

PRZEGLĄD EUROPEJSKI

Theoretical reflection
on the activity of entities
at international, regional
and national levels

Political and legal aspects
of the financial perspectives
and economic problems in EU

Intercultural communication
and public diplomacy in Europe

3

2019



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Teoretyczne rozważania
o aktywności podmiotów
na poziomach międzynarodowym,
regionalnym i krajowym

3

2019

Polityczne i prawne aspekty
perspektyw finansowych
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Komunikacja międzykulturowa
i dyplomacja publiczna w Europie

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THEORIES AND METHODS IN EUROPEAN STUDIES

The European Union as a laboratory of paradiplomacy in the context of international and domestic determinants of regions' foreign activities

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Abstract

The aim of this article is to propose an analytical framework of the EU as a laboratory of paradiplomacy in context of international and domestic determinants of the regions' foreign activities. The article shades some light on the definitions of paradiplomacy, which allow to understand the ambiguity of the status of regions in international relations. Firstly, the dimensions and types of paradiplomacy are identified. Secondly, the discourse concerning international and domestic determinants of international engagement of regional governments is identified. Then, the framework of the EU as a laboratory of paradiplomacy is explained in the three subsequent parts. Firstly, the EU is referred to as an *intermestic* determinant of paradiplomacy, what results from the specific nature of the EU that corresponds with the international and domestic determinants of paradiplomacy in general. Secondly, the EU is addressed as an arena of paradiplomacy where various patterns of regional governments' presence in Brussels are tested. Finally, paradiplomacy in the EU is addressed as a scholarly challenge for the further research.

Keywords: paradiplomacy, EU, international determinants, domestic determinants

Unia Europejska jako laboratorium paradyplomacji w kontekście międzynarodowych i wewnętrznych uwarunkowań aktywności zagranicznej regionów

Streszczenie

Celem artykułu jest zaproponowanie podejścia postrzegającego UE jako laboratorium paradyplomacji w kontekście międzynarodowych i wewnętrznych uwarunkowań aktywności zagranicznej regionów. Artykuł otwierają rozważania definicyjne, które pozwalają zrozumieć niejednoznaczność statusu regionów w stosunkach międzynarodowych. Następnie przywołane zostały wymiary i typy paradyplomacji. W dalszej kolejności, identyfikowane są międzynarodowe i wewnętrzne uwarunkowania międzynarodowego zaangażowania regionów. Podejście postrzegające UE jako laboratorium paradyplomacji wyjaśniono w trzech kolejnych częściach. W pierwszej, integracja europejska jest traktowana jako międzynarodowo-narodowa (*intermestic*) determinanta paradyplomacji, co wynika

ze specyfiki UE, która odpowiada międzynarodowym i krajowym determinantom paradyplomacji w ogóle. W drugiej, UE jest postrzegana jako arena paradyplomacji, w której testowane są różne formy obecności władz regionalnych w Brukseli. W trzeciej, paradyplomacja w UE odniesiona została do kluczowych podejść teoretycznych, które podejmują jej temat w kontekście badawczych ambicji jej teoretycznego uregulowania.

Słowa kluczowe: paradyplomacja, UE, uwarunkowania międzynarodowe, uwarunkowania wewnętrzne

The regions understood in this article as non-central governments¹ began to be considered in the category of international relations' participant in the 1970s, mainly due to the so-called New Federalism, which resulted in changes in federal states that enabled international activity of Canadian and US provinces. This vector in the area of international relations began to be successively and intensively explored in the 1990s as a result of global alternations of the international order related to the end of the Cold War and globalisation processes (Kuznetsov 2015: p. 43–44). In Europe, the particular mobilisation of regions in international relations is associated with the intensification of the processes of European integration, which fundamentally strengthened the role of regions (Hooghe 1995: p. 175).

Regions' involvement in international relations causes many difficulties in terms of proper defining of their activities in the scientific categories. In consequence, this increasingly interesting phenomenon still remains in a perspective of a scholar challenge. In traditional definition of international relations the regions' status is clear: they are not subjects of international law (Tomaszewski 2006: p. 74). Moreover, "regions do not have sovereign governments able to lay down their definition of the 'national interest' and to pursue it in a unified and coherent manner. Regions are complex entities containing a multiplicity of groups which may share common interests in some areas but be sharply divided on other issues (...). They must fit their own activities into a world dominated by national governments and transnational organisations, which they can rarely challenge head on but must work around or with" (Keating 2000: p. 3). Regions' external engagement is often "an activity that typically falls in a legal and constitutional grey zone because most constitutions almost always give exclusive powers over foreign affairs to the state" (Lecours 2008: p. 6). And states do not always share the conviction of delegating or assigning international competences to regions, fearing for the states' inconsistent presence in international arena or divisions and internal conflicts. However, this does not change the fact that regions are beginning to be perceived in the context of an actor of international relations, next to traditional state actors and non-state ones like transnational corporations, civil society organisations, etc. (see more: Keating 2001; Surmacz 2013).

The aim of this article is to propose an analytical framework of the EU as a laboratory of paradiplomacy in context of international and domestic determinants of regions' foreign

¹ In this article the notions "non-central governments", "regional governments", "subnational governments" will be used interchangeably.

activities. The article opens with definition considerations, which allow to understand the ambiguity of the status of regions in international relations. Next, the dimensions and types of paradiplomacy are identified. Then, the discourse concerning the international and domestic determinants of international engagement of non-central governments is described. The framework of the EU as a laboratory of paradiplomacy is explained in the three subsequent parts. Firstly, the EU is referred to as an *intermestic* determinant of paradiplomacy, what results from the specific nature of the EU that corresponds with the international and domestic determinants of paradiplomacy in general. Secondly, the EU is addressed as an arena of paradiplomacy where various patterns of regional governments' presence in Brussels are tested. Finally, paradiplomacy in the EU is addressed as a scholarly challenge for the further research.

Conceptualisation of regions' international activities: paradiplomacy or ...?

Labeling the external activities of regional governments has been challenging in the academic literature. The most frequently used term 'paradiplomacy' has been incorporated in different styles and not in the same meaning by scholarly attempts of exploring the phenomenon of subnational governments' involvement in international relations. In fact, one of the founding fathers of 'paradiplomacy' concept, Ivo Duchacek, started in 1984 with the term 'microdiplomacy' what might suggest a speculative dimension of conceptualizing the region's actorness in international relations at that time. Moreover, the term of 'paradiplomacy' had been engaged by Rohan Butler in 1961 to describe "the highest level of personal and parallel diplomacy, complementing or competing with the regular foreign policy of the minister concerned" what usually meant "unofficial or secret negotiations that may take place in a shadow of official diplomacy, 'behind the backs' and 'under the table'" (Kuznetsov 2015: p. 26). The correlation between international engagement of regions with the term 'paradiplomacy' was forged by Panayotis Saldatos (1990: p. 34), who understood it as "a direct continuation, and to various degrees, from state government, foreign activities". This approach was supported by Duchacek (1990: p.32) who claimed that the term actually adequately referred to the analysed phenomenon: "parallel to, often coordinated with, complementary to, and sometimes in conflict with center-to-center 'macrodiplomacy'".

Without contesting the phenomenon of regional governments' involvement in international relations, the term of 'paradiplomacy' had been criticised, mostly by John Kincaid who proposed to use the term 'constituent diplomacy' which was meant to upgrade the sense of meaning of regions' actorness in international relations. In his opinion, paradiplomacy equaled secondary what could not be the case of units in federal states, like the US, where "the states are co-sovereign constitutional polities with the federal government, not sub-national governments" (Kincaid 2001: p. 1). Similar arguments were shared by Brian Hocking (1996: p. 39) who claimed, that "neologisms (...) – 'paradiplomacy' and 'microdiplomacy' implied some second-order level of ac-

tivity, the parent concept – diplomacy – being the rightful preservation of national governments". A second argument was of far more significant reason. In his view, the term 'paradiplomacy' limits regional governments to "unitary actors, whereas, in reality, they represent quite complex patterns of relationships both inside and outside their national settings, and embrace a diversity of interests". Instead he proposed the concept of 'multilayered diplomacy', understood as "densely textured web" in which regional actors "are capable of performing a variety of goals at different points in the negotiating process. In doing so, they may become opponents of national objectives, but, equally, they can serve as allies and agents in pursuits of those objectives" (Hocking 1993: p. 2–3).

The definition disputes mentioned above reflect the problems with conceptualisation and localisation of international activities of regions in key categories of international relations. However, as Kuznetsov (2015: p.28–29) concludes: "all proposed alternatives did not earn enough credit to substitute *paradiplomacy* as the major term in academic discourse. An accurate glance at the bulk of literature of the 1990s and 2000s gives us strong evidence of that because it shows that scholars may easily operate different terms in their works, but the concept *paradiplomacy* became the central starting point for both those who prefer this neologism and those who claim to have coined something better". The term is as problematic and ambiguous as the external activities of regions, however, this does not change the fact that regional involvement in international relations has been increasing, what is immanently associated with changes in international arena and on nation-state level.

Dimensions and types of paradiplomacy

While understanding that paradiplomacy is generally about subnational governments' presence and activities in international relations, it is also important to understand that in the case of each region paradiplomacy does not mean the same, mostly in the sense of motivations, goals, possibilities and constraints. In this context André Lecours (2008: p.2–4) distinguishes between three layers of paradiplomacy. The first one is mainly about economic issues, focusing on attracting foreign investments, targeting new markets for export, establishing trade partners. There are no political aspirations nor cultural matters at stake in this type of paradiplomacy which is "primarily a function of global economic competition". The examples of such paradiplomatic layer can be found among American states, Australian states as well as Canadian provinces other than Quebec, namely Ontario and Alberta. The characteristic feature of the second layer of paradiplomacy is its extensiveness and multidimensionality because it involved cooperation in cultural, educational, technical, technological aspect. This cooperation is usually labeled as "decentralised cooperation" and refer mostly to European regions without prominent political goals. The third layer of paradiplomacy bases on political considerations. As Lecours (2008: p. 3) concludes: "Here, sub-state governments seek to develop a set of international relations that will affirm the cultural distinctiveness, political autonomy and

the national character of the community they represent". The layers can be cumulative depending on the variables mentioned above, international incentives and conjuncture and results of strategies the regional governments adopt.

Due to multitude of regional governments that perform different layers of paradiplomacy, it has been a challenge to develop a typology of it that would not lead to oversimplification (Magone 2006: p. 7). One of the most frequently mentioned is that developed by one of the founding fathers of the paradiplomacy concept, Ivo Duchacek, who in 1986 concluded that: "The various initiatives taken by non-central governments on the international scene have so far assumed four distinct yet interconnected forms: (1) transborder regional microdiplomacy, (2) transregional microdiplomacy, (3) global paradiplomacy, and (4) protodiplomacy" (Kuznetsov 2015: p. 27). The first type means trans-border formal and informal contacts between regions that share geographic proximity and the resulting similarity in commonly shared problems and methods of their solutions. Transregional microdiplomacy stands for connections between non-central governments that are not neighbours. Global paradiplomacy, as Duchacek describes, "consists of political functional contacts with distant nations that bring non-central governments into contact not only with trade, industrial or cultural centers on other continent but also with various branches or agencies of foreign national governments" whereas protodiplomacy contains the most distinctive political aims it means "activities of non-central governments abroad that graft a more or less separatist message onto its economic, social and cultural links with foreign nations" (Kuznetsov 2015: p. 27).

Another frequently mentioned is that proposed by Robert Kaiser who distinguished between three types basing on the forms that paradiplomacy adopted in the global governance system (Magone 2006: p. 8). The types are as follows:

- 1) Transborder regional paradiplomacy which relies on formal and informal contacts between neighbouring regions across national borders;
- 2) Transregional paradiplomacy which is understood as cooperation with regions in foreign countries;
- 3) Global paradiplomacy which rests on political-functional contacts with foreign central governments, international organisations, private sector industry and interests groups.

While sharing many similarities, Duchacek's and Kaiser's typologies capture different types of relations the regional government establishes in the international area, these are between regions themselves as well as other actors like states, international organisations, etc. However, according to José M. Magone (2006: p. 9–10) they miss one additional level that cannot be ignored, that is between the global and the regional. He suggests introducing an another type: transnational paradiplomacy which means a cooperation between national governments, which forms a context for regional governments and different interest groups to take part in common projects. As he explains: "The gatekeeper for such paradiplomacy are the national governments, but the real actors come either from civil society or subnational governments" (Magone 2006: p. 10).

International determinants of paradiplomacy

Reflecting upon the determinants of the rise of paradiplomatic practices, David Crikemans unambiguously states that the activities of non-central governments are part of more comprehensive processes of multilevel international and global politics (Crikemans 2010: p. 5). Following this presumption, one of the major determinants is globalisation processes, understood not merely as a competition for market share, trade opportunities or economic liberalisation, but mostly in a broader context. As Carlos R.S. Milani and Maria C.M. Ribeiro observe globalisation has evolved "into a social and political struggle for defining cultural values and political identities (...), having major consequences for the internationalisation of politics" (Milani, Ribeiro 2011: p. 23). The consequences are at least several. Firstly, key categories in international relations such as participants or foreign policy have been subjected to intense processes of re-definition and re-categorisation. The processes of globalisation are accompanied by changes in international order which Marek Pietraś (2018: p. 185) describes as "late-Westphalian", which is characterised, among others, by the fact that apart from state actors (constituting the core of the Westphalian order) there are also influential entities without sovereignty, among others transnational corporations, transnational civil society organisations that create global civil society, religious movements and networks of sub-state territorial units. Globalisation processes have also put into question the classic division of the domestic policy from the external policy in relation to foreign policy due to "the increased permeability of national borders, implying a new quality of international interdependencies. Complex interdependencies arise, with the mutual penetration of what is global, international, national and local" (Pietraś 2018: p. 187). James N. Rosenau (2004, p. 34–36) diagnoses that a globalised world experiences fragmentation and integration at the same time, what he calls *framgregation* which means that these two processes are interconnected, leading to a de-hierarchisation of world politics.

Secondly, as Theodore H. Cohn and Patrick J. Smith (1996: p. 25) noted: "The scope of international relations has expanded dramatically as global interdependence has increased, encompassing "new" policy areas such as environmental pollution, human rights, immigration, monetary and trade instabilities, and sustainable development. Unlike traditional strategic/security matters, these new issues are *intermestic* in nature: that is they are 'simultaneously, profoundly and inseparably both domestic and international'. The intermestic character of contemporary international issues favours involving different types of actors in international politics what leads to second important tendency. The increasing engagement of these various actors, mainly transnational and non-governmental, is visible on different levels making the international relations "decentralised" in many dimensions. As pointed out by Christoph Schreuer (1993: p. 449) centralisation embodied in the state monopoly, "is not a promising recipe for social stability or a better world order". Moreover, this state monopoly is being questioned because of *intermestic* nature of international issues, global interdependence producing multiple channels of access for different actors, which "in turn, progressively reduce

the hold on foreign policy previously maintained by central decision makers" (Chambers 2012: p. 10)

A third tendency redefines another classic division regarding the decision-making processes in relation to the significance of its subject. Basically, it was assumed that topics in the field of high politics were decided at the central level, while issues in the area of low politics were situated in the hands of sub-national units. Nowadays, we observe that this division loses its *raison d'être* due to the fact that often the "local" issue is the subject of interest for a wider audience, not only outside the region but also the state, while "hard" issues of international or state policy directly affect the socio-political and economic space of the region (Kuznetsov 2015: p. 104).

The international determinants contribute to the quality of the regions status as international actors. José J. Magone claims the region and its location factors become a more flexible unit to deal with the emerging thrusts of globalisation (Magone 2006: p. 2), whereas Christian Lequesne and Stéphanie Paquin (2017: p. 190–191) convince, that non-central governments have certain advantages over nation states resulting from their ambiguous status, which is partly both "sovereignty-bound" and "sovereignty-free" in the words of James N. Rosenau (1990: p. 36). Being sovereignty-bound means that, being in the state structure, unlike non-government actors, they have direct access to decision makers, including foreign policy actors, as well as international diplomatic networks. On the other hand, their sovereignty-free position allows them maneuverability "to act more freely than central governments. In that sense, non-central governments enjoy some of the benefits of civil society actors" (Lequesne, Paquin 2017: p. 191). In this way, non-central governments are "hybrid actors transcending Rosenau's *two worlds of world politics*, the *state-centric world* of the nation-state and the *multicentric world* of non-state actors. By exploring the boundaries between the conventional but often misleading distinctions between state and non-state actors, they have been able to play a variety of roles in several political arenas" (Hocking 1996: p. 40).

Based on the description and analysis of the international activity of regions in the world, John Kincaid distinguishes a number of roles that local governments can play in their international environment. First of all, he indicates the roles associated with promoting the economic, national and cultural interests of the regions. In the economic area, regional governments usually seek to attract foreign investment, promote exports of regional products, attract foreign tourists by conducting trade missions, offering incentives to investors, etc. In national and cultural area, regions attempt to „project their national or cultural identity onto the world stage; establish exchanges and other relations with kindred political communities elsewhere in the world; foster education abroad about their culture and education" (2010: p. 25–28). Another important set of international roles involves relations with the central government and here Kincaid (2010: p. 27) indicates that local governments are pressure actors in foreign policy-making. Regardless of their constitutional competence, local governments attempt to build and explore mechanisms that enable them to lobby in the central government and build alliances with non-governmental partners in order to put pressure on it to pursue desired foreign

policies. With regard to the foreign policy of the state, local governments can also be partners with their nation-state government in foreign policy development as they may be useful in offering expertise and experience. In case of certain reasons and concerning certain regions, "a constituent government can serve as a proxy for the nation-state by initiating a policy, providing aid, or conducting negotiations in situations where it would be politically embarrassing, diplomatically awkward, or legally impossible for the nation-state government to do so" (Kincaid 2010: p. 27).

Domestic determinants of paradiplomacy

Diagnosing the sources of dynamic development of the paradiplomacy only in the international area gives an incomplete picture, therefore it should be supplemented with internal stimuli of foreign activity of the regions. Naturally, setting clear boundaries between external and internal determinants is not recommended due to contemporary global tendencies resulting in their mutual penetration and conditioning.

Alexander S. Kuznetsov (2015: p. 103–104) propounds the thesis that democratisation processes favour the development of regional activity in a natural way, assuming pluralism and decentralisation, stimulating and sometimes even forcing regional entities to a specific action. For Kincaid (2010: p. 15–16) democratisation is of far greater importance than globalisation when it comes to determining international activities of regions, mainly due to the fact that this kind of regional governments appeared before the era of globalisation which is rather an enabling factor than a casual factor and it does not explain "the variations in constituent diplomacy evident across countries, nor does it explain the absence of constituent diplomacy in the most countries". Basically, paradiplomatic activities are more common, as it is diagnosed in the literature, in the countries that "have a market-based economy, a democratically elected national government, elected regional and local government officials, competing and/or regional political parties, and protections of human rights, including property rights" (Kincaid 2010: p. 16).

The paradiplomacy is closely connected with the processes of regionalisation, which paradoxically overlap with the processes of globalisation, resulting in a situation in which the nation state is under the pressure of factors flowing from above and below. At the level of internal determinants, regionalisation can be seen in at least three dimensions: first, as "a state policy (...) in which central governments are actively involved in engaging regional elites in designing and implementing a national strategy, thus raising their political and economic status"; secondly, as "a bottom-up process in which regions demand greater political, economic and cultural autonomy"; thirdly, as "a reaction of both central and regional governments to the challenges and opportunities arising in the context of global economic change" (Kuznetsov 2015: p. 103). This third dimension confirms the correlation between the international policy processes and the internal policies / policies of the state.

Depending on the characteristic features of the state's political system, four inter-governmental relations models can be distinguished, which determine the quality and

scope of international activity in the regions. The first pattern is a dualism model, found in the United States, in which the federal government and the state pursue "their separate foreign-policy interests independently in accordance with their respective constitutional powers. Intergovernmental relations are activated when the states need assistance from the federal government or the federal government needs assistance from the states" (Kincaid 2010: p. 21–22). The second pattern is to promote a nation-state as a dominant actor with limited international activities of region. This model is mostly to be found in Russia. In the third pattern, a nation-state performs as a leader but "there is more parity and a better balance of power between the nation-state and the constituent governments". This pattern is characteristic for parliamentary federation in the Westminster tradition. In the fourth pattern non-central governments enjoy limited foreign-affairs powers and are involved in nation-state foreign-policy-making through institutionalised intergovernmental structure. Here, the examples are, among other, Austria, Belgium and Germany.

As we can see from the types of intergovernmental relations, different countries react differently to international aspirations and activities of their regions. However, what could be observed, especially in Europe, national governments begin to realise the inevitability of international development of regions. Thus, in order to avoid internal incoherence, visible dramatically from the international perspective, they try to craft channels and mechanisms of intergovernmental consultation and coordination (Lecours 2008: p. 6–7), which are determined by several, not only constitutional, factors.

With regard to stimulants of paradiplomacy, which are consequences of domestic circumstances, it should be pointed out that they have naturally a diverse nature, intensity and consequences in the context of various countries and their regions. First of all, there are "significant differences in the legal frameworks that regulate the foreign policies of constituent units: some are more formal and rigid constitutionally (Germany) and others are more formal and include many ad hoc procedures (UK)" (Requejo 2010: p. 12). In the literature, priority is given to the federal character of a state which results in a top-down pressure of central governments on regional structures. In fact, as diagnosed by Ferran Requejo (2010: p. 12): "comparative politics shows that the existence of a symmetric position between two chambers of the central parliament (with an upper chamber of a territorial nature) as well the existence of different party systems in the two levels of government are elements which, in general terms, reinforce the intensity of the foreign policy of the constituent entities (...) the multi-level nature of a state is also reflected in the international sphere. In the Belgian case, the regions and linguistic communities ratify the international agreements signed by the federation and, in the German case, the upper chamber (Bundesrat) plays an important international role".

The paradiplomatic activity of regions is particularly conditioned by determinants whose essence places them in the bottom up dimension of understanding regionalisation, which, as we shall see below, may result problematically for central governments. They most often result from various kinds of asymmetries in the country and the accompanying aspirations of the regions.

The first type of asymmetry can be distinguished in countries where different regions are characterised by unequal entrance to the nation state due to ethnic, linguistic specificity, etc., which increases their need to have a special status, emancipation or secession against other backgrounds (Kuznetsov 2015: p. 105). In this context, the paradiplomacy serves as "a multifunctional vehicle for the promotion of interests and identity" (Lecours 2008: p. 2) and thus as a tool for building relations with the rest of the world, bypassing the central government, in order to build foundations for international recognition for national aspirations and thus to create an instrument of pressure on the central government in the fight for the most far-reaching concessions for the region. Examples of such territorial units as Catalonia, Basque Country, Flanders endowed with a national character illustrate the motivation of their regional governments to carry out a more active foreign policy (Requejo 2010: p. 10). For fundamental cases of this type of paradiplomacy, like Flanders, Stéphane Paquin (2003: p. 621–642) uses the term 'identity paradiplomacy'. As expected, paradiplomacy appears to be a great multifaceted challenge for central governments, which involves managing various levels of asymmetry within the state, i.e. between the 'secessionist' region and the other units or between the particular region and the central government. However, as Peter Lynch (2001: p. 159) emphasises, paradiplomacy: "has two distinct political ends. Firstly, paradiplomacy can be used as a nation-building strategy to raise the profile of the region in preparation for a bid for statehood. Second, paradiplomacy as a political defense mechanism for regional governments and political parties that seek to resist secession and statehood, and they use paradiplomacy to emphasise the extent to which the region can become an effective role in international politics while avoiding the uncertainties of secession". In this second understanding, paradiplomacy can serve as a source of compensation for giving up national and/or state-building aspirations.

The second type of asymmetry is connected with the actual possibilities of international influence and decisive efficiency. In this context, the paradiplomacy is fueled by the inefficiency of central governments felt by regional units in specific areas in the international environment. As Kuznetsov (2015: p.106) points out, this is the most often the case when the central government does not show sufficient political will to take up the topic, strategically important from the point of view of the interests of the region, which in this situation alone attempts to build international space for their articulation and implementation. Another, crucial elements in this type of asymmetry are systemic deficiencies, which Krzysztof Tomaszewski (2006: p.78) mentions: "(...) failure of the central administration (excessive bureaucratisation, expert deficiencies, limitations in the disposal of resources, etc.); institutional shortcomings resulting in insufficient involvement of intra-state units in decision-making processes in the field of foreign policy; lack of precise provisions in the constitution regarding appropriate division of competences between particular levels of authority; general reduction of foreign policy's meaning and referral to domestic affairs". In the case of 'active' regions, not only because of separatist ambitions, but mainly for reasons of economic activity, such systemic deficiencies in the country constitute a source of frustration for the region, which finds its outlet in the search for a space in international relations.

The third type of asymmetry concerns the differences between regions within one country, which result in its territorial diversification and increased ambitions of the regions, mainly due to their economic potential and international experience that they get during their paradiplomatic activities (see more: Cohn, Smith 1996: p. 33).

The European Union as a laboratory of paradiplomacy

In research on paradiplomacy, European integration is indicated as one of its most important determinants. This is mainly due to the fact that the European Communities introduced a structural policy that resulted in the allocation of regions in the European policy-making. In this context, the concept of "Europe of the Regions", which various understandings were to accentuate the regional turnaround in Europe, acquired a special meaning. This was in line with the specific nature of the European Union as well as the aspirations of various regions for which European integration began to perform specific functions, not necessarily the same as those that it held for their central governments.

The specific nature of the EU is the reason behind the logic proposed in this article that the EU experiences, embraces, encompasses as well as many times generates the determinants of paradiplomacy described above. Therefore it is assumed here that the EU constitutes a form of a laboratory of paradiplomacy which is characterised by activities of different regional governments with different capacities, institutional and constitutional background and motivations which aim at exploring possible channels of access to the EU decision-making in a differentiated manner. This very fact justifies the framework of the EU as a laboratory of paradiplomacy, especially that since some time the traditionally prevailing concept of "Europe of the Regions" has been questioned not only by scholars, who are searching for an explanatory approach aimed at the generalisation of paradiplomacy in the EU, but also by central governments, which generally tend to resist the devolution of real power to non-central governments, as well as regions themselves, which are disappointed with some of the EU development directions e.g. the 1993 and 1999 revision of European structural cohesion policy, which introduced social partners into the European arena, thus undermining the privileged role of regional government (Bauer, Börzel 2010: p. 10).

In the following section, the framework of the EU as a laboratory of paradiplomacy is explained in the three subsequent parts addressing the core issues. Firstly, the EU is referred to as an *intermestic* determinant of paradiplomacy, what results from the specific nature of the EU that corresponds with international and domestic determinants of paradiplomacy in general. Secondly, the EU is addressed as an arena of paradiplomacy where various patterns of regional governments' presence in Brussels are tested. Finally, paradiplomacy in the EU is presented as a scholarly challenge.

The EU as an *intermestic* determinant of paradiplomacy of Member States' regions

In context of international determinants European integration is particularly important for the international mobilisation of regions, as it not only stimulates these activities, but

also offers an arena for their implementation, which is referred to as "increasingly post-sovereign political space" (Chambers 2012: p. 8). The foreign activity of the regions of the EU Member States, together with its various formulas, has become one of the most prominent manifestations of paradiplomacy in the today's world, being a kind of logical emanation of the EU specifics, combining state-centric and supranational regimes. It is precisely the EU that constitutes a kind of 'test ground' for the contemporary tendencies in international relations like re-definition and re-categorisation of key categories in realms of sovereignty, diplomacy, high and low politics. Firstly, the European integration challenged the traditional understanding of sovereignty and number of scholars tend to forge notions adequate to describe the EU's nature. William Wallace (2006: p. 491-494), for example, uses the term of "partial polity" where sovereignty has been continuously reinterpreted, what results in the 'post-sovereign' politics of collective governance in the world where problems are more of global than national character. For this reason, the EU fits the "late-Westphalian" model of international order as it embraces different kind of actors within the framework of its decision-making, starting from state actors and supranational institutions to transnational participants (see more: Curyto 2015). Secondly, as a consequence of Europeanisation processes understood broadly as the EU's impact of its Member States (top-down Europeanisation) and Member States' impact on the EU (bottom-up Europeanisation), European integration remains constantly of *intermestic* character, meaning that processes within the EU (perceived as international arena in this sense) are interconnected with domestic development and *vice versa*. Here we can apply the approach that Europeanisation top-down processes resulting in advancement in integration correlate with bottom-up processes producing rather disintegrative mechanisms (see more: Curyto 2017). Thirdly, European integration and EU legislation encompass and regulate a wide range of policy areas, what puts into question a traditional division of issues of *high politics* and *low politics*, producing the fact that often *low politics* issues are under serious political consideration and bargaining at the EU level within different institutions. In context of this development, regions are not only invited but also forced in some sense to activate in the European arena. As Carolyn Moore (2007: p. 2) explains: "The simple explanatory factor in understanding regional engagement in Brussels is that EU policy matters for regional actors". The relevance of EU policy and legislation is highly recognised by regional actors since particularly EU legislation involves regional governments in its implementation forcing them to take steps towards establishing means to shape that legislation (Greenwood 2003: p. 231).

This brief comparison of international determinants of paradiplomacy which are manifested in the EU gives us a sense of understanding of their correlation with domestic determinants of regions' international engagement which are also strongly represented in the case of the EU. As stated in the previous part, democratisation and decentralisation are particularly important incentives for paradiplomacy to be developed. In context of the EU the growing tendency of decentralisation in majority of EU Member States increased the capacity of regional governments which seek different patterns of influencing their national governments' EU policy preferences (Loughlin 2001: p. 18). Naturally, this ten-

dency is partly forced by Europeanisation processes and EU legislative outcomes which require the involvement of regional actors, at least in the area of implementing European decisions.

When it comes to domestic determinants of paradiplomacy, the EU case is also representative, mostly in terms of intergovernmental relations between central and non-central governments. This issue must be obviously located in reflections upon political systems of the EU Member States, which define the scope of possibilities of international activities of the regions. The brief look at this matter lets us arrive with conclusion that regions within federal states enjoy more space to maneuver in comparison to their counterparts in unitary states and this is a general international tendency. But the case of the EU is more about the actual relations between the state and the region, taken in political, economic and cultural dimensions. Addressing all the asymmetries mentioned in the part above, which are naturally present in the EU Member States and their regions, we can see that the EU is treated as a point of reference to deal with these asymmetries. For example, for the regions which experience the asymmetry associated with their ethnic or linguistic specificity "the EU increasingly serves as a potential reference point and even ally for ethno-national political movements against what are perceived as the redundant constrictions of the nation-state. Membership of the EU offers an alternative institutional framework which can help to diminish the political and economic costs of secession" (Chambers 2012: p. 8). As a consequence, European integration became in some sense a compensation for the ambitions of certain regions.

The other asymmetries within the EU Member States come usually from "soft power" of regions and they are produced by such kind of factors like one's region' capacity of international influence, decisive efficiency or economic position in contradistinction to less equipped regions and in this aspect the EU offers opportunities to reach decision-making mechanisms for European regions, which are driven by economic, cultural or political motivations and not necessarily secessionist aspirations, for example in Germany, France or Austria (see more: Blatter et al. 2013). As diagnosed by Chambers (2012: p. 8): "The EU constitutes a political regime which provides previously domestic actors such as regional governments with diverse opportunities to take advantage of new opportunities to access the international scene". The opportunities open the area of understanding of the EU as an arena of paradiplomacy of EU Member States' regions where various modes of activities are explored and tested.

The EU as an arena of paradiplomacy of Member States' regions

The opportunities are both in institutionalised and non-institutionalised channels. In the first case, the development of the regions' activity was significantly influenced by the structural funds policy under which supranational actors such as the European Commission, national authorities, regional authorities and social actors work closely together (Hooghe 1995: p. 182). The Treaty of Maastricht, which introduced institutionalised channels for presenting their interests and opinions, was of significant importance for the region's activation, for it initiated, inter alia, a procedure allowing the Member State to

send a regional minister to the Council of Ministers, which could negotiate bindingly for a Member State, as well as appointed the Committee of the Regions, which is an institution designed for the representation of the regional level in the EU (Hooghe 1995: p. 180). Concerning the procedure, there were Belgian regions and German *Länder* particularly interested in and which successfully lobbied the 1991 Intergovernmental Conference what resulted in the fact that „national governments' monopoly of representation [in the Council of Ministers – B.C.] was clearly broken" (Bursens, Deforche 2010: p.167). Naturally, diverse national regulations in the context of the above procedural and organisational solutions result in a varied level of activity of the European regions, which does not undermine the significance of their existence. What is also interesting, in this context, paradiplomacy has begun to be considered in parallel with Europeanisation, understood as the adaptation of a member state to institutional arrangements of the EU (Bursens, Deforche 2010: p.168).

In addition to the institutionalised channels of access to the EU decision-making, regions also explore non-institutionalised forms. Amongst a vast variety of informal instruments the ones that are frequently used are regional offices in Brussels, which strive to be something "between an informal 'embassy' for their particular region and a lobbying agency. They provide the European Commission and the European Parliament with regional viewpoints on issues that concern them; they survey the European scene for upcoming issues and bring them to the attention of policy-makers in their home governments; they participate in networks with other regional offices or with other organisations; they provide a rudimentary welcome service to private actors from their regions; and they lobby for a greater voice in EU decision-making" (Hooghe 1995: p. 186). However, a high degree of diversity between European regions in terms of their economic position or political aspirations means that this type of regional representation is not homogeneous and creates a map of offices of active 'advocates' of their regions, as well as more passive ones, which nevertheless share the belief that it is impossible to be absent in Brussels.

While reflecting upon growing mobilisation and institutionalisation of regional offices in Brussels Carolyn Moore (2007: p. 1) diagnoses a "somewhat paradoxical situation whereby on the one hand, the concept of a 'Europe of the Regions' has largely been discredited and has generally fallen out of favour, whilst at the same time, the regional engagement in Europe continues to grow at an exponential rate". In this understanding the concept of "Europe of the Regions" means a sort of the European-wide solution to encompass the variety of European regions and their potential, motivations and goals which would result in consolidating some sort of the "Third Level" engagement in the EU (Moore 2007: p.13). The reasons for failure of this concept comes from vast heterogeneity of European regions.

What seems to matter the most in today's paradiplomacy in the EU is the case of influencing the EU policy and the legislation what is conditioned by the capacity to act and in this context we can distinguish two types: constitutional regions and administrative (non-constitutional) regions. Moore (2007: p. 8) diagnoses that "The constitutional regions in Brussels represent a unique subset of regional actors in the EU with a del-

egated set of legislative competences. The Spanish Autonomous Communities, the German and Austrian Länder, the Belgian provinces and the Devolved Administrations of the UK constitute a vocal group of powerful regions, who together press for greater recognition of their unique governmental status in Europe, and a more powerful say within European decision-making processes". Constitutional regions are strongly oriented to the political dimension of their activity in Brussels, whose goals are clearly linked to the priorities of their national governments, which are both their sponsoring agencies and their end users. As a result, these regions "seek to carry out policy work for ministers, help to define future policy programmes and agendas, and arrange ministerial meetings and briefings with the key EU decision-makers. Their institutional focus is largely directed in Brussels towards these institutions with the most authority, and where themselves are keen to extend their influence: primarily to the Council of Ministers and the Permanent Representations of their member states" (Moore 2007: p. 9). Therefore, the fundamental goal of the constitutional regions is to influence the EU decision-making process and build channels of access to the key decision-makers. The implementation of this 'Brussels strategy' is also carried out based on the investment in a large number of qualified staff and prestigious locations in the city, near target institutions.

The starting point for administrative regions to operate in Brussels is their position towards their sponsoring stakeholders and the level of involvement of different actors ranging from local government ones, education institutions, business companies, etc. Therefore, the case of these regions is to pursue the economic development agenda of the region as a whole. As a result the core of their activities concentrates on diagnosing the EU funding opportunities, raising awareness of these schemes amongst interested partners, establishing networks with other EU regions to upgrade both individual and common capacity. In contradistinction to constitutional regions, the administrative ones' regional offices are characterised by more low-key political dimension in their work what results in targeting different EU institutions. Being attached to the usefulness of regional networks they are strongly involved with the Committee of the Regions, but the most important actions are aimed at the European Commission. Non-constitutional regions "seek to engage in policy networks which allow regional actors in Brussels to share experience and develop joint opinions to deliver to Commission consultations or directly to the relevant policy officials. Some of these grouping are quite formal in nature, meeting on a regular basis (...); others remain more ad-hoc in nature and are short lived, generally over the lifecycle of an individual policy proposal. As a result, their primarily interlocutors in Brussels tend to be officials within the European Commission, where they often find themselves pressing against an open door in response to the 'demand pull' from the many DGs who seek their participation" (Moore 2007: p.10).

Consequently, as we see from the diversification between constitutional and administrative regions, there is no common pattern for regions to act on the Brussels level. Therefore European regions are experimenting in their 'EU paradiplomacy' basing mostly on means available for them, but their motivations and goals as well.

Paradiplomacy in the EU as a scholarly challenge

The very fact of heterogeneity of EU Member States' regions with their diverse paradiplomatic actions, together with specific nature of the EU itself, has been a challenge for scholars to grasp the reliable and comprehensive picture of the paradiplomacy in the EU. Most commonly, paradiplomacy is usually referred to multi-level governance approach which "encompasses fundamental aspects for understanding subnational diplomacy" since it "accepts the ideas that decision-making competences are shared by actors at different levels and that political spheres are interconnected" (Setzer 2015: p. 4). In this sense the concept of multi-level governance "has opened scholarly eyes for regions as relevant actors in EU decision-making" (Bursens, Deforche 2010: p.157). In this concept's understanding we can expect that European reality is constituted by three levels: European, national and regional what aspires to prove that "European integration has neither purely strengthened the state, as suggested by liberal intergovernmentalism (...), nor has the state been automatically weakened as expected by neo-functionalist approaches" (Bauer, Börzel 2010: s. 2). However, multi-level governance as a key concept in explaining the regions' international engagement has been challenged by scholars who, while acknowledging its input, recognised some further necessities to research. Peter Bursens and Jana Deforche (2010: p.151) claimed, that multi-level governance must be supplemented by historical institutionalism to explain "why certain regions acquired a particular set of foreign policy powers" in order to operate on international level. Michael W. Bauer and Tanja Börzel (2010: p. 2) claimed that "The multi-level governance literature acknowledges that European integration has not given rise to the emergence of a homogenous regional level of governance in the EU" and they justify that "the patterns of intergovernmental relations between the EU, the central state and the regions are too diverse to be explained by the theories of European integration that have dominated the debate on a 'Europe of the regions'. The concept of multi-level governance is better suited to accounting for the varieties of regional government found in the EU. However, this concept has no explanatory power to account for the variation we observe across time, policies and member states". Following similar presumptions Michael Keating (2017: p. 616) claims that "There is a search for mechanisms to institutionalise this 'third level', but they have reached no solution. The multilevel governance approach opens up the black box of the state and emphasises complexity, but it has weak ontological and normative foundations". Therefore he proposes to consider applying the federal perspective, that in its recent development moves away from the American model and "has the analytical advantage of focusing on relationships among territory, function and institutions while also addressing normative issues including representation, sovereignty and solidarity" (Keating 2017: p. 616).

The promising utility of this approach remains to be seen, but there are still the same complications concerning the heterogeneity of the regional governments in EU Member States and, what Keating (2017: p. 626) emphasises himself, the actual will of Member States to provide regions with further competences and the EU's "mandate or interest to intervene in matters of national sovereignty". These three aspects make paradiplomacy

in the EU a multifaceted phenomenon, resisting a scientific generalisation. Nonetheless, the very presence of regional governments in Brussels seeking palpable influence on the EU decision-making and their central governments' European policy preferences proves more and more that "regional presence in Brussels has become a core element of EU membership" (Moore 2007: p. 3). Thus, in a functional way, the EU constitutes a laboratory of paradiplomacy. In his study, Kuznetsov (2015: p. 50–51) lists dimensions that can serve as explanatory frameworks of paradiplomacy in general, but they are tested within the EU's laboratory framework more than intensively. The most representative for the EU's case are as follows:

- a. constitutional dimension which refers to analyzing paradiplomacy from the position of legal expertise and identifying the competences regional governments are granted in national constitutions and other legal acts with reference to international affairs;
- b. federalist dimension in which scholars tend to perceive international activities of regional governments as a variable for the development of the federal system or, reversely, they point out to federalist arrangements as an explanation for evolution of paradiplomacy;
- c. nationalism dimension which parallels paradiplomacy with nationalist aspirations in the regional level in multinational and multilingual countries;
- d. globalisation dimension which seems to be one of the most frequent scientific discourse presenting paradiplomacy as "an illustrative manifestation of the two global forces – regionalisation and globalisation";
- e. international relations dimension which embraces is a broad perspective of analysis of changes in international relations, which are predominantly visible in growing number of new actors that influence international arena, putting sovereign states' position in this matter to the test;
- f. diplomacy dimension which focuses on the phenomenon of decentralisation of diplomacy ("diplomatic" practices of regions) and its consequences to the central state diplomacy.

Conclusions

In recent decades paradiplomacy has become an increasingly interesting and challenging area of study. Its vast evolution in scope, types and dimensions is a result of changes taking place constantly on the international and domestic arenas. For this reason, paradiplomacy is somewhat manifestation of the contemporary alternations in international relations and the inner-state affairs. In this context, an increasingly interesting case is the EU, which can serve as an explanatory framework for international activation of European regions. There are several reasons for justification of such an approach. Firstly, European integration mechanisms encompass many of the global mechanisms and domestic changes that were described in this article as determinants of paradiplomacy. Secondly, the EU and Europeanisation processes as such produced

many of the stimuli and possibilities for regions to engage in European scene. And thirdly, certain European regions that were experiencing distinctiveness from their nation-states before the intensification of the EU's 'paradiplomatic' opportunities, see the EU as a point of reference and arena to operate without a severe need of secession from their countries.

The aim of this article was to propose the framework of the EU as a laboratory of paradiplomacy, which was explained through addressing the core issues. Firstly, the EU was referred to as an *intermestic* determinant of paradiplomacy, what results from the specific nature of the EU that corresponds with the international and domestic determinants of paradiplomacy in general. Secondly, the EU was addressed as an arena of paradiplomacy where various patterns of regional governments' presence in Brussels were tested. Finally, paradiplomacy in the EU was presented as a scholarly challenge. The development in the first two aspects resulted in palpable, however diverse regional engagement in Brussels recognised to that extent that for example José M. Magone (2006: p. 19) even claims that "What once was regarded as paradiplomacy is now part of European domestic politics". At the same time, this development require a scholarly touch what seems to be a challenge taken into consideration of the variables and dimensions this article was pointing to. Nonetheless, the regional activities aimed at the EU institutions and their own central governments' European policy preferences are operating more or less intensively with respect to the European integration, and for that reason the EU constitutes a laboratory of paradiplomacy.

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Is the European Union still an attractive international actor? Challenges for the global role of the EU

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Abstract

The purpose of the article is to try to outline whether the EU is still an attractive actor in international relations, which is conceptualised as a specific soft, normative and the same transformative power and the centre of attraction for states located outside this organisation. The credibility of the European Union on international arena was undermined by global changes taking place in the 21st century, including emergence of new non-European powers, and particularly a series of crises (financial, migration, identity) that have affected the EU recently. In the article the following analysis will be made: the basic components consisting of attractiveness of the EU and evolution of its perception on the international arena, and the main challenges that the EU has to cope with in order to become a significant power again. It is assumed that the European Union certainly lost its attractiveness and prestige as a result of recent transformations that affected it within the system, but also due to the dynamics of the international environment.

Keywords: attractiveness of the EU, European values, soft power, challenges for the EU, global power

Czy Unia Europejska jest wciąż atrakcyjnym aktorem międzynarodowym? Wyzwania dla globalnej roli UE

Streszczenie

Celem artykułu jest analiza potencjału Unii Europejskiej jako istotnego podmiotu stosunków międzynarodowych, conceptualizowanego jako swoista miękka, normatywna, a tym samym transformacyjna siła i centrum przyciągania dla państw znajdujących się poza jej granicami. Globalne zmiany jakie dokonały się w XXI wieku, w tym pojawienie się nowych mocarstw pozaeuropejskich, a szczególnie seria kryzysów, które dotknęły Unię w ostatnim czasie (finansowy, migracyjny, tożsamości) podważają znacząco jej wiarygodność na arenie międzynarodowej. W artykule zostanie podjęta analiza: podstawowych komponentów składających się na atrakcyjność Unii Europejskiej oraz ewolucji jej postrzegania na arenie międzynarodowej oraz najważniejszych wyzwań, którym musi sprostać, aby być ponownie liczącą się potęgą. Zakłada się, że Unia Europejska niewątpliwie

utraciła swą atrakcyjność i prestiż w wyniku ostatnich przeobrażeń, które ją dotknęły wewnątrz systemu, ale i wynikających z dynamiki środowiska międzynarodowego.

Słowa kluczowe: atrakcyjność Unii Europejskiej, wartości europejskie, miękka siła, wyzwania dla UE, potęga globalna

In recent years, the European Union, absorbed in the debt crisis, growing populism and the struggle with the refugee crisis, not only has failed to achieve the desired economic growth, but also declined to strengthen its influence and presence at the international level. As a result, the perception and overall potential of the European Union in the world have deteriorated. In addition, we are witnessing a departure from the transatlantic and Eurocentric international order. The policy of the President of the United States, Donald Trump, poses a great challenge to the principles and values on which the European Union was built, including the dominance of the model of liberal democracy and its attractiveness. Competitive models, including Russia and China, are gaining increasing popularity.

Strengthening of the political role and influence of the EU in the world has been the ambition of this organisation since its creation. The Treaty of Maastricht, adopted in 1993, in Article 3 (ex Article 2 Treaty on European Union) lists objectives and basic assumptions reflecting great hopes that countries entertained in connection with membership of the European Union. These postulates include: protection of shared values, fundamental interests, security, independence and integrity; consolidation and support for democracy, the rule of law, human rights and the principles of international law; protection of peace, conflict prevention and strengthening of international security (TEU 1993). These objectives were strengthened in the Treaty of Lisbon of 2007 through their consolidation in art. 21 of the Treaty on European Union (TEU 2012). They constituted the basis for the perception of the European Union as a normative power, whose actions produced significant effects, especially in four areas: trade, human rights, security, environmental protection and climate change (Fischer 2015: p.101). From the point of view of Ian Manners normative power is the power of ideology, opinions or standards set by the European Union (Manners 2002: p. 239), which can also become a guiding light.

In addition, the Common Foreign and Security Policy and defence policy were institutionalised in the Treaty on European Union (Chmielewski 2002). This policy was a response to the upheavals that hit the European continent in the 1990s: the collapse of the USSR, the democratisation of the countries of Central and Eastern Europe, of the Balkans and the re-unification of Germany. It seems, however, that over twenty years later the effects are insignificant and rather far from the initial assumptions. The dynamic situation in the world has posed difficult challenges for the Union and its foreign policy, starting with ethnic cleansing in former Yugoslavia in the 1990s, the war in Iraq, or conflicts in Libya, Syria or eastern Ukraine. In all of them the EU has demonstrated its helplessness, weak presence or spectacular division between the Member States. As a result, the position of the European Union has marginalised at the international level, where the helm has been taken over mainly by its strongest Member States.

Today, it is still unclear what role the European Union will play in the 21st century. Will the Europeans be able to respond to old and subsequent regional and global challenges? To what degree will the EU and its Member States influence the conditions of the new order? Today – just like in 1945 and 1989 – Europe is again at the crossroads, and the situation is developing in two opposite directions: either Europe will be able to co-determine the future rules of global governance, or rather it will begin to weaken, gradually marginalise, until, in the worst case, it will be doomed to complete lack of significance at the global level. As the situation may develop in both directions, it will be worthwhile to carry out an analysis of key factors that are likely to shape the future global role of the EU, and thus, affect its attractiveness.

The aim of the article is to analyse the change in the perception of the European Union in the world from the perspective of the challenges that the EU has faced recently and those that it will meet in the future. The main hypothesis is that the European Union has undoubtedly lost its attractiveness and prestige as a result of recent transformations that have affected it within the system, but also due to the dynamics of the international environment.

The following research questions follow the hypothesis thus formulated: What have been the evolution and theoretical approaches to the perception of the EU in recent years and what are the premises? What are the attributes of the EU and what are its weaknesses that determine the position of the EU in the international arena? What challenges will the European Union have to respond to in the near future? What are the reasons for the EU's loss of its strategic orientation as well as internal and external attractiveness?

Components of the potential and attractiveness of the European Union in the world

The discussion on the theoretical foundations of the European Union has continued since the 1970s. The majority of the approaches have referred to defining it in terms of soft power, primarily due to the lack of hard, military parameters of a power characterising this organisation. In this discourse the EU has been mainly described as a civilian power (Duchêne 1972), a normative power (Manners 2002), a transformative power (Leonard 2005), a soft power (Nye 2004), a smart power (Nye 2012), a small power (Toje 2010), a quiet superpower (Moravcsik 2009: p. 403-422), an ethical power (Aggestam 2008), or a civilian power with teeth (Steinmeier 2007). (Piskorska 2017: p. 193).

Leaving a detailed analysis of the above approaches apart, for the purposes of the article soft power is regarded as the most comprehensive concept referring to the specifics and attributes of the attractiveness of the EU, as the basis of this concept is appeal, that is the attractiveness of the system of values and the way of conduct (power of attraction), culture and foreign policy. According to J.S. Nye, who is considered to be the creator of the concept of soft power, the more the subject is attractive, the more power it has to exert outside (Nye 2012: p. 163). Soft power is based on the ability to shape the preferences of others – according to J.S. Nye: “an entity can achieve the desired result in

world politics because other countries admire its values, imitate its principles, aspire to a similar level of prosperity and openness – they want to imitate it" (Nye 2012: p. 5).

In the case of the European Union, all three elements find a real reflection not only in its history and identity, but also in the EU strategies (European Security Strategy, EU Global Strategy, EU Enlargement Strategy), programme documents (European Neighbourhood Policy, Eastern Partnership, development policy, cultural policy, etc.) and on-going activities (mediation, negotiations). (Piskorska 2017: p. 211).

A very important determinant of the attractiveness of the EU is culture, understood as a set of norms, desirable behavioural patterns and values – transferred outside the EU. In this field, Europe competes with the United States. The broadly understood cultural heritage of Europe, including common European roots, is a common denominator for the sense of identification of the EU Member States, but also of countries outside it. This community contributes to the construction of the concept of European identity understood as a civilisational community referring to art, literature, Roman law, architectural style, secular humanistic thought, or the Christian religion and language (Sokolewicz 2003: p. 450–451)¹. These traditions form the general framework of the European system of values and still have a significant impact on the development of European culture (Gołembski 2012: p. 96–97). It is also necessary to include them in the discourse on the attractiveness of the European Union as a cultural community. They undoubtedly belong to essential resources of soft power of this organisation, attracting other communities, conditioning Europe's strong position in the world.

A basic resource shaping the attractiveness of the European Union are values and norms that are the underpinning of its constitutive foundations (Zajac 2014: p. 123–124). They are listed in art. 2 Treaty of the European Union: "dignity, freedom, democracy, respect for human rights and fundamental freedoms, the rule of law"² (TEU 2012). These principles, common to all Member States, were supplemented by subsequent four of lesser importance: social solidarity, non-discrimination, sustainable development, and good governance and treatment as the basic instruments of its foreign policy. Undoubtedly common norms in the field of human rights and democracy constitute the essence of normative power of Europe (Manners 2002: p. 235–258).

The European Union promotes these political values very extensively through each form of external relations. For example, a specific goal of the European Neighbourhood Policy is to inspire political and economic reforms in partner countries ensuring in return, *inter alia*, their participation in the EU internal market.

The identification of the EU as a normative power, and indeed a "force for good" took place in the first European Security Strategy adopted in 2003. It is stated that the promo-

¹ There is linguistic diversity in the European Union. Among the 24 official languages, three main language groups: Germanic, Romance and Slavic dominate.

² „The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail”.

tion of values is the main principle of the EU's external relations (Council of the EU 2003)³. The same goal is also pursued in the European Union's policy towards its neighbours in the east and south of Europe. Within the framework of the European Neighbourhood Policy (ENP), common values are revealed mainly in the area of: "the rule of law, good governance, respect for human rights, including minority rights, good neighbourly relations, market economy principles and sustainable development, as well as intercultural dialogue" promoted by the Union. Strengthening of democracy, the rule of law and fundamental freedoms occupies a high position in action plans, association agreements or in-depth free trade agreements – key ENP documents signed with partner countries. However, one should note the resistance of some of the neighbouring countries to the transposition of European values into their axiological system, e.g. Belarus. Proponents of this concept argue that the EU's power lies in its ability to project fundamental values beyond its borders in order to achieve ideological influence of the EU, for example in such areas as the death penalty, peace building or institutionalisation of the International Criminal Court or the Kyoto Protocol (Scheippers, Siccurelli 2007: p. 435–457).

An essential resource of soft power of the European Union is its external activity, based largely on the aforementioned values and principles. A common feature of the European Union's foreign policy is striving for stability and peace on the continent also outside the European Union, not through hard, force methods (forcing peace), but the policy of association, partnership and cooperation, creating free trade zones, promoting democracy and economic prosperity, facilitating interpersonal contacts by introducing free movement of people, cultural and educational exchanges. In foreign policy, the concept of soft power consists of applying its determinants, such as: observance of international law, non-interference in internal affairs of other countries, or the level of culture of pursued foreign policy (Piskorska 2017: p. 231). The European Union also carries out its actions through development and humanitarian policies.

Challenges for the European Union: the reasons for the decline in the attractiveness of the EU

Looking at the many breakthrough moments in the history of European integration, it seems that today the European Union has found itself in the conditions of a prolonged political, economic and social crisis. As a result, the Union currently suffers from a loss of strategic orientation and attractiveness both internally and externally. The EU has entered a period of internal exhaustion after almost twenty years of cumbersome attempts to reform political and institutional structures and the last three enlargement rounds. At the same time, being in the midst of the debt crisis, the Union is often compared to a freighter with a glorious history, which has lost "a command bridge indicating its next destination" (Emmanoulidis 2012: p. 87–88). However, if only the EU can overcome the

³ "Spreading good governance, supporting social and political reform, dealing with corruption and abuse of power, establishing the rule of law and protecting human rights are the best means of strengthening the international order based on effective multilateralism".

current lack of internal dynamisms, it will be able to continue to co-influence the managing of global affairs.

Among the reasons for the decline in the attractiveness of the EU we can mention: the loss of *raison d'être* and the appearance of the EU conceptual vacuum, Brexit, the elite crisis, a leadership deficit, exhaustion resulting from reforms and enlargement policy, fear of losing sovereignty, a relative decline of European economic potential, policy of isolationism of President of the United States Donald Trump, and the migration and security crises.

Many Europeans – ordinary citizens, but also representatives of political, economic and intellectual elites – question the added value of European integration in the future. The lofty goals that laid the foundations of the European Union over 60 years ago, such as prosperity, solidarity, peace and stability, have been partially achieved. In addition, the Europeans love the four common freedoms of the single market, the practical benefits of having a single currency, the abolition of border control and the creation of conditions in which the prospect of an armed conflict between the EU countries has become unthinkable. It seems that these undoubted achievements of the EU concern the past. What is expected in the future is the definition of a new *raison d'être* of this organisation.

However, today in the European Union there is a lack of a full conceptual debate regarding its future, equalling the "grand constitutional project of Europe" that collapsed more than ten years ago. At the same time, we can see antagonisms between and within the Member States regarding the future political order in Europe. There are, therefore, conflicting and sometimes irreconcilable views on the *finalité* of the European Union. They often even take on an extreme form – from the increasingly intense support for the monetary integration of Europe, Europe of various speeds, to the project of the United States of Europe as a key strategy for the survival of the continent. A discussion on this subject was undertaken in the White Paper on the Future of Europe published on 1 March 2017. The President of the European Commission, Jean Claude Juncker, proposed five scenarios that are to help carry out the debate on the future of Europe: carrying on; nothing but the single market; those who want more do more; doing less more efficiently; doing much more together (European Commission 2017). Differences can also be seen in the proposals of individual countries concerning the solution of specific problems in Europe. The plan for saving Europe (repairing the monetary union) according to the French President Emanuel Macron and German Chancellor Angela Merkel is a particularly outstanding example (Gros 2017, 2017a). Undoubtedly, the wide disagreement on the final direction of the European Union threatens the prospects of the integration project.

A month earlier, in a letter addressed to the 27 leaders of the Member States before the summit in Malta, the President of the European Council, Donald Tusk, calling for unity (Council of the EU 2017)⁴, underlined the three main threats to Europe's stability: a new geopolitical situation⁵, the internal situation, including the rise of nationalistic and

⁴ "United we stand, divided we fall": letter by President Donald Tusk to the 27 EU heads of state or government on the future of the EU before the Malta summit.

⁵ The new geopolitical situation: increasingly assertive China, Russia's aggressive policy towards Ukraine and its neighbours, wars, terror and anarchy in the Middle East and Africa (including the important role

xenophobic sentiments in the EU itself, and the state of mind of pro-European elites⁶, including the lack of faith in the sense of political integration.

The biggest challenge and at the same time an unprecedented event is the decision of the British from 2016 to withdraw from the European Union. According to Marek Prawda, "after the British referendum, the Union has remained the same, but it will not be the same any more" (Civil dialogue 2018). In addition, the resolution of the British undermined the conviction that every crisis strengthens the EU and, as a result, it gets stronger out of it. Although Brexit negotiators try to minimise the damage to both parties, they must expect that it will happen. There is an important task that Europe must tackle – to re-arrange relations in the group of 27 countries and create a new identity of this smaller community.

Another challenge for the European Union that causes a decrease in its moral perception is the lack of citizens' faith in political elites and their decisions, and doubts as to whether they will cope with the complexities of the modern world. This phenomenon intensified during the debt and financial crisis in Europe, during which citizens noticed the limited skills of political actors in confrontation with the need to discipline financial markets dysfunctional at that time. Although a decline in confidence in national political elites at both national and European level is a common tendency in the modern world, it seems to have particularly drastic consequences for the EU, which is still perceived as an elitist project and which enjoys a much smaller benefit of the doubt than the constituent nation states.

Furthermore, the European Union suffers from a leadership deficit both at the level of the Member States and EU institutions. In the first case, we can identify three main reasons for the current situation: first, the traditional driving force of integration processes – the tandem of France and Germany has lost its attractiveness and efficiency. The enlargement of the EU, followed by increasing economic, financial, social and geopolitical heterogeneity, and diverse interests revealed within it, has structurally weakened the significance and influence of the Franco-German tandem, as well as their motivation to reach a common compromise. Secondly, there are difficulties in identifying a new, alternative coalition that could be a driving force in the European Union. Projects to replace the previously leading states, such as the big three, that is Germany, France and Great Britain or the Weimar Triangle (Germany, France and Poland) have not been implemented. At present, the United Kingdom has deliberately resigned from contesting for leadership in this organisation as a result of the decision to exit the European Union. Poland, on the other hand, has found itself in an infamous position of the first country in the history of European integration towards which the European Commission has initiated the procedure for monitoring compliance with the rule of law under Article 7.1 of the Treaty on European Union, which definitely disqualifies it from acting as a model Member

of radical Islam) and worrying declarations of the new US administration – all these make the future highly unpredictable.

⁶ The state of mind of pro-European elites: a decline of faith in political integration, submission to populist arguments as well as doubt about the fundamental values of liberal democracy.

State (Barcz, Łojek-Zawidzka 2018). Thirdly, the role of Germany in the European Union has changed significantly since the mid-1990s. The European orientation of this country has become more pragmatic, less visionary and more determined by narrow economic, political and financial interests.

On the other hand, at the level of EU institutions, in the late 1990s the European Commission lost a lot of its strategic importance. There were several reasons for this: firstly, the strength and influence of the European Commission shifted towards the European Council, where the heads of states and governments of the Member States increasingly influence the general orientation of the EU. This trend has been strengthened after the entry into force of the Treaty of Lisbon and the consolidation of the EU Presidency (The Treaty of Lisbon 2010: p. 63–85). Secondly, EU enlargement has made it difficult for the Commission to play the role of a compromise seeker in a situation where the EU has become more heterogeneous and more complex. Thirdly, the European Union has evolved over the last decade from a more technological project into a political one, where the role of the European Commission is increasingly questioned due to a lack of democratic legitimacy (Emmanoulidis 2012: p. 90).

The contemporary European Union suffers from both reform fatigue and tiredness resulting from several enlargement rounds. The inability of the EU to carry out effective reforms of its institutional and political system in the last two decades is the source of frustration both for the citizens and for the policy decision-makers. Recent experience in EU history is based on the failures of treaty reforms. Starting from the Treaty of Maastricht, since the beginning of the 1990s the European Union has been in a permanent state of crisis related to the necessity of reforming it. Neither the Treaty of Amsterdam nor the Treaty of Nice brought a long-awaited integration leap. In addition, the rejection by France and Denmark of the constitutional treaty in 2005 and the initial rejection of the Treaty of Lisbon by Ireland in 2008 multiplied irritation, incomprehension and disappointment. Only its ratification and entry into force on 1 December 2009 brought some relief. Nevertheless, the amendment of EU treaties is by no means perfect and is certainly not the final stage of reforming the EU⁷. Therefore, the shortcomings of the Lisbon system will require further treaty changes.

As far as EU enlargement is concerned, as a result of the entry of 12 members to the organisation in 2004–2007 enlargement fatigue has become a widespread phenomenon in many Member States (Eurobarometr 2008: p. 227–230). This does not mean that the process has ended once and for all, but after the accession of Croatia to the EU in 2013, the pace of enlargement has clearly slowed down. As a general consequence, the European project has been deprived of one of the key motivating factors since enlargement policy was the main source of political and economic dynamism in the last two decades.

⁷ The Treaty of Lisbon was a typical compromise between those who supported more politically integrated Europe and those who were not ready to go beyond the existing nature of cooperation. Hence the Treaty of Lisbon is characterised by many shortcomings relating to its legal complexity, lack of transparency, readability and institutional ambitions, as well as inequities in the division of competences between the EU and its Members.

Immediately after the fall of the Berlin Wall and the collapse of the USSR, the prospect of joining the EU became the main motivation for the countries of Central and Eastern Europe to carry out thorough reforms.

The loss of dynamism of the European project has also resulted from the concern of national elites about the consequences of further loss of sovereignty. The European Union countries have transferred a large share of their national competences to the organisation over the last 60 years. A further loss of sovereignty in such areas as social policy, employment policy, tax policy, foreign policy, security and defence policy, could not only reduce the existing power of the Member States, but also limit the remaining privileges of national political elites. This is the main reason why national governments, parties, parliaments or even constitutional courts prevent further extension of the EU competences to avoid depriving them of power.

Currently, the European Union, perceived as the main economic player, benefiting from the globalisation process, is facing several challenges, which include: the emergence of new economic powers, the negative effects of the global economic crisis and the European debt crisis. Europe has suffered the long-term consequences of the crisis much more severely than other regions. In addition, most Member States struggle with low growth rates, high levels of domestic debt as well as a growing deficit. Moreover, a technological gap between EU and non-EU countries has shrunk, and European society must face the socio-economic consequences of the aging population.

The economic potential of the European Union as a whole is still high, but the trend seems to be downward compared to other economic powers and previous generations. As a consequence, more and more Europeans feel insecure about future standards of living and the European social model. Under these conditions, the European Union is not perceived as an effective response to the negative economic forces of globalisation. On the contrary, in the eyes of many citizens the European Union is viewed as a catalyst for unrestrained globalisation. At the same time, though, opinion polls indicate that the majority of citizens would like to see the EU as a "protective force" defending them against its negative effects. However – in their opinion – the EU is currently unable to fulfil their expectations (Eurobarometer 2009: p. 194–195).

For several years, the European Union has also been confronted with problems coming from outside. The economic crisis that has lasted since 2008 has turned out to be only a prelude to the multiple crises, aggravated in subsequent years by the challenges of global migration and security. The refugee crisis that affected Europe in 2015–2016 has caused significant social and economic problems, especially in European countries, both of "first contact" (Italy, Greece) and target countries (Germany, Sweden), and to some extent also in transit countries (Hungary, Austria, France). The increased inflow of foreigners seeking protection in European countries is a consequence of the global crisis. According to Global Trends data prepared by the United Nations High Commissioner for Refugees (UNHCR 2016), in 2016 the number of displaced persons on a global scale amounted to 65.6 million, of which refugees accounted for 22.5 million, internally displaced persons (within the borders of the country of origin) 40.3 million, and persons applying for the

refugee status 2.8 million (UNHCR 2016). Over the last decade, the number of foreigners applying for asylum in European Union countries was regularly increasing from around 200,000 in 2006 to around 1.3 million in 2015-2016 (Florczak 2018: p. 138-139). Citizens of Syria, Afghanistan, Iraq, Pakistan, Nigeria and Iran submitted the largest number of applications at that time (Eurostat Statistics Explained 2018). Germany (722,400), Italy (123,000), France, Greece, Austria and the United Kingdom and Turkey (78,600) admitted the highest number of people (UNHCR 2016).

The response of the European Union to the refugee crisis is constantly criticised, and the solutions proposed by the Council in 2015 have aroused controversy in some Member States. The actions taken consisted in, first of all, launching the funds possessed in the framework of asylum policy pursued since the Maastricht Treaty, part of the third pillar of the EU (Europeanised in the Treaty of Amsterdam amending the Treaty on European Union 1997), and now regulated by art. 76 and 78 of the Treaty of Lisbon⁸. As a result of the 2015 crisis, steps taken under the common asylum policy have proved insufficiency to effectively manage borders and restore stability in the Schengen area. The largest number of migrants reached Europe via the Mediterranean Sea (716 thousand) and the Western Balkans (667 thousand).

Challenges related to the illegal flow of refugees forced the EU to develop a policy of their relocation from countries affected by their largest inflow (Italy, Greece and Hungary). The decision on this matter was taken at the meetings of the Council on 14 and 22 September 2015 (Council Decision 2015/1523, 2015/1601). This principle was opposed by some countries of Central and Eastern Europe (including Poland). Some of them (Slovakia and Hungary) filed a complaint against the temporary mechanism for compulsory relocation of applicants for international protection to the Court of Justice. It was rejected in September 2017, recognising it as an effective mechanism for responding to the migration crisis in Europe (especially in Greece and Italy) (EU Court of Justice 2017). An additional solution was the agreement with Turkey concluded in March 2016. This country agreed to admit to its territory those migrants who do not require international protection and who got to Greece from its territory, as well as to receive those who were detained in Turkish waters (Council of the EU 2016)⁹.

The migration crisis has undoubtedly carried implications for the stability and security of Europe. It has been often associated with increased terrorist activity in European capitals, which has affected the sense of insecurity in society. The EU has turned out to be helpless in securing the imperviousness of its borders, which has undermined the effectiveness of security and defence policy. The refugee problems coincided with the

⁸ The EU asylum policy aims to harmonise Member States' asylum procedures by introducing a common asylum system, allowing all third-country nationals who require international protection to be granted adequate status and to ensure compliance with the principle of non-refoulement – a prohibition of deportation to a country in which they are liable to be subjected to persecution.

⁹ In connection with the agreement Council Decision (EU) 2015/1601 was modified (cf. Council Decision (EU) 2016/1754 of 29 September 2016 amending Decision (EU) 2015/1601 establishing provisional measures in the area of international protection for the benefit of Italy and Greece (OJ L 268, 1.10.2016, p. 82).

destabilisation in the southern and eastern neighbourhood of the European Union, which showed that Europe has lost its ability to influence its surroundings. The EU is criticised by the leaders of the countries of the South, i.e. Turkish President R. Erdogan. Moreover, some actions of Russia, which supports nationalist and authoritarian movements in the EU Member States, aim to break EU coherence (Kuźniar 2018: p. 63–64). Russia's aggression towards Ukraine in 2014, the accompanying sharp anti-Western course and attempts to intimidate through increased military presence on the eastern and northern borders showed the lack of EU capabilities in this regard. As a result, the European Union's competences in the mediation process between Ukraine and Russia were taken over by the strongest European states, i.e. France and Germany, which instead of the EU as a whole participated in the Normandy format.

Conclusions

Summarising the above considerations, we can distinguish three main phenomena that cast a shadow on the future and the current perception of the European Union project (Pisarska 2017). The first trend refers to the decline in citizens' confidence in the European Union. Since the financial crisis from 2008, this phenomenon has been noticeable on many levels: between the government/elites and their voters/society (Brexit), on the government-government level (relations between the European Union and Russia) and between countries and institutions (the Eurozone crisis, the migration crisis). In addition, we can discern a slow deterioration of the socio-economic condition and hard security felt by the majority of European citizens, but also the separation of elites from the majority of society, which has led to the expansion of populism and anti-system movements.

Another conspicuous trend is the lack of appealing positive narrative about the European Union: instead of it there have appeared populist movements in Europe that thrive in subsequent EU Member States. They propagate such values as independence, sovereignty and security against so-called others, and the pro-European camp does not react to these slogans with a contrary narrative. Moreover, neither EU institutions nor the Member States make serious attempts to create a counterbalance or reorient the discussion towards EU values and aspirations.

The third and the last trend results from the lack of vision and leadership in the European Union. The wider European project was initiated and later conducted and carried out by talented leaders, presenting their vision of peaceful and united Europe to their societies. In the present context, however, there is a significant lack of visionary leadership at the EU level. The vision of the president of France Emmanuel Macron "European Renaissance" presented on March 4, 2019 was not accepted by other leaders of EU Member States (Macron 2019). The continent therefore seems to be closed in short-sighted politics, without a long-term plan.

In other words, the future role of the EU in the international order is determined by political intentions and the ability of the Member States to further intensify and deepen

cooperation. In order to do this, the Union must first and foremost overcome the current crisis of legitimacy, trust and attractiveness both inside and outside Europe.

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EU LAW, INSTITUTIONS AND POLICIES

New paths of research in the European Commission's compliance practice: the example of Poland

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Abstract

The article explores the potential for new research into issues of state non-conformity as a result of increasing euro-skepticism in Europe. Relying on the Polish example, it suggests that a new attitude towards the EU has arisen which escapes traditional classifications and warrants a rethinking of established theories on sources of non-compliance. This attitude gives new context to the Commission's existing enforcement practice and calls for a fresh look at its compliance instruments not only with respect to infringement cases but also in its dispute with Poland over the rule of law principle where the conduct of both parties seems to be symptomatic of their more general approaches.

Keywords: European Commission, non-compliance, enforcement, Poland, sanctions, rule of law

Nowe kierunki badań nad praktyką kontrolną Komisji Europejskiej na przykładzie Polski

Streszczenie

Celem artykułu jest zaproponowanie nowych kierunków badań w obszarze kontroli przestrzegania prawa UE przez państwa członkowskie wobec rosnącego w Europie eurosceptyzmu. Artykuł proponuje na przykładzie Polski, że uformował się nowy sposób prowadzenia polityki unijnej, który wyrywa się tradycyjnym klasyfikacjom i wymaga przemyślenia istniejących teorii nt. źródeł naruszeń państw. Skutkuje to koniecznością rewaluacji dotychczasowej praktyki kontrolnej KE i niesie ze sobą potrzebę nowego spojrzenia na stosowane przez Komisję procedury, metody i narzędzia kontroli nie tylko względem naruszeń prawa EU, ale również w sporze dotyczącym zasady praworządności, gdzie zachowania obu stron są symptomatyczne dla ich ogólnej praktyki.

Słowa kluczowe: Komisja Europejska, naruszenia państw członkowskich, procedury przestrzegania prawa UE, Polska, sankcje, praworządność

The past few years have brought a gradual shift in the political make-up of Europe where euro-skeptical political parties have grown visibly in strength. In some EU Member States, they have already won elections while in another effectively pushed for its exit¹. This ongoing change brings multiple questions concerning its context, impact and outcome, each of significance to many different aspects of the EU's operation, including state compliance.

Euro-skepticism tends to go in pair with criticism of EU obligations and, from there, non-compliance is just one step away, providing a vivid means of demonstrating a Member State's negative outlook. A national authority's will to conform to EU law is thus linked to the attitude that it exhibits towards the Union and, neglected or inappropriately addressed, can have far-reaching consequences for the European project. To what extent non-compliance is indeed coupled with euro-skepticism and how responsive and effective are the Commission's strategies with respect to defiant violations are two questions that immediately come to mind in that context, especially that the Commission alone has the power to "make it or break it" by being too lenient, too harsh or simply arrogant and off-putting, and it isn't immediately obvious which of the approaches presents the safest and most effective solution. Hence, what is needed nowadays is, in particular, a fresh look at issues of state non-compliance and the Commission's enforcement practice from the perspective of this spreading EU antagonism present across many national political parties.

The purpose of this article is, therefore, to explore the potential for new research within the area of the Commission's enforcement and in the context of recent changes in the political make-up of Europe. The article, therefore, does not in itself seek to provide answers but rather to outline the direction which research into state non-compliance should be taking nowadays.

Main theories of non-compliance and corresponding tools

The political science research into reasons behind state non-compliance on the international arena has led to the development of two main theories. The enforcement theory (Olson 1971; Downs et al. 1996) proposes that states make the choice to violate international law when the estimated costs of applying a given norm offset the benefits. The management theory (Chayes, Chayes 1995) proposes that states do not chose to violate international law and when non-compliance takes place it is rather due to circumstances existing outside their control such as unclear legal provisions or political and economic capacity limitations. According to this theory states have a natural inclination towards effectiveness and the pursuit of common interests while the enforcement theory assumes that national interests take precedent over international if the stakes are high enough.

¹ As of the date of writing this article (August 2019), the Brexit Withdrawal Agreement (2018), negotiated and endorsed by all EU Member States and the UK Government, has not yet been ratified by the UK Parliament. The United Kingdom is expected to leave the EU on 31 October 2019 with or without the Agreement.

Interestingly, both theories had been initially perceived as contradictory but their mutual complementarity was eventually acknowledged and since then they have been treated as two equally valid explanations of state non-compliance (Tallberg 2002; Conant 2012).

Understanding the reasons behind state infractions is beneficial because – as both theories agree – different motives require different solutions and a properly selected measure can go a long way in ensuring state compliance considering that states are sovereign entities with the power to both further and damage international cooperation. Hence, the enforcement theory proposes that – since states perceive their international obligations in terms of costs and benefits – their infractions should be combated by means of coercive measures (e.g. sanctions) because they increase the costs. On the other hand, the management approach suggests that – since state infractions stem from difficulties and limitations instead of bad will – they can be prevented (clarification, simplification, transparency, capacity-building) and, if not, informal and problem-solving methods (cooperation, dialogue) should suffice as Member States have a natural predisposition for cooperation and, given the opportunity, conform.

The European Commission in its compliance practice relies on methods drawn from both theories. On the one hand, it has at its disposal coercive measures (Court of Justice infringement proceedings, financial sanctions under Article 260 TFEU, special Treaty and non-Treaty infringement procedures) and, on the other, it resorts to a wide spectrum of preventive tools (transposition guidelines, expert groups, administrative cooperation) as well as amicable and conciliatory problem-solving methods (EU Pilot, pre-litigation procedure under Article 258 TFEU, "package meetings", dialogue and negotiation) (European Commission 2007). It can be questioned whether the Commission applies these enforcement and managerial instruments in accordance with the conditions presented in the aforementioned theories, but recent behavior of Poland towards the EU bring another question, if the theories themselves have managed to keep up with the evolving world and if they should not be supplemented by a new type of non-compliance sources and a new set of tools.

Intentional violations of EU law

Before this potential new approach to (non-)compliance can be presented, it is first necessary to have a closer look at the way state non-conformity is seen by the enforcement theory as it involves the notion of intent on the part of state authorities. This is not to say that unintentional violations do not take place in Poland but rather that the intent to transgress is what lies at the core of this potential new development in non-compliance patterns.

Intentional violations of EU law are nothing new and Member States have been attempting to bend rules in their favor since the beginning of the Communities. According to the enforcement theory states infringe international law deliberately when the benefits of non-compliance offset the costs so when the protection of a national interest or

a specific interest group (e.g. farmers, fishermen)² is seen as more important than the consequences of non-conformity. This suggests that when a Member State intentionally violates EU law, the ensuing dispute – as a general rule – pursues a specific goal (benefit), has a material explanation (even if erroneously interpreted or exaggerated) and – whether by means of threats or sanctions (the cost) – the infringing government can be reasoned with. This does not mean that exceptions do not take place but rather that Member States are rational entities which do not resort to non-compliance without a subjectively-justifiable motive and at least try to keep the problem contained, preventing it from “spilling over” to other issues which would invite more costs.

Furthermore, intentional violations can have different levels of severity depending on the interest at stake and can take different forms such as when Member States feign ignorance and shift blame onto errors and misinterpretations (so-called ‘evasion’)³ or when they do not hide behind excuses and, instead, openly refuse to comply or make public announcements of intent (‘defiance’)⁴, the latter being more rare as it brings more costs (Krislov et al. 1986: p. 64).

According to the enforcement theory, such intentional infractions should be combated by means of coercive measures as they increase the costs but it is not certain whether the Commission indeed follows this reasoning in practice, and further research into the subject would be welcome. Since the future of the EU is dependent not only on the Member States’ fulfillment of their EU obligations but also on their overall desire to participate and further the European project, combating high-stakes violations must be a little like walking on eggshells where the Commission has to ensure conformity without alienating the transgressing Member State. With that in mind, I propose a hypothesis that when the Commission encounters defiance it actually delays formal Treaty procedures, resorting in the first place to informal and amicable measures such as negotiations and dialogue and keeping coercive measures as a means of last resort; in other words, it begins slow and progressively turns up the heat. As will be indicated later, this is how the Commission has also approached the rule of law dispute with Poland but it can be questioned whether this was the right choice and if the Commission had not made the mistake of applying old theories to a new type of conflict.

A new approach towards the EU?

The current political situation in the European Union (EU) is asking for a reevaluation of theories concerning the character and background of intentional state violations of EU law particularly in terms of rationality of state conduct. Due to a shift of the Polish political scene in 2015 marked by the coming to power of the Law and Justice political

² E.g. C-304/02 (Judgment of the Court 2005) and C-265/95 (Judgment of the Court 1997).

³ This is particularly visible with respect to violations of Articles 34 and 36 TFEU.

⁴ E.g. C-1/00 (Judgment of the Court 2001) and 42/82 (Judgment of the Court 1983). The fact that the majority of examples of serious non-compliance disputes concerns France is an interesting research problem in itself.

party (*Prawo i Sprawiedliwość* – PiS), a new approach towards the EU seems to be emerging. The Polish government stands out nowadays by having both an overall negative perception of the European project and a strong focus on internal matters at the cost of its position on the European arena and conflict with EU institutions. Its methods of conducting politics as well as its hierarchy of goals have also evolved, making it an inflexible, unpredictable and unprofessional partner that is hard to reason with, which – as will be indicated later – is also visible in its (non-)compliance practice.

Poland nowadays firmly believes in the supremacy of national goals (regularly identified with the interests of the governing party) and treats the European Union at the very least as an inconvenience and at worst as an enemy. As a result, it does not shy away from conflict and lacks genuine will to work together and find a mutually satisfactory solution. It may appear on the surface as desiring cooperation but it does not strive for compromise and its idea of a satisfactory solution boils down to the EU withdrawing, as is most apparent with the rule of law dispute discussed further. To be fair, Poland does sometimes concede, but only when it is pressed against the wall and not before putting up a fierce fight. This general inflexibility and close-mindedness makes Poland a tough partner in negotiations.

Furthermore, Poland's behavior on the EU arena is now marked by occasional unpredictability when trivial goals (such as petty squabbles) take precedent over more crucial and/or beneficial interests. This was, for example, the case during the elections of the European Council's President in 2017 when Poland alone voted against the Polish candidate Donald Tusk achieving the infamous voting quota of 1:27 simply because he had been the Law and Justice party's political opponent for many years. The image Poland had back then projected to the world by ostentatiously refusing to support a Polish candidate so wholesomely supported by everyone else was without doubt detrimental to its interests in the EU and yet this was the path chosen, suggesting that the governing party's hierarchy of goals no longer corresponded to what is generally accepted in the EU.

Finally, the Polish method of conducting dialogue is nowadays based on relying on weak and unsubstantiated claims while disregarding the EU's substantial arguments, transforming meaningful dialogue into a conversation between deaf parties. Polish politicians rely nowadays on *ad hominem* accusations against the representatives of the EU.⁵ They also tend to disseminate inaccurate information about easily-verifiable facts⁶ and

⁵ This is visible especially with respect to the First Vice-President of the European Commission Frans Timmermans who – in the dispute over the rule of law – has been accused inter alia of being biased and partial by Prime Minister Beata Szydło (Bos-Karczewska 15.01.2016), lying and living in an ivory tower by Minister of Foreign Affairs Witold Waszczykowski (Wielński 17.02.2017), and lacking knowledge and being driven by political considerations by Minister of Justice Zbigniew Ziobro (Kospa 12.01.2016).

⁶ For example, Prime Minister Mateusz Morawiecki said in the European Parliament in 2018 in defense of unconstitutional reforms of the Polish Supreme Court which sought to replace many of the Court's judges by illegally reducing their terms of office, that during the communist martial law in Poland in years 1981-1982 these same judges had condemned his 'comrades in arms' to 10 years of prison. Facts, however, prove that not only was the Prime Minister 13 years old during martial law but also none of the few judges (8 on almost a 100) who were indeed adjudicating during that time had condemned political opponents to 10 years of prison (Czuchnowski 6.07.2018).

rely on false claims and non-existent evidence. For example, Minister of Foreign Affairs Witold Waszczykowski told the press that the re-election of Donald Tusk as President of the European Council in 2017 (infamous 1:27 vote) had been a fraud and that the Minister had at his disposal "expert opinions which demonstrated that the nomination of Tusk could be challenged on the basis of EU law" (TVN24 27.03.2017), thus accusing the heads of all EU Member States of fraud. Suffice to say that no such opinion has ever been put forward.

A new approach to (non-)compliance?

This aforementioned behavior suggests a changing approach to the EU and it is also visible with regard to issues of compliance, where Poland does not always respect the authority of the Court of Justice (CJEU), lacks the will to cooperate with the European Commission and sometimes even disregards established case-law and practice.

Probably one of the most telling examples concerns the Polish widespread logging of trees in *Puszcza Białowieska*, one of the last primeval forests in Europe, designated as a Natura 2000 site. Holding the felling of trees to be contrary to EU law, the Commission brought in 2017 infringement proceedings against Poland before the Court of Justice (case C-441/17) and applied for interim relief which was provisionally granted a week later by the Vice-President of the CJEU, ordering Poland to cease its logging of the forest. Poland, however, continued with the felling of trees as before. The result was such that the Court of Justice, for the first time in the history of the EU's interim relief, had doubts whether Poland would adhere to the final order on interim relief and had to threaten it with a periodic penalty payment of at least 100 000 euros per day to ensure the measure's effectiveness (Order of the Court 2017).⁷ The looming sanction did compel Poland to cease the logging but the authorities still waited until the last day before complying, having everyone doubt whether they would comply at all, and demonstrating how unpredictable and persistent they had become.

Another example concerns the application made by the Polish Chief Prosecutor (and Minister of Justice) Zbigniew Ziobro in 2018 to the Polish Constitutional Tribunal asking whether Article 267 TFEU was compatible with the Polish Constitution in so far as it permits a national court to make a preliminary reference to the European Court of Justice in cases concerning the shape, organization and procedures of a Member State's judiciary. This application constituted a reaction to a couple of preliminary references made by the Polish Supreme Court with respect to new reforms of the Polish judiciary involving such issues as irremovability and independence of judges (compulsory retirement of Supreme Court judges in case C-619/18 discussed further – Judgment of the Court 2019) as well as non-discrimination on the basis of age in case C-563/18 (*Sąd Okręgowy* 2018). By asking for a ruling on the incompatibility of Article 267 TFEU with the Polish Constitution, the Minister of Justice was contesting the jurisdiction of the Court of Justice and,

⁷ Poland eventually lost this case (Judgment of the Court 2018b).

according to commentators, sought to partially exclude Poland from the preliminary reference procedure and, in the long run, bring about a so-called "Polexit" (Gazeta.pl 17.10.2018, Wilgocki 17.10.2018). On another occasion, Minister Ziobro challenged the independence of the Court of Justice by stating publicly that it was carrying out the desires of the Commission's Vice-President Frans Timmermans because the date for the opinion of Advocate General in the aforementioned case C-619/18 concerning compulsory retirement of the Supreme Court judges (Judgment of the Court 2019) was scheduled not long before the elections to the European Parliament (Gazeta.pl 12.02.2019).

These examples do not only suggest diminished professionalism and unpredictability on the part of the Polish authorities which, by now, have proven themselves capable of making unsubstantiated accusations as long as they fall on fertile soil. These examples also demonstrate the spill-over effect where a dispute over the Polish Supreme Court leaks into other areas such as the very essence of the preliminary reference procedure. Most of all, however, these examples seem to be symptomatic of a larger trend of the authorities not caring about how Poland is perceived by its partners nor shying away from sparking even the most unfounded conflicts with the EU. As a result, while all intentional violations stem from the desire to oppose the EU, the Polish examples differ in that respect that they more frequently pursue unclear goals, are based on weak arguments, do not constitute measures of last resort, tend to unnecessarily spill-over to other areas and are often fiercely defended irrespective of the size and nature of their benefits.

It should be noted, however, that a fair share of these public defiant statements are just bravado: a lot is said and a bit less done.⁸ This, however, does not necessarily have to negate the hypothesis that a new approach to compliance is emerging. Because even if the Polish authorities ultimately conform to the CJEU's decision or withdraw from the most far-reaching and unlawful measures, they tend to do so after a long battle, under widespread intensive pressure and in the face of consequences they are not ready to bear. This means that they are capable of compromise but their overall unpredictability makes it difficult to foresee when it will happen. Also, too many layers of conflict have already been initiated with the EU to exert such strong pressure in each case as this would not only be difficult to execute, it would also devalue itself.

The above examples suggest that further research into the behavior of Polish authorities would be beneficial in order to confirm whether there indeed emerges a new approach to (non-)compliance marked by unprofessionalism, unpredictability and inflexibility. Should this be established then the question of adequateness of the Commission's compliance tools comes to mind. These methods are, after all, based on the presumption that Member States either weigh the benefits of infractions against the costs or that they can be reasoned with by means of substantial evidence. The Commission's compliance instruments do not take into account the possibility that a Member State may choose disproportionately larger costs over benefits or that it may equate data and facts with random unsubstantiated claims.

⁸ For example, the application to the Constitutional Tribunal regarding the compatibility of Article 267 TFEU was eventually withdrawn.

This problem also concerns the formal infringement procedure under Article 258 TFEU where it is difficult to predict state reactions to unfavorable Court's judgements if state authorities do not recognize the benefits of membership and do not care to ensure their place among the remaining Member States. In that context, it would also be beneficial to ponder the consequences of failure to comply with a Court of Justice judgement imposing financial penalties. Whereas this remains a purely hypothetical option, the situation in Poland indicates that one can no longer entirely exclude the possibility of a Member State refusing to recognize the binding nature of inconvenient legal provisions or Court judgments. Coercive measures have so far worked against Poland but that was because the majority of the Polish population remains pro-EU and the government seems to fear crossing a certain threshold that would send an unambiguous message about its desire to quit the European project⁹. It cannot, however, be ensured that this popular support will continue unaltered, and it would be worth pondering what the Commission or even the EU as a whole could do to ensure cooperation from such governments.

The rule of law and Poland

The unpredictability, unprofessionalism and inflexibility of Polish authorities as well as the accompanying contested adequateness of the Commission's compliance tools can also be observed with respect to the dispute over the rule of law from Article 2 TEU. Since the parliamentary elections of 2015, Poland has adopted a number of laws reforming the Polish judicial system which encroach on the independence of the judiciary and the separation of powers and over which the European Commission has been waging a losing battle, possibly because it had failed to properly evaluate Poland's motives in the first place.

The reforms and their implications are so extensive and complex¹⁰ that it would take more than this article to properly recount every questioned provision adopted by Poland.¹¹ However, to give an example of how these encroachments were brought about, it is worth looking at the Polish Constitutional Tribunal which was the first of the judicial bodies subjected to reform.

Soon after the parliamentary elections in autumn 2015, the new parliament nominated three judges to the Polish Constitutional Tribunal without a valid legal basis (so-called

⁹ When the main figureheads of the governing party (PiS) are asked whether they are advocating a so-called 'Polexit', they deny it but their behavior and speeches are frequently so antagonistic and critical that they are interpreted by commentators and experts as covert eagerness to leave (Burakowski 17.10.2018). For example, the President of Poland Andrzej Duda called the EU an "imaginary community with little relevance to Poland", talked of how Poland no longer had any influence over its own matters and compared the EU to the partitions of Poland from the XVIIIth century when the country had been invaded and divided among its neighbors, losing its sovereignty for over a hundred years (Bartkiewicz 14.03.2018).

¹⁰ The Commission's four rule of law recommendations to Poland contain a detailed account of all important decisions taken by the Polish authorities in relation to the Polish judicial system, including the Commission's assessment how these decisions were contrary to the rule of law (European Commission 2016a, 2016b, 2017a, 2017b).

¹¹ See more: Barcz, Zawadzka-Łojek 2018.

'substitutes'¹²) in place of another three judges who had been lawfully nominated by the previous parliament a few months before.¹³ The Polish Constitutional Tribunal ruled (Wyrok 2015) this new nomination unconstitutional, alongside some other amendments to its operation and procedures (Ustawa 2015/2217; Wyrok 2016). However, neither of the judgements was implemented while the latter (Wyrok 2016) was not even published as the Polish Prime Minister Beata Szydło (being in charge of the Polish Official Journal) concluded that "it was not a judgement" (Pietruszka 21.03.2016).

The Commission reacted quickly to these actions of the Polish authorities asking them already in December 2015 about the Polish constitutional situation. In January 2016 it launched the Rule of Law Framework and in July 2016, after six months of unsuccessful dialogue, sent Poland its first recommendation (European Commission 2016a) where it found that "there was a systemic threat to the rule of law in Poland" because "the Constitutional Tribunal [was] prevented from fully ensuring an effective constitutional review". The recommendation also enumerated the measures Poland was expected to take, including the publication and implementation of the Tribunal's judgements (Wyrok 2015; Wyrok 2016). The Polish authorities disagreed on all points and did not announce any new measures to "alleviate the rule of law concerns" (European Commission 2016b: Preamble 17).

Despite this failure, as long as Andrzej Rzepliński was the President of the Constitutional Tribunal, the unlawfully nominated judges (aforementioned 'substitutes') were prevented from adjudicating. However, once his term ended in autumn 2016 new President Julia Przyłębska was appointed by the parliament and she allowed the 'substitutes' to sit in benches and decide on judgements. Furthermore, the parliament adopted three new laws governing the functioning of the Constitutional Tribunal repeating in them a number of provisions considered unconstitutional in the unpublished judgement from 2016 (Wyrok 2016). This time, however, the Constitutional Tribunal with its new composition declared these provisions compatible with the Polish Constitution (Wyrok 2017). It stated that the government had had the right to evaluate the unpublished judgment from 2016 and refuse its publication, and that the nomination of the three 'substitutes' in place of the other three judges lawfully nominated had, in fact, been legal. What's more, this new judgement of 2017 was issued by two of the three¹⁴ 'substitutes', which means that they ruled in their own case in contrast to the principle *nemo iudex in causa sua*.

The Polish authorities had thus paid little attention to the Commission's first rule of law recommendation of June 2016 (European Commission 2016b) and, with constitutional review no longer independent, promptly moved onto the remaining judicial bodies. Over the course of only two years (2016-2017), "more than 13 consecutive laws have been

¹² The press in Poland has dubbed them 'dublerzy' which roughly translates into 'substitutes'.

¹³ There had, in fact, been five judges nominated by the previous parliament (No. VII) but the Constitutional Court declared the nomination of two judges out of five unlawful (as it was premature by a few months). The subsequent parliament (No. VIII) was, therefore, supposed to nominate only the remaining two but, instead, it nominated a whole new five.

¹⁴ Only two of three so-called 'substitutes' sat on this judgement because the third had by then passed away.

adopted affecting the entire structure of the justice system in Poland: the Constitutional Tribunal, the Supreme Court, the ordinary courts, the national Council for the Judiciary, the prosecution service and the National School of Judiciary.¹⁵ The common pattern of all these legislative changes [was] that the executive or legislative powers have been systematically enabled to interfere significantly with the composition, the powers, the administration and the functioning of these authorities and bodies" (European Commission 2017b: para. 173).

These reforms were adopted and implemented in spite of the Commission's three subsequent recommendations (European Commission 2016b, 2017a, 2017b), the Venice Commission's two opinions (Venice Commission 2016a, 2016b), the European Parliament's three resolutions (European Parliament 2016a, 2016b, 2017) as well as statements, opinions and reports made by various other international organizations and bodies such as the Council of Europe Parliamentary Assembly¹⁶, the United Nations¹⁷, Organization for Security and Co-operation in Europe¹⁸, CCJE¹⁹, CCBE²⁰, and ENCJ²¹ emphasizing the reforms' incompatibility with the Polish Constitution and international standards of judicial independence and calling Poland to desist and revert the disputed amendments. In early 2018, the Commission launched against Poland Article 7(1) TEU procedure (European Commission 2017c) but this also failed to bring any significant change to the disputed reforms of the Polish judicial system.

Polish responses to these multiple critical statements can be overall summarized as defensive, delaying, dismissive but also manipulative. When and if the Polish authorities responded, it was mostly to defend their reforms using weak and subjective argumentation²² irrespective of how overwhelming and substantial were the charges, and not shying away from crude language and *ad hominem* attacks. At the same time, they strove to give the impression of being open to dialogue and cooperation, regularly requesting clarifications only to reiterate their previous explanations, and showing themselves as victims of unfair attacks despite their alleged efforts to cooperate while accusing others of relying on arbitrary and unsubstantiated argumentation.²³ The European Commission

¹⁵ The most important of those reforms were: the Law on the National School of Judiciary and Public Prosecution (Ustawa 2017/1139), the Law on the Ordinary Courts Organization (Ustawa 2018/1443), the Law on the National Council for the Judiciary (Ustawa 2018/3) and the Law on the Supreme Court (Ustawa 2018/5).

¹⁶ Parliamentary Assembly of the Council of Europe (Council of Europe 2017).

¹⁷ United Nations Special Rapporteur (United Nations 2017).

¹⁸ Organization for Security and Co-operation in Europe, Office for Democratic Institutions and Human Rights (OSCE 2017).

¹⁹ Consultative Council of European Judges (CCJE 2017).

²⁰ Council of Bars and Law Societies of Europe (CCBE 2017).

²¹ European Network of Councils for the Judiciary (ENCJ 2017).

²² For example, in one of its responses to the Commission's report before the General Affairs Council under Article 7(1) TEU Poland – aside from defending the disputed reforms – suggested that the Commission did not understand their intricacies and was demonstrating bad will by refusing to withdraw from the CJEU case C-619/18 concerning the compulsory retirement of Supreme Court judges despite Poland's amendment of the contested provision, ironizing about some of the Commission's arguments (Wójcik 5.02.2019).

²³ For example, Minister of Foreign Affairs Witold Waszczykowski said in 2017 that Poland was still hopeful about returning to the path of dialogue whereas Vice-President Timmermans – by participating in the

seemed to be powerless in the face of this new and unpredictable style of 'dialogue' and, in the end, Poland has managed with a few exceptions to carry through near all of its reforms regardless of international criticism, the Commission's recurring pleas and the impact it had on its position.

Most of the time when the Polish authorities withdrew from their plans under the pressure from the Commission and political opposition, it was temporary and cosmetic as when the Polish President Andrzej Duda vetoed the Law on the Supreme Court on suspicion of its unconstitutionality as it placed the Court's judges under the influence of the Minister of Justice. This veto did not, however, prevent the Polish parliament from adopting a similar law a bit later, this time according to the project put forward by the President of Poland himself. One of the main changes made by the President to the original draft was that his version subsequently adopted placed Supreme Court judges under the influence of the President of Poland, not the Minister of Justice.²⁴

Similarly futile was the 'success' of the Polish opposition when the government finally decided to publish in 2018 (so two years later) the infamous unpublished judgement from 2016 (Wyrok 2016) concerning the unconstitutionality of some old reforms of the Constitutional Tribunal. Not only did the publication of this judgement have no effect as subsequent laws and judgements made it redundant but it was also published with the annotation regarding its status stating that it had been "issued in violation of the law" since back then that was what the Prime Minister had said about it and why she had refused to publish it.

The most tangible success of the Commission in its dispute with Poland over the rule of law took place in 2018. The aforementioned new Law on the Supreme Court (Ustawa 2018/5) lowered the retirement age of the Supreme Court judges from 70 to 65 and applied to judges in office allowing them to request a prolongation from the President of Poland who could make this decision according to no clear criteria or time-frame, whereas the Polish Constitution stipulates that the First President of the Supreme Court is appointed for a term of 6 years (Article 183(3)) and that judges are irremovable (Article 180). When the law entered into force in April 2018, these new retirement rules became applicable to the Court's President and 37% of judges in office at the time with the effect of mid-mandate compulsory retirement. As a result, many of the Supreme Court judges were forced to retire but its President Matgorzata Gersdorf refused and, for quite a while, it was not sure who would prevail with the authorities exerting strong pressure such as a smear campaign²⁵, reference to the Constitutional Tribunal (no longer independent),

European Parliament's LIBE committee session regarding Poland – had exceeded the competences of an international bureaucratic institution and his actions had become political (Wilgocki 31.08.2017).

²⁴ This new version of the Law on the Supreme Court (Ustawa 2018/5) was the very same which would later be considered in case C-619/18 (Judgment of the Court 2019) an infringement of Article 19(1) TEU due to the compulsory retirement of Supreme Court judges, discussed further.

²⁵ The practice of discrediting judges in the eyes of Polish citizens by the governing party in order to justify their reforms goes beyond the President of the Supreme Court. Already in its first rule of law recommendation the Commission criticized the practice of "undermining the legitimacy and efficiency of the Constitutional Tribunal" (European Commission 2016a: 74). Similarly, the proposal for a Council decision under Article 7(1) TEU indicates that Poland should "refrain from actions and public statements which

designation of the person to replace her, etc. The adoption of this law drew, however, a strong reaction not just from the EU and the Polish opposition but also from the world at large and in July 2018 the European Commission initiated the infringement procedure. Poland unsurprisingly denied the infringement and in October the Commission brought Article 258 TFEU proceedings before the Court of Justice in case C-619/18, simultaneously requesting interim relief and expedited procedure, both granted. A month later, Poland suddenly repealed the disputed provision²⁶ (Ustawa 2018/2507) but the Commission did not withdraw the case and in June 2019 the Court of Justice declared that by applying the lowered retirement age to judges in post and by granting the President of Poland the discretion to extend the period of judicial activity, Poland had infringed Article 19(1) TEU (Judgment of the Court 2019). The above case was, therefore, a success but, in the end, it was limited in scope and had little impact on other similarly questionable reforms of, for example, ordinary courts where judges are nowadays demoted and subjected to disciplinary hearings for referring inconvenient preliminary questions to the Court of Justice (Iustitia 12.12.2018). Too many contestable provisions are still in force, and this one case of preventing compulsory mid-term retirement of Supreme Court judges seemed, in the end, merely a single battle won in a losing war.

The European Commission and the rule of law: success or failure?

The aforementioned analysis brings the question whether the European Commission has properly handled the problem of the rule of law in Poland. Was there a better way to address the situation that the Commission has either overlooked or dismissed? One of the ways of answering this question would be to look at the Commission's conduct through the perspective of existing theories of non-compliance and corresponding methods of ensuring that compliance.

The Commission's response to the Polish encroachments on the Constitutional Tribunal in late 2015 was to follow a managerial approach and utilize the Rule of Law Framework (European Commission 2014) which is a soft-law instrument based on dialogue and negotiation ('start slow and progressively turn up the heat'). For the next two years (2016-2017), the Commission continued with this approach sending one recommendation after another likely with the hope that informal exchanges would achieve better results than

could undermine further the legitimacy of the Constitutional Tribunal, the Supreme Court, the ordinary courts, the judges, individually or collectively, or the judiciary as a whole" (European Commission 2017c: art. 2(e)). These criticized actions and statements constituted of inter alia a billboard campaign "Just courts" ordered by the government and meant to convince Polish people to reforms by presenting concrete examples of bad judicial decisions and conduct such as releasing a pedophile, drunk driving or stealing a sausage (sic!) (Kondzińska 14.09.2017). Also, a journalist investigation has recently found that deputy Minister of Justice Łukasz Piebiak arranged and controlled "organized hate towards [specific] judges who are opposed to changes in the justice system implemented by PiS" (Gatczyńska 19.08.2019).

²⁶ Poland repealed the disputed 'compulsory retirement' provision at the beginning of judicial proceedings under Article 268 TFEU likely with the hope of preventing the CJEU from ruling in this case as its judgement would strengthen the position of the Polish judiciary against the encroachments of the authorities on its independence.

a rapid and aggressive pursuit of Poland which could force it to move to the offensive in order to defend against the politically undesired procedure under Article 7 TEU. The result of this strategy was, however, that the Commission's successes were minimal, if one can call them successes at all, while Poland has continued further down the road of contestable reforms. It could even be said that, despite all evidence pointing to the lack of genuine will on the part of Polish authorities, the Commission has allowed itself to be tantalized by empty promises, and stretched out the Rule of Law Framework to as many as four recommendations (European Commission 2016a, 2016b, 2017a, 2017b), where each was a little longer than the last, supplemented with additional charges against new reforms that Poland had adopted in the meantime, and where each was met with similar unprofessional and crude replies repeating *ad nauseam* the conviction of their alleged legality and the Commission's inability to understand.

In that regard, it would seem that the Commission – by relying on the same reasoning behind dispute resolution as with regards to violations of EU law – may have failed to comprehend the real motives behind Poland's actions and thus applied towards it inadequate managerial tools. It may have underestimated the determination of Polish authorities to bring unconstitutional systemic change and failed to realize in time their veiled unwillingness to cooperate, somewhat naturally expecting Poland to behave in a rational, predictable and professional manner and giving it the benefit of the doubt for too long. The Commission surely was not ready for the level of undiplomatic language used, and it would be interesting to analyze in greater detail whether the Commission has indeed misinterpreted the situation.

That being said, was there something that the Commission could have done differently? Would an earlier initiation of Article 7 TEU rectify some of the above-mentioned problems? Not necessarily, as the so-called 'atomic procedure' is considered a means of last resort and its rapid commencement would have likely brought suspicion of partiality on the Commission's side as it could not be said that it had exhausted beforehand all other available means (read: managerial methods). It could also have led to a quick exhaustion of all available tools and penalties or, alternatively, to an even worst outcome of Article's 7 TEU failure as the ministers in the Council and members of the European Parliament would likely be less eager to agree to such an undesired and extreme measure as they may be today. These concerns suggest that the Commission may have not necessarily underestimated Poland but simply had no choice but to test managerial methods for a sufficiently long period of time. Finally, the fact that Article 7 TEU procedure has not yielded any tangible results during 1.5 years since its commencement indicates that its earlier launch would not have been any more beneficial either.

Article 7 TEU is indeed underway. The European Parliament adopted already in March 2018 a resolution giving consent to continuing with the procedure (European Parliament 2018). The General Affairs Council has also taken action but so far it has limited itself to conducting hearings under Article 7(1) TEU where the Commission updates the ministers about the state of the rule of law in Poland and where Polish authorities present their own position and answer questions (Council of the European Union 2018). The result is

such that there has not yet been any determination made about a "clear risk of a serious breach" of Article 2 TEU values. Nobody wants to use Article 7 TEU lightly as that would create a dangerous precedent but it does not bode well if the Council cannot make up its mind after 1.5 years of hearing statements and analyzing the evidence. This begins to look like the Council may never reach a decision, possibly because of the looming unanimous voting of Article 7(2) TEU.

In the end, it may be the Court of Justice of the EU who proves the most effective in dealing with the rule of law problems in Poland. Its judgement in case C-64/16 concerning Portuguese judges (Judgment of the Court 2018a) has opened up to Polish courts the possibility of relying on Article 19(1) TEU in order to indirectly combat at least some of the contested reforms in the Polish judicial system, and in 2018 alone Polish courts have sent nine²⁷ such preliminary references, which makes about 30% of all Polish references from that year. One of them (C-563/18) concerned, for example, the aforementioned "disciplinary proceedings ... conducted under political influence" against Polish judges (Sąd Okręgowy 2018). It is not yet certain how the Court will rule in these cases and whether the Polish authorities will respect its rulings but it nonetheless seems like a step in the right direction.

The Commission must have also noticed the potential in the Court of Justice and it has also made use of the infringement procedure against Poland by bringing in 2018 before the Court two cases under Article 258 TFEU: C-619/18 concerning the infamous compulsory retirement of the Supreme Court judges (Judgment of the Court 2019) and C-192/18 still pending regarding the similar lowering of retirement age of ordinary courts' judges as well as the different retirement age for male and female judges (European Commission 2018b). Interestingly these were the only two actions for failure to fulfill obligations brought against Poland in 2018²⁸, as if the Commission had decided to focus its resources only on the most important Polish violations of EU law. As of the date of this article²⁹, there has not yet been a single infringement action brought against Poland in 2019. The Commission has, however, initiated the pre-litigation procedure under Article 258 TFEU over the mentioned earlier disciplinary proceedings against Polish judges and a reasoned opinion has already been sent to Poland in that regard (European Commission Press Release 3.04.2019, 17.07.2019).

The problem with relying too heavily on the infringement procedure is, however, such that – for it to be successful – Poland has to be proven to have infringed a specific provision under the Treaty or secondary legislation (such as Article 19(1) TEU or 157 TFEU) and the majority of contested Polish provisions do not seem to be sufficiently covered by EU law. Some claim that the Commission could make Article 2 TEU the subject-matter of infringement proceedings (Taborowski 2018: p. 51) but this would be harder to justify especially in the face of Polish loud claims about the EU's encroachments on its internal

²⁷ C-522/18, C-537/18, C-558/18, C-563/18, C-585/18, C-624/18, C-625/18, C-668/18, and C-824/18.

²⁸ There was one more infringement case C-206/18 brought in 2018 but under the Article 260(3) TFEU and it was withdrawn from the register (European Commission 2018c).

²⁹ August 2019.

operation and exclusive competences, and the Commission seems to prefer to tread here on the safe side. As a result, the Court of Justice as a coercive means of enforcing compliance does have its limitations and – with the Polish government's overall unpredictability – it is uncertain how far its authority reaches. In other words, will the costs of unfavorable CJEU judgements be enough to offset the benefits that the governing party draws from their unconstitutional reforms? Will it even care about the costs at all?

Possibly due to the overall ineffectiveness or insufficiency of available tools, the Commission is currently pursuing a new type of penalty that has the potential of curbing Poland's breaches of the rule of law. Currently, a proposal for a regulation is undergoing the ordinary legislative procedure "concerning the protection of the Union's budget in case of generalized deficiencies as regards the rule of law in the Member States" (European Commission 2018a). By means of this regulation, the Commission seeks to create a new type of penalty against Member States showing a "generalised deficiency" with respect to the rule of law: "the suspension of payments and of commitments, a reduction of funding under existing commitments, and a prohibition to conclude new commitments with recipients." The project assumes that the Council would make the decision on the Commission's proposal, after presenting the Member State in question with the opportunity to respond and only on the basis of specific criteria concerning, among others, the seriousness, time-frame and effects of this deficiency but also the degree of state's cooperation. While the proposal appears an interesting response to the situation in Poland, it is still a long way from being adopted and applied, and we can only speculate about its potential effects.

All in all, a brief overview of the Commission's reactions to the rule of law problems in Poland suggests that the early conciliatory measures, although understandable, did not yield sufficient results nor did the coercive procedure under Article 7 TEU meet its expectations (at least so far) and a more detailed evaluation of the Commission's approach would be welcome if we are to draw conclusions for the future.

Conclusions

The Commission's proposal for a new type of penalty for disrespecting the rule of law principle suggests that existing measures have been insufficient in combating state breaches of Article 2 TEU, and that there is a need to strengthen the coercive side of the Commission's dispute with Poland outside of Article 7 TEU procedure. As such, the proposal (European Commission 2018a) is very welcome and, once adopted, it will hopefully prove effective, influencing Polish authorities to weaken their encroachments on the Polish judicial system. However, seeing how many times members of the Polish governing party (PiS) have demonstrated how little they cared for rules and procedures, as well as remembering about their focus on personal interests and connections³⁰, the perspective

³⁰ The extent of 'share of the spoils' and nepotism taking place in Poland since the coming to power of PiS has reached a level previously unseen in the history of Polish contemporary democracy. All manner of high and low positions in public institutions and state-owned companies have been filled with unquali-

in which they suddenly withdraw from their reforms in order to spare Poland EU penalties with the perspective of one day being held personally accountable for their abuse of power and unconstitutional reforms feels a little naïve. It is impossible to predict how far PiS is ready to go to safeguard its position but the extent and content of unconstitutional reforms it has so far carried out effectively placing its members outside the law, does not give a good prognosis for the future. Much more likely is the option where the Polish government, under the Commission's renewed pressure, agrees to a few small compromises and earns itself some goodwill and a delay in penalties but these concessions nonetheless fall short of what Poland needs to do in order to fully embrace Article 2 TEU. The Union can help the Polish people against their government only so far.

This brings me to another question, much harder to put forward for a Polish citizen but one that, after four years of unsuccessful attempts at reinstituting the rule of law in Poland, necessarily comes to mind. Is there an end line to the EU's involvement and if not, should there be? So far, the Union's pressure on Poland is dictated as much by the need to maintain its very foundations as it is to safeguard citizens and businesses both Polish and from other Member States. However, assuming that Law and Justice (PiS) finds a way to spread euro-skepticism among the Polish people while foreign businesses slowly withdraw from the Polish market, is there some point of disconnectedness between Poland and the EU that warrants a halt to the Commission's attempts at bringing Poland back into the fold? How far should the EU keep trying to protect Poland from itself? Is there some breaking point after which reconciliation simply become unachievable? Hopefully, this will remain a purely theoretical question for researchers to toy with.

The coming to power of euro-skeptical political parties across Europe seems to be slowly bringing to the EU a new style of politics based on unpredictability, inflexibility and unprofessionalism that pushes it to reevaluate its operations and functioning on a number of planes, including compliance. Poland, in particular, has managed to draw attention to itself by behaving in a way that challenges traditional conceptions and necessitates a return to some core questions such as sources of non-compliance and the

fied members of the governing party, their family, friends and sympathizers (Strzałkowski 16.01.2017), including in the European Parliament (Becker, Dudek 30.11.2018). Furthermore, the rotation on the most lucrative positions is incomparable to previous governments: heads of state-owned companies change on average every twenty days (!), allowing the largest amount of people to benefit from high pays and advantageous severance packages (Graniczewska 12.04.2018). Also salaries are sometimes arbitrarily set, exceeding what could be reasonably expected, as in the case of unqualified assistants to the head of the Polish National Bank who each earn 65 000 PLN monthly (which roughly translates into 15 000 €), which is more than the salary of the Polish President or Prime Minister (Karpiński 28.12.2018). Last but not least, the positioning of unqualified but loyal personnel in all critical positions in the state while taking effective control of near-all monitoring and controlling institutions (e.g. the judiciary or Central Anticorruption Bureau), allows for unchecked political corruption and illegal activity such as the leader of PiS Jarosław Kaczyński being effectively in charge of a private company (through his secretaries and drivers) without reporting it in his earnings (to which he is obliged as a member of the Polish Parliament), refusing to pay the company's contractors and receiving large undue loans from nationalized banks governed by his strawmen in order to build two 190-meters tall towers in Warsaw (costing 300 000 000 €) which would provide his political party with secret financing outside of any control and in amounts which would give them an enormous advantage over remaining Polish political parties for years to come (Czuchnowski, Szpala 29.01.2019; Sieradzka 31.01.2019).

effectiveness of conformity tools. Whether we agree with it or not, euro-skepticism is strengthening in Europe and reliance on existing solutions may prove insufficient to ensure its unhindered survival. The literature's role is to foresee the consequences and look for answers that can be of use to EU institutions. Recent changes in the political make-up of the EU thus call for the reevaluation of our knowledge on state non-compliance and the Commission's enforcement, as well as for a critical analysis of Poland's dispute with the EU over the rule of law principle.

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Disaster response mechanisms in EU and NATO¹

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Abstract

The objective of this article is to identify, analyse and assess the European Union (EU) and NATO's roles in international disaster response operations. The article adopts a broad approach and deals with mechanisms that could apply to so-called "natural" and "man-made" disasters. It considers instruments that may contribute to fulfil the rights of people stricken by disasters in Europe and beyond. The use of NATO's disaster response capabilities has drawn limited attention in scientific literature so far. The main hypothesis stipulates that NATO provides added value in international disaster response in relation to the United Nations (UN) and EU actions. NATO with its transatlantic dimension and its military capabilities can assist when a stricken nation, its neighbours and/or other international organization(s) capacity or measures cannot cope with the potential negative consequences of a natural or man-made disaster. However, EU and/or NATO disaster response actions do not substitute a stricken country actions but complements their efforts in this area.

Keywords: Disaster response, EU, NATO, UN.

Unijne i natowskie mechanizmy reagowania na katastrofy

Streszczenie

Celem tego artykułu jest określenie, analiza i ocena roli UE i NATO w międzynarodowych operacjach reagowania na katastrofy. W artykule przyjęto szerokie podejście i omówiono mechanizmy, które mogłyby mieć zastosowanie do tak zwanych klęsk żywiołowych i katastrof spowodowanych przez człowieka. Rozważa się w nim instrumenty, które mogą przyczynić się do realizacji praw osób dotkniętych klęskami żywiołowymi w Europie i poza nią. Wykorzystanie zdolności NATO do reagowania na katastrofy przyciągnęło dotychczas ograniczoną uwagę w literaturze naukowej. Główna hipoteza przewiduje, że NATO zapewnia wartość dodaną w międzynarodowym reagowaniu na katastrofy w odniesieniu do działań ONZ i UE. NATO ze swoim wymiarem transatlantyckim i potencjałem wojskowym jest w stanie pomóc, gdy poszkodowany kraj, sąsiedzi i/lub inne organizacje międzynarodowe nie są w stanie poradzić sobie z potencjalnymi negatywnymi skutkami katastrof naturalnych lub spowodowanych przez człowieka. Przy czym działania UE i/lub NATO w zakresie reagowania w przypadku katastrof nie zastępują działań państw dotkniętych katastrofą, lecz stanowią uzupełnienie ich wysiłków w tym obszarze.

Słowa kluczowe: Reagowanie na katastrofy, UE, NATO, ONZ

¹ This article reflects the personal views of the author and does not represent the views of any institution or organisation.

We are facing an increasing number of natural and man-made disasters, which generate great social and economic costs. When disasters strike, local authorities, civil societies and governments should assist affected people and restore essential public services, like water and food supplies, transports, communication and healthcare as well as in longer term rebuild destroyed infrastructure and environment. However, disasters often overwhelm national coping capacities. In these cases, the assistance of foreign and international actors is critical to ensuring that humanitarian needs are promptly and adequately met.

In the period from 1998 to 2017 only climate-related and geophysical disasters killed 1.3 million people and left a further 4.4 billion injured, homeless, displaced or in need of emergency assistance. Direct economic losses were valued at US\$ 2.908 billion. As for France, Germany and Italy these losses for the period are respectively 43.3; 57.9; and 56.6 in billion US\$. Flood; storm; earthquake; extreme temperature; landslide; drought; wild-fire; volcanic activity; and mass movement (dry) are responsible for most losses (CRED 2018: p. 4).

The CRED report, which focuses on hydrological, meteorological and climatological events, finds "That human cost is there for all of us to see in the alarming numbers of people who are now internally displaced every year by disasters, often losing their homes and their livelihoods, in extreme weather events and earthquakes" (CRED 2018: p. 1).

Disasters in addition to direct damages have also significant macroeconomic effects. "A disaster's initial impact causes mortality, morbidity, and loss of physical infrastructure (residential housing, roads, telecommunication, and electricity networks, and other infrastructure). These initial impacts are followed by consequent impacts on the economy..." (Cavallo, Noy 2009: p.14). Natural disasters have negative short-run economic impacts. Disasters also have adverse longer-term consequences for economic growth, development and poverty reduction. But, negative impacts are not inevitable. Monitoring, preparedness, national and international disaster response and management can reduce these impacts. These negative impacts are partially mitigated by insurance coverage. However, "Insurance coverage regarding floods and geophysical hazards is far from sufficient in quite some EU Member States" (Perrels et al. 2014: p. 4).

In 2017 there were 301 disaster events, of which 183 were natural disasters and 118 man-made disasters worldwide according to the Swiss Reinsurance Institute Sigma estimates. The costs of those disasters are enormous in term of killed/dead, injured, displaced, homeless and in economic terms. The EU has seen a wide range of natural and ecological disasters. In 2017, over 200 people were killed by natural disasters in Europe. In Portugal alone, forest fires in 2017 resulted in at least 66 deaths and 204 injured people and the direct economic damage was estimated at close to EUR 600 million, representing 0.34% of Portugal's Gross National Income. For the first time in history, significant fires occurred in Sweden and Germany in 2018 leading to deep concerns that climate change is impacting civil security in ways previously not seen (Lamos, Ketelsen 2018). In many situations the resources available to the state have been inadequate and the only solution has been to call the international community for help.

Therefore, the question should be asked whether we can improve disaster response by using international capabilities? What international disaster response mechanisms are available in Europe? This also requires answers to questions such as: How can NATO contribute to this effort in Europe? Are there instruments facilitating vital transport/speeding up the delivery of assistance in Europe?

The use of NATO's disaster response capabilities has drawn limited attention in scientific literature so far. However, the International Federation of Red Cross and Red Crescent Societies lists NATO capabilities as mechanisms available at regional level in Europe (IFRC 2007).

The IFRC's study outlines existing legal frameworks related to international disaster response at the global, regional, bilateral and national levels. It quotes literature in areas of international law relevant to disaster response, presents analyses of relevant law and legal issues, and finds that "... bureaucratic barriers to the entry of relief personnel, goods and equipment and the operation of relief programmes, as well as regulatory failures to monitor and correct problems of quality and coordination, can undermine aid effectiveness" and that these "legal barriers can be as obstructive to effective international disaster relief operations as high winds or washed-out roads" (IFRC 2007: p. 1, 8).

The IFRC' study also presents different "disaster" definitions, proposed in: Tampere Convention, 1998, art. 1; United Nations Department of Humanitarian Affairs (UN DHA), Agreed Glossary of Basic Terms, 1992; the Agreement Establishing the Caribbean Disaster Emergency Response Agency (CDERA Agreement), 1991 art. 1(d); Red Cross/Red Crescent and NGO Code of Conduct, 1995; International Space Charter, 1999, art. 1; and Framework Convention on Civil Defence, 2000, art. 1(c). It points that the international humanitarian community has adopted a broad approach to the term disaster in policy documents.

In 1992, an "Agreed Glossary of Basic Terms Related to Disaster Management" prepared by the UN DHA defined disaster as "a serious disruption of the functioning of society, causing widespread human, material or environmental losses which exceed the ability of affected society to cope using only its own resources." (IFRC 2007: p. 23)

The CRED defines a disaster as "a situation or event which overwhelms local capacity, necessitating a request at national or international level for external assistance; an unforeseen and often sudden event that causes great damage, destruction and human suffering; though often caused by nature, disasters can have human origins " (CRED 2018: p. 9).

In Europe, the international cooperation takes into account Article 222 (b) of the Treaty on the Functioning of the European Union ('Solidarity Clause'), which provides (inter alia) the option for the EU and EU countries to provide assistance to another EU country which is the victim of a natural or man-made disaster (Gatti 2016). The 2010 Internal Security Strategy added disasters such as forest fires, earthquakes, and floods to the list of European Union (EU) internal security concerns, expanding on the more traditional anxieties over militaries, border protection, and the effects of poverty (Leite 2015).

Further, there has been a lot of research focusing on the growing EU capacity to coordinate crisis management and on disaster response capabilities. Examinations of

these work show that the disaster response capabilities of NATO have been neglected. The goal here is to compare, bring together and synergize existing capabilities in EU and NATO. Thus, the article brings together the EU and NATO capabilities connecting the practice and scholarly study on disaster response in Europe.

The paper maps mechanisms available to manage disasters in EU and beyond, details the wide range of crisis management capacities, and assesses the levels to which these capacities have been used.

Governmental, non-governmental and international organisations play important role in assisting the population affected by disasters. This article focuses on the European Union (EU) and the North-Atlantic Treaty Organisation (NATO). There are fundamental differences in purpose, roles and capabilities among these organisations, however, they are committed to providing disaster response in a timely and efficient manner and to ensure assistance that meets the real needs in the population affected by disasters, whether in Europe, America, Africa or in other areas.

The UN is intergovernmental organization promoting international cooperation. It holds the primary role in the coordination of international disaster relief operations. The EU is primarily a political and economic union of European states. It may carry out disaster response, humanitarian and rescue missions, peacekeeping and armed missions for crisis management, including restoration of peace. The EU is an important player in disaster response.

NATO is a political and military alliance of USA, Canada, and the most of European countries. NATO's three core tasks are collective defence, crisis management and cooperative security. However, NATO has also a long track of achievements in disaster response. The many countries are members of both the EU and NATO. Both organisations share common values and strategic interests.

The article consists of three sections. The first one discusses the EU disaster response mechanisms, tools and activities and outlines the role of the United Nations and the Office for the Coordination of Humanitarian Affairs (OCHA). Sections two is dedicated to the identification and analysis of NATO's disaster response mechanisms, tools and missions.

The next section examines three NATO's disaster response operations, what demonstrates that NATO provides substantial added value to the EU and UN efforts in international disaster response. NATO's capabilities, including civilian and military assets and capabilities played an important role in providing humanitarian relief in these three operations.

There is also presented the Memorandum of Understanding (MoU), that facilitates vital civil cross border transport. If at least one more person is rescued in a disaster (inside or outside the EU) when the rescuers arrive in time thanks to the MoU described in the article, it will be an achievement, exceeding the importance of less practical theories. Knowledge, understanding - through scientific analysis - and further promotion of this instrument among policy and/or decision makers and first responders will contribute to its use.

In the research process qualitative research methods were used, including in the form of analyses, synthesis, abstracting, comparison, generalization and implication, as well

as conclusions. The review and analyses are based on rich empirical material: mission records, policy documents, archives online, media statements as well as practical work experience of the author, who contributed to the development of policy documents and legal instruments and supported disaster response operations.

The European Union Humanitarian Aid and Civil Protection

The European Union is very active in the field of helping victims of disasters worldwide. In doing so the EU respects the UN leading role in disaster relief coordination.

The UN role, as stated in the Chapter I of its Charter, is to maintain international peace and security, develop friendly relations among nations, achieve international co-operation and be a centre for harmonizing the actions of nations. It holds the primary role in the coordination of international disaster relief operations with its Office for the Coordination of Humanitarian Affairs (OCHA). The Office was established in December 1991 by General Assembly Resolution 46/182. The resolution provides that "...humanitarian assistance must be provided in accordance with the principles of humanity, neutrality and impartiality". As stated at the UN OCHA Website: "OCHA is the part of the United Nations Secretariat responsible for bringing together humanitarian actors to ensure a coherent response to emergencies. OCHA also ensures there is a framework within which each actor can contribute to the overall response effort." (General Assembly Resolution 46/182).

The EU and its member countries are the world's leading donor of humanitarian aid, for which the Treaty of Lisbon provides the legal basis (Official Website of the European Union, Humanitarian aid and Civil protection). Nevertheless, the EU committed to disaster response already in 1985, when Member States agreed to co-operate in the field of Civil Protection, including both the preparedness and the response in the case of major natural disasters (European Commission 1999).

The Maastricht Treaty in Article 3(t) authorized, among others, measures in the area of civil protection. On 19 December 1997, a Community Action Programme in the field of civil protection was established by the Council Decision. And in 2001, the EU established the Civil Protection Mechanism to facilitate reinforced cooperation in civil protection (European Council 2001). The key element was the establishment of the Monitoring and Information Centre (MIC) in Brussels. It operated as a centre for the dissemination of data and for early warning. The Centre assisted both within and outside the EU.

Since 2003, the EU has carried out military and civilian operations outside its territory as part of the European Security and Defence Policy. The Treaty of Lisbon in art. 214 specifies the EU role in providing assistance, relief, and protection to victims of natural or man-made disasters worldwide. It mandates the European institutions to outline the measures for such actions.

The EU is very active in the field of helping victims of disasters worldwide. The EU has worked in all major crisis areas: Syria, South Sudan, Ukraine, West Africa, the Central African Republic, and the Ivory Coast.

In 2013, the EU adopted the new Civil Protection Mechanism (CPM) (European Parlia-

ment and the Council 2013'. In 2014, it adopted the implementing decision on the CPM functioning (EU Commission Implementing Decision). The mechanism can be activated for any serious natural or man-made disaster within or outside the EU. The EU civil protection policy was merged with humanitarian aid policy into one Directorate General Directorate –General for European Civil Protection and Humanitarian Aid Operations (ECHO).

As stated at the DG ECHO Website: "The overall objective of the EU Civil Protection Mechanism is to strengthen cooperation between Participating States in the field of civil protection, with a view to improving prevention, preparedness and response to disasters. Through the Mechanism, the European Commission plays a key role in coordinating the response to disasters in Europe and beyond." Its devices are: the Emergency Response Coordination Centre (ERCC), that acts as a coordination centre between participating states – the affected country and experts; the Common Emergency Communication and Information System (CECIS), which is a web-based alert and notification application enabling real time exchange of information; training programme for civil protection teams; and civil protection modules (*European Civil Protection... WWWW*).

The opportunity to participate in the Civil Protection Mechanism has also been granted to non-EU Member States. In addition to the EU Member States, Iceland, Montenegro, Norway, Serbia, the North Macedonia and Turkey take part in the Mechanism. Any country in the world can call on the EU Civil Protection Mechanism for help (*European Civil Protection... WWWW*).

When disaster strikes the affected country's emergency response authority can activate the Mechanism. The affected state within and/or outside the EU may request assistance through the ERCC for the deployment of assistance resources. The states participating in the Mechanism may choose if and how to contribute. Once decided, they inform the ERCC of their decision through the CECIS, indicating the scope and terms of any assistance to be rendered.

Any country in the world stricken by a major disaster can make a request for assistance through the ERCC. The Centre analyses the needs, plans and execute the form and size of assistance that can be immediately deployed. The ERCC monitors emergencies around the globe on a 24/7 basis and coordinates the response of the participating countries in case of a crisis. It is active all year around.

The European Commission can enable delivery of assistance to the stricken country within a few hours by co-financing transport costs. It can also pool and consolidate shipments from various countries to the affected country, which boosts the efficiency of the European response.

The ERCC supports a range of prevention and preparedness activities, from awareness-raising to field exercises simulating emergency response.

The Centre has monitored over 300 disasters and has received well over 200 requests for assistance. It assisted in some of the most tragic disasters, including: the earthquake in Haiti in 2010; the disaster in Japan in 2011; typhoon Haiyan that hit the Philippines in 2013; the floods in Serbia and Bosnia and Herzegovina, the Ebola outbreak, the conflict in Ukraine in 2014; the earthquake in Nepal in 2015; the conflict in Iraq, hurricane „Matthew"

in Haiti in 2016; fires in Europe in 2017 and the refugee crisis (Jacuch 2017a: p. 170). In July 2018, Sweden has requested assistance, activating the EU Civil Protection Mechanism for the forest fires raging across Sweden. This assistance includes planes, helicopters and firefighting personnel from Germany, Lithuania, Poland, France, Italy and Portugal (*European Civil Protection... WWV*).

In November 2017, responding to the high number of recent emergencies the EU Commission announced new plans to strengthen the EU civil protection response to support Member States to better respond and prepare for natural and man-made disasters. This includes the creation of rescEU, a reserve of new civil protection capabilities, including forest fighting planes, special water pumps, urban search and rescue and field hospitals and emergency medical teams (European Commission 2017).

NATO's Involvement in Humanitarian Assistance/Disaster Response

NATO is not a major humanitarian actor. However, NATO has always placed great emphasis on the protection of civilian populations. Since its inception, NATO has understood not only the need for preparedness for war in the military area but also in civilian field, in civil defence. NATO's role in Disaster Assistance was described in a booklet issued in November 2001, which also gave examples of NATO's involvement in disaster response.

In early 50. NATO established the first civilian committees responsible for civil emergency planning, including the Civil Defence Committee to oversee efforts to provide for the civil protection, which later was renamed as the Civil Protection Committee. In 1953, NATO agreed a disaster assistance scheme recognising that the capabilities to protect populations during a potential conflict could also be used to protect them against the effects of natural or man-made disaster (NATO 2001: p. 5).

In November 1955, the field of emergency planning was further extended, and the Senior Civil Emergency Planning Committee was set up. The Chairman was the Secretary General, and the members, as a rule, those officials who are responsible for civil emergency planning in their own countries. By 1958, the North Atlantic Council (NAC) had established procedures for NATO's coordination of assistance between member countries in case of disasters, which remained in effect until May 1995 (NATO Civil Emergency Planning booklet 2001: p. 5). Then they were revised and became applicable also to Partner countries.

Later, NATO defined civil emergency planning as a basis for civil support to planning and conducting NATO operations; a catalyst for improving national resilience against all hazards, including the protection of populations and critical infrastructure; a platform for cooperation with partner nations; and a forum for engaging other international organisations.

NATO's involvement in disaster response and humanitarian operations has a long history. In 1953, NATO assisted Belgium and the Netherlands that were hit by storm floods. Until 1960, there were relatively few major disasters in Alliance member countries which exceeded national capabilities, and which required NATO coordination or assistance.

In May 1976, NATO's coordinated involvement took place in connection with an earthquake in Italy.

In 2000, the NAC decided on NATO CEP's five roles, which are: (1) Civil support for Alliance military operations under Article 5; (2) Support for non-Article 5 crisis response operations; (3) Support for national authorities in civil emergencies; (4) Support for national authorities in the protection of the population against the effects of weapons of mass destruction; and (5) Cooperation with partner nations (NATO Backgrounder 2006: p. 2).

These roles continue to be valid today, along with the decisions taken at the recent NATO summits, NATO focus shifted toward enhanced civil preparedness.

The NATO senior committee, the Civil Emergency Planning Committee (CEPC) directs four Planning Groups (PGs) covering eight functional areas: Transport Group, which covers aviation, inland surface transport and ocean shipping; Joint Health, Agriculture and Food Group; Industrial Resources & Communications Services Group; and Civil Protection Group. The CEPC and Planning Group members are representatives from national ministries. They maintain a pool of experts, interestingly, who are coming from private sector, academia and in some cases from administration (Jacuch 2017b: p. 139–140). The CEPC is responsible for carrying out all five roles, including civil emergencies as in roles 4 and 5. The Euro-Atlantic Disaster Response Coordination Centre (EADRCC) coordinates NATO's disaster response efforts. The EADRCC realises similar role in NATO like the ERCC in the EU.

The Euro-Atlantic Disaster Response Capability was created by the Euro-Atlantic Partnership Council (EAPC) on 17th December 1997. On 3 June 1998, the Euro-Atlantic Disaster Response Coordination Centre (EADRCC) started to operate. The EADRCC is NATO's principal civil emergency response mechanism in the Euro-Atlantic area. It is active all year round, operational on a 24/7 basis (*Euro-Atlantic...* WW/W; Jacuch 2017b: p. 137). The other important tool is Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport that is described later.

The EADRCC supports the NATO CEP's five roles. The Centre has access to the pool of civil experts maintained by the PGs. They can be called to provide the Centre with expert advice in specific areas in the event of a major disaster. These are international experts from industry, science and administration provided by nations, selected and trained, available free of charge at a short notice (Jacuch 2017b: p. 139–140).

The EADRCC is open for NATO Allies and Partners, the Mediterranean Dialogue Countries, the Istanbul Cooperation Initiative Countries, and the Partners across the globe.

The main tasks of the EADRCC include: coordinating the response of NATO and Partner countries; dealing with the consequences of Chemical, Biological, Radiological or Nuclear (CBRN) incidents, including terrorist attacks - this task was given to the EADRCC shortly after the tragic events of the 11th of September 2001, four coordinated terrorist attacks carried out by al-Qaeda against the United States; guiding consequence management efforts; information-sharing on disaster assistance; conducting annual large-scale field exercises with realistic scenarios; organizing seminars to discuss lessons identified from NATO-coordinated disaster response operations and exercises; organizing work-

shops and table-top exercises to provide training for local and international participants (Jacuch 2017a: p. 171).

The UN retains the primary role in the coordination of international disaster relief operations. The EADRCC activities are closely coordinated with other international organizations, including: the UN OCHA, the EU, International Committee of the Red Cross, the International Atomic Energy Agency, the Office for the Prohibition of Chemical Weapons, and the World Health Organization, etc. The EADRCC also cooperates with NATO Military Authorities.

The Centre complements and provides additional support to the UN role, the EU and other organizations efforts. The stricken country remains responsible for disaster management. The EADRCC has coordinating role, which takes place at government level.

The EADRCC acts only upon request. A request for assistance can be received from: a stricken NATO or partner nation; the UN OCHA; exceptionally from a stricken non-EAPC nation; and from other organizations working in the field of international disaster response. Next, and after receiving political guidance as appropriate, the EADRCC coordinates, in close consultation with the UN OCHA, the responses of countries to occurring disasters. It acts as a focal point for information-sharing on disaster assistance requests among member and partner countries and maintains close liaison with the UN, European Union and other organizations involved in international disaster response (Jacuch 2017a: p. 171).

Moreover, the EADRCC acts as a clearing house for information. The Centre prepares and circulates daily Reports. It also identifies outstanding requirements and possible solutions to them. It maintains the roster of pre-declared Inventory of national capabilities for CBR consequence management. One of EADRCC tools is the Euro-Atlantic Disaster Response Unit (EADRU), which is a non-standing, multi-national mix of volunteered national civil and military elements (qualified personnel of rescue, medical and other units; equipment and materials; assets and transport). When deployed they act in coordination and cooperation with the UN and other disaster response organisations. The EADRCC maintains an inventory of multilateral and bilateral agreements, in the area of disaster response, data on visa requirements, border crossing arrangements, transit agreements, procedures for customs clearance of disaster relief goods in EAPC countries, Points of Contact of customs authorities in EAPC nations, and agreements on the status of foreign relief personnel in EAPC area (Jacuch 2017a: p. 171).

Over the past years, the EADRCC has been responding to more than 60 requests for assistance from nations. These have included floods, forest fires, dealing with the aftermath of earthquakes, heavy snow, hurricane, outbreak of Ebola, pandemic flu, refugee crisis, and with other crises. These included requests in several cases from European Union countries, however mostly from non-EU European countries, and from US, Turkey, Pakistan, Central Asia, Middle East and West African countries. In many emergencies both the EU and NATO assisted to those stricken countries.

The Centre organizes workshops, table-top exercises and seminars on response to emergency situations to improve preparedness and capabilities of stricken and assisting nations, enhance interaction between allies and partners as well as between civilians

and military. It also conducts annual large-scale field exercises with realistic scenarios (Jacuch 2017a: p. 173).

Use of military assets and capabilities in NATO's disaster response operations

Since 1998, the collective use of military capabilities under NATO command in a disaster response operation has happened several times. The use of military assets and capabilities available in the NATO's Structures can only be provided on request by the stricken nation or by an appropriate international organization and upon decision of the North Atlantic Council (NAC). NATO's policy for the use of military assets in response to humanitarian situations is in line with the relevant UN guidelines as the Guidelines on the use of Military and Civil Defence Assets (MCDA) in Complex Emergencies and the Oslo Guidelines.

Three operations are analysed below. These are: NATO's intervention in response to Hurricane Katrina in the United States in August 2005; NATO's assistance to Pakistan following the earthquake in Kashmir in October 2005; and NATO support to Monsoon Floods Relief Efforts in Pakistan in 2010. In the three cases the EADRCC played a central coordinating role in NATO's disaster relief. Finally, there is also presented a unique tool that facilitates vital civil cross border transport.

Hurricane Katrina

The EADRCC final report N° 15/2005 provides a detailed account of this operation. Hurricane Katrina displaced 770,000 residents. Its death toll was 1836 people. It destroyed or made uninhabitable 300,000 homes. Katrina damaged 19 percent of U.S. oil production (NATO EADRCC 2005).

On 3 September 2005, the USA sent a request for assistance to NATO/EADRCC. Next, the EADRCC dispatched its liaison officer to Washington. Twenty-three nations offered assistance directly to the EADRCC; twelve nations informed the EADRCC about their offers through the EU Civil Protection Mechanism. Additional four EAPC nations made their offers of assistance directly to the USA. In total thirty-nine EAPC nations provided assistance to the US.

On 9 September 2005, the NAC approved a transport operation to move donations from Europe to the United States. NATO established air-bridge from Ramstein, Germany to Little Rock, Arkansas. It delivered 200 tons of relief goods. With the completion of the NATO air transport operation on 2 October 2005, all donations accepted by US authorities were delivered (Jacuch 2017a: p. 174).

NATO's Assistance to Pakistan Following the Earthquake in Kashmir

The NATO EADRCC final report N° 23/2006 provides a detailed account of this operation. On 8 October 2005 a devastating earthquake hit Pakistan, killing an estimated 73,000 people and left up to four million people homeless in the affected area. In certain

districts, 90 percent of the houses were destroyed, and all the school buildings collapsed (NATO EADRCC 2006).

On 10 October 2005, the EADRCC received from Pakistan an urgent request for assistance in coping with the aftermath of the devastating 8 October earthquake. In addition, the UN asked NATO for assistance in putting together its own relief operation. In response, the NAC approved a major air operation to bring supplies from NATO and Partner countries as well as from the United Nations High Commissioner for Refugees (UNHCR) to Pakistan. The NAC approved a two-stage Alliance response. The first stage focused on the air-bridge.

The EADRCC, acted as a single point of contact. The EADRCC worked in conjunction with NATO Military Authorities, Pakistan authorities, UN OCHA and the EU. The Centre coordinated all offers from NATO and Partner nations that requested NATO transportation assistance. The SHAPE Allied Movements Coordination Centre (AMCC) coordinated the execution of the movement.

NATO conducted air transportation through two air bridges, from Germany and Turkey. NATO Response Force (NRF) aircraft were used for repositioning aid supplies within Europe and in delivering aid directly to Pakistan, mainly UN goods from Turkey. A total of 42 EAPC nations aided Pakistan, either on a bilateral basis, through the EU Civil Protection Mechanism or through the EADRCC. In total, some 168 NATO flights delivered almost 3500 tons of relief supplies. The airlift came to an end on the 9th of February 2006. The NATO relief flights were the largest single contribution to the airlift relief effort. The NATO air-bridge was used by 19 EAPC and 2 non-EAPC nations and by the UNHCR, the World Food Programme, the UN OCHA and NGOs. NATO military liaison officers and civil experts augmented the EADRCC.

The second stage of the operation included NATO's deployed elements of the NATO Response Force: a headquarters command and control structure, engineering units, helicopters and military field hospitals. Altogether about 1000 NATO engineers and supporting staff as well as 200 medical personnel worked in Pakistan during the operation. NATO forces worked closely with both the government of Pakistan and the UN. The 90-day mission ended on the 1st of February 2006 (Jacuch 2017a: p. 175-176).

Pakistan 2010 Monsoon Floods

The EADRCC final report N° 24/2011 provides a detailed account of this operation (NATO EADRCC 2011). The 2010 monsoon floods in Pakistan were the worst in recorded history. They killed more than 2000 people and affected 18 million – more than a tenth of the population. An estimated 11 million people were made homeless because of the disaster. The floods destroyed hundreds of thousands of hectares of cultivatable land and crops in the traditional food-basket regions of Sindh and Punjab, and many farmers lost their seeds. And at least 1.2 million livestock died.

On 20 August 2010, in response to the request submitted by Pakistan, the NAC decided that NATO would, with immediate effect, commence flood relief support by means of airlift/sealift operations in coordination with other stakeholders engaged in the relief op-

eration. EADRCC was approved as a Clearing House for information sharing and donations coordination. NATO Civil-Military Assessment and Liaison Team went to Islamabad. As of 22 November 2010, which was the last day of NATO's air bridge to Pakistan, twenty-four humanitarian relief flights delivered 1019.55 tons of relief items. NATO donated to Pakistan an emergency bridging equipment (234 meters), delivered by a ship sponsored by Turkey in January 2011. The operation was terminated after 90 days (Jacuch 2017a: p. 176).

Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport

The other important NATO's tool, which aims at improving the speed and efficiency of assistance to victims of humanitarian crises or disasters, is the Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport (MoU). The MoU was agreed by the EAPC in September 2006 (NATO 2006).

The MoU has been developed under the supervision of the NATO SCEPC, which in 2010 was re-named to read Civil Emergency Planning Committee (CEPC), in close cooperation with the NATO Planning Board for Inland Surface Transport (Jacuch 2009).

The MoU is a multilateral instrument which provides the general framework for the facilitation of vital civil cross border transport movements across the territories of the signatories. It is applicable for the provision of humanitarian assistance in response to disasters, including those triggered by a Chemical, Biological, Radiological or Nuclear (CBRN) event.

The MoU does not constitute a legally binding agreement. It does not create any new regulations above the national or international legislation. It has several specific features that make it extremely suited for that purpose, in particular: the MoU aims at the speeding up and simplification of existing national border crossing procedures, and not at their abolishment; no new privileges and/or immunities are foreseen and/or requested for any of the participants in the relief operations; it includes a confidence-building measure by ensuring that full compliance with national regulations, bi- and multilateral agreements, international laws and conventions is recognized by Participants of the MoU.

The MoU is a multilateral instrument signed by individual nations. It does not create any new regulation above national as well as international legislation. The MoU has been signed and entered into force between more than 30 NATO Allied and Partner for Peace nations.

The MoU has been a significant achievement in improving international response to crisis and emergencies. In 2006, the MoU was released to the International Federation of Red Cross and Red Crescent Societies as well as to the Organization for Security and Co-operation in Europe (OSCE), UN-OCHA, and the World Customs Organization at their request.

The NATO MoU speeds up the delivery of disaster response, provides that requesting states will accord priority to civilian disaster relief transport, including permission to cross otherwise closed borders. The MoU is referred by the IFRC in line with the ASEAN Agreement, the Kyoto and Istanbul Customs Conventions as those instruments

relaxing i.a. customs procedures and duties in disaster response operations (IFRC 2007). The MoU is an important instrument available in Europe and beyond. Therefore, it should be promoted between first responders, decision and policy makers in EU at all levels.

Conclusions

Today, natural and man-made disasters are the part of the environment in which we live. In most cases, we are not fully prepared when it occurs. The clear leadership and responsibility of a stricken nation as well as the role of the UN as the prime focal point for the coordination of international disaster relief operations should always be recognized. Both the EU and NATO respects UN OCHA's leading role in disaster relief.

The EU helps victims of man-made and natural disasters worldwide. The ERCC monitors emergencies around the globe on a 24/7 basis and coordinates the response of the participating countries in case of a crisis. It is active all year around.

NATO's role and added value is in respect of short-term disaster relief. NATO's support can be provided at the request of a stricken country, the UN OCHA, or other organizations working in the field of international disaster response. It would be aiming at improving the conditions for recovery. Then, it can be taken over by other more appropriate actors. NATO civil emergency response mechanism, the EADRCC, is active all year round on a 24/7 basis monitoring emergencies and coordinating contributions in case of a crisis.

The growth of large scale natural, man-made and environmental disasters has led to the increased deployment of military assets and capabilities in disaster response. The responsibility for a disaster response rests with the stricken country. However, when the magnitude of a disaster exceeds the national response capability, there may be a need for international assistance, including, if requested, assistance by or through NATO.

In international disaster NATO can use its military assets and capabilities. Then, the EADRCC and the Alliance's military structures provide coordinating, liaising and facilitating functions. These enable contributors to provide necessary capabilities, such as hospitals, purification units, generators, folded bridges, etc. This coordination role that characterizes NATO-led operations has proven useful both to the authorities of the receiving country, to the United Nations, or other actors. The three operations analysed above provide practical and successful examples when NATO military assets and capabilities were used.

The time of delivery of assistance to victims of humanitarian crises or disasters, including cross border is crucial. Here, the Memorandum of Understanding on the Facilitation of Vital Civil Cross Border Transport, bilateral and multilateral border crossing agreements can improve the speed and efficiency of assistance. When a disaster strikes, every minute counts for saving lives. Immediate, coordinated and pre-planned response is essential.

There are fundamental differences in purpose, roles and capabilities among EU and NATO, however both organizations are committed to providing disaster response in a timely and efficient manner and to ensure assistance meets the real needs in the

population affected. They have their policies and respect each other roles in the process of response, built their coordinating mechanisms and can mobilize certain capabilities that could be used to assist a stricken country.

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Ambivalent German narration towards economic problems of eurozone in the light of constructivist approach

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Summary

The European financial and economic crisis made Germany a leader trying to introduce the principles of order to the Economic and Monetary Union in line with the ideas of German governance policy (*Ordnungspolitik*), which is explained by ordoliberalism. However, there is strong relativism visible in constructing European reality, resulting from the fact that the adopted ordoliberal assumptions do not fit into the macroeconomic, diversified space of the eurozone, and, what is more, cannot be implemented during the recession, because their effectiveness is determined by the long-term perspective and national identity. Moreover, the role of the leader does not comply with the principles of *Ordnungspolitik*. On the other hand, the partnership with France, which is necessary to maintain stability of the eurozone, causes a move away from the conceptual assumptions of ordoliberalism. The aim of the article is to draw attention to Germany's ambivalence in solving the economic problems of EMU, as well as to show ambivalent attitude of other Member States towards Germany.

Keywords: ordoliberalism, Social Market Economy, Germany, European Monetary Union, economic crisis, constructivism

Ambiwalentna narracja Niemiec wobec ekonomicznych problemów strefy euro w świetle podejścia konstruktywistycznego

Streszczenie

Europejski kryzys finansowo-ekonomiczny postawił Niemcy w roli lidera, starającego się wprowadzić zasady ładu do Unii Gospodarczo-Walutowej, zgodnie z ideami niemieckiej polityki ładu (*Ordnungspolitik*), której wykładnią jest ordoliberalizm. Jednak w konstruowaniu europejskiej rzeczywistości widoczny jest silny relatywizm, wynikający z faktu, iż przyjęte ordoliberalne założenia nie wpisują się w makroekonomiczną, zróżnicowaną przestrzeń strefy euro, a tym bardziej nie mogą być implementowane w okresie dekonjunktury, gdyż ich skuteczność warunkuje perspektywa długoterminowa, ale również i tożsamość narodowa. Co więcej, sama rola lidera nie jest zgodna z zasadami *Ordnungspolitik*. Z drugiej strony zaś, konieczne do utrzymania stabilności strefy euro partnerstwo

z Francją powoduje odejście od koncepcyjnych założeń ordoliberalizmu. Celem artykułu jest zwrócenie uwagi na niemiecką ambiwalencję w rozwiązywaniu ekonomicznych problemów UGW, przy jednoczesnym ambiwalentnym nastawieniu pozostałych państw członkowskich wobec Niemiec.

Słowa kluczowe: ordoliberalizm, Społeczna Gospodarka Rynkowa, Niemcy, Unia Gospodarczo-Walutowa, kryzys ekonomiczny, konstruktywizm

„All uncertainties in political and economic life are managed by intersubjective constructs of how the world works. If I am at least certain of this, then I have a capacity to construct my own view of how the world works in coordination with others, and I can exercise these constructs through institutions that, ideally, are flexible enough to accommodate my views”

Leonard Seabrooke

There are many aspects of the crisis spilling-over the European Union (starting from financial crisis at the end of 2007, economic crisis in 2008, debt crisis in 2009, through institutional crisis in 2009, political crisis in 2013, migration crisis in 2015 and social crisis in 2015, reaching the crisis connected with „Brexite” in 2016, and finally an axiological one), as well as there are many interpretations of their reasons. They are dependent on specific context and narration, i.e. the social perception of particular countries in the European construction. Limiting the analysis to the eurozone, the crisis reality revealed the significant deficiencies in the effective governance of the area of common currency, and simultaneously pointed to the mistakes made by the member states at the level of creating integrated structure.

There was a lack of the framework in the construction of European *polity*, or ‘an *amalgamated security community*’ (Karl Deutsch) increasing the predictability of integrating actors behaviour and decreasing the economical imbalance that would effectively regulate and coordinate the European order. Ineffectiveness of mechanisms limiting the risk of crisis and the instruments chastising the member states to keep the stability and fiscal credibility resulted in disturbance in the system structure and influenced the behaviour of actors–agents (assuming that agents are countries, especially those belonging to the euro area). It was assumed, that despite the lack of meeting the criteria of convergence within the period of accepting the common currency, and joining the Euro Club in the same way, it would be necessary to correct relevant macroeconomic variables and introduce structural reforms allowing to obtain as much as possible, and the most optimal currency area (R. Mundell, R. J. McKinnon), despite the fact, that the criteria for an optimal currency area in the creation of the eurozone were met to a negligible extent.

Moreover, the various narrations of constructed European reality are influenced by the differences in varieties of capitalism; representing a more liberal paradigm and those that are based on coordinated assumptions (P. A. Hall, D. Soskice), and varieties

of neoliberalism such as German ordoliberalism, Friedman's Chicago neoliberalism or determined by the thought of Austrian School, represented among others by Friedrich August von Hayek. They are revealed in the exposition of various factors determining the strategies of economic growth and multiplying the fears over giving the sovereignty to the supranational institutions and strict political integration. Among other, these differences led to breaking the monetary integration spill-over effect by the member states in the sphere of effective economic, and especially fiscal politics.

The aforementioned matters became the catalysers of current disorder in the Euro area, generating the questions of functionality and, as a consequence, a future of European project. Germany's strong determination and commitment to "save the eurozone" placed this country in the leader's position. However, the proposals of the German way of Euro area governance was the reason, why other member states felt ambivalently, though more (northern European countries) or less (southern countries) they accept the German norms and values and implement them at the international level.

The aim of this research is to draw attention to Germany's ambivalence in solving the economic problems of European Monetary Union, as well as to the ambivalent attitude of other Euro members towards Germany. The main hypothesis is that German ordoliberalism is a microeconomic normative theory, which contributed to the German stability and economical effectiveness, but it is not applicable in a diverse macroeconomic environment. Therefore, German narration on Europe manifests the ordoliberal principles; rooted in the context of the situation, they are implemented to a greater or less extent. Moreover, there are strong disagreements of other EMU member states with the German way of governance, leading to deepening the consequences of crisis in eurozone, which increases the costs of European cooperation, and in fact deepen integration. The constructive approach seems to be adequate to achieve the aim of the research.

Constructive narration in the German Europeanisation

The approach chosen for the research was based on constructivism, shaped as the result of debate over the appropriate neofunctionalism (E. B. Haas), and the liberal inter-governmental approach of A. Moravcsik (Risse 2009: p. 144). Originally, the constructivist method was used in the field of international relations, followed by an application in the EU research. Thomas Christiansen, Knud E. Jørgensen and Antje Wiener emphasize that constructivism should not be regarded as a theory characteristic for rational analysis of European integration, but rather as an interpretative tool to understand the impact of "social context" or "intersubjectivity" on the ongoing integration process (Christiansen et al. 1999: p. 528–529).

This approach indicates the relative assumption in perception of „results and process of crisis“, but also „social perception of behaviour (practices)“ (Czachór 2013: p. 190–191) of the integration actors (member states), depending on the context or vision of integrating development. Secondary, as opposed to the rational or neo-functionalist paradigm, the role of the ideas which influence significantly on the factors and material results, i.e.

forming the content of interests or gaining the control – the particular ways of power aspiration (the theory of realism), which ultimately affects the construction of EU reality¹ are taken into consideration. Therefore, constructivism is not limited to epistemological issues, but – as Ruggie emphasizes – it is more important than the dimension of social ontologies (Christiansen et al. 1999: p. 530).

Thirdly, from the constructive perspective, the reality of the EU is not forever certain. It undergoes the modifications and constructive changes including institutional and identity ones. It is a consequence, that various value systems, social contexts, beliefs and cultural traditions are initiated in the EU social interactions and political behaviour. They constitute the basis for various capitalism models or varieties of neoliberalism, which turned out to be, to some extent, the confrontational factors. In fact, apparently determined ways of constructing national preferences, affect the contradictions of the integration interests of member states.

On the other hand, the result of various ideas and social contexts are norms and values, which became common in the process of Europeanisation, and have been shaping the subjects of integration in contact with the surrounding social structure, as the eurozone or the whole EU. In other words, the common ideas determine the creation of European identity and mutual interests „of actors working in purpose of” (Wendt 2008: p. 11), which are based on appropriateness logic; thus, collective intentionality is expressed. They recognise socially shaped behaviour and norms and adjust their own activities to them by the way of compromise. It occurs due to the process of internalisation and socialisation of actors, which, as the result of integrating dynamics, determine their internal social and economic orders, and simultaneously it is the factor that determine the changes and also the process of eurozone reconstruction (Skolimowska 2010: p. 228–229; Czachór 2013: p. 193).

Assuming that the European reality is socially constructed, changeable, and – differently than rational assumption – undergoing transformation, particular and often contradistinctive logic of the individual actors, give a trajectory directions of the European integration. Hence, the way of EU governance, as well as the shape of European order, are influenced by different types of norms, rules and concepts. In this regard, the constructivist approach is strongly correlated with the processes of Europeanisation². One of the element that links constructivist approach and the Europeanisation processes is highlighting the meaning of changes and its dynamics, continuous development and

¹ The essence of the idea and institutions (also the non-formal) having the influence on the countries acts was noticed by Alexander Wendt. He explains that the existence of the idea is the only factor determining the framework of interests and the power of countries are ideas which constitute this „material basis”. (See: Wendt 2008: p. 93–133)

² In the following context, the Europeanisation processes are understood as the cause and effect relations, affecting the EU by the transfer of institutional and ideological and organizational practices from the level of national countries to the supranational level and vice versa. It is the modern, narrow meaning of Europeanisation concentrating only on the EU. Helen Wallace called this dimension of Europeanisation as EU-isation to indicate the stronger relations in „transferring” of particular solutions, which influence on the formal shape of integrating structures (political encounters). The broader term of Europeanisation refers to „infecting” Europe or by Europe with the cultural practices and historical impact (cultural encounters). (See: Flockhart 2010: p.790–792)

its mechanisms, without focusing on static results. A 'change' in this instance can be considered to a greater extent not as a process, but as a state, the result of which are activities, impact and outputs. In constructivism the key for understanding integration is the meaning of language, discourse and deliberation, which are significant for the shaping of European reality; by backing the ideas, norms and values, the spread of which effects on shaping the identity, cognitivism and understanding of European integration vision. Their legitimacy and validity are noticeable in the study of Europeanisation; the ideas are constructed through social and political discourse and become an impulse for actions, affecting the dynamic of changes. Hence, traditional approach to the Europeanisation presents the mechanism of institutions transfer (formal and informal), as well as the implementation of ideational features. The certain transfer of concepts or norms goes from the national level to the EU level (*bottom-up*), and the transfer of supranational legal and institutional rules and systemic solutions goes to the member states (*top-down*). The higher structural disproportions (lower level of structural isomorphism) between the national and European practices, the greater adaptation pressure, and the changes implemented in the member states are more noticeable and costly (Börzel, Risse 2003: p.62–62).

The European reality is „constructed socially" (Berger, Luckmann 1966: p. 13), and on multiple layers, and normative and ideological factors through the process of social education – social learning and deliberation – affect institutional changes (Seabrooke 2006: p.1). In other words, the influence on subjects activity–actors is made together by the interaction with the structure (in the analysed case with Economic and Monetary Union (EMU)), and otherwise – the structure is created by those actors in accordance with Giddens' structuration orientation (Cybal-Michalska 2013: p. 7–30).

In accordance with the accepted logic of the Europeanisation process, the case of Germany within EMU exemplifies that not all participants of integration process have the same influence on shaping the European reality. Although, as the German constructivist Thomas Risse claims, the multiple identity remains strongly connected with the national state. Some actors of integration contribute to norms, rules, values promotion to a greater extent, and appoint the directions of shaping for the particular structure. For instance, taking into consideration the role of language in mediating and constructing social reality, the positive narration (by political leaders) influencing the perception of German society resulted in fact that EMU order and generally the EU order became a part of German identity. The European rhetoric in Germany was extremely strong in the light of Konrad Adenauer activities, on his way to sign the Treaty of Rome (on 25 March 1957) and to create the unified and liberal European order. The prominent father of the German socio-economic style of governance, Alfred Müller-Armack, also had an influential impact on the integration practice. Taking a strategic position (in 1952 he was appointed a head of the Policy Principles Directorate) in the federal Ministry of Economic Affairs (Schefold 2017: p. 354), he actively participated in negotiations of the Treaty of Rome. European tradition and rhetoric were obviously continued by Helmut Kohl, whose government was the most determined supporter of EMU, and by Angela Merkel's government, especially

in the time of financial and economic crisis of 2008 year (Müller-Armack 1957; Kohl 1992).

Similarly, the Italians identify themselves strongly with the European heritage, and the participation in the integration is understood as the condition of overcoming Italian internal problems. However, their institutional form of socioeconomic order and the structure of non-formal institutions do not reveal strong correlation with the EU solutions.

When it comes to Great Britain, the Eurosceptical communicative transfer, which is a result of low identification with EMU and in general with the EU, and the strong feeling of British identity, has finally lead to disturbances of relations in the European Union system by constant opposition „we“ and „they“ (Risse 2000: p. 1,8).

As Vivien A. Schmidt argues in case of France, an institutional misfit occurred at the discursive level, where political elites were not able to achieve a compromise between European neoliberal solutions and the traditional approach to social issues. The same problem arose in the 90's in the field of adopting national economic structures to the neoliberal challenges related to European monetary policy (Schmidt 2000: p.9–10). Otherwise, the intensifying Europeanisation processes, being the result of supranational institutional structures formation (formal and informal), revealed much higher degree of compatibility between „the German and Community interests, institutions and identities“ as well as the framework of rules and norms (Bulmer 1997: p. 50).

In case of other countries, such as Great Britain or the countries of southern Europe, the Europeanisation proved higher institutional misfit of their national structures, than in the Federal Republic. They are mainly related to the convergence of federal features, decentralisation level, multilevel governance style, economic order and legislative solutions.

As Tomasz Grosse noticed, the constructivist method assumes that ideas and values are the area of political struggle, and often manipulation. Therefore, the European order is constructed by the most influential, dominant actors; other groups are forced to adopt the rules, after their consolidation at the supranational level (*top-down*). (Grosse 2014/2015: p. 41–43). From the beginning of European integration, Germany has been deeply engaged in management of European institutional, macroeconomic and political order. Since the moment of signing the Maastricht Treaty (TEU 1992), through the process of Europeanisation (*bottom-up*), it has delegated the elements of its own governance style, known as the Social Market Economy (SME), which is based on the policy of order (*Ordnungspolitik*). Moreover, considering the fact that German SME is not a theory, but a dynamic style of the process of policy making, it was easy to incorporate it into the supranational level, thus constructing the way of Europeanisation; its specific level has been achieved in Germany without extra costs and, as Klaus H. Goetz finds out, the central national features of governance has been reinforced (Radaelli 2000: p. 10). Hence, Germany being a dominating actor in EMU, influences strongly the European values and generally the dynamic of the whole integration by the Europeanisation processes. Moreover, economic crisis has shaped a determined narration in accordance with German interpretation of economic aspect of the SME – mainly ordoliberal.

According to the ordoliberals, economic problems in the eurozone are direct consequences of lack of order and proper institutional crisis management's instruments.

Simultaneously, the acts of some political actors are connected with easing the fiscal rigor and the temptation of moral hazard, resulting from the incorrect, integrating functioning, power scattering and ineffective governing. Considering that the crisis began in the financial area, it should be born in mind, that the fundamental mistakes were made in the economic integration constructive phase, i.e. in the period of EMU and thus the achievement of the single euro currency. Its structure has not been developed on the basis of common (impartial) ideational factor and community awareness, but on the particular national interest influenced by subjective values and arguments, especially political ones. While German neoliberalism (labelled ordoliberalism) focuses on economic efficiency and competitiveness, France or Greece are primarily interested in transferring social narration to supranational level. Divergence of national interests resulted from the incorrect logic of argumentation to develop a solid vision of future integration. For this reason the current EMU seems to be *de jure* an economic project, *de facto* politically shaped. It was supposed to enhance the political integration of Europe, ensuring economic prosperity and political stability. As a result, neither political integration has been completed, nor – with the expectation of Germany – the competitiveness of member states has been increased, not to mention achieving economic convergence.

Summarizing, German constructive approach can be assigned from ordoliberalism, as the explanatory meaning in the analysis of German convictions of correctness considering the elements, functions and objectives at the European level. Ordoliberal values become then an initial context for the transmission of institutional culture, which is internationalised at the supranational level. Therefore, during the socialisation process, based on logic of appropriateness, they are internalised, and are becoming a part of multiple identity and determine the actions of eurozone members (Ruszkowski 2016: p.60–63).

German ordoliberalism as the strategy towards the EMU economic problems

German ordoliberalism is a theory of economic order based on the wide-ranging politics of order (*Ordnungspolitik*), which concerns also political, social, axiological and institutional aspects. Ideological rules of ordoliberalism were developed at the end of the 30s of the 20th century in Germany among the working groups, the so-called *Freiburg Circles*³.

As the normative concept, referring mainly to the economic sphere of order ("*order*", "*Ordnung*") originates from Latin word "*ordo*"), has become a part of holistic style in the

³ Freiburg Circles in the years 1938–1944 constituted the platform (research communities) of religiously motivated, scientific thoughts at the University of Freiburg in Breisgau (the Faculty of Law and Economics). The purpose of informal, even underground meetings was to work out theoretical foundations for the economic order of post-Nazi Germany. Freiburg Circles consisted of three working groups: Freiburger Konzil, Arbeitskreis Freiburger Denkschrift (Freiburger Bonhoeffer Kreis) and Arbeitsgemeinschaft Erwin von Beckerath. Freiburg Circles provided the theoretical, ordoliberal guidelines for their practical implementation by members of the Freiburg School and the main political leaders, after the World War II. (See: Bokajto 2016: p.72–73)

SME. It had been implemented by parliamentary coalition of Christian Democratic Union and Christian Social Union (CDU/CSU), the chancellor Konrad Adenauer and his minister of finance, Ludwig Erhard, to the German politics until 1948. German Christian Democracy is strongly determined by ordoliberalism and the SME until now, although, a part of its rules moved away significantly from of the *'ideal type'* (Max Weber) concerning the endogenous factors (i.e. by stronger Keynes' interpretation of Social Democratic Party, SPD) and exogenous factors (i.e. resulting from the compulsion of complying to the structural order of the EU and the institutional culture of the eurozone).

The essence of ordoliberalism shapes institutional framework, conditions (*Rahmenbedingungen*) and the economic policy governance rules without having the influence directly on the economic processes (*Prozesspolitik*, *Ablaufpolitik*) and the activity of economic and political subjects. Forming the legal and institutional frameworks, based on the economic constitution (*Wirtschaftsverfassung*) aims at the economic life order, i.e. it should be shaped by the legal and institutional structure (Böhm et al. 1937, p. VII–XXI).

Ordoliberalism is the theory of constituted order (not spontaneous one), in which „the free market economy is guaranteed only in the scope of determined order. If there is a conflict between freedom and order, the absolute priority is given to the determined order" (Böhm 1937: p. 101; Ptak 2004: p. 99 and more). The economic constitution is based on the constitutional rules, namely: functional system of prices, stable monetary policy, guaranteed private means of production, free contract conclusion on the open market, material responsibility (*Haftungsprinzip*), and the consistency of economic policy (Dahl 2015: p. 57–62). Their completion is constituted by the regulation rules such as: supervision over the monopoly, progression of income tax, determination of the minimal salary, but only in the period of abnormal market conditions, and paying attention to the external effects and limitations of free market (market failures). Constituted order is subject to the institutional regulations, which are able to guarantee the economic progress by the growth of competitiveness, i.e. to „protect" the free market and the competitive opportunities (*Wettbewerbspolitik*). The effectiveness of such „governance mechanism" is manifested in suppressing of moral hazard, as well as the irrational practices destabilising the structures of social relations, e.g. the eurozone.

What distinguishes German style – the SME, is the principle of order's interdependence, formulated by Walter Eucken (*Interdependenz der Ordnungen*), previously used by Max Weber (*Denken in Ordnungen*); the state and its legal and institutional system, its economy, society and policy are strictly connected with each other. Therefore, functioning of one sphere is determined by the effectiveness of others, so the structure of economic order is analysed in the prism of relations and social norms, cultural and axiological values. The example of interdependence of social and economic orders is the essence of competitiveness in German narration, in the context of which the *economic constitution* has a role of legitimised market coordinator. Free competition is guaranteed by all practices to fight the forms of monopoly and power concentration (both public and national, as well as private). Therefore, „the equal division of benefits obtained in the economic activity" should be guaranteed by the specific rules, but also the limitations for

the overuse of governmental power towards the citizens or economic order (by interventionism application) should be set. The free competition is the condition of *sine qua non* equality and social justice, as well as the basis for maintain democracy, which meets the condition of the SME, resulting in the Erhard's welfare for everyone (*Wohlstand für Alle* by L. Erhard). (Jingkun 2007: p.2–4).

In the European political discourse, ordoliberalism occurred as one of the strategies to save the eurozone. It has particularly contributed to the spectacular economic successes in Germany (Beck, Kotz 2017). The ideas, norms and 'ordo' rules had been implemented in the European practices even before signing the Maastricht Treaty; and by the *bottom-up* process, they influenced significantly the EU structure and the eurozone.

First of all, ordoliberalism is characterised by the long-term culture of stability in the sphere of monetary and fiscal policy; both in individual and public finance⁴. The general idea of constructing economic development is the supply and competitiveness strategy, and the low inflation rate. Integrated regulations of ordoliberal economic constitution are concentrated therefore on the primacy of monetary policy, which task is rationalisation of the price mechanism (the flexibility of prices and remunerations and the deflationary policy) by the stabilisation of monetary value and the price system. Comparing to such countries as France, Greece, Spain or Italy, the main objective is not the policy of economic growth, achieved by the public investments and consumption, but by the macroeconomic structural reforms and guaranteeing the high competitiveness that leads to increased prosperity and a welfare. The rule of financial responsibility (*Haftungsprinzip*) has an exceedingly important role in transactions and decisions, especially those resulting from the excessive risk (e.g. financial speculations) or the moral hazard. Therefore, the chancellor Angela Merkel and her Minister of Finance (2009–2017) Wolfgang Schäuble were strongly opposed to such practices as debt mutualisation, nationalisation of banks or buying the treasury bonds by the European Central Bank (EBC) to finance the loss of the public means in the time of crisis. The mistakes made at the national level are unacceptable, i.e. in the scope of financial policies and excessive expanses leading to the terrific deficit, which negative results are shared among the countries at the supra-national level.

Considering the constructive meaning of political discourse, the various systems of European members narration result in the different interpretations of actions, events, decisions and perception of reality. It can constitute the explanation of the ambivalent Merkel's government policy, taking into account the way of construction of European reality during the financial crisis: on the one hand, towards the economic problems of EMU, on the other hand, towards their own country. The strategy of crisis management and simultaneously the long-term concept of deepening the cooperation in EMU has a positive consequences in the national system, which is shown by the macroeconomic rates of German economy. According to the data of Federal Statistic Office, German GDP – adjusted for inflation – has

⁴ Ordoliberalism in prevailing rhetoric is often identified with saving policy. However, neither Eucken assumption nor any other work of classical ordoliberals treats these two evenly. Therefore, saving is not the main principle, rather the indirectly result of applying constitutive and regulative principles.

been increasing since 2010, except for the years 2012–2013. It is not stimulated by private investments, but by increased external consumption (Statistisches Bundesamt WWW).

Moreover, the stimulus packages introduced in the years 2008–2009 (in particular so-called *Konjunkturpaket I* and *Konjunkturpaket II*) contributed to the creation of additional jobs, having a strong impact on the reduction of unemployment and the number of incomplete employment in Germany. The federal government's purpose was professional activation and the introduction of instruments to counteract exemptions in the form of subsidies for entrepreneurs. Additionally, in the time of crisis, Hartz IV reforms of labour market, introduced successively in 2001–2004, have considerably contributed to decrease in the number of unemployed to 6.4% in 2015 (Statista.com WWW). It means that after 2010 Germany has not at all applied austerity or severity standards, that were expected from other EMU countries, so in this context there is a noticeable ambivalence according to ordoliberal rules. Neoliberal (German version – ordoliberal) structural labor market reforms implemented by Schröder's cabinet (*SPD und Bündnis 90/Die Grünen*) have won the social acclaim over time through the positive political discourse manifested in their propagation and dissemination by the next coalition governments. Furthermore, since 2010 there has been a moderate increase in social benefits, and labor market policy has focused on the organization of full employment, which is consistent with the assumptions of Keynesianism, not ordoliberalism (Eichhorst, Hassel 2015: p.11).

Meanwhile, when it comes to the eurozone, the countries such as Greece, Italy, Spain, have ultimately agreed to take financial support in the crisis time, but it was conditioned by structural reforms, limiting internal demand and reducing public expenditure. These countries were obliged to achieve fiscal stability through the imposition of austerity. As a consequence, the direct reaction towards the strictness of saving was even worse – southern Europe deepening into the recession by increasing the debt of member states in reference to GDP or by the increase rate of unemployment. In fact, the ultimatum seemed unreal; over the years Germany has reached economic stability, but during the most severe economic downturn, it required almost reformatory *blitzkrieg*, especially from Greece. It is not consistent with ordoliberal principles, which are intended to be long-term strategy as a kind of political engineering.

Imbalance state was also deepened by the ECB that based actions on ordoliberal rules. Its policy has contributed to the imbalance of the countries' payments: by aiming to improve the demand for loans to consumers and business customers has led to consumer indebtedness, in particularly "in the South of the eurozone".

Without the consideration of long-term aspects of German strategy in connection with the created image of Germany, as "the hegemony" tending to create the German integration: "a German Europe – a European Germany" (see: Ash 2012), Greek Prime Minister at that time, George Papandreou, claimed in 2010 that German vision of EMU is „the attack on it by other political or financial powers" and „the attack on Greece" as „a part of secret plan" (Visvizi 2016: p. 45).

German competitiveness is another ambivalent issue affecting European convergence capabilities. Commitment to the promotion of culture of stability within the eurozone (not

only at the national level) should lead to the end of its own competitiveness⁵ through increasing real wages or free capital reduction, while southern countries should increase their competitive advantages by reducing costs and wages and increasing employment at the same time (Ramotowski 2014).

Considering this aspect, an important paradox, commonly overlooked, should be taken into consideration. Ordoliberalism is the domain of German national economy (*national Volkswirtschaftslehre*). Its theoretical basis has been developed at particular time, under certain political and economic conditions. Thus, it is based on microeconomic normative principles. In contrast to the holistic style of the SME, ordoliberalism is a stable, unchanging, inflexible concept or rather theory. According to Alfred Müller-Armack, it is a main element of the SME's style (*Stilelement der Sozialen Marktwirtschaft*): "it's not just about shaping economic order, but rather about how to incorporate this order into the overall lifestyle" (Müller-Armack 1976: p. 236). Hence, even if strong competitiveness of German economy (in itself) is parallel with ordoliberal assumptions (in their theoretical interpretation), it must not correspond to the macroeconomic environment of various EMU economies. It seems to be harmonious with the coherence theory of truth by Francis Herbert Bradley. According to it, true beliefs and true statements correspond to the actual state of affairs, so relationship between ideas, principles and statements need to be consistent with the facts and reality. In other words, the truth or the falsity is determined by how it relates to reality (as an all-inclusive reality) (Newhard 2002).

It can be considered, that ordoliberal strategy also results in the ambivalent perception of Germany's role among other integrative actors. On the one hand, it is expected that the Federal Republic will take leadership and make appropriate decisions, concerning the strategy ordering the structural disturbances by elaboration of constructive solutions and implementation of integration objectives hierarchy. On the other hand, if Germany proposes its solutions, there will be some accusations referring to the strict fiscal rigor and implementation of economical radicalism, which results in even greater division of countries into centric and peripheral ones instead of uniting them. Moreover, the fiscal rigor in connection with the enforcement of the ECB clause of not taking obligations from governments and acting as the lender of last resort, which in fact was enshrined in the Maastricht Treaty, is perceived as the act that deepens the crisis and leads to the statement that it did not start in Greece, Ireland or Spain but „due to" the Berlin's strategy (Wren-Lewis 2015).

During the Delphi Economic Forum in Greece, which took place in March 2017, the former Prime Minister of Italy, Mario Monti, said openly, that the economic crisis was caused not by the southern member states, but by Germany and France, which did not meet the conditions of *Stability and Growth Pact* in 2003, and the European Commission does not hold them responsible when France breaks the rules concerning the maintenance of appropriate budget deficit level and Germany does not maintain the trade balance (Michalopoulos 2017).

⁵ Germany's current account surplus accounted for 7.4 % of the country's nominal GDP in June 2019 (see: CEIC Data WWWW)

Moreover, the question arises: why has not Germany, defending its credibility, transparency and fiscal diligence, been able to meet the obligations imposed by the *Stability and Growth Pact* several times on its own? German narrative assumed implementation of institutional and procedural solutions at the EU level, which would oblige to maintain price stability and to prevent excessive budget deficits. The foundation of their implementation was depoliticisation of economic integration by giving EMU so-called stabilisation mandate. This meant that the interpretation of ordoliberal rules had a chance to become binding for all countries that are members of the "stability community". However, entering into the third stage of EMU proved, that strong political bonds are a dominant factor of most decisions, including those concerning the adoption of the single currency, among others by Greece, and those that do not have an economic basis, but are determined politically.

The fact is that the economic problems of EMU made Germany, the strongest economy in the region, bear the greatest burden of financial help, especially for the certain countries such as Greece, Spain and Portugal that were in crisis. It is not the non-committal help, because the consolidation of public debt and the increase of their national economy are required. The conditional loans are the additional responsibility for the governmental expanse of expenditure. Germany did not agree to the requests of southern member states asking for the conditions of debt repayment mitigation. Simultaneously, it should be recognised that Angela Merkel acceded to implement the helping packages for Greece, which were based on the particular interest – the fear of losing 40 billion euro, which German government invested in Greek government bonds (Koszel 2011: p. 9).

Partnership cooperation instead of hegemonic power

In the chaos of crisis, Germany took the position of a leader being influential not only due to the economic power and political consequence, but also due to the concept assumptions in reference to the governing of European order. Christian Schweiger reports though that such position is not included in the long-term strategy of the Federal Republic, because despite the multiple discrepancies concerning the framework of EMU, it should be based on the stable multilateral partnership, mainly on cooperation with France, i.e. the hard core (Schweiger 2014: p. 21–29). Stefan Lehne believes, that the current leadership „is not the result of national ambitions", but rather „the side effect of its [i.e. Germany's] great success as the economic power and master of export" (Lehne 2012: p.11).

Germany absorbs the rules and community-based ideas (*top-down*) as strong as its own solutions are implemented at the supranational level (*bottom-up*). The high degree of identity compatibility with the European one, results in the readiness to transfer even greater part of sovereignty onto EU institutions, but exceptionally in the agreement of multilateral cooperation, in the conditions of stable partnership with France (Lehne 2012: p.11). In such approach creation, the explanatory factor is the memory of hegemonic in-

tentions of Bismarck, Wilhelm II, and finally Hitler, which brought disastrous results – both political and moral – for the German state, therefore, the multilateralism and avoiding the unilateral acts became the political norm (Schmale 2011). Even for Konrad Adenauer the integrated Europe constituted the necessary condition for understanding the rules of law and order and democratisation, and, first of all, it constituted the platform of fighting against the nationalisms. He believed then, that only the axiological stability allows for economic free space functioning, which is based on the free market rules without the limits in trading, including the freedom of movement, free movement of capital, goods and services, and the possibility of free competition rules implementations (Rede von Konrad Adenauer 1956). His vision '*Europapolitik*' – applied by other chancellors (including the social-democratic W. Brandt, H. Schmidt and G. Schröder, as well as others originating from CDU) – became a part of German identity. German unification was not the breaking factor, it even accelerated the progress of integration, which can be proved by the resignation from economic miracle, the German Mark (*Deutsche Mark, DM*), by Helmut Kohl in favour of common currency, Euro (Risse 2000: p. 10). The deepened cooperation of federal nature spread over the greater and greater number of countries, constitutes the natural environment of social and economic development, especially in the reality of crisis (Lehne 2012: p. 10).

On the one hand, partnership with France is slowing down Germany's efforts to managed European austerity policy and has influence on „softening" of ordoliberal regime, while on the other hand, Germany wants to maintain the European project due to the „German European patriotism", which influenced on the political self-determination of the country and stabilisation of economic order (Risse 2000: p.11). The ambivalent German attitude is noticeable again. The context of one of the feature of constructivism, of German decisions, manifests itself in the necessity of partnership with France. The reason is that they are not able to find on its own the appropriate solutions to the after-crisis reality of EMU. Accepting close cooperation, they are aware of the necessity of changes that must be introduced into the ordoliberal narration, „softening" it (conceptual perspective).

It can be even hypothesised that the competitive and stable environment is the guarantee of Germany's economic success. One of the members of German independent Economic Experts Council (*Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung*), Peter Bofinger claims, that the source of export surplus on the capital account in Germany is relatively high market openness. It guarantees the comparative and absolute benefits from the governance of macroeconomics policy in other eurozone member states, and especially maintaining the aggregated demand at the high level. It creates the possibility of strong orientation to the ordoliberal paradigm and the usage of Keynes' approach, supported by the policy of full employment of other countries (Bofinger 2015). Once again, the ambivalence of German strategy is visible; ideational factor of ordoliberal paradigm was included into the convergence criteria, legitimised by the Maastricht Treaty. It had an important role in implementation of budget rigor in EMU by the *Stability and Growth Pact*, strengthened in the crisis period by the provisions of *Six Pack* (2011), European Mechanism of Stability, influenced also on the regula-

tions of European System of Central Banks creation with special attention paid to the politically independent Central Bank. Also during the crisis, since 2013 the coordination of economic policies has been regulating the provisions of *Two Pack*, in order to make their development closer. Moreover, Angela Merkel, whose attitude was dominated by the federation concepts, expressed her agreement to the development of integration in *multi-speed Union*. In this matter, she agreed to the proposals of Paris (in the period of Francois Holland's presidency) and accepted the suggestions of the President of the European Commission, Jean-Claude Juncker, which were included in the fifth point of White Paper entitled: „*Avenues for unity for the EU at 27*” presented in March, 2017. She admitted in this way that in the current crisis of imbalance, it is impossible to maintain *in unctim* between the enlargement and deepening the integration, which fostered the principle of the interdependence orders.

All of these actions have been undertaken to optimise EMU, to achieve the economic convergence and political stability. On the other hand, these imbalance is used by the Federal Republic to reinforce its economic position. The surplus of German balance of payments is absorbed mainly by the countries, whose GDP structure is dominated mainly by consumption and public expenditures, which later results in excessive budget deficit and private sector debt. This imbalance is caused also by the limited remuneration policy and high flexibility of labor market. Additionally, the deflation monetary policy of the EBC, and during the debt crisis– the strategy of the so-called „quantitative easing” strengthened significantly the competitiveness of German export. It is worth highlighting that Germany has not been the advocate of common currency, especially without the stable and strong integration in the economic and political area. Moreover, unadjusted and still independent fiscal policies of eurozone member states in reference to the common monetary policy, contradict the ordoliberal rule of interdependence of orders and therefore influence on the withdrawal from the *‘ideal type’* and implement the disorganization of all financial system in the EU. Wolfgang Schäuble claimed that the problems of the payment balance are the effect of “universal mixture of financial policies accumulated within 13 years and the stable currency rate for the collection of various countries being at various levels of economic and structural development” (Funk 2012: p. 22). German export uses the eased financial policy of the ECB, which is also confirmed by Stefan Bielmeier, the main economist of cooperative DZ Bank (Müller 2017).

Conclusions

Germany has become the catalyser of changes in the EU, influencing EMU structure, and also otherwise. German participation in EMU has enforced the policy of structural reforms and higher flexibility on the labour markets and budget policy. EMU influenced the process of market liberalisation which required institutional fiscal and market rigor (Dyson 2000: p. 2). The real impact on the ordoliberals was the lack of control over the governments of the member states, within the range of meeting the fiscal criteria concerning especially the level of debt and deficit which increased the uncertainty of implementing

common stability policy (Dyson 2000: p.3). Possibly, the greater rigor and coordination will be created in eurozone, which development strategy will be based on the two-speed concept, where the main axis will be French and German tandem. The political situation is slightly complicated due to the result of last elections in Germany. After gaining only 20,5 % of votes, the SPD withdrew from the formation of the next government with Christian Democrats, that has existed since 2013. This fact created the perspective for the so-called Jamaica Coalition, with the liberals (FDP) and the Greens (*die Grünen*). In the turbulent discussions, it turned out though that future coalition partners are unable to agree on the basic matters (i.e. concerning the climate policy and migration). The coalition talks were stopped by the liberal party, which was firmly against any political concepts of the Green Party. In such situation, the chancellor Angela Merkel absolutely rejected the possibility of minority government creation. In order not to lead to the dissolution of the Bundestag and the convening of further elections, she tried to persuade SPD leader Martin Schultz to consider a joint agreement proposal. The possible creation of a Grand Coalition would have a positive effect on relations with France, especially when it comes to managing the euro area, which would be much more complicated in the conditions of the Jamaica Coalition. FDP leader Christian Lindner rejected the proposal of the French president Emmanuel Macron regarding the future scenario based on seeking to expand and deepen integration in EMU. Mainly unacceptable to him was the proposal to create a budget for the eurozone, associated with the need for greater funding for countries such as France or Italy by the Federal Republic. Macron expressed his concerns, claiming that he "would have died" had Merkel formed an alliance with the FDP (Maurice 2017). Meanwhile, the Grand Coalition, through the person of Martin Schulz, would certainly be more inclined to reach a compromise. Macron saw an ally and mediator of the conditions between him and the more conservative Christian Democrats. In the former President of the European Parliament, Martin Schulz. German social democracy, like France, shares the idea of deeper integration of the eurozone, which should be governed by an "economic government" consisting of members of the Commission and subject to the control of the European Parliament. Like Macron, SPD supports the idea of creating a common eurozone budget that would have a stabilising role, while the European Stability Mechanism should be transformed into the European Monetary Fund and contribute to financial support of EU countries to a greater extent, and in particular aim to stabilise economic growth in the eurozone. The sources of support for European investments in social democracy together with France are seen in tax harmonisation (Das Regierungsprogramm 2017 bis 2021: p. 98–99).

All these postulates are in opposition to the assumptions of the Christian Democrats, who do not want to allow the communitarianism of member states' debts and strongly rejects the idea of introducing Eurobonds, which could lead to the creation of a "transfer union" in which Germany, and more precisely, taxpayers would bear greatest costs. Both Merkel and her finance minister Wolfgang Schäuble oppose the euro budget, which would increase the powers of the Commission and Parliament, and they do not accept the creation of a minister of economy and finance in the euro area (Kafsač 2017).

Despite different views on the functioning of EMU, Germany and France are the creators of the single currency, and it is in their interest to maintain its stability and efficiency by combating disintegrating tendencies. Therefore, since the formation of the government on March 14th, 2018 by the Grand Coalition, cooperation in France has been deepened, but the SPD is far from supporting the ordoliberal Christian Democratic discourse. Therefore, the alternative cost of creating a Grand Coalition and in-depth cooperation in the eurozone as the first speed may be even stronger ambivalence of Chancellor Merkel when it comes to ordoliberal narrative. On the one hand, this will be incompatible with the Christian Democratic identity, and a too far departure from traditional rhetoric may lead to chaos within the party and weakening Angela Merkel's position. On the other hand, it will be forced to adapt its political narrative to the coalition partner and France, as well as to the increasingly social direction of EMU development. In this case, the new EU structure will probably generate a new culture in the new constellation of political power, which will certainly become a part of the interesting constructivist discourse.

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Position of OLAF in a multi-level governance system of the European Union¹

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Abstract

The author aims to investigate the position of OLAF in the multi-level governance system (MLG) of the European Union with specific inter-institutional consequences of such location, assuming that OLAF is not a classical supranational institution. In the research subject an important role is played by the European Commission (EC), which established OLAF and gave it specific competences to act. These facts are fundamentally important for further considerations, so they can have a major impact on the precise determination of OLAF's position in the MLG. If OLAF as an agent and supervisor has control powers over supranational institutions, including its principal, a supranational European Commission, it is unlikely that it would also be a supranational institution. This article demonstrates, that OLAF is not a classic supranational institution because it exhibits strong features of a supra-supranational institution operating in a multi-level EU governance system. A helpful theoretical and methodological research tools we consider the Principal/Agent Theory (PAT) and its combination Principal/Supervisor/Agent Theory (PSAT) on the one hand, and the concept of multi-level governance (MLG) on the other hand.

Keywords: OLAF, multi-level governance, supra-supranational level, European Union

Pozycja OLAF w systemie wielopoziomowego sprawowania rządów w Unii Europejskiej

Streszczenie

Celem artykułu jest zbadanie miejsca jakie zajmuje OLAF w systemie wielopoziomowego zarządzania Unii Europejskiej ze specyficznymi inter-instytucjonalnymi konsekwencjami tego miejsca, przy założeniu, że OLAF nie jest klasyczną instytucją ponadnarodową. Istotną rolę w przedmiocie badań odgrywa Komisja Europejska (KE), która ustanowiła OLAF i nadała mu kompetencje do działania. Ramy te są ważne i mają wpływ na precyzję usytuowania OLAF w systemie wielopoziomowego zarządzania. Jeżeli OLAF jako agent i nadzorca ma kompetencje kontrolne nad ponadnarodowymi instytucjami, włącznie ze swoim mocodawcą – Komisją Europejską – to nie jest on podobny do innych instytucji ponadnarodowych. Pomocnymi w badaniu narzędziami teoretyczno-metodolo-

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gicznymi są, z jednej strony teoria mocodawca-agent (*Principal/Agent Theory*, PAT) oraz jej mutacja – teoria mocodawca-agent-nadzorca (*Principal/Agent/Supervisor Theory*, PSAT), a z drugiej strony koncepcja wielopoziomowego zarządzania (*Multi-level Governance* – MLG).

Słowa kluczowe: OLAF, koncepcja wielopoziomowego zarządzania, supra-supranational poziom, Unia Europejska

Adopted research perspective

The activity of OLAF (*Office Européen de Lutte Anti-Fraude, European Anti-Fraud Office*) is one of the least researched among the institutions² of the European Union (EU). As one of the executive agencies established by the European Commission (EC), it operates in a very specific way, which may inspire not only attempts to explain its action, but also to look for much wider consequences for the current arrangements made in European studies.

Significant elements affecting OLAF's activity appear already at the time of its creation (Xanthaki 2006; Haus 2000; Pujas 2003). Thus, the analysis begins at the moment when the EC creates institutions (primarily executive agencies) to support it in areas with a high degree of specialisation, and at the same time delegates competences through which they can work for the EC to those institutions in a secondary mode³. Note that the Commission is the principal here and the executive agencies are its agents. EC is an agent of the Member States that have brought it to life, but at the same time it is the principal for executive agencies that it establishes, and to which it delegates competences in a secondary mode so that they can act. One of such agencies established by the EC is OLAF. The purpose of the research is an attempt to position OLAF in the multi-level governance (MLG) system of the EU with specific inter-institutional dependencies and consequences of such a position.

The research hypothesis assumes that OLAF is not a classical supranational institution because it has control powers over supranational institutions, including its principal, which is the EC. This assumption implies the main research question, which can be formulated as follows: what kind of institution in the MLG is OLAF, since it is not a supranational institution?

A helpful research tool here seems to be the Principal/Agent Theory (PAT), the initial phase of which involves motivations (sociological, psychological) of players in business

² The term „institution” in relation to OLAF is used in this article in a general and broader sense than the institution mentioned in art. 13.1 TEU.

³ Secondary delegation concerns competences already belonging to EU institutions and it actually involves redistribution by a given institution of its own competences or competences acquired towards an agency (agent) appointed or chosen by it. By contrast, primary delegation takes place from the level of the Member States to EU institutions. It is based on foundational treaties and their subsequent revisions. The result of secondary delegation, competences come from the supranational level of managerial institutions to the “supranational level of Community agencies (*EU – level Agencies*)” (Majone 1997: p. 144). Then one can speak of a specific horizontal dispersion of competences between many specialised community agencies at the supranational level. Secondary delegation takes place entirely on the supranational level.

or politics, and then there are strategies involving two types of such players, which is, principals and agents. Strategies are sets of intentional behaviours, actions and interactions aimed at the achievement of the desired effect, and interactions between the principal and the agent constitute the basic analytical unit in this theory. PAT includes a very advanced application of game theory.

In European studies, the PAT theory has already been applied to the study of the EU political system, including the analysis of delegating functions⁴ and used, among others, to explain why sovereign states form international organisations (institutions) (Ruszkowski 2008, 2010; Pollack 1997, 2003, 2005). However, the PAT's exploratory potential is much larger, also with regard to institutional introspection, and perhaps primarily inter-institutional.

The essence of this theory is the reflection on the relationship between the principal (principal, employer, boss, etc.) and the agent (representative, contractor), which is bound by a specific contract (hierarchical dependence). It means that the principal and the agent are not partners and are not equal. We are dealing here with a bipolar strategy (the previously mentioned *game theory of principal-agent*), in which each party of the system works in its own interest, but this situation can also lead to conflicts.

In addition to the PAT theory, the mutation theory – the PSAT (Principal-Supervisor-Agent Theory) theory – will be used in the analysis. The PSAT involves the introduction of control functions, which may be assigned to the agent or a third party, i.e. the supervisor, into the classic principal-agent system.⁵ The supervisor category is extremely important for the research subject, i.e. the analysis of OLAF and its interinstitutional position in the EU's MLG system. OLAF is an executive agency of the EC having control competences, which belong to its immanent resource and actually define its purpose (Weyembergh, Briere 2017; Simonato et al. 2018).

Supranational institutions in the EU can be both an agent and a supervisor over principals. Thanks to the supervisory functions (monitoring, control), the supranational nature of such a central institution is emphasised and more clearly exposed. In addition, supervision strengthens the "readability" of power-based relations within a given organisation (system). It is a response to imbalance, but it can cause tensions between each levels in the system authority hierarchy. Thus, supervision causes an imbalance which is based on the rules and principles of a given organisation at its source (March, Simon 1987: p.152–153).

⁴ The PAT can be a useful tool to analyse the process of delegating (or entrusting) functions of states to the supranational level, or to examine decision-making mechanisms in a given political system. The PAT is used to examine dependencies, including difficulties that arise after establishing contractual relations between the principal and their agent and within their duration. Agency interactions begin when one party (principal) enters into a hierarchical relationship based on a contract with the other party (agent) and delegates responsibility to it, performing functions or tasks upon request. The purpose of constructing contractual relations in the principal-agent system is to analyse the difficulties that arise during the asymmetric distribution of information clearly favouring the agent (Kassim, Menon 2002: p. 3).

⁵ J. Tallberg proposes to extend the PAT theory in two directions: vertically by adding supervisors to it, and horizontally by introducing a collective principal or a collective agent (Tallberg 2003: p. 24).

In the research subject and searching for answers to the question posed, an important role is played by the EU, which established OLAF and gave it specific competences to act. These facts are fundamentally important for further considerations, so they can have a major impact on the precise determination of OLAF's position in the MLG.

In the PAT, the EC is an agent of the Member States, which in turn as a collective principal, established it and delegated its competence and powers to act. The delegation of competences (functions, tasks) by the Member States of the EU to its institutions takes place through treaties and is of a primary nature. As a result of the delegation of competences, the EC also received prerogatives for state control (e.g. it is a guardian of treaties), thus it is not only an agent, but also a supervisor. The role of the EC as an agent and a supervisor for the Member States as well as the nature of its competences and the original mode of their delegation make the EC have characteristics of a strictly supranational institution.

We will transfer the same relationship between the principal and the agent to the relations between the EC and OLAF and we will additionally use it to investigate the position of OLAF in the EU's MLG system. The EC is not only an agent of the Member States, but also a principal for OLAF, for example. It is important for the analysis, that OLAF, on the other hand, is an agent of the EC, but it is not an agent of the Member States, because they have not created it and have not delegated powers to it and thus have no control over it.⁶

Based on the findings of the PAT/PSAT theory, relations between the EC and OLAF can be divided into several phases: (1) creating an agent and/or a supervisor by the principal, (2) delegating tasks and competences to the agent, (3) emerging of information asymmetry between the agent and the principal, (4) controlling the agent by the principal and the agent escaping from this control, (5) controlling the principal by the agent. The aforementioned phases determine further research procedures in the undertaken analysis.

Creation of OLAF as an agent and a supervisor

OLAF was established by Decision No. 1999/352 of the European Commission (EC) of 28 April 1999, which entered into force on 1 June 1999 (Commission Decision 1999/352). The predecessor of OLAF was formed in 1988 at the request of European Commission (and within its General Secretariat) and it was the Unit for the Coordination of the Fight against Corruption (*Unité de Coordination de la Lutte Anti-Fraude* – UCLAF). The Commission assigned competences in the field of administrative control, fraud control, anti-corruption and embezzlement control, including irregularities related to the implementation of the Community budget (also within the EC) to UCLAF (Vervaele 1999). As an agent of the Commission, UCLAF did not enjoy much liberty and independence (although independence should be a fundamental feature of the agent), because it was positioned in the structures of the Commission (its principal). The search for a more autonomous and independent agent was therefore only a matter of time.

⁶ This is a rule that coincides with a certain medieval vassal system, and which can be summed up by the statement that "my agent's agent is not my agent."

After the liquidation of UCLAF, by the decision of the European Commission of 1 May 1998 (COM 98/276, COM 98/278), the Task Force for Coordination of Fraud Prevention (TFCFP) was established for a short period, which was only a transitional body preparing a comprehensive institutional solution. This solution was OLAF, which took over the tasks, internal structure and personnel of UCLAF and TFCFP.

Among the reasons (motivations) for which the EC, as the principal, decided to set up its executive agent⁷, in the form of OLAF the following must be listed: willingness to achieve the desired result in a specific area, which is combating corruption and embezzlement, reducing operating costs and making decisions, relieving and reducing their own responsibilities in these areas, willingness to receive specialist and expert knowledge, settling disputes and solving specific problems by operational methods. In the case of establishing OLAF, a broader perspective to explain the causes of the creation of an agent that focuses on the issue of having information and assumes that agents are created to provide specialised, unbiased knowledge, arguing that delegating competences is the main mechanism generating distribution benefits should be much more adequate. Creating an institution (agent) is inherently distributive and the choice of institution is motivated by the desire to institutionalise the desired set of preferences (Kassim, Menon 2002: p. 5).

In addition, the PSAT theory explains that the principal or principals may appoint not only an agent, but also a supervisor, i.e. an entity that will have control and supervisory tasks. In practice, a supervisor is a variant of an agent established to control other agents, or supervise credible obligations of principals.⁸ It does not change the fact that the principal remains the sole and residual disposer and the owner of the result developed by the agent.

Establishing OLAF, the EC gained a specialised instrument to fight corruption, fraud and actions against the EU's financial interests. OLAF, being the executive agent of the EC, received from them, as its principal, first of all institutional independence (in terms of the operational mandate including investigations) and administrative and financial autonomy, and – what is very important – competence to act, including the right to carry out internal controls in all Community institutions (e.g. EC, European Parliament, Court of Justice of the EU), while maintaining external control mechanisms in the form of investigations in the Member States (art. 3 and 9 of the EC's decision of 28 April 1999).⁹ Thus, the EC may also be a controlled entity and subject to OLAF's operations. This means that

⁷ Executive and regulatory agencies operate in the EU institutional system alongside the executive and ancillary institutions and are "used" in particular by the European Commission in the course of its work. The European Commission eagerly delegates money and powers in particular to executive agencies. In turn, the delegation of competencies to regulatory agencies is more likely if the transaction costs leading to direct regulation by the legislator are high. There is even an argument about better control of expenditures in these decentralised bodies than in the common budget.

⁸ Jonas Tallberg proves that in a situation where states submit to decisions taken at the supranational level, they behave as agents, which may additionally confirm the behaviour of the European Commission, which in turn supervises the level of implementation of Community legislation in the Member States, and this task is closer to the tasks of the principal or supervisor (Tallberg 2003).

⁹ In conjunction with Council Regulation (Euratom, EC) No. 2185/96 of 11 November 1996.

OLAF is not only an agent of the European Commission, but also a supervisor over its supranational principal and other actors at all levels of EU governance.

Delegating tasks and competences to the agent

Delegating competences by the principal to the agent is supposed to be an antidote to problems resulting from collective actions (egoisms, particularisms, difference of preferences, etc.), where both actors expect the benefits of long-term cooperation. However, it should be emphasized that firstly of all they also need security that transaction costs involved in monitoring and control of the agent will not outweigh the benefits of the contract, and, secondly of all, that the agent will respect the provisions contained in the contract and will not behave autonomously (Kassim, Menon 2002: p. 4–5).

The main motive for delegating control powers to OLAF by the EC was the willingness to reduce transaction costs, the need to increase democratic legitimacy and acceptance of OLAF's activities (through its independence and the mission assigned to it). In addition, the delegation of certain tasks to OLAF has allowed the Commission to overcome the difficulties that may arise from their implementation. Because it is easier to overcome these problems by specialists, experts (technocrats) from OLAF than by not always adequately prepared officials of the EC. Therefore, OLAF exercises investigative powers conferred on the Commission by relevant EU acts, doing so as its agent.

In the case of delegation of competences by the EC to OLAF, we are dealing with a secondary delegation from the level of EU institutions to other EU institutions with the omission of Member States (state bypassing). Such delegation is based on EU secondary legislation. Thus, the EC transferred competences to OLAF not only pursuant to the decision of 1999 establishing OLAF, but also on the basis of several other acts of secondary legislation, including *ex ante* under EC Regulation No. 2185/96 to carry out control and supervision in the Member States in accordance with existing cooperation agreements in third countries (art. 3 and 9 of the Decision of the EC of 28.04.1999). In Regulation No. 1073/1999 of the European Parliament and the Council of 25 May 1999 concerning OLAF's investigations, its operational (investigative) competences towards Community bodies were additionally specified (in line with the EC decision). Based on art. 4 item 2 of this Regulation, OLAF has received full access (without prior notice) to all information and premises of EU bodies, institutions and offices and agencies (Regulation No. 1073/1999).¹⁰ The Office may copy all documents and contents of all data carriers there. OLAF may be entrusted investigations in other areas (OLAF Manual 2009) by the EC or by other institutions. The specification of OLAF's control competences was affected

¹⁰ For example, MEPs are obliged despite their immunity to full cooperation with OLAF, including making all necessary documents available to them. OLAF has investigative powers towards individual deputies of the EP. They, in turn, should cooperate with OLAF. OLAF has access to all information and all rooms in the EP" (Berner 2004: p. 87–88). OLAF's internal investigations do not violate parliamentary immunity and the right to refuse to testify under Protocol No. 7 on the privileges and immunities of the European Union annexed to the Treaty on European Union and the Treaty on the Functioning of the European Union.

by virtue of Regulation No. 1073/99 of the European Parliament and of the European Council of 31 May 1999 and Regulation of the European Parliament and of the Council (Euratom) No. 1074/1999 of 25 May 1999, but above all, pursuant to the Regulation of the European Parliament and the Council of the European Union No. 883/2013 of 11 September 2013 (the so-called OLAF Regulation), which repealed the two previous regulations and strengthened OLAF's investigative mandate and the scope of assistance of this Office to EU Member States and their services in the fight against corruption, embezzlement and other illegal activities damaging the EU's financial interests (Schaerlaekens 2004; Brammer 2009).

Secondary delegation can be of a horizontal nature when competences are ceded by supranational institutions to agencies without supervisory powers (which results in the fragmentation of competences)¹¹, and of a vertical nature, when competences are transferred to Community agencies with control and supervisory powers (which results in the centralisation of competences, but at a level higher than the conventional supranational level). The hierarchical structure of control, power and communication, which is additionally strengthened by delegating competences to higher instances and also positioning knowledge, information, etc., is becoming clear here in the EU political system. The delegation of competences by the EC to OLAF is, therefore, a secondary vertical delegation.

OLAF, as an agent, can try to expand its competences at the expense of its principal, i.e. at the expense of the EC, or independently of its principal (without diminishing its competence resources) (Braun 2004: p. 9). Maximising competences is a natural tendency diagnosed in supranational agents. OLAF primarily wants to strengthen its capabilities in control activities and, above all, in operational activities, thus wanting to have a greater impact on the political results of the ongoing investigation process. The already mentioned decision of the EC establishing this Office includes information about the possibility to extend competences by OLAF. In fact OLAF is responsible for the preparation of legislative and regulatory initiatives of the EC in order to prevent fraud and is responsible for other operational activities of the EC in the fight against fraud (...), in particular: a. development of necessary infrastructure, b. ensuring the collection and analysis of information, c. showing technical support to other EU institutions and relevant national bodies (art. 2 sec. 4 and 5 of Commission decision 1999/352). For example, OLAF has increased the scope of its powers for tasks that bring them closer to the offices dealing with tax supervision. Like any maximisation of the agent's competences, also the above-mentioned tax powers have strengthened OLAF, even though they did not generate a total hollow-up effect of the Member States or the EC from this area of competences, however OLAF certainly took over some prerogatives that were previously managed by the Member States and the EC.¹²

¹¹ As part of horizontal secondary delegation, internal delegation may occur in a given EU institution. For example, the Director-General of OLAF may delegate the written execution of some of his/her tasks to one or more employees of the Office, specifying the terms and scope of that delegation (art. 17 sec.6 of Regulation No. 883/2013).

¹² In the case of OLAF, several methods can be recalled from the catalogue of methods for maximising competences by a supranational institution. The method of delegation of competences by the principal,

In addition, it should be remembered that in general OLAF cares for the Community and civil interest, not for national or institutional interest (e.g. it can accept or reject the entire Community budget, and does so without the participation of the Member States, which is another evident example of bypassing the Member States).

Information asymmetry between the agent and the principal

OLAF as an executive agency is a highly specialised institution. Its competences and information resources are of a special nature, often also strongly limited in terms of access to it by other EU's institutions, including the OLAF principal, which is the European Commission.

OLAF has expert knowledge, available only to them, which may lead the EC to delegate to them further tasks and responsibilities in the hope of effective service of a given competence area and of right decisions in technical areas, including easier problem-solving. The agent has more knowledge than the principal, which from the very beginning causes information asymmetry¹³ in the relations between them, which as a result of appropriate actions can be used by the agent for its own purposes and interests and to the disadvantage of the principal (see below OLAF's control over the Commission).

There is no doubt that OLAF has an *ex post*¹⁴ information advantage over the Commission, because only they know best what methods and actions they use or what intentions they have during the implementation of tasks. Some of OLAF's methods of operation are known only to them and remain within the sphere of their internal tools. Hence, information asymmetry may help OLAF get engaged in opportunistic behaviours – concealment or hiding certain actions, applied methods and manners leading to the achievement of goals and concealment or hiding of information (Kassim, Menon 2002: p.3)¹⁵. It is obvious that in the case of OLAF's control powers over the Commis-

independent maximisation of competences by the agent, extending the EU's activity to the areas that contribute to OLAF, the CJEU jurisprudence, international agreements to which the EU is a party. On 24 June 2016, when the EU joined the Protocol on Combating Illegal Trade in Tobacco Products of 2012 (the Protocol is an integral part of the WHO Framework Convention on Tobacco Control), OLAF was the largest beneficiary of this accession, which received further operational competences in the fight against illicit trade in cigarettes and tobacco. At the same time, OLAF investigators gained access to a new electronic tool for combating customs fraud. OLAF has been authorised to build a new IT system that allows the EU and its Member States to improve the tracking of suspect cargo on board ships. OLAF has been granted access to the Container Status Message system (CSM), which collects information on the movements of containers carried on sea-going vessels (*The OLAF Report 2016*, 2017: p. 25).

¹³ Information asymmetry *de facto* consists in shifting the possession of information in favour of the agent. The principal experiences a deficit of information and the agent has an informational advantage and independence, which may help them escape from the supervision of the principal. In the principal-agent system, information asymmetry is distributed in the agent's favour.

¹⁴ I.e. after establishing the agent and relations between them and the principal, in contrast to *ex ante* information asymmetry, which occurs before establishing the relationship between the principal and the agent.

¹⁵ It is worth noticing that asymmetric information distribution, in which OLAF has the leading role and advantage, between OLAF and the EC also results from concealment and hiding of certain actions and information by OLAF.

sion, the likelihood of concealment increases due to the divergence of preferences and interests (Pollack 1997: p. 108).

OLAF's information advantage over the Commission raises its independence from its principal. The EC cannot always follow OLAF's work on an ongoing basis, they only get to know its effects more often, believing that OLAF has the right knowledge and skills, and at the same time is capable of taking risks (moral hazard).

Control of the European Commission over OLAF

The control of the principal over the agent is an important element in the PAT theory. In the case of the EC as OLAF's founder, such control would be a form of supervision at the supranational level, because the EC is a supranational structure.

OLAF is not just an agent of the EC, but it is also a supervisor. Therefore, even the supranational institution that established it, namely the EC, has difficulties controlling it. Above all, OLAF is independent of the EC as its principal and other EU institutions. OLAF's operational independence and administrative and financial autonomy in the exercise of their mandate constitute characteristics of the agent.

The Director-General of OLAF, who is responsible for investigations carried out by the Office and has the opportunity to initiate an investigation (art. 5 sec. 1-3 of Regulation No. 883/2013) cannot accept any instructions from outside. This means that when carrying out investigative tasks, the director of this Office cannot ask the Commission or another EU institution or body or any government of an EU Member State for suggestions, nor accept any instructions from them. However, the EC may impose disciplinary sanctions on the Director-General of OLAF after consultation with the Council and the EP and the Surveillance Committee, which must be substantiated (art. 17 sec. 9, 10 of Regulation No. 883/2013)¹⁶.

In the EU institutional practice, the special Surveillance Committee, which consists of five independent experts appointed for five years (without the possibility of renewal) by the European Parliament, the EC and the Council of the EU (art. 4 of Decision of the Commission No. 1999/352) has control over OLAF¹⁷. This means that the EC as the principal of OLAF has no direct control over it. At this point the influence of supranational principals (EC, EP and Council) on OLAF, by appointing an expert to the above-mentioned Surveillance Committee is presumed. It would be something of a very limited personal pressure, but only of an indirect nature. This state of affairs testifies to OLAF's unique position in the EU political system.

¹⁶ If the Director-General considers that the measure taken by the Commission undermines his/her independence, he/she shall immediately inform the Surveillance Committee and decide whether to lodge a complaint against the Commission before the Court of Justice (art. 17 sec. 3 of Regulation No. 883/2013).

¹⁷ The Surveillance Committee should not interfere in the conduct of on-going investigations and assist the Director-General of OLAF in carrying out his/her duties. His/her tasks are to assess the Office's independence, apply procedural guarantees and the duration of investigations (art. 15 of Regulation No. 883/2013).

However, *ex ante* control of the Commission over OLAF covers only the scope of procedures and administrative activities of OLAF, including legal instruments available to the agent and procedures the agent must abide by (Pollack 1997: p. 108). OLAF must follow decisions and regulations under which it was established and equipped with competence.

The above mentioned considerations make it clear that the EC has some influence on the election of the Director-General of OLAF and the selection of experts for the Surveillance Committee, which makes the EC, as the principal, have some indirect influence on OLAF. In this situation, every agent, including OLAF, tries to avoid such an influence. The main tool for OLAF to escape from the EC's control is its control competences over the Commission. They make the roles of the two institutions in control clearly reversed in favour of OLAF. Information asymmetry in favour of OLAF also helps them to resist the Commission's control.

Summarising and extending the above-mentioned findings, a more consolidated catalogue of OLAF's methods of escaping the EC's controls can be built. Among them, the following should be mentioned:

- 1) activities that can control or oversee the EC. Supervisory (monitoring and control) powers of OLAF as the supervisor of the Commission allow them to conduct investigations and other operational activities against the EC (see more in detail below – in the chapter "Control competencies of OLAF"),
- 2) activities that may bypass the EC. To work more broadly and more effectively in the EU's interinstitutional system, OLAF has established cooperation with Euro-pol and Eurojust (pursuant to art. 2 sec. 6. of the decision of the EC), in addition, it remains in direct contact with the police and judicial authorities of member states and third countries¹⁸, as well as with international institutions (e.g. with Interpol), which makes it take actions that bypass its principal,
- 3) OLAF's ability to extend its competences (maximisation of competences, acquisition of new powers),
- 4) information asymmetry, which allows OLAF to hide some of its activities (*hidden actions*), especially investigative, and for the same reasons, not disclosing information at its disposal (*hidden information*),
- 5) operational independence as well as administrative and financial autonomy.
- 6) OLAF as an agent-supervisor much more effectively escapes the control of the principal than other community agencies, but it only demonstrates its extremely specific role in the EU's political system. As a result, at this stage, we can say that the EC, as the principal of OLAF, has no direct control over it, but OLAF has full and direct control and supervisory powers over the EC.

¹⁸ In 2017 OLAF had an infrastructure of over 70 international contracts with third countries that dealt with information exchange and mutual assistance in combating corruption, fraud and embezzlement. These contracts are concluded on the basis of art. 19 of Regulation No. 515/97 (Compare: *The OLAF Report 2016, 2017*: p. 26).

Control competences of OLAF

Thanks to the PSAT (Principal–Supervisor–Agent Theory) analysis, studies of the relationship between the supranational principal, which is the EC, and agents located in the EU, show an interesting phenomenon. It turns out that in addition to agents such as executive or regulatory agencies, or supervisory and advisory committees, operating in the EU political system like their principal, i.e. the European Commission, at the same supranational level, because they do not have direct supervisory powers over their principal, there is also OLAF, that is, an executive agent established directly by the European Commission, which – it seems surprising – has, in the face of its supranational principal, superior competences¹⁹. Therefore, OLAF is a supervisor of the Commission and other supranational institutions as well as the Member States.

OLAF is authorised to conduct external and internal administrative investigations in order to combat fraud and corruption and other unlawful activities detrimental to the Community's financial interests.²⁰

As part of internal investigations, OLAF may conduct administrative investigations against the EC, the Council of the European Union, the European Parliament and the European Central Bank²¹ in matters covering the competence scope of these institutions and in all other EU institutions, bodies, offices and agencies (art. 4 of Regulation No. 1073/99). This is clearly a new competence scope for OLAF as an agent-supervisor compared to its predecessors (UCLAF and TCFP). In addition, OLAF has been granted the right to conduct disciplinary and criminal investigations and has been completely excluded from the supervision of the EC, which ensures its independence from its principal (Berner 2004: p. 87). OLAF's administrative investigations aim to combat fraud, including embezzlement and corruption, as well as other illegal activities detrimental to the EU's financial interests. Therefore, OLAF can control each EU institution, including its principal, the European Com-

¹⁹ OLAF is not the only case of an agent-supervisor. According to K. McNamara, the European Central Bank is also a regulatory agency and has power over certain supranational institutions and countries (McNamara 2002: p. 4). Similarly, some jurisdictions of the Court of Justice of the EU should be examined in this respect, which may repeal, reduce or increase fines or periodic penalty payments imposed by the European Commission, and according to art. 260 and 261 of the Treaty on the Functioning of the European Union have an unlimited jurisdiction with regard to the control of the Commission's decisions regarding its monetary sanctions, for example in the supervision of business mergers (compare also art.16 of Council Regulation 4064/89). However, the cases of the ECB and the ECJ should be investigated further.

²⁰ If it is necessary, OLAF may combine as part of a single investigation the aspects of external and internal investigations without having to open two separate investigations (item 21 of motives of Regulation No. 883/2013: p. 3).

²¹ The ECB may be controlled by OLAF in accordance with Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (Official Journal of the EC L 136 of 31 May 1999, p. 1. Initially, the ECB did not want to recognise OLAF's right, which led to the accusation of the bank by the European Commission (guardian of Community law) at the beginning of 2000 and bringing it to justice before the Court of Justice of the EU. The main complaint of the Commission against the ECB was the refusal of the bank to cooperate with OLAF in the fight against fraud and corruption. Similar accusation and for similar reasons, the Commission submitted to the European Court of Auditors concerning the European Investment Bank (see the ECJ judgment in the case C-11/00, ECR I-7147).

mission. It can even bring a complaint against the Commission to the Court of Justice of the EU, when it considers that its independence is threatened or limited by actions and measures taken by the EC (art. 17 sec. 3 of the Regulation No. 883/2013).

In addition, the office may take all actions in connection with the performance of official duties by officials, including heads of offices and agencies, staff members of the institutions in the EU (art. 1 sec. 4 of the Regulation No. 883/2013). In addition, OLAF may ask members of the Community institutions to prepare oral information.²² Internal investigations are carried out in all EU institutions, bodies, offices and agencies (art. 4 of the Regulation No. 883/2013). OLAF's unique control mandate is to conduct internal investigations of officials of varying degrees in the EU institutions. In connection with these investigations, OLAF may issue disciplinary recommendations (DR) towards the staff of EU institutions in which symptoms of corruption or other abuses have occurred. Such recommendations may result in taking investigative measures when the suspicion is confirmed, DR are ineffective and the institution concerned will not act alone. No action is undertaken by OLAF if the suspicion is not confirmed or when the DR has brought effect, or the institution concerned has explained the situation on their own (compare with Table No. 1). We should remember that OLAF has the possibility of conducting administrative investigations against the EU's managing institutions in cases involving the scope of competences of these institutions²³ and in all other EU bodies, offices, agencies and institutions (art. 4 of the Regulation No. 1073/99). In addition, OLAF having powers to conduct disciplinary and criminal investigations and excluding them from the direct EC's surveillance constitute a new solution (Berner 2004: p. 87-89). OLAF received (pursuant to art. 4 item 2 of the Resolution No. 2185/96 of 11 November 1996) full access to all information, institutions and agencies. The Office may copy all documents and contents of all data carriers.

Table 1: Actions taken by the institutions following disciplinary recommendations of OLAF in 2014-2016.

EU institution	Total number of cases	No decision	Decision made, no actions	Actions undertaken
EU agencies	9	4	3	2
Court of Justice of the EU	2	1	1	0
European Commission	20	4	5	11
Economic and Social Committee	2	1	1	0

²² To work more broadly and more effectively in the EU's interinstitutional system, OLAF has partnered with Europol and Eurojust (in accordance with art. 2 sec. 6 of the Decision 1999/352). OLAF remains in direct contact with the police and judicial authorities of the Member States. Therefore, also at EU level, such contact is needed.

²³ OLAF's internal investigations do not violate parliamentary immunity and the right to refuse to testify.

European External Action Service	4	1	0	3
European Investment Bank	2	1	0	1
European parliament	9	3	1	5
TOTAL	48	15	11	22

Source: *The OLAF Report 2016*, European Union, Luxembourg 2017: p. 34.

In the three analysed years (2014-2016), 48 disciplinary recommendations of OLAF forced the EU institutions to undertake 22 curative actions. Most of these actions were taken by the European Commission (11), and no action was taken by the EU agencies and the Economic and Social Committee.

In addition to internal investigations, OLAF performs competences entrusted to it by the EC under the so-called external investigations, which are used to carry out on-the-spot controls, inspections and supervision in the Member States, in economic entities and - in accordance with existing cooperation agreements or administrative arrangements - also in third countries (based on art. 3 and art. 9 of the Decision of the EC of 28 April 1999 and art. 3 and 14 of the Regulation of the European Parliament and the Council of the European Union No. 883/2013 of 11 September 2013) to protect the financial interests of the European Communities against fraud and other irregularities.

Based on the above findings, it can be concluded that OLAF is currently one of the most specific community agencies in terms of theoretical reflection. Relations between OLAF as an agent and the Commission as its supranational principal are based on secondary delegation starting at the supranational level, on which the principal acts²⁴. Secondary delegation by a supranational institution as the principal to the agent created by them, who has supervisory powers over their supranational principal and enjoys all the other features of the agent, is a vertical delegation, i.e. "upward" to the higher level in the MLG, which in the initial theoretical reflection phase related to this issue, can be defined as the "supra-supranational" level.

OLAF is an agent of the EC that created it, but is not an agent of other EU institutions (including supranational institutions). In turn, OLAF's competences as a supervisor refer not only to the EC, but also to actors operating on other levels of multilevel governance (towards the Member States at the national level, towards regions at the regional level, etc.). Thus, OLAF as an agent has a narrower impact than OLAF as a supervisor. However, focusing on OLAF's control and supervisory competences only over supranational institutions (European Commission, European Parliament, European Central Bank, etc.), it should be confirmed that in this respect it operates above supranational institutions. Such an agent-supervisor is a special institution with features situating it above its supra-national principal (EC), because:

²⁴ And not at the national level, as is the case with primary delegation.

- 1) it was established by a supranational principal,
- 2) from the supranational level, it was given the competence to act in the post-secondary mode (role of the agent),
- 3) it has supervisory powers over a supranational principal and has sanctions against this principal (role of supervisor),
- 4) it has the ability to independently expand its own competences (maximising competences),
- 5) it has preferences other than its supranational principal (conflict of interest),
- 6) it enjoys independence from the supranational principal and internal autonomy,
- 7) it has an information advantage over the supranational principal (information asymmetry),
- 8) it escapes control of the supranational principal.

Of these eight elements forming a catalogue showing the specificity of OLAF, the three condensed features seem particularly important, also for its inter-institutional positioning in a MLG system in the EU. They are: (1) no direct control by the EC as its supranational principal, (2) supervising the supranational EC that established it (and also other supranational institutions), and (3) escaping the control of the EC (thanks to information asymmetry, independence or the ability to bypass the EC). Owing to these superior and independent attributes, OLAF acquires the characteristics of a supra-supranational institution²⁵. This is an extremely interesting observation that has consequences also for the entire multi-level system, which should take into account the new, supra-supranational level of governance.

Findings and conclusions

In the research undertaken, the relations between the EC and OLAF were adopted as the basic analysis axis. The applied PAT theory, in combination with the PSAT, allows OLAF to be determined as an agent and supervisor of the EC. OLAF as an agent supervisor is independent and autonomous not only from its supranational principal, but also from other EU institutions and Member States, and also has an information advantage over them and escapes their control.

If OLAF was appointed by the supranational EC and manages competences entrusted to them in the vertical secondary delegation from a supranational level, and it has control powers over its principal and over other supranational institutions, it means that it operates at the "supra-supranational" level. OLAF as an agent and supervisor in the political system of the EU is, therefore, a vertical structure with a "supra-supranational" impact and influence.

In the theory of European studies, there are three fundamental conditions for the emergence of a supra-supranational institution:

- 1) establishment of an institution-agent by a supranational principal,

²⁵ With regard to the escape of the "supra-supranational" Community agent, i.e. OLAF, it should be emphasised that it is by nature much stronger than that of supranational agents.

- 2) granting an institution-agent by a supranational principal with competences in the mode of secondary delegation (from the level of a supranational institution to an institution-agent established by it), bypassing the Member States,
- 3) an institution-agent having control (supervisory) competences over a supranational principal.

As a result, such an institution-agent is also a supervisor and operates at a level above the supranational level. OLAF meets all of these conditions, so it has a supra-supranational nature. Thus, the theoretical approaches based on the PAT and the PSAT applied in European studies allow for the determination of the position of OLAF in the MLG and in inter-institutional relations. When attempting to determine this position, we can conclude that OLAF is:

- 1) 1) a supra-supranational executive agent with strong independence and autonomy,
- 2) 2) a supervisor over all EU institutions and EU Member States and sub-national actors,
- 3) 3) an agent capable of establishing international cooperation (international organisations, third countries, etc.).

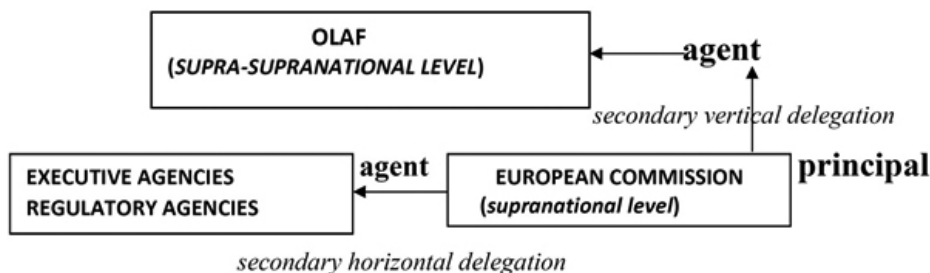
The conducted research allowed us to verify the accepted research hypothesis, which assumed that OLAF is not a classical supranational institution, because it has control powers over supranational institutions, including its principal, which created it and granted it with such powers in the course of secondary delegation. In fact, OLAF is not a classic supranational institution because it exhibits strong features of a supra-supranational institution operating in a EU's MLG system.

In addition, the analysis made has led to several other findings that may have a contextual and postulative meaning here. It found out that:

- 1) secondary delegation can be divided into its horizontal variant, i.e. when the transfer of competences takes place on one level in the MLG (e.g. supranational) and the vertical variant when delegation takes place between levels in the MLG (e.g. between the supranational level and the supra-supranational level, Figure No. 1);
- 2) secondary delegation of the "supranational institution-community agency" type (with both horizontal and, above all, vertical traits) turns out to be a powerful source of intra-EU integration drive;
- 3) while horizontal delegation, and within it, internal delegation of competences by supranational institutions to agencies without supervisory powers, resulted in the fragmentation of competences, vertical delegation of competences to community agencies with supervisory powers results in further centralisation of competences, only at a higher level than the supranational level known so far. The hierarchical structure of control, power and communication known in the EU political system, which is additionally strengthened by the delegation of competences to higher instances and positioning of specific intellectual and technocratic resources there, becomes clear;

- 4) supra-supranational supervising covering virtually all levels in the MLG actually has parameters indicating the existence of meta-governance;
- 5) it seems that the Court of Justice of the EU and the European Central Bank have certain supra-supranational features, but at the supra-supranational level the European Ombudsman can also operate, who is elected by the supranational European Parliament and examines the so-called bad administrative practices in European institutions, i.e. has certain supervisory attributes;
- 6) the supra-supranational level alongside the conventional levels in the MLG (supranational, national and regional) allows for a new look at the multi-level political system of the EU.

Figure 1: Secondary horizontal and vertical delegation on the example of the European Commission - OLAF relationship



Source: the author's elaboration.

Attempts to search for and identify supra-supranational traits in OLAF and other EU institutions may open a new area of exploration in European studies, but also introduce a new focus on the research of MLG in the EU, which should take into account the new supra-supranational level of governance.

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Legal aspects of protection of the financial interests of the European Union

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Abstract:

The foundations and the operating framework of the institutions of the European Union and its Member States are determined by legal acts established at the EU level. The legal bases at the EU level contain key standards in the scope of protection of the financial interests of the European Union and are the main determinants for the individual EU countries when their legal institutions create legal bases at the national level. The aim of this article is to present the main legal basis for the protection of the financial interests of the European Union at the EU level, which will help to examine the impact of these provisions on detecting irregularities and fraud in the EU.

Keywords: budget, European Union, irregularities, legal basis

Prawne aspekty ochrony interesów finansowych Unii Europejskiej

Streszczenie:

Podstawy oraz ramy działania instytucji Unii Europejskiej i jej państw członkowskich wyznaczają akty prawne ustanawiane na poziomie unijnym. Podstawy prawne na poziomie unijnym zawierają kluczowe normy w zakresie ochrony interesów finansowych Unii Europejskiej oraz stanowią główne wyznaczniki dla poszczególnych państw UE przy tworzeniu przez ich właściwe instytucje podstaw prawnych na poziomie krajowym. Celem pracy jest przedstawienie głównych podstaw prawnych dotyczących ochrony interesów finansowych Unii Europejskiej na poziomie unijnym, co przyczyni się do zbadania wpływu tych przepisów na wykrywanie nieprawidłowości i nadużyć finansowych w UE.

Słowa kluczowe: budżet, Unia Europejska, nieprawidłowości, podstawy prawne

Discussions on the issues related to the protection of the financial interests of the European Union (EU) are increasingly undertaken by the organisation on the international forum. On a large scale, this issue is also the subject of debates among the individual EU Member States. In a more or less direct way, this topic has also appeared since the beginning of the founding of the European Communities, and later within the European Union. The EU institutions and bodies, as well as the national institutions of the EU Member States, are increasingly focused on increasing the protection of the EU financial interests and on the cooperation development in this area both between the EU and the Member States and directly between the countries themselves. It should be noted that this issue is also a frequent topic of discussions and debates taking place at the political arena of the member countries and in various types of scientific and advisory bodies.

The steadily growing importance of the European Union as an international organisation, the development of its main competences as well as the increasing general budget mean that the EU is becoming an increasingly important player on the international arena, having a significant impact on shaping the global reality. Bearing in mind the above mentioned statements, in the recent years inevitably, there is a noticeable development of the new forms of activities aimed at causing various types of damage to the organisation's budget. The evolution of various methods of action also contributes to an increase in crime to the detriment of the Union's financial interests. In particular, you can distinguish activities such as fraud in the use of the EU funds (use of improperly means allocation, formal and substantive errors in the implementation of individual projects, etc.), tax fraud affecting the EU finances, as well as smuggling and illegal trade in tobacco products and counterfitting (Zapobieganie W/W). Intensification of this type of activities requires from the Union and its Member States to undertake joint, wide-ranging activities to improve and develop international cooperation in preventing, counteracting and combating emerging financial crimes to the detriment of the European Union.

Regulating the protection of the EU's financial interests has also become necessary because more than half of its expenditure is allocated to beneficiaries through the Member States. The management of funds from the general budget by the EU countries requires constant monitoring and taking actions aimed at eliminating the resulting damage to the Union's financial interests (Kosikowski 2014: p. 104). In addition, managing the enormous amount of funds the European Union has at its disposal relative difficulties in an institutionally complex international environment. All illegal activities affecting the EU expenditure and income are hidden very quickly in order to avoid legal liability. The growing importance of the problem is under discussion and the need for rapid response has led to the establishment of certain key determinants the common principles and the adoption of legal regulations aimed at preventing, eliminating and punishing irregularities and fraud of a financial nature.

In recent years, numerous legal acts and various recommendations regarding the protection of the financial interests of the European Union have been created. The provisions

contained therein are primarily aimed at streamlining the processes for the protection of the financial interests of the European Union at the EU and national level, improving the management of the European Anti-Fraud Office (OLAF), strengthening procedural guarantees in investigations thanks to a multi-step approach leading to the smooth operation of the European Public Prosecutor's Office reforming Eurojust, ensuring better protection of the EU's financial interests, including through criminal law and through administrative investigations through an integrated policy to protect taxpayers' money and through the various Commission's anti-fraud strategies (European Parliament 2018: p. 2). The quantity, rank and complexity of the new legal acts and the other key documents regarding the area of protection of the financial interests of the European Union adopted at the EU level creates the necessity of addressing the impact on the scale of irregularities and fraud against the EU financial interests in Member States of that organisation.

The subject of the article is the issue of legal aspects of protecting the European Union's financial interests in the context of the scale of fraud and irregularities occurring in the Member States. The aim of the research is to identify the role and significance of the adopted legal bases for protecting the EU's financial interests and their indirect impact on the scale of fraud and irregularities reported by the Member States. Considering the purpose of the article, it should be noted that legal acts and other documents regarding the protection of the European Union's financial interests adopted at the EU level contribute to better protection of the EU's financial interests at national level. The analysis of the appropriate legal solutions is the answer to the following research questions: Can legislation on the protection of the EU financial interests established at the EU level have a positive impact on streamlining processes related to the adoption and implementation of legislation in this area at national level? Do more transparent rules established at both the EU and national level contribute to better detection and elimination of all irregularities? Does updating and adapting regulations and new documents at the EU level lead to an adequate level of protection of funds from the EU budget?

The main research method used in this work is the institutional and legal analysis. The sources studied are primary the EU law and, above all, the EU derivative law regulating issues in the broadly understood protection of the EU financial interests – regulations issued by the EU institutions. The author also uses the statistical method, due to the analysis of statistical data, i.e. the amount of irregularities and fraud reported by the Member States. Neo-functionalism and the theory of rational choice will help to explain integration processes in this area – in the context of analysing decision-making in the field of cooperation in the protection of the EU financial interests. Due to the complexity, diversity and specificity of the functioning of legal systems in individual Member States, only solutions at the EU level have been analysed, not solutions at the national level. The choice is also justified due to the fact, that at EU level a fundamental framework is set up, based on which countries set up their own measures to protect the EU's financial interests. At the same time, the author is aware of the undeniable impact of domestic legal solutions on the existing level of irregularities and financial fraud. The article is a general outline of the complex subject of the legal basis in this field.

The author focuses on selected legal bases, without considering the rich history of the creation and shaping of individual legal acts in the field of protection of the EU financial interests and concerning specific types of irregularities and frauds to the detriment of the EU budget.

The first part of the article will characterise the treaty foundations regarding the protection of the EU's financial interests in general. Next, the author will discuss acts of secondary law, which play a significant role in the discussed area, taking into account the key topics contained in them, as well as the other legal acts and documents. Then, statistical data on detected irregularities and fraud will be analysed. The article ends with a summary, in which the author draws attention to the basic problems and challenges for the Member States and the EU in the studied area. This division will allow to systematise and indicate currently applicable basic documents from the analysed scope, and will also contribute to clarifying the research problems.

Treaty basis

The key issues related to the protection of the EU financial interests are contained in Part Six, Title II, Chapter 6 of the Treaty on the Functioning of the European Union (TFEU). Currently, the main treaty basis for the protection of the financial interests of the European Union is art. 325 TFEU. Paragraph 1 of this article states that "the Union and the Member States shall combat fraud and any other illegal activities affecting the Union's financial interests by measures taken pursuant to this Article, which have a deterrent effect and provide effective protection in the Member States and in all institutions, bodies and the Union's organisational units". This article also points to the need for individual Member States to take the same measures to combat fraud that affects the financial interests of the EU that they use to combat such frauds, which are detrimental to the financial interests of their own countries. This reservation aims to oblige Member States to adequately protect the EU's financial interests and to treat this obligation as much as the protection of finance in specific countries. What is more, it gives the states some freedom in choosing methods and means, thanks to which they coordinate their activities aimed at protecting the EU's financial interests against fraud. The states cooperate closely and regularly with the European Commission, which gives them the opportunity to freely exchange information and orientate their activities thanks to consultations with the Commission.

In the field relating to judicial cooperation in criminal matters, according to art. 83 par. 2 TFEU, it is possible to set minimum standards for the determination of offenses and sanctions in a given field through directives, if approximation of criminal laws and regulations of the Member States proves necessary to ensure effective implementation of the EU policy in an area that has become subject to harmonizing measures. Article 84 TFEU indicates that the European Parliament and the Council may establish measures to promote and support Member States' activities in the field of crime prevention. The tasks of Eurojust referred to in Article 85 TFEU underline the promotion and strengthening

of coordination and cooperation between national and law enforcement investigating authorities regarding serious crime that affects two or more of the EU Member States or which requires joint prosecution. Attention should also be paid to art. 86 TFEU, where in paragraph 1 indicates that 'in order to combat crimes affecting the financial interests of the Union, the Council, acting by means of regulations in accordance with a special legislative procedure, may establish a European Public Prosecutor's Office based on Eurojust. As a consequence, the European Public Prosecutor's Office based in Luxembourg will start operating in 2020, more on this later in the article. In addition, art. 87 TFEU underlines that the Union is developing police cooperation involving all competent authorities in the Member States, including police, customs and other law enforcement agencies specializing in the prevention, detection and prosecution of crime. Crucial importance of Europol's is described in Article 88 TFEU. Europol's task is to support and strengthen police activities of the Member States and mutual cooperation in preventing and combating serious crime affecting two or more Member States, terrorism and forms of crime violating the common interest covered by the Union's policy.

The protection of the EU's financial interests and the fight against fraud are closely linked to budgetary control. The European Court of Auditors (ECA) has a particularly important role in the control of the European budget in the context of external audit. With regard to institutional provisions contained in the TFEU, in accordance with art. 287 TFEU, ECA audits the legality and regularity of income and expenditure, as well as ensures sound financial management, and signals any irregularities that arise. ECA audits the accounts of all the EU income and expenditure, as well as bodies or organisational units set up by the EU to the extent that the founding act does not exclude such control. It is worth mentioning that these controls can also be carried out locally also in Member States where they are carried out in conjunction with national audit institutions or other relevant control services. National institutions can participate in these audits if they express such a need and willingness. All these institutions cooperate with each other on the basis of mutual trust and maintain their independence.

It is worth noting that despite the frequent appearance in the various documents of the term "financial interests of the European Union", for a long time no attempt was made to define its definition, which did not appear in the treaty law. Similarly, the term of this is also not explained by the Court of Justice of the EU in its rulings (Pączek, Koba 2011: p. 165). In particular, it should be pointed out that there is a distinction between financial interests *sensu stricte* and *sensu largo*. Considering this distinction, financial interests in the narrow sense include within the scope of the EU general budget, and in a broad sense - all revenues and expenditures of institutions, organs as well as organisational units of the Union (Grzelak 2006, p. 53–54, quoted in: Pączek, Koba 2011).

Derivative law acts

Over the years, the European Union has adopted many directives, regulations, decisions, recommendations and opinions regarding the protection of the EU financial inter-

ests and supporting the implementation of the anti-fraud activities in the organisation. It is worth paying close attention to some of them.

Regulations regarding general principles of conducting inspections in the EU countries and administrative measures and imposing penalties in case of detection of irregularities were included in the Council Regulation of December 18, 1995 on the protection of European Communities' financial interests (Council Regulation No. 2988/95). The Regulation establishes common legal principles in all the European Union policies, it also indicates the need for such administrative controls, measures and penalties to be effective, proportionate and dissuasive (Article 2 (1)). The key goal is to take into account the nature and severity of irregularities and the benefit or degree of responsibility granted or obtained.

An equally important document is the Council Regulation of November 11, 1996 on on-the-spot inspections and inspections carried out by the Commission to protect the European Communities' financial interests against fraud and other irregularities (Council Regulation No. 2185/96). This regulation draws attention to the need to carry out on-the-spot checks and inspections, indicating the main objectives, conditions, procedures and their scope. The detection of serious or transnational irregularities or irregularities that may affect entrepreneurs operating in several EU countries is of the greatest importance here.

Regulation of the European Parliament and of the Council of 26 February 2014 establishing a program to support activities in the field of protection of the financial interests of the European Union (Hercule III program) (Regulation No. 250/2014) highlighted the activities carried out under the Hercule II program and announced intensification of activities undertaken by the EU and the Member States in the field of combating fraud, corruption and any other illegal activities affecting the financial interests of the European Union. First of all, this program focuses on supporting the development of new mechanisms for counteracting fraud, intensifying cooperation and its coordination between the Member States of the Union, the Commission and the European Anti-Fraud Office, as well as conducting training in the EU countries and countries outside this area (Protecting...WWW).

It is also worth mentioning the Directive of the European Parliament and of the Council of 5 July 2017 on combating fraud against the financial interests of the Union through criminal law (the so-called PIF Directive) (Directive 2017/1371), which will replace the Convention on the protection of the European Communities' financial interests of 27 November 1995 (Council 1995). Member States are required to transpose it by July 2019 and the Convention will no longer apply (more information on the Convention later). The PIF Directive aims to ensure effective and uniform protection of the EU financial interests, and defines common EU definitions of offenses affecting the EU's financial interests and uniform levels of maximum criminal sanctions.

It introduced, among others, a common definition of offenses to the detriment of the Union's financial interests, which includes fraud, misappropriation of funds, money laundering, and active and passive corruption. For these offenses, criminal sanctions of

at least 4 years in prison were established if the damage to the EU budget or benefits obtained would amount to over EUR 100,000. In addition, the directive introduces penalties for cross-border fraud related to VAT (Directive 2017/1371).

Council Regulation of 12 October 2017 implementing enhanced cooperation in the establishment of the European Public Prosecutor's Office (Council Regulation 2017/1939) concerns the creation of the European Public Prosecutor's Office as a decentralised EU prosecutor's team that will be equipped with exclusive competence in investigating perpetrators of crimes who they expose the European Union budget to losses as well as prosecution and trial. The prosecutor's office will have the same investigatory powers throughout the European Union and will operate based on the national legal systems of individual Member States (OIDE 2018). The prosecutor's office will mainly carry out cross-border preparatory proceedings on fraud involving the EU funds for more than PLN 10,000 and cross-border cases of VAT fraud, which caused damage of more than EUR 10 million. In addition, what is important, it will also work closely with national law enforcement agencies, as well as with other authorities, such as Eurojust and Europol. The European Public Prosecutor's Office is organised on two levels, of which the central level is the Central Prosecutor's Office, composed of the European Attorney General and its two deputies and European prosecutors (one from each participating EU country) and the administrative director, and the non-central level is delegated European prosecutors who operate in participating EU countries.

Particular attention should be paid to the OLAF, which mainly investigates fraud to the detriment of the European Union budget, corruption, tax evasion, irregularities related to tendering procedures as well as serious weaknesses within the European institutions and develops policy of combating all fraud for the needs of the EC. OLAF was originally established by the Commission Decision of 28 April 1999 (Commission Decision 1999/352/EC), replacing the Working Party on the Coordination of Fraud Prevention and taking over all of its tasks. In addition, further changes were introduced by subsequent Commission decisions. The role of OLAF, investigations and the main tasks and competences are set out in separate regulations and agreements. OLAF performs an administrative and investigative service, it can only issue recommendations regarding what actions should be taken by individual EU or national bodies as a result of investigations conducted by the Office (Proczek, Szczepanska 2017: p. 218). OLAF receives information from various sources about alleged abuses and irregularities. In the most cases, this information is the result of controls carried out by units responsible for the management of the EU funds within the European institutions or in the Member States. All suspicions are subject to a preliminary assessment, which allows to determine whether the allegation qualifies for consideration by the authority and meets the criteria necessary to initiate an investigation.

Another unit that specialises in the protection of the EU's financial interests is the Advisory Committee on Coordination of Fraud (COCOLAF) (Commission Decision 1994/140/EC), serving primarily to exchange information and views on issues related to the protection of the EU's financial interests. This activity ensures cooperation

between EU countries and the European Commission in order to prevent and punish fraud, as well as exchange of information between the EC and the Member States. COCOLAF coordinates the way in which the European Commission and its Member States fight against fraud related to the EU money. Participants are representatives of the competent national services of the Member States and the Commission services. The role of the unit is to advise the Commission on all matters related to the prevention of fraud and any other illegal activities having a negative impact on the financial interests of the EU and deal with any matters related to cooperation between the competent services of the Member States or between the Member States and the European Commission.

Other legal acts and documents

One of the special legal instruments adopted by the EU is the Convention on the Protection of European Communities' Financial Interests of November 27, 1995, previously mentioned (the so-called PIF Convention). This convention primarily aims to protect the financial interests of the EU and its taxpayers on the basis of criminal law, and together with protocols it provides a harmonised legal definition of fraud, and also requires signatories to accept criminal sanctions for such abuse.

The document distinguishes fraud in terms of expenditure and income. According to art. 1 point 1 of the Convention, fraud in relation to expenditure is any intentional act or omission of action which concerns:

- using or submitting false, inaccurate or incomplete declarations / documents in order to unlawfully detain funds originating from the Union budget or misappropriating them,
- non-disclosure of information in violation of a special obligation for the same purpose,
- improper use of funds from the EU budget for purposes other than those for which they were originally granted.

The convention also indicates that fraud in relation to revenues is any intentional act or omission of action which concerns:

- the use or presentation of false, inaccurate or incomplete declarations / documents to unlawfully reduce the resources of the Union budget,
- non-disclosure of information in violation of a special obligation for the same purpose,
- misuse of the benefits obtained in accordance with the law for the same purpose.

The protocols are attached to this Convention - the 1996 Protocol introduced a uniform definition of active and passive corruption, defined the concept of an officer at national and EU level, and harmonised penalties for offenses related to corruption. The following 1996 protocol gave the Court of Justice the power to interpret, so that national courts can submit a request to the Court of Justice of the EU for a preliminary ruling in the event of doubt regarding the interpretation of the Convention and its protocols.

In turn, the Protocol adopted in 1997 clarified the issues of liability of legal persons, money laundering and confiscation (Prusak 2009: p. 6).

As mentioned earlier, the Convention will cease to apply with the implementation of the PIF Directive in all Member States, and what is particularly important, in the case of the United Kingdom and Denmark, the provisions of the Convention will continue to apply.

One of the key documents is also the Commission Communication on Anti-Fraud Strategy (Communication 2011), which is part of a comprehensive approach to the issue of fraud and corruption in the organisation. It aims to strengthen the protection of the Union's financial interests, in particular by improving the overall anti-fraud cycle. This means including both prevention, detection, investigation, sanction and recovery of misappropriated money. All entities managing EU funds are obliged to prevent irregularities and fraud affecting the EU budget. The European Commission, EU countries and other partners (e.g. regional bodies or development agencies) are required to implement management and internal control procedures to prevent and detect irregularities, errors and fraud. Cooperation between OLAF and the other services of the European Commission, in particular external auditors, needs to be strengthened, as should the cooperation between OLAF and the other investigative services in the case of an internal investigation.

Detection of fraud and financial irregularities in practice

Based on Article 325 TFEU, the European Commission, in cooperation with the Member States, annually submits a report on the protection of the financial interests of the European Union ("report on the protection of EU's financial interests"). The last published report concerns data for 2017.

According to the information in the report, in 2017, Member States notified 73 measures that they had used to protect the EU's financial interests and combat various types of fraud. These measures mainly covered shared management, financial crimes, customs and illegal trade, public procurement, conflicts of interest, anti-corruption and anti-fraud strategy, organised crime, fraud, and whistle-blowers. It concerned a number of appraisals, i.e. detection, prevention, investigation, prosecution, and recovery of funds and sanctions. By the end of the reporting year, a total of 10 EU Member States had adopted national anti-fraud strategies. This shows that these countries understand the importance of a strategic approach to fighting fraud and irregularities. At the same time, the Commission called on the other Member States to develop and adopt such strategies.

In 2017, a total of 15 213 fraudulent and non-fraudulent irregularities were reported to the European Commission. Compared to 2016, this was down by 20.8%. With regard to the amounts affected by irregularities, in 2017 the figure was about EUR 2.58 billion, a decrease of 8.6%.

Table 1: Irregularities in individual years

Reporting year	Irregularities reported as fraudulent and non-fraudulent	Irregular amounts (billion EUR)
2013	15 779	2,14
2014	16 473	3,24
2015	22 349	3,21
2016	19 080	2,97
2017	15 213	2,58

Source: Own study based on the Annual Report on the Protection of the European Union's financial interests — *Fight against fraud* - 2013, 2014, 2015, 2016 and 2017.

As the table shows, the number of irregularities increased over the five-year period, and the most notably in 2015. This is caused by many factors, including available funds in the EU budget, conditions related to the economic situation, closing the 2007-2013 programming period, improvement of control over the management of the European Union funds by competent institutions, and improvement of the activities of domestic services.

From the abovementioned number of irregularities reported in 2017, 1146 irregularities were reported as fraudulent (including cases of suspected or established fraud). The number of irregularities related to fraud reported in 2017 decreased by 19.3% compared to 2016, while the amounts increased by 37.5%. The remaining number of irregularities (i.e. 14,067) were reported as non-fraudulent (20.9% less than in 2016). From the above data, it can be concluded that the activities of the Member States were targeted more specifically, i.e. to detect the most serious irregularities related to fraud, as evidenced by the increase in both the number of irregularities reported as fraudulent and their overall amount.

It is also worth mentioning that in 2017, OLAF opened 215 investigations and completed 197 of them, recommending recovery of EUR 3.1 billion, where EUR 2.7 billion related to revenue. During the year, OLAF ended large cases of undervaluation fraud. At the end of the year, 362 inquiries were initiated.

The data presented above regarding the scale of irregularities and fraud to the detriment of the EU's financial interests show that Member States are trying to take a number of actions to eliminate any irregularities that would harm the EU's financial interests. The systems for detecting all types of irregularities in the Member States have become more "tight", making it possible to detect more crimes. In addition, more deliberate prosecution of these crimes is possible, i.e. crimes involving large amounts and committed by organised crime groups. Certainly, this is possible thanks to transparent regulations in force at EU level, established by the EU institutions and bodies.

Conclusions

The European Union loses many millions of euros each year as a result of financial crimes to the detriment of the organisation's interests. The legal systems of individual Member States, which are characterised by high complexity and diversity, also sometimes make it difficult to prosecute criminals and recover lost money from the EU budget. For this reason, it is very important to establish common rules and a framework for Member States at EU level. Within the European Union, a number of initiatives have been taken to protect the Union's financial interests and to combat all forms of irregularities and fraud.

The legal basis presented above for the protection of EU financial interests is only an outline of the subject discussed. Each institution acting for the protection of finances in the organisation operates on the basis of separate, more detailed documents, and all actions to the detriment of EU finances are included in separate records that will specify these forms of illegal activity. Nevertheless, these individual legal acts show that the EU institutions undertake broad activities in the area of protection of financial interests, more and more paying attention to emerging problems and expanding activities negatively affecting the EU budget. Emerging new forms of illegal activity require both EU and national institutions and bodies to undertake extensive activities, and they are increasingly enabled by adopted legal acts at the EU level. It also contributes to a more systematic and more efficient reception of documents at the national levels of individual Member States of the European Union. The actions taken by the EU alone could not effectively counteract activities to the detriment of the Union budget and adequately protect the financial interests of the organisation. The wide range of legal bases established at EU level is an important basis for shaping these foundations in the area in question in the Member States. In view of the above, it should be emphasised that legal acts and the other documents regarding the protection of the financial interests of the European Union adopted at the EU level contribute to better protection of the EU financial interests, therefore, the thesis put forward in the introduction of the article has been positively verified. Legislation on the protection of the EU financial interests established at EU level has a positive impact on streamlining processes related to the adoption and implementation of legislation in this area at national level. Updating and adapting regulations and new documents at EU level lead to an adequate level of protection of funds from the EU budget. The presented statistical data also supports these theses, which indicates the better and more targeted actions of Member States to detect the largest and the most complex irregularities affecting the highest capital amounts. Clearer rules established at both the EU and national level contribute to better detection and elimination of all irregularities and fraud.

The activity of the European Anti-Fraud Office is very important in this area, which is a key body investigating irregularities and frauds that are of great importance and have a negative impact on the European Union budget – both the income and expenditure of the organisation. What is particularly important, it also deals with cases of serious abuse of rights by employees of the Union's institutions and bodies.

The foundations and the operating framework of the institutions and bodies of the European Union and its Member States are determined by legal acts established at the EU and national level. The legal bases at the EU level contain key standards in the scope of protection of the financial interests of the European Union and are the main determinants for individual EU countries when their competent institutions create legal bases at the national level. The creation of a legal basis at EU level defines and sets the leading "road" for Member States to properly prevent financial crimes to the detriment of the European Union.

It is important from the point of view of the protection of the EU financial interests to support multilateral cooperation between the Member States and in contacts with the EU institutions. The exchange of knowledge, experience and the initiation of direct contacts between representatives of states certainly has a positive impact on the scale of detecting irregularities and fraud in the EU. Not only cooperation between the Member States and the EU institutions is very important, but also between the Member States themselves. Thanks to developing this type of cooperation, it is possible to exchange experience at the lowest level, which positively affects the detection of irregularities. In addition, it is the Member States, who have the best knowledge of the types of crime committed on their territory. This in turn contributes to the proper and well-targeted analysis of such behavior. Well-conducted cooperation and clearly defined legal foundations for the protection of the European Union's financial interests are the most appropriate way to limit and eliminate the occurrence of irregularities and fraud.

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The European Union vs. the Eurasian Economic Union: "integration race 2.0"?

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Abstract

One of the most remarkable features of regional development in Eurasia is the competition between the European Union (EU) and Russia within the so called "contested neighborhood", e.g. the post-Soviet space. Originated in the 1990s it gained the special momentum in 2000s after the beginning of the Russia-led "Eurasian integration process", leading to the creation of the Eurasian Economic Union (EAEU) in 2015. That fact brought the competition between the EU and Russia to the new level, e.g. the "integration race", which had the strong impact on the whole post-Soviet space. The most obvious outcome of that process is the outburst of the Ukrainian crisis in 2013, which on the one hand contributed to further exacerbation of the EU-Russia relations, on the other – it paved the way to elaboration of the new forms and tools of the integration activities. However, it failed to bring the "integration race" between the EU and the Russia-led EAEU to the standstill. Being in the latent "crystallisation" phase, this process goes further with the covert competition between the integration blocks. Its actors are not only the non-aligned post-Soviet states, but also the existing members of the integration structures. All the mentioned above factors makes the "new edition" of the "integration race" rather dangerous because further acceleration of such a competition can lead to the large-scale rivalry between the EU and the EAEU, which may cause unpredictable consequences.

Keywords: European Union, Eurasian Economic Union (EAEU), integration, competition, 'integration race', post-Soviet space, Eastern Partnership

Unia Europejska a Euroazjatycka Unia Gospodarcza: „wyścig integracyjny 2.0”?

Streszczenie

Jedną z najbardziej zauważalnych cech rozwoju regionalnego w Eurazji wydaje się być konkurencja między Unią Europejską (UE) a Rosją w ramach tak zwanego „spornego sąsiedztwa”, a mianowicie przestrzeni poradzieckiej. Zapoczątkowana w latach 90. XX wieku, konkurencja ta nabrała szczegól-

nego rozpadu w 2000 r. po rozpoczęciu kierowanego przez Rosję „procesu integracji euroazjatyckiej”, co zaowocowało utworzeniem Euroazjatyckiej Unii Gospodarczej (EUG) w 2015 roku i przeniosło konkurencję między UE a Rosją na nowy poziom – zaczął się tzw. „wyścig integracyjny”, który miał duży wpływ na przestrzeń poradziecką. Najbardziej przyciągającym uwagę skutkiem tego procesu został wybuch tzw. „kryzysu ukraińskiego” w 2013 r., który z jednej strony przyczynił się do dalszego pogorszenia się stosunków UE–Rosja, z drugiej zaś – uutorował drogę do opracowania nowych form i narzędzi działań integracyjnych. Nie doszło jednak do zatrzymania „wyścigu integracyjnego” między UE a kierowanym przez Rosję EUG. Będąc w fazie utajonej „krystalizacji”, idzie ten proces dalej wraz z ukrytą konkurencją między blokami integracyjnymi. Jego aktorami są nie tylko państwa postsowieckie, dotychczas nieuczestniczące w tych blokach, ale także obecni członkowie struktur integracyjnych. Wszystko to sprawia, że „nowa edycja” wyścigu integracyjnego jest dość niebezpieczna – dalsze przyspieszenie konkurencji może prowadzić do konfrontacji między UE a EUG, co może mieć nieprzewidywalne konsekwencje.

Słowa kluczowe: Unia Europejska, Euroazjatycka Unia Gospodarcza (EUG), integracja, konkurencja, „wyścig integracyjny”, przestrzeń poradziecka, Partnerstwo Wschodnie

The fall of the Soviet Union led to emergence of the new actors on geopolitical scene in Europe. Among them is the most significant one, the European Union (EU) – a successful integration structure (Witkowska 2008; Petrakov, Kucheryavaya 2016; Wojtaszczyk et al. 2015), which boosted its activity within the so-called post-Soviet space – the territory, encompassing the former Soviet Union states (FSU-states), which shortly became the so-called “contested neighborhood”. The EU, exerting “civilising role”, managed to win over some FSU-states by making them either full-fledged or the associated members. However, it failed to win over the other mighty regional player – Russia, which traditionally considered the post-Soviet space as the territory of its own specific geostrategic interests.

This fact could not have stipulated the competition between the EU and Russia on the one hand. On the other hand, it enabled the process of elaboration of the most suitable formula of bilateral relations. In the beginning of 2000s it seemed that the both parties managed to find that formula by elaborating the special project, which implied building up closer cooperation in several spheres aimed creating so called “Greater Europe” – the EU–Russia common economic, social and political space. However, taking into consideration the huge contradictions between the parties involved, the project proved to be not feasible, stipulating the beginning of the so-called Eurasian integration process, aimed creating the effective institutional counterweight to the rising influence of the EU in the post-Soviet space. The result of this process was the emergence in 2015 of the alternative integration structure – the Eurasian Economic Union (EAEU), which became not only the product of the long-year process of regional integration within the post-Soviet space, but the more important one of the mighty regional actors, effectively influencing the political and economic development within the post-Soviet space (Dragneva-Lewers, Wolczuk 2015).

However, the most important was the emergence of the EAEU (Hartwell 2013), what had transformed the competition between the EU and Russia in the “contested neigh-

borhood" into the "integration race", e.g. a form of rivalry between different integration blocks, which can have far-reaching impacts. One of the most obvious consequences of this process was the outburst of the Ukrainian crisis in 2013, which became the remarkable aftermath of the EU-EAEU "integration race". Moreover, despite further de-escalation and return to the latent phase, the "new edition" of the "integration race" is still possible under the certain conditions. Taking into consideration all the factors and causes of the presented situation it is extremely important not only to analyse the essence of the "integration race" and its major reasons, but also to take into thorough scrutiny the objects, forms and tools of this process, and to single out the possible scenarios for the future. All the above mentioned patterns of the integration processes the authors are trying to investigate in this article and to shed some light on the possible scenarios for the future. The methodology used in the research includes: theoretical analysis of the main approaches to the regional integration, case studies and comparative analysis.

Theoretical framework of the regional integration

The origination of the process of regionalisation (regional integration) within the post-Soviet space can be not only dated back to the beginning of the 1990s but also stipulated by the emergence of the new theoretical approach towards the regional integration – the so called "new regionalism" (Hettne, Inotai 1994; Hettne et al. 1998; Hettne, Soderbaum 1998). Unlike the traditional or the "old regionalism", which was elaborated in 1950s amidst the Cold War and which deems the processes of regionalisation as accession to one of the rival blocks (Nye 1965, Balassa 1961; Cox 1996; Deutsch 1957), the "new regionalism" is more dynamic, flexible and it often emerges as a response to the particular problem or issue (Obydenkova 2006: p. 35; Robson 1993; Haas 1958, 1964) of the Post-Soviet space¹.

The new regionalism is a comprehensive, multifaceted and multidimensional process, which implies a change of a particular region from relative heterogeneity to the increased homogeneity with regard to a number of dimensions, where the most important elements are culture, security, economic policies and political regimes. The convergence along these dimensions may be a natural process or politically steered one or, most likely, a mixture of the two trends.

Regionalisation is a process of the regional integration structure formation and it has resemblance of the regional integration on the basis of different regional structures.

The region may emerge spontaneously, but it is ultimately dependent on enduring organisational framework facilitation and security, social communication and convergence of values and actions throughout the region (Kinyakin 2016; Hettne 1993, 1997; Hurrell 1995).

¹ Initially this term was introduced in the article of Lithuanian political scientist Algimantas Prazauskas "The CIS as postcolonial space", published in 1992. (See: Prazauskas 1992).

The post-Soviet regionalisation had different institutional and organisational forms, which were stipulated not only by the regional specifics but also by the dynamics of political and economic processes within the region.

The regionalisation processes within the post-Soviet space began at the moment when one of the two world's "superpowers", the Soviet Union, collapsed. The agreement dissolving the USSR as a political institution, which was signed on December 8, 1991 timely coincided with the foundation of the new regional organisation – The Commonwealth of Independent States (CIS).

The post-Soviet integration path dependence

The multiple examples of setbacks connected with the realisation of regional integration structures within the post-Soviet space anticipates the long-standing malevolent practice or, in the other words, path dependence. This term, which was introduced in 1980s by the neo-institutional economics, became extremely popular in the social sciences in 1990-2000s for analysing specifics of institutions and modes of behavior of different actors (De Melo, Panagariya 1993).

There are two major approaches towards the path dependence, which can be defined as dependence on the previous practices or persistence of prior conditions (decisions), e.g. "wide" and "narrow" (Liebowitz, Margolis 1995). The "wide" one propagates importance of the historical factors ("history matters"), whereas path dependence is defined as the predetermined outcome due to the action of historical events ("locked-in by historical events"). (Arthur 1989). The "narrow" approach postulates, that despite existing "inheritance" its influence on current processes is not a crucial factor for development. In the other words, path dependence is regarded not as predetermination but as the circumstance, which to some extent influences the process, but which can be easily overcome.

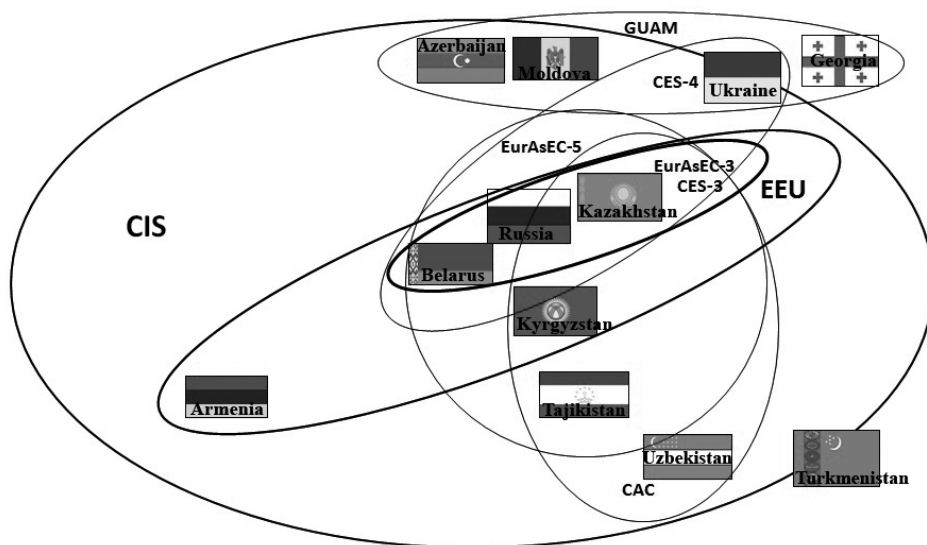
The core element for the theoretical analysis of path dependence is efficiency. Using it as the criterion Stan Liebowitz and Steven Margolis propose their typology of path dependence, selecting three major types – first-degree, second-degree and third-degree path dependence (Liebowitz, Margolis 1995).

The first-degree path dependence indicates instances, in which persistence of prior conditions or decisions exists, but with no implied inefficiency.

The second-degree path dependence anticipates persistence of prior conditions or decisions, leading to outcomes that are "regrettable and costly to change". However, they are not inefficient in given the assumed limitations of knowledge.

The third-degree path dependence connected with persistence leading to an outcome, that is inefficient, but in this case the outcome is "remediable".

This typology of path dependence based on the measuring of efficiency and outcomes is compatible with the analysis of economic and political processes, such as regional integration. And the process of regional integration within the post-Soviet states is a good case of predominance of previous practices and modes on contemporary processes.

Figure 1: Regional integration structures within the post-Soviet space 1991-2017

CIS – Commonwealth of Independent States; EAEU – Eurasian Economic Union; CES – Common Economic Space; GUAM – Organisation for Democracy and Economic Development; EurAsEC – Eurasian Economic Community; CAC – Central Asian Cooperation

Sources: Hartwell 2013: p. 56, 411-420; authors' own modeling.

Since 1991 there had been several attempts to create a long-standing integration project, which would encompass the post-Soviet states. Among the best-known structures were the Commonwealth of Independent States (CIS), GU(U)AM Organisation for Democracy and Economic Development, the Union State of Russia and Belarus, Eurasian Economic Community (EurAsEC), Single Economic Space (SES), and the Customs Union (CU).

Despite the fact that the structures were destined to be economic integration vehicles lots of them turned out to be two-fold, trying to promote not only economic, but also political integration. However, only few of these integration structures proved to be working and effective, managing to unlock the inherent integration potential due to lack of effectiveness and dynamics.

Moreover, the similarity of emergence, functioning and decline of the integration structures within the post-Soviet space enables to speak about integration path-dependence, which plagues the regionalisation process within the post-Soviet space.

What is actually the post-Soviet *integration path dependence* and what are its main features? Shortly, it can be described as a performance of the integration dysfunction, which is marked by the decrease of integration incentives and efficiency and degradation of the integration institutions due to the strengthening of negative factors.

Among these factors there should be distinguished not only endogenous ones (difference in scale and structure of national economies, level of social and economic development), but also the exogenous (for example, influence of the third parties).

Speaking about the peculiarities of the post-Soviet integration path dependence, the following characteristics should be mentioned:

- predominance of political factors (political expediency) within the integration processes;
- misbalance/lack ("bad choice") of the model of the integration cooperation;
- lack of the straightforward and commonly shared strategy of integration cooperation (situation of "inner conflict") and problems with elaboration of "integration identity";
- ineffectiveness of supra-national and national institutions in implementation of the integration cooperation.

All these characteristics were relevant for many integration projects and structures within the post-Soviet space, having a casting negative effects on the processes of regionalisation and regional integration as a whole.

First of all, it affected functioning of integration mechanisms, leading to their degradation as the integration special purpose vehicles (SPV), leading to their demise and gradual transformation into the "bare shells" – institutionalised but largely ineffective structures, which partly or fully lost their integration potential.

To exemplify the effect of the post-Soviet integration path dependence it is important to take into consideration two well-known integration structures: the Commonwealth of Independent States and the Union State of Russia and Belarus.

The CIS created in 1991 as a successor and substitute of the departed Soviet Union was designed as a comprehensive integration structure, comprising not only economic but also political integration. In the early stages it proved to be rather effective, consolidating 12 out of 15 former Soviet republics, which were disoriented after the collapse of the USSR. The rise of the CIS as an integration structure, which has a mixed bottom-up and top-bottom essence was based not only on the shared Soviet values and economic linkages, but also on the ideology of creation of the common political, economic and humanitarian space, based on historical, linguistic and economic proximity of the newly created independent states.

However, after the initial short boost the CIS began gradually losing its dynamics, due to the lack of effectiveness in a couple of years, turning into a formal working structure despite the ongoing process of institutionalisation. Especially it was obvious with the economic projects within the CIS.

For instance, the initiative of the foundation of an Economic Union within the CIS, which was put forward in 1993 and which suggested passing majority of the stages of economic "integration ladder", e.g. creation of the FTA, formation of the Customs Union and the Monetary Union as well as setting up common economic space based on freedom of goods, services, capital and labour force eventually did not find its embodiment. The signed by the majority of the heads of the CIS member states founding treaty, de-

signed to create the Economic Union within the Commonwealth of Independent States did not come into force due to the fact that it was not ratified by the national parliaments of the CIS "majors" (among them were Russia, Kazakhstan, and Ukraine).

The created in 1994 Intergovernmental Economic Committee (IEC), which was designed to take the steering role within the CIS Economic Union and which obtained some competences from the national level, from the very beginning was deprived from the real power for pushing forward the economic integration. The main reasons for the demise of the integration projects within the CIS were not only a lack of political will stipulated by the specific interests of the CIS member states but also lack of the integration model, a straightforward integration strategy (apart from being the "Soviet substitute") shared vision and values, as well as strengthening disintegration tendencies due to the rising orientations of the former Soviet Union states to extra-regional actors (for instance, the "multi-vector policy") and deepening of the "existential fears".

The latter stipulated the process of building the alternative integration projects, aimed to withstand of the rising influence, but having not only political, but also economic dimension. Among them the most interesting example is GU(U)AM, the Organisation for Democracy and Economic Development, which was created in 1997 as an alternative bloc aimed at limiting Russian influence, but which has also a political agenda.

What the CIS concerns, at the end of 1990s the idea of creating an economic project (FTA) within the organisation was revived. However, the beginning of the FTA in 2012, was a belated move due to the fact, that by that time alternative integration project and structures (first of all the Customs Union within the "Eurasian project") emerged, what alongside with the breakout of the Ukrainian crisis contributed to the tips of further demise of the CIS as the integration structure.

As a result, the Commonwealth of Independent States did not realise the inherent integration potential at the moment playing a minor virtual role, wielding no real powers and providing no incentives for integration within the post-Soviet space.

The second case is the Union State of Russia and Belarus, a bilateral integration project, started in 1996 by signing of the intergovernmental treaty of creation of the Community between Russia and Belarus the process of Russia-Belarus integration was boosted in 1999 with signing and ratification of the treaty of the Union State Russia and Belarus, which in 2000 came into force. This integration project was designed to be a complex one, comprising economic, social as well as political spheres (Averyanov-Minskiy 2015; Ilyina2017; Suzdaltsev 2013).

However, the political part, which included such actions as formation of joint parliament and signing of constitutional act practically was not implemented due to the rise of political ambitions of the Belarus leader Alexander Lukashenka as well as discrepancy of visions of the perspectives of development of the Union State, which became the most obvious after the change of power in Russia (retirement of the president Boris Yeltsin and Vladimir Putin's coming to power).

What the economic part of the project of the creation of the Union State between Russia and Belarus concerns it was implemented half-way.

In fact, Russia and Belarus managed to create the Customs Union and the Common Economic Space, which enabled economic freedoms (free transfer of goods, services, capital and labor), but didn't come close to the idea of creation of monetary union and introducing the single currency.

Moreover, starting from 2000s the interrelations between Russia and Belarus in the economic sphere had been constantly marred by different trade conflicts. Among them the most acute are so-called "energy wars" (supplies of Russian oil and gas to Belarus) as well as "food wars" (ban of some (dairy) Belarus products entering Russian food market). All these threatens not only to put the end to the bilateral integration project between Russia and Belarus, which at the moment is rather in moribund state, but also to hamper the implementation of multilateral projects, where both nations play significant roles (for instance, the Eurasian Economic Union).

The major problems of the Union State of Russia and Belarus are stemming from the political origin of these projects, which was developed within the model "*holding together regionalism*" (HTI).² Despite relative political proximity (both countries are autocracies) and complimentary character of Russian and Belarusian economies in functional sense, the nations did not managed to elaborate the shared vision of the integration, what hampers the elaboration of the joint integration strategy. At the moment lots of experts are dubious about further perspectives of economic cooperation between Russia and Belarus (Ilyina 2017).

Some scholars are putting the special emphasis on development of the Russia-Belarus relations within multilateral projects (eg. Suzdaltsev 2013). Among them is the EAEU, which is qualitatively new type of regional integration structure within the post-Soviet space and which has the solid inherent integration potential, but which is due to be developed in order not to lose dynamics and effectiveness, becoming the latest victim of the post-Soviet integration path dependence.

The Eurasian integration project: pro et contra

At the moment there are certain risks of given the forced character of Eurasian integration, which influences the model of integration as well as strategy of integration cooperation. However, the EAEU, which has a solid integration dynamics, but has not managed to prove its integration effectiveness yet (due to relatively poor economic results), can avoid it by opting to accept one integration model and elaborate not only the joint strategy of integration cooperation. The current one – "Long-term prognosis of economic development of the Eurasian Economic Union" (rus.: *Долгосрочный прогноз экономического развития Евразийского экономического союза до 2030 года*, see: Evrazijskaya ekonomicheskaya komissiya 2015), from our perspective, is rather far from that, but more important is the system of the shared values.

Unfortunately, at the moment it seems to be rather a distant perspective, albeit some actions in this direction have been undertaken. For instance, at the moment there are clear signs

² More about this model of regionalisation within the post-Soviet space see: Libman, Vinokurov 2012.

of changes in the EAEU integration strategy from extensive (increase of the number of the member states) to intensive (boosting the inner integration processes within the structure).³

However, in general in order to avoid the post-Soviet integration path dependence "trap", the EAEU, which is not a full-fledged integration structure yet, should make not only correction of errors but also a thorough self-improvement work if it wants not only to prove its viability but also to be competitive as an integration project and a regional integration structure within the post-Soviet space in the long run. First of all it concerns the very essence of the Union, which has lots of imbalances, which are relevant to one of the three major dimensions: institutional, structural and functional.

Institutional dimension is strongly connected not only with the institutional framework of the EAEU, which is rather sophisticated and contradictory, what to some extent puts obstacles for more active integration. For instance, despite existence of Single economic space and Customs Union within the Union there are still a lot of tariff (exemptions) and non-tariff barriers, which thwarts the development of mutual trade, which at the moment accounts for 10% whereas the trade with the major trade partners - the EU and China is 44% and 13% respectively.⁴

The difference in tariff policies within the EAEU also contributed to the protracted debates and difficult consultations on the EAEU Customs Code, which was due to be signed and enacted in 2015, but was finalised only in 2017 and came into force in 2018.

The situation with the accomplishment of the Customs Code spotlighted long simmering "conflict of interests" between the EAEU member states with Belarus initially refusing to sign finalised document due to worries of "potential setbacks for national economy" after coming it into force.

This situation is stipulated by another institutional imbalance – the different positioning of member states within the EAEU. Despite the Eurasian Economic Union is institutionalised and promoted as a "union of equals" in reality there is a strong domination of the certain states.

It is strongly connected not only with the size but also with the structure of the national economies, enabling some member states not only to make more significant contribution to the EAEU but also to subsidise other member states and to get some "returns". For instance, Russian oil and gas supplies to Belarus and Armenia, which account for 10% and 5% of GDP of these countries respectively make them more susceptible to the Russian influence (Knobel 2017).

This fact can be explained not only by the revival of Russian "irredentist" bias but also by the Russian vision of the EAEU as not only economic, but also a geopolitical tool (the Ukrainian crisis highlighted it very clearly). And although this vision is not shared by other EAEU member states, Russia's position is dominant in many cases.

³ Previously the extensive character of the Eurasian integration strategy was a source of debates and quarreling within the EAEU. For instance, the issue of accession to the Union of Kyrgyzstan in 2015 led to the tensions between Russia and Kazakhstan.

⁴ According to the analytical data, provided by the Eurasian Economic Commission in 2018 the mutual turnover within the EAEU accounted only 7.3% of the EAEU turnover in bulk (See: Statistics of mutual trade WWW).

Especially it is noticeable in the sphere of external affairs of the EAEU. For instance, introduction of unilateral embargo on European foodstuffs as response to the Western sanctions imposed in July 2014 amidst Ukrainian crisis and putting the ultimatum to the other EAEU member states to support this hard stance (what was not done) showed not only the growing Russian dominance within the EAEU but its desire to handle the issue of foreign relations.

Another case is unilateral signing on behalf of the EAEU of the joint statement of cooperation between the Eurasian Economic Union and the Chinese initiative called the "Silk Road Economic Belt" (one of the programme within the Chinese strategic "Belt and Road" (BRI) initiative) by the Russian President Vladimir Putin and the Chinese leader Xi Jinping on the 8 of May 2015. This fact led not only to the countersigning it by the other EAEU leaders the next day but also left lots of open questions about the decision-making process and distribution of competences within the EAEU.

All this makes the Union as a regional integration structure rather vulnerable and susceptible to inner conflicts, connected with the division for the "seniors" and the "minors".

Moreover, it makes the EAEU less attractive for the potential newcomers and partners. The latter are more inclined to establish bilateral ties with the EAEU member states not taking into account the Union as a solid and well-established integration structure.

It is rather a bad sign, taking into consideration the fact, that the Eurasian Economic Union at the moment tries to establish relations with different national and supra-national actors in form of creating of FTAs. At the moment it is one of the main directions of the development of the EAEU, as an integration structure, which turns out to be under-developed, considering the fact, that presently the Union has the only one full-fledged FTA – with Vietnam.⁵

The lack of institutionalised trade partners outside the Union turns out to be one of the major structural imbalances of the Union as an integration structure. It is not only a litmus paper for the effectiveness of the EAEU as a negotiating partner but also a marker of attractiveness for the potential counterparts. Among them there are not only the countries, potential candidates for accession to the EAEU (up to 2015 the EAEU was negotiating the accession with Tajikistan and Mongolia), but also the supra-national institutions, which are of a special interest for the EAEU.

The special emphasis was put on the negotiations with the European Union, which is not only a major trade partner for the Eurasian Economic Union, but also a prime source of investments and innovations. Taking into consideration the fact, that the EAEU is exploiting the raw material economic model (2/3 of all exports account for energy resources), the Union badly needs innovations for modernisation of the economies. Those innovations could be provided by the EU. Moreover, the EAEU still considers fulfillment of the ambitious idea of creating the world's largest FTA "from Lisbon to Vladivostok" as feasible in the mid-term.⁶

⁵ In May 2018 the EAEU and Iran signed the provisional treaty, envisaging creation of the FTA for three years. The talks about creating FTAs at the moment are underway with different countries. Among them Serbia, Israel, Turkey, Singapore as well as integration blocks like ASEAN.

⁶ Interviewed by the author during the Gaidar Forum in January 2017, spokesman of the Eurasian Development Bank (EDB) – research body within the EAEU Evgeny Vinokurov, estimates as of 40% the probability of creation the FTA between the EU and the EAEU by 2020.

However, due to the odds with the "steering force" of the EAEU – Russian Federation over Ukraine – the implementation of the idea of the pan-European FTA creation looks very vague. Obviously, understanding that the EAEU tries to diversify its activity by focusing on building relations with APEC counties makes China a special interest for the EAEU in this respect.

It is not only due to the intention to develop economic cooperation (not only within BRI initiative but also within the so-called "Greater Eurasia" project) but also well-established economic linkages with the Central Asian EAEU member states. Kazakhstan is exploiting the oil pipeline – Kazakhstan-China oil pipeline (Kenkiyak-Kumkol-Atasu-Alashankou and Kyrgyzstan is a major hub for the Chinese products within the region of Central Asia due to the liberal tariff policy).

However, cooperation with China, which prefers to build the bilateral instead of multilateral relations is not going to become a smooth ride for the Union.⁷ It is connected not only with geopolitical essence of the Chinese economic initiatives (and the BRI initiative is not an exclusion) as well as Chinese tough position as a negotiator. That is why the EAEU, which currently is using the model of "multi-vector policy", could opt to return to the European vector as a prime one. Although it is connected with the risk of exacerbation of inner conflict within the EAEU, considering the strong pro-China party within the structure.

Thus, the structural imbalance within the Union connected with different orientation of the EAEU member states could be reinforced.

The EAEU – EU "integration race"

The issue of orientations of the EAEU member states as well as the "conflict of interests" turns out to be the major functional imbalance of the Union not only for the time being but also for the upcoming years. It is connected not only with the controversial nature of the EAEU, which is not yet a full-fledged integration structure, but also with the environment, influencing the processes, including the processes of regionalisation within the post-Soviet space. Potentially, this poses a real threat to the EAEU, trying to win the "hearts and souls" of the former Soviet Union states and to outpace the main competitor – the European Union.

The EU, which is the closest neighbor and, historically, the major trade partner for many post-Soviet states (including the EAEU member states) traditionally considered the post-Soviet space as a priority space. It was due not only to geographical proximity, but also to the desire to have a safer environment (stands in line with the so-called EU "three pillars", e.g. the European Communities, Common Foreign and Security Policy and Cooperation in Justice and Home affairs)⁸.

⁷ Notwithstanding the EAEU and China managed to sign the non-preferential trade agreement in May 2018.

⁸ The Treaty of Maastricht (1992) created the European Union as a single body of "three pillars": (1) European Communities, (2) Common Foreign and Security Policy and (3) Cooperation in Justice and Home affairs (see: The Three Pillars WWW).

Exactly the security worries became the major trigger for the integration policy of the EU towards the former Soviet Union states. Some of them eventually became the EU member states, the others got a status of the privileged trade partners (like Armenia). Wielding the variety of the integration tools, starting from the conventional "soft power" (educational, cultural diplomacy) to the mechanisms of financial support, the EU became one of the major extra-region actors. In 2000s the EU protracted policy towards the former Soviet Union states got institutionalized on the basis of creating the special tools or the special purpose vehicles (SPV). Among the best-known ones is the started in 2009 Eastern Partnership (EaP) project – programme within the EU European Neighborhood Policy (ENP).⁹

Although, the results of the EaP functioning are activity debated (EaP managed to integrate three out of six core post-communist states), the very fact of its existence as the EU integration SPV stipulates active role of the European Union as a mighty regional player, trying to diminish the influence of the competing projects.

And the EAEU, which is positioning itself as an alternative to the EU, albeit is trying to establish relations with the European counterpart. However, the prospect for that seems rather humble, due to several reasons – political, economic, and technological. The most likely the scenario of the interrelations between the EU and the EAEU is protracted "co-existence" (Kinyakin 2016).

It is strongly connected not only with the current odds between the EU and some EAEU members state (Russia and its role in Ukrainian crisis) but it also has a more deep-seated ground – two integration structures have different and even rivalry values, which are hardly compatible to each other.

To the contrary, the vested interests of the two major integration structures anticipate the beginning of the harsh rivalry for the "hearts and souls" of the post-Soviet states, who are to be integrated into one rival structure. This rivalry or so called "integration race" had previously took place with integration of Armenia to the EAEU in 2013.¹⁰

However, the most striking instance is Ukraine, which was wooed by both – the EU and the EAEU (then Customs Union) to become integrated into the European or Eurasian structures. However, the harsh "either-or" position of the EU and the EAEU towards Ukraine, which traditionally pursues the "multi-vector policy", balancing between the mighty regional players, turned out to be harmful, contributing to the emergence of the so-called Ukrainian crisis.

This situation became the culmination of the so-called "*integration race*", which can be described as competition/rivalry of different regional integration projects (regionalisms), aimed at bringing closer or winning over regional actors – nation-states by elaborating special strategy and using the special tools.

⁹ The main aim of the EaP was to establish a closer relationship with six former Soviet republics – Armenia, Azerbaijan, Belarus, Georgia, Moldova and Ukraine – by extension of the European institutional framework (so called *acquis communautaire*) and boosting political and economic cooperation by signing Association Agreement (AA) and Deep and Comprehensive Free Trade Area (DCFTA).

¹⁰ The country was on the verge of accepting *acquis communautaire* and signing the AA with the EU, but in autumn 2013 made a twist, opting to integrate into the Eurasian structures.

The main factors of the "integration race" are:

- two or more competing integration projects (regionalisms) within one region;
- entropy of political and economic regional processes;
- diverse and vested interests of regional players – nation-states;
- active "third party" (extra-regional) factor;
- conflict of different ideological/axiological orientations.

Structurally the "integration race" has three major dimensions: 1) *institutional*, 2) *functional*, and 3) *ideological*.

1) *The institutional dimension* is connected not so much with the difference of institutional framework as the institutionalised status of integration structure, claiming to become the mighty regional actor. So it is mainly about the "image" of the integration bloc as a solid and fully-fledged integration structure, which stipulates attractiveness for the potential members and partners.

2) *The functional dimension* is strongly connected with the efficiency of the integration structure. Not only in the economic, but also in political sense ("political weight"). The integration structure should prove its viability and sustainability both for the potential members and partners. Thus, it gets a solid advantage in the integration race.

3) *The ideological / axiological dimension* anticipates two things – volume and quality of "soft power" as well as capacity and competences to disseminate this. The integration structure strives to become more attractive for the potential newcomers, which can be further initiated as members of the integration bloc by providing certain sets of values and giving some patterns.

Speaking about **the tools of the "integration race"** one can single out two majors – "fight for neophytes" (new members), "integration proselytism" (existing members). Both of these forms were used within the EU-EAEU "integration race", which got the new quality after the emergence of the Ukrainian crisis.

"Ukrainian Rubicon": the chances for the EAEU – EU "integration race 2.0."

It occasionally became a dividing line in the history of the post-Soviet regional integration and regionalisation. It highlighted not only once concealed and now revealed conflict of interest between the mighty regional players (first of all Russia and the EU), which has multidimensional (political, axiological) nature, but to some extent contributed to transition of the post-Soviet regionalisation into "crystallisation" phase.

The latter is specified by appearance of many new uncertainty factors, which heavily influenced regional integration processes.

First of all, it means **qualitative change** of the essence of the integration processes and their transformation from extensive (broader integration) to intensive (deeper integration) form.

This can be attributed primarily to the EAEU, which opted to adopt the intensive form of integration in order to increase its efficiency as integration structure considering not

only economic hardships (the slump of the Russian economy, which began in 2013 heavily affected the national economies of the other EAEU member states, which are very dependent on the Russian market) but also (geo)political problems (the odds between Russia and the West over Ukraine). Under these conditions promoting the intensive integration, aimed at advancing efficiency is the only option, which is existentially very important for the EAEU as integration structure if it wants to avoid getting to the post-Soviet path dependence "trap", becoming one more false start and dead end.

However, in order to fulfill this task, proving the HTI model of regional integration it is important that the EAEU should make a thorough analysis of activity and correct its integration strategy as well as the action models. The latter should be attributed to the position of Russia, which at the moment plays the role of "equal among equals" within the Union, what contributes to the exacerbation of the inner "conflict of interests". Maintaining its role as a major driving force of the EAEU Russia at the same time should improve political tools, pursue a rational balance in bilateral and multilateral relations as well as redeem old-fashioned and wicked approaches and principles (for instance, unilateral usurpation of pollack agenda or long-standing division for the "seniors" and the "minors"). All this will help to elaborate the new basis of values, which will be attractive not only for the existing members of the EAEU, but also for the potential newcomers.

The ideological/axiological dimension turns out to be the major one in this sense influencing the process of regionalisation within the post-Soviet space in the mid- and long-term perspective. This means mere political, economic, cultural, linguistic proximity, which is deemed as a premise for the integration activities but more with promotion of image of prosperous future, based on the certain set of values.

Currently this trend within the post-Soviet space is getting momentum not only with some FSU states opting to accept EU *acquis communautaire* and enacting the AA and the DCFTAs (in 2014 Moldova, Georgia and Ukraine signed the AA) but also Armenia and Kazakhstan, despite being the EAEU member states, signed the new Association and Cooperation agreements with the EU respectively.¹¹

This implies the attractiveness of the European values and the EU as an integration structure for the post-Soviet space. The main reason of that is not only the activities of the EU, using not only "soft", but also "smart power" tools and promoting "best practices", but also the struggle of the FSU states for development and security.

Developmental and security factors (beside axiological) define the processes of regionalisation within the post-Soviet space. Both of them are integral for the regional integration. Whereas the first one traditionally plays an enormously important role, the second got special significance after the breakout of the Ukrainian crisis.

The developmental factor implies carrying out of modernisation, which is badly needed by all the FSU counties. First of all, it is connected with the economic sphere, which plagues lack of investments, deterioration of infrastructure and economic demise in general. Lots of integration initiatives in different forms (HTI, allying with the "third par-

¹¹ In case of Kazakhstan should be also mentioned announced plan to shift from Cyrillic to Latin alphabet to 2019.

ty") within the post-Soviet space were commercially originated and suggested deeper industrial cooperation in order to provide sustainable economic growth. However, not only setbacks with implementation of the economic integration projects but, first of all, lack of inner source of investments and, what is more important, insufficiency of innovations make the FSU states more susceptible for cooperation with the extra-regional actors. Among them is not only the EU, which is the main trade partner and the source of investments and innovations for the majority of the post-Soviet states, but also China, which is at the moment becoming more active as the mighty regional actor within the post-Soviet space, promoting economic cooperation (especially in the Central Asian region) and providing the necessary tools for modernisation.¹²

In medium- and long-term perspective the developmental factor is going to get more significance due to the eventual economic demise of many post-Soviet states, which will determine the further trajectories of the regionalisation within the post-Soviet space.

However, the action of developmental factor most likely will be defined by the other factor, which is security.

Amidst the Ukrainian crisis this factor got a special meaning due to not only the "existential fears", which are intrinsic for some FSU states, but also to a new type of the post-Soviet reality, which is forcing the states to act. In this respect one of the options is reviving integration structures and boosting its activities. For instance, the GU(U)AM Organisation for Democracy and Economic Development, which from the late-2000s was rather moribund structure was granted a second chance.

In March 2017 after the almost ten-year break it staged the summit in the Ukrainian capital of Kiev, where there were many questions on the agenda. However, the special emphasis was put on security issues, considering the ongoing military conflict in the Southern Ukraine and the situation with the Crimean Peninsula, which turned out to be the outcome of "Russian Irredentism".

The mentioned above irredentism (if it exists!) turns out to be the real problem for developing relations with the post-Soviet states, which are traditionally weary of spreading Russian influence (like the Baltic states) or previously had disagreements with Russia (like Georgia) but also for the closest Russian allies.

For instance, the Crimea referendum and the accompanying events (first of all, the irredentic rhetoric by some Russian politicians) set a wave of worries among the Russia's closest allies – Kazakhstan and Belarus, which have large groups of ethnic Russians. The strengthening of these worries also intensified after the remarks made by the Russian president Vladimir Putin about the Kazakh statehood.

All the mentioned above signs is not only harmful for boosting of the integration process on the basis of the current integration structures (for instance, the EAEU) but it fosters the "separatist" sentiments and leads to "integration proselytism", which increases in turn the probability for the beginning of the new "integration race".

¹² The project of conjuncture the EAEU within the Chinese BRIF initiative on the basis of Shanghai Security Organisation can be also regarded in such a way.

The security issues and the political factors in general are likely to get more significance in the medium- and the long-term perspectives due to not only the positions and activities of the major extra-regional players (the EU, China, Turkey, Romania, and Iran) but also to the inner political processes in the post-Soviet states.

One of the most dynamic, which is about to get strength in the upcoming years, is the process of changes among the political elites in the post-Soviet states. It can be facilitated either through democratic (elections) or semi-democratic (ousting) or non-democratic procedures (neopatrimonial nomination). However, in any case, the changes in political elites, especially in the politically volatile post-Soviet space, influence heavily the processes of regionalisation. The best example is Moldova, where the president Vladimir Dodon, who was elected in March 2017, decided to distance his country from European structures and to improve the relations with Russia and the EAEU, including possible accession to the Eurasian integration structure and reverse – the start of democratic transit in Uzbekistan after the death of the very politically influential Islam Karimov in 2016 and establishing better cooperation with the West. Moreover, they proved that the EAEU-EU "integration race" has the solid potential, which can be implemented under the certain circumstances. However, this time the results of this race can be hardly predictable.

Conclusions

One of the most remarkable features of regional development within the macro-region of the "Greater Europe" during the last decades is the growing competition between two mighty regional players – the European Union (EU) and Russia. It dates back to the beginning of the 1990s, encompasses different spheres and has the specific object – the so called "contested neighborhood" within the post-Soviet space.

After timid endeavors to bring former Soviet republics (FSU) – newly established states closer, this process gained a special momentum in 2000s with the beginning of the EU programme called *Eastern Partnership (EaP)* in 2007 and the beginning of the Russia-led "Eurasian integration process", finding its embodiment in the creation of the Eurasian Economic Union (EAEU) in 2015. Those facts brought the competition between the EU and Russia to the new level, stipulating the beginning of the so-called "integration race". It had significant impact not only on the EU-Russia relations, but it also heavily affected the status-quo in the "contested neighborhood", launching the entropic processes in the post-Soviet states. The most evident example is the conflict in Ukraine, which escalation was stipulated by the "integration race". And even despite subsequent de-escalation and coming into the latent phase the competition between the EU and Russia for winning over the post-Soviet states remains, considering the serious grounds.

This fact increases the probability of renewal of the "integration race" between the EU and the Russia-led EAEU, which has lots of preconditions. Moreover, unlike the previous one, "the new edition" of the "integration race" (the "integration race 2.0") can be facilitated with the use of new formats and tools and has the evident specifics – the competition for not only non-aligned post-Soviet states, but also for the existing members of the integration blocs.

All the mentioned above factors make the consequences of the new "integration race" between the EU and the EAEU more unpredictable and graver for further political and economic development of the post-Soviet space.

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HISTORY, CULTURE AND SOCIETY IN EUROPE

Analysis of public discourse on religious minorities in Turkey after the coup attempt of 15th July 2016¹

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Abstract

The aim of this paper is to follow and analyse the public discourse on religious minorities in Turkey after the failed coup d'état of 15th July 2016. However either Turkish state's policy or social attitudes towards these groups have always been controversial and their real position has always differed from their legal status, the author decided to put a hypothesis that the coup attempt is indeed what has significantly affected the way they are being perceived by mass media in Turkey and hence, by Turkish public opinion. Thus, the purpose of this analysis is to study the chosen media content concerning religious minorities and to answer the question how the post-coup reality affects the situation of persons belonging to these groups. In order to achieve this goal several research methods specific for political science and humanities are applied and Polish, English and Turkish language sources are widely referred in the article.

Keywords: Turkey, coup d'état, religious minorities, 15th July 2016, Jews, Greeks, Armenians

Analiza dyskursu publicznego na temat mniejszości religijnych w Turcji po nieudanej próbie zamachu stanu z 15 lipca 2016 roku

Streszczenie

Celem publikacji jest prześledzenie dyskursu publicznego dotyczącego mniejszości religijnych w Turcji po nieudanej próbie zamachu stanu z 15 lipca 2016 roku. Jakkolwiek polityka tego państwa, jak również społeczne postawy wobec tych grup zawsze budziły kontrowersje, a ich rzeczywiste położenie odbiegało od formalnego statusu, autorka tekstu zdecydowała się na postawienie hipotezy, że to właśnie nieudana próba zamachu stanu wpłynęła szczególnie znacząco na postrzeganie i traktowanie tych grup przez mass media i, co za tym idzie, turecką opinię publiczną. Celem analizy jest więc prześledzenie wybranych treści medialnych i odpowiedź na pytanie o to, jak po-zamachowa rzeczywistość wpływa na sytuację osób należących do tych grup. Osiągnięciu tego celu służy zastosowanie szeregu metod badawczych specyficznych dla nauk społecznych, w tym nauki o po-

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lityce, jak również odwołania do źródeł polsko-, angielsko- i tureckojęzycznych, będące warunkiem rzetelnej analizy zjawisk, których tekst dotyczy.

Słowa kluczowe: Turcja, zamach stanu, mniejszości religijne, 15 lipca 2016, Żydzi, Grecy, Ormianie.

The aim of this article is to analyse the public discourse on religious minorities in Turkey after the failed coup d'état of 15th July 2016. In other words, the author aims to examine whether any changes in media and social attitudes towards minority groups have occurred after this date or their situation remains unaffected regardless of the events of 15th July. Falling on July 2018 the second anniversary of the coup attempt is in the author's opinion a good occasion to make an effort to summarize how the situation of persons belonging to these groups looks like and thus, to answer the question asked above. In order to reach the goal of examination, it is necessary to refer shortly to terms used in the title of this paper as some of them are not as clear as it may appear.

The first thing requiring to be clarified briefly is the term 'discourse' widely used either on the scientific or journalistic ground. According to Norman Fairclough, one of the founders of critical discourse analysis applied to sociolinguistics, "discourse is a difficult concept, largely because there are so many conflicting and overlapping definitions formulated from various theoretical and disciplinary standpoints" (Fairclough 1992: p. 3–4), what is strictly related to the fact that the term lost its original meaning deriving from linguistics and is nowadays commonly used also in social theory and humanities, not to mention every-day colloquial language. Moreover, although it is readily used, there is no generally agreed definition what was accurately articulated by Polish sociologist Jerzy Szacki: "The word *discourse* has made in contemporary humanities a stunning career and it is becoming increasingly difficult to be certain if it still means anything or not, because it is used in many different ways and quite not infrequently simply as a *quasi*-scholar term to determine any longer speech or any text" (Szacki 2005: p. 905). Despite these discrepancies many academic attempts to unify this term may be indicated, with special regard to works of N. Fairclough who rejects 'discourse' in the meaning of "extended samples of spoken dialogue, in contrast with written texts" in favor of discourse as "interaction between speaker and addressee or between writer and reader, and therefore processes of producing and interpreting speech and writing, as well as the situational context of language use" (Fairclough 1992: p. 3–4). This kind of approach is not only close to conceptions of precursors of theory of discourse as M. Foucault or J. Habermas but is also widely represented on Polish academic ground where the term 'discourse' is defined *inter alia* as "Transmitting ideas and influencing people through language, strongly conditioned by the social position of senders and receivers, their purposes and needs, knowledge, hierarchy of values, understood also as a social context of communication and the specificity of communication through mass media" (M. Lisowska-Magdziarz 2006: p. 9). In this meaning, discourse is a sequence of communication events so study on it shall focus on "relationships of causality and determination between (a) discursive practices, events and texts, and (b) wider social and cultural structures, relations [...]; investigate how such practices, events and texts arise out of and are ideologically shaped by relations of power

and struggles over power" (Fairclough 1992: p. 132). Exactly this meaning of 'discourse' is being applied in this paper. In other words, as it was stated above, the author aims at exploring the content of public discourse referring to religious minorities and thus, to follow and analyze the evolution of social attitudes towards them.

The next term which requires to be clarified is the specificity of the minority concept valid in contemporary Turkey.

The main source and basis of Turkey's minority policy is until today the Treaty of Lausanne (1923), an international agreement officially settling the conflict between The Kingdom of Greece supported by the Allied Powers and the Ottoman Empire. One of the most important goals that the Turkish delegation to Lausanne was supposed to achieve was to put through own standpoint on minority issues which already in those days seemed to be one of the most significant matters in the new proclaimed Republic of Turkey. In other words, contents of the treaty in whole and particularly its section III regarding minority rights protection were supposed to reflect an ideology that became a basis of new Turkey and was aimed at building unitary state with one Turkish nation speaking Turkish language. This brand new vision created by architects of post-Ottoman order like Mustafa Kemal Atatürk and his supporters is reflected in articles 38 and 39 of the Treaty of Lausanne. According to first of them "Non-Moslem minorities (tur. *gay-rimüslim akalliyetler*) will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defense, or for the maintenance of public order" (Library of Congress 2007: p. 959). The another one stipulates that: "Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems. All the inhabitants of Turkey, without distinction of religion, shall be equal before the law. Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments, functions and honours, or the exercise of professions and industries. No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings. Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts." (Library of Congress 2007: p. 959). Although apparently it seems to be a guarantee of minority rights it actually became a pillar of policy which is until today in contrary with standards of the universal and regional systems of minority rights protection. According to the interpretation of cited articles that was adopted by new nationalist authorities of Turkey, only non-Muslim communities may be granted a legally sanctioned status of minority and thus, are entitled to benefit from related privileges. In compliance with the literal wording of both the regulations, 'minorities' are these which are 'non-Muslim' what became a basis of an interpretation stating that only groups professing religion other than Islam are legally entitled to be granted a minority status in the meaning of the treaty. The act itself as an international agreement concluded for an indefinite period remains in force

until today and still is a main factor shaping the minority policy of the Republic of Turkey. The pillar of this policy is negation of existence of non-Turkic elements of the society and adoption of the religious factor as the one and only criterion of 'being a minority'. Hence, from a legal point of view groups like Kurds, Arabs, Circassians, Laz people, Zaza people or Azeris do not even exist. Moreover, although in the treaty itself there are no legal obstacles to grant the minority status to all groups professing religion other than Islam in practice only Greeks, Armenians and Jews enjoy privileges resulting from it. Some other religious communities like *inter alia* Roman Catholics and Assyrians belonging to one of the Eastern Christian churches remain in a specific legal vacuum. Although there are no legal obstacles to grant them a minority status it still hasn't have occurred so that their members are perceived neither as a minority nor as an equal element of Turkish society (Bardakçı et al. 2017: p. 62–63). A completely different issue are the Alevis – a spiritual group a status of which is not clear not only in context of the Treaty of Lausanne but first of all in a religious meaning. As the Alevis' denomination consists of various elements derived from either Islam or Christianity and local animistic beliefs they are being accepted neither as Muslims nor are Christians. As the Alevis are not officially recognised as minority and thus, are not a research subject of this paper they shall become a theme of separate analysis dedicated strictly to their position in a society of contemporary Turkey (Hanoğlu 2017: p. 13–14).

Thus, according to Turkish state's minority policy, whenever the term 'religious minorities' is used in the paper, the author refers to these groups which are recognised under the Turkish law as religious minorities: Jews, Greeks and Armenians.

The next term which is used in the title and needs to be shortly clarified is "coup attempt of 15th July 2016". 15th July 2016 is a date of the abortive coup which started in evening hours of 15th July when tanks led by members of rebellious faction of Turkish Armed Forces appeared on the Bosphorus Bridge in Istanbul. The intention of taking power in the state was officially proclaimed by the self-appointed Peace at Home Council (tur. *Yurtta Sulh Konseyi*) via Turkish public television channel TRT but as it proved in later hours lack of sufficient control over media establishments was indeed what significantly inflicted defeat of the coup attempt. In the meantime, in various locations of Istanbul, Ankara and few other cities some further successes of the putschists were reported but in literally few hours course of the events took a completely unexpected turn. In other words, the coup ended before it began and the scale of social support shown to the legal authorities went beyond all expectations the consequences of what are widely discussed below. The response to president Recep Tayyip Erdoğan's call to take to streets exceeded expectations of maybe even himself as within not even one hour the streets of Istanbul, Ankara and many other cities were flooded by crowd of hundreds of thousands coup-opponents rising slogans not only of support for president and the ruling Justice and Development Party (tur. *Adalet ve Kalkınma Partisi*, AKP) but in general regarding Turkey's greatness and independence, resentments against the European Union and the United States and restoring the significance of Islam in public life (Republic of Turkey is a secular and democratic rule of law since its proclamation in 1923). Despite the fact that

pro-coup tanks remained on the Bosphorus Bridge until early morning of 16th July and some attempts to take control over other strategic points and buildings were undertaken by the putschists during whole night, failure of the coup was obvious from the moment when the presidential aircraft safely landed in Atatürk Airport in Istanbul. Despite the fact that the coup attempt failed and the legal authorities remained in power Turkish society suffered a significant damage as only during two days up to 300-350 people were killed and over 2000 wounded including among others pro-coup soldiers lynched by pro-president civilians (Türkiye Büyük Millet Meclisi: p. 390). Regardless of failure of the coup and apart from being supporter or opponent of AKP and president R.T. Erdoğan there is no doubt that Turkish society has been surviving a deep trauma, especially taking into consideration the fact that it is not a first time when army takes an attempt to remove legal authorities from power.

According to official version the coup attempt was inspired by the US-resident Turkish preacher Fethullah Gülen titled by his supporters *hocaefendi* what means more less 'Honourable Teacher' and refers to person who possesses an outstanding knowledge and experience in teaching and interpreting rules of Islam and is at the same time commonly respected and recognised as an authority. F. Gülen regarded as one of the most influential Muslim scholars and thinkers is at the same time founder of Hizmet Movement (*hizmet* – Eng. *mission, service*) known also as Gülen Movement or Cemaat (eng. *The Assembly, The Community*), a transnational religious and social movement which on the one hand has been for a long time appreciated for its scale and effectiveness but simultaneously criticised because of lack of transparency and its political commitment. As the coup itself and responsibility for events of 15th July are not the subject of the analysis it is sufficient to finish these considerations in this moment and focus on a 'by-product' of process of looking for The Guilty – the groups which are under Treaty of Lausanne recognised as minorities: Jews, Greeks and Armenians.

With a purpose of achieving the research goals indicated above, several ways of scientific proceeding have been applied. Especially methods of legal-institutional analysis, content analysis and critical discourse analysis turned out significant for realisation of aims indicated by the author. (1) Legal and institutional analysis of documents constituting frames of Turkey's minority policy – a method which at the same time enables analyzing theoretical and practical dimension of implemented changes and applied mechanisms; (2) Content analysis examines "who says what through which channel to whom with what effect" (Lasswell 1948: p. 117), so in practice it includes media content analysis, what must be distinguished from (3) critical discourse analysis which also bases on textual sources analysis but is less than content analysis focused on reality as it exist, more on reality as it is produced (Hardy et al. 2004: p. 20-21). In other words, while the content analysis serves first of all the purpose of following public texts, speeches, articles, on-line statements etc. as they are, the discourse analysis aims at interpretation, reading between lines and trying to understand what the author intended to say. Thus, the content analysis method is always more objective, measurable and estimable while discourse analysis is characterised by high level of subjectivism and susceptibility to interpretation. Simultaneously,

also elements of other research methods specific for political science and humanities have been applied (historical analysis, decisional analysis etc.).

15th July coup d'état and minorities

As stated in the introduction, the author intends to focus on public discourse on non-Islamic groups recognised as minorities under the Treaty of Lausanne. The main reason for undertaking this topic is intention to study the paradox which consists in the fact that on the one hand the abovementioned groups are the only ones which are protected in any way under the Turkish law and on the other hand seem to be an 'accidental victim' of post-coup looking for The Guilty.

Literally, Treaty of Lausanne provides the minority groups – in the meaning sanctioned by the document itself – a wide range of rights and privileges with a purpose of protection of their religious identity in Muslim society. However actual living conditions of persons belonging to religious minorities have always been far from legal status of these groups what shall become a research topic for a separate article, the author decided to focus on their situation after the 15th July coup d'état as exactly this date seems to be a turning point in contemporary history of Turkey and its society. As social position of these groups prior to the coup attempt is not a research subject of this paper it is enough to emphasize that Turkey's minority policy based on the Treaty of Lausanne has been full of discrepancies and paradoxes since the moment of proclamation of the republic in 1923. In other words, despite the fact that in the light of document the minority rights are widely protected, in practice this protection has been always far from the letter of the act what results from *one nation policy* implemented by new nationalist authorities of the Republic of Turkey. Hence, dissonance between formal and real status of these communities is not a new phenomenon so the author doesn't intend to prove something what is commonly known. The question that the author would like to answer is whether the special status and legal protection granted to these groups under the Treaty of Lausanne saves them in any way from post-coup process of looking for The Guilty or in the contrary, makes them particularly exposed to social dislike and media hate campaign.

The trauma of 15th July and both real and stimulated by government fears and suspicions became a great ground for wide-ranging process of looking for The Guilty what in short time began to remind a 'witch-hunt' in which the further 'witches' have been consecutively found in various social and occupational groups like among others journalists, academicians, ethnic and language societies (with Kurds at the forefront), supporters of parties other than the ruling one, foreign enemy powers (with USA, EU and Israel at the forefront) and many others. In other words, although the main driving force behind the coup was according to the official version the Gülen Movement, there were no obstacles to look for The Guilty among circles strongly denying to have any connection with controversial preacher. One of such groups, appearing more and more often in public speeches of president Erdoğan and other prominent politicians are exactly the religious minorities. In order to analyze the evolution of discourse on these groups in the post-15th July reality

it is necessary to refer widely to words articulated by prominent Turkish politicians immediately after the coup and during the incoming months.

As repeatedly stated above, it is almost impossible to indict a group not affected by the 15th July coup d'état, especially after entering a state of emergency on 20th July 2016 that had been extended for seven times and was finally lifted on 19th June 2018. However religious minority groups were not the first who was declared a public enemy number one, it didn't take a long time when they began to be blamed for engagement in the coup as well. The first alarm signal indicating that religious minorities will not be passed over within the process of looking for The Guilty were the words of president R.T. Erdoğan, prime minister Binali Yıldırım and the leader of coalition Nationalist Movement Party (tur. *Milliyetçi Hareket Partisi*, MHP) Devlet Bahçeli, one after another giving a speech condemning the coup and enemy forces standing behind him. Although none of the minority groups was indicated by its name it is obvious that statements like "flock of heretics" by R.T. Erdoğan (tur. *kafir sürüsü*), "army of crusaders" (Tur. *haçlı ordusu*) by B. Yıldırım or "Byzantine germ" (tur. *Bizans tohumu*) by D. Bahçeli were a broad hint that The Guilty hides beyond Sunni majority dominant in Turkey. What is especially interesting, the heads of Jew, Greek and Armenian communities were present at the "Democracy and Martyrs Rally", where the words were said, at the invitation of president Erdoğan himself. In other words, the fact of invitation of the religious leaders may suggest that the groups they are representatives of are recognised as integral parts of Turkish society not only on a legal basis but on the actual ground as well and thus, were invited to joint celebration of fail of the coup and will take part in creation of post-15th July reality. In fact, words addressed formally to unspecified "heretics", "crusaders" and "Byzantine germs" were widely interpreted as a harbinger of upcoming 'witch-hunt' that in short time became an axis of public life in Turkey and lasts until today.

Words cited above were only a prelude to a multi-dimensional process of assigning the responsibility for the coup to various groups with a special regards to foreign forces and their alleged Turkey-inside supporters considered as a 5th column interested in overthrowing the AKP government. In other words, it was only few days after 15th July when first accusations towards governments of West countries began to be addressed. Yet at the beginning of September 2016 during the assembly of National Security Council president Erdoğan said that all those who did not condemn the coup attempt in a clear, unambiguous way are at least as guilty as its direct perpetrators: "There are some powers and persons who claim that the coup d'état of 15th July was allegedly a game or a theatre prepared by ourselves. Whoever can talk about the coup like that and does not clearly condemn it at the same time, is an integral part of 15th July tragedy and its wilful supporter. All those who remain in this mistaken belief will not save from account before our martyrs and the whole Nation!" (BBC Türkçe 2016). After the words about 'heretics' and 'crusaders' it was one of the most meaningful statements of Turkish leader who thereby gave an unlimited permission to blame not only the Gülen Movement but 'foreign powers' in wide meaning, including first of all the European Union and its inside-Turkey representatives who religious minorities became to be perceived, irrespective of having any tights with

the coup or not. In short time this state of affairs turned out to be an impulse for starting a public discourse on minorities' role in the coup, including not only mass media but also academic or, rather more pseudo-academic, and journalistic events focusing on proving correctness of the thesis put forward by Mr. Erdoğan.

One of the most significant examples of this phenomenon was a conference organised under the patronage of among others Anadolu Agency, the biggest and pro-governmental media agency in Turkey, the Center for Middle Eastern Strategic Studies (ORSAM), Prime Minister's Directorate General of Press and Information and Prime Minister's Department of Coordination of Public Diplomacy and others. The meeting took place on 21st July 2016 so almost right after the coup attempt and its main goal was to analyze the Western discourse on these events, with a special regard to mass media and their actual or alleged involvement into their development. According to the statements of members of the conference, either European political leaders or the most influential media adopted a wait-and-see policy and have been consequently avoided condemning the coup attempt despite the fact that it was obviously against the principles of democracy. In other words, the common denominator of European politicians and commentators were to refrain from unambiguous opinions or assessments on the events of 15th July as long as the situation is not clear enough to be sure whether president R.T. Erdoğan and the AKP government will be overthrown or not (Yüzbaşıoğlu et al. 2016). Moreover, according to words of İlnur Çevik, the spokesman of president R.T. Erdoğan, also many examples of support for the putschists may be found among Western media representatives like for instance American Fox TV experts openly interested in a success of the coup (Anadolu Agency 2016). The author of this paper took an effort to verify such claims and the result is that while there are no unequivocal manifests of support for the putsch, some controversial statements and opinions may be indicated. Just to illustrate some attitudes taken towards the coup it is enough to quote the words of Dr Sebastian Gorka, political scientist and deputy assistant to president Donald Trump, who justifies the events of 15th July as a remedy for authoritarian trends increasing under the rule of AKP and president Erdoğan, and his silent consent for ISIS activities in northern Syria (Gorka 2016). However interpreting these words as an obvious support for the putschists is a far-reaching simplification, it must be admitted that there is same logic in the way these words are understood by a vast majority of Turkish public opinion. In other words, society suffering an emotional trauma was and still is particularly susceptible to all suggestions, views and opinions putting the coup attempt in a positive light. Although Turkey is deeply divided with regard to political views and the number of opponents of current authorities is almost identical to number of their supporters, antipathy towards ruling powers shall be never equated with support for the coup. Despite the fact that president Erdoğan arouses bad feelings in a significant part of the society, vast majority of it would never accept a military and violent change of government or president, what was observed during 15/16 July night when hundreds of thousands of people took to the streets not to defend R.T. Erdoğan but to protect democracy and own future. Considering that fact, it is understandable that most of Turkish people do not share or even take into

consideration any idea in favour of the perpetrators of this trauma and remain distrustful about all attempts to justify it. In this atmosphere, all the symptoms of binding hope for a better future with the coup attempt is being perceived by a dominant part of society an act strictly aimed at Turkey's vital interests. Thus, opinions similar to these published by Fox TV, presented also in some European mass media, are used by Turkish authorities as a perfect propaganda tool shaping in common people conviction that the trauma of 15th July was inspired from abroad. This is a short and simple way to allocate the reasons of own fears and doubts beyond Turkey – in United States, European Union, Israel, Armenia and even Vatican, as sources of never ending Christian and Jewish imperialism. An obvious consequence of such a state of affairs is blaming for the coup attempt not only the external enemies but the closer ones: Turkey-resident religious minority groups perceived as an extension of foreign powers interested in overthrowing president Erdoğan and the AKP government. This is exactly how Greeks, Armenians and Jews became, next to Fethullah Gülen movement and unnamed 'external powers', one of those who are suspected of being involved in the coup attempt.

Turkish media and looking for The Guilty

The post-coup political and social moods and fears stimulated intentionally by the authorities found in a short time a reflection in mass media majority of which began some kind of competition in seeking The Guilty. Although a comprehensive analysis of condition of Turkish mass media is not possible due to the limited volume of this paper, it must be mentioned that the date 15th July became a turning point also on media market subjected from this moment to a deep revolution leading to a dichotomy in which media institutions were *de facto* obliged to define themselves either as pro-government or anti-government. National and local newspapers, TV and radio channels as well as web portals found themselves under a pressure to choose being among pro-government establishments or not. In other words, all those who did not declare own support for legal authorities have been automatically considered as tools in hands of enemies and 5th column of Hizmet Movement (*vide*: case of *Today's Zaman*). The most distinct harbinger of forthcoming polarization of media establishments were the words of president Erdoğan himself who claimed that "(...) all those who do not condemn the coup attempt in a certain way are at least as guilty as its main perpetrators (BBC Türkçe 2016). Hence, remaining neutral proved to be impossible and these of media institutions which took effort to stay objective became in a short time object of purges and even closure procedures – everything under the pretext of being related to organizers of the coup. As a result, hundreds of media outlets were shut down in the course of the 2016 purges and those which managed to remain unaffected are at the same time those which more or less openly declared own support for legal authorities. However, as staying not engaged turned out not to be enough to prove being not related to the coup perpetrators, the establishments which decided to survive post-coup repressions began a wide-ranging process of looking for The Guilty.

That is exactly how the coup attempt gave a strong impulse to outflow of hate speech towards all those whose involvement in the events of 15th July was at least suggested by the authorities. In other words, all the groups, powers or even individuals who were directly or indirectly indicated as allegedly guilty for the coup attempt became an object of unambiguous insinuations by almost all significant media jointly and openly supporting the ruling forces. As stated above, one of those whose involvement into coup attempt was quickly and undoubtedly ascertained by pro-government newspapers, TV channels and Web portals were exactly religious minority groups. One of the earliest voices throwing into question the minorities leaders' attitude towards the coup attempt was an article by Mahmut Övür entitled "Why do the leaders of minorities stay silent?" (tur. *Azınlıkların ruhani liderleri neden sessiz?*) published in "Sabah", one of the main daily newspapers, on 25th July 2016. As it appears from the title, objection raised by the author concerns controversial behaviour of spiritual leaders who refrain from immediate condemnation of the coup attempt what results, according to the article, from wait-and-see policy aimed at choosing the better option in case of success of the coup. Moreover, indicated by name leaders of Jews, Greeks and Armenians are openly blamed for no reaction on coming from European countries accusations that events of 15th July were actually faked and controlled by political background of president Erdoğan. However beyond Turkey's borders various theories on genesis of the coup are still being discussed, in Turkey the 'FETÖ option' (tur. *Fethullahçı Terör Örgütü*, Eng. *Terrorist Organization of Fethullah's Supporters*) is one and only taken into consideration and exactly in this context the author severely criticizes all the three leaders who should in his opinion have unambiguously distanced themselves from any speculations. According to his opinion, official representatives of religious minorities which are an integral part of Turkish society are more than obliged to take an attitude towards events of 15th July and stand on the side of own government. At the same time, the author responds own questions about reasons for postponing the univocal condemnation of the coup attempt and claims that this controversial behaviour results directly from minorities' connections with Gülen Movement. Övür refers to project entitled 'Dialogue between religions' which was initiated symbolically in 1997 when the leader of Hizmet met with pope John Paul II what in his opinion clearly indicates that religious minority groups living in Turkey are with a high probability internal tools used by US-resident Gülen with a purpose of overthrowing the government in Ankara (Övür 25.07.2017: p. 18). However the author leaves these suggestions without continuation and does not unambiguously dispel doubts resulting from such claims, those who the suspicions have been raised against are obvious and clear.

This kind of speculations opened a door for an outflow of hate speech within which the main and most conspicuous theme pursued widely and eagerly is the role of Jews – traditional main characters of conspiracy theories present in Turkish political life from time immemorial. Although the "Jewish finger" theory has been never literally articulated by the Turkish authorities, pro-government media became an Ankara's voice in process of explanation of the genesis of the failed coup. In other words, as the political interests refrain president Erdoğan from expressing this kind of opinions openly, this role is being

played by TV channels, newspapers and web sites competing in devising the most conspiratorial theory ever. One of the best examples of this phenomenon are considerations by Fuat Uğur, journalist of "Türkiye", one of the most popular nation-wide daily newspapers. Since the date of 15th July 2016 he has spent long hours on attempts to prove that there is a secret connection between the events of that time and US Central Intelligence Agency (CIA) allegedly interested in overthrowing current authorities with the purpose of establishment of new ruling forces close to Fethullah Gülen. Moreover, citing anonymous sources he claims that in the night of the coup attempt at least one high ranked CIA agent came to Turkey in order to control the course of events from inside and moreover, he made his journey directly from nowhere else than from Israel (Uğur 23.07.2016: p. 8). In a series of articles he presents a thinking process which led him to surprising conclusion that The Guilty lively interested in determining the legal forces in Ankara is the Jewish lobby in United States whose local governor is no one else that leader of Hizmet Movement. Thus, what is more than natural, the suspicion falls on Turkey's Jewish minority – a group of about 20000 – 25000 thousand (Oran 2004: p. 51) people led by rabbi Isak Haleva perceived by those who share similar views as a 5th column of Jewish imperialism striving strongly to take control over the Turkish state.

Jews are not the only ones whose role in the coup attempt is widely discussed among pro-government journalists entirely devoted to find The Guilty. Another group suspected for active support for the putschists are Armenians, next to the Jews 'usual suspect' in conspiracy theories accompanying all the significant political occurrences in Turkey. As difficult bilateral Turkey-Armenia relations are a completely different problem, here it only shall be indicated that as a result of not easy joint history both sides are still being perceived by each other as enemy and real threat for own security. In other words, as the Armenians have always been considered by the Turkish side as traitors, plotters and creators of the biggest falsity in history called 'Armenian genocide', counting them as potential perpetrators of the coup attempt seems quite naturally. Similarly to Jews, also Armenians became an object of more or less logical journalistic analysis' which in fact is a voice of many Turkish politicians who want to avoid public expression of own views. However many examples of this phenomenon may be given, in the author's opinion particularly interesting are these conceptions which find the roots of alleged Armenian involvement in the coup attempt in events from over 100 years ago. According to Hasret Yıldırım from daily newspaper "Yenisöz", understanding the genesis of 15th July requires looking back in the past until the end of 19th century when the Janissaries corps were being formed by Kazım Karabekir, one of the most influential politicians of late Ottoman Empire. With a purpose of reinforcing the formation, hundreds of thousands of Armenian children inhabiting the eastern borders of the Empire were forcibly recruited and then brought up as Ottoman, Turkish and Muslim citizens. All the problems, including further military coups, faced by Turkish army during 20th century result in Yıldırım's conviction exactly from the fact that a significant part of Turkish Armed Forces (tur. *Türk Silah Kuvvetleri*) is still dominated by descendants of Armenian Janissaries. Moreover, as they grown up, started own families and their children also had own descendants, nowadays,

according to Yıldırım, there is about 100 000 'crypto Armenians' (tur. *kripto Ermeniler*) living in contemporary Turkey (Yıldırım 7.10.2016: p. 16) and looking for an opportunity for a revenge for murdering their ancestors by Ottoman army. The author clearly suggests that previous military coups as well as the coup attempt of 2016 were inspired by Turkish Armenians in cooperation not only with Armenian state but also with Gülen Movement. First victim of this kind of thinking became of course the Armenian minority perceived, similarly to Jews, as the 5th column of Armenia – not only Turkey's historical enemy but also a state which in mass perception is responsible for creation of false and unjust image of Turkey as a perpetrator of Armenian genocide of 1915–1916.

However vast majority of this kind of views and opinions is articulated not by politicians themselves but by pro-government mass media, several examples of blaming minority groups directly by decision makers may be indicated. Deputy of ruling AKP, Mehmet Erdoğan (unrelated to president Erdoğan, convergence of names) during one of his public speeches said that if the coup had been successful establishment of Kurdish-Armenian state in the eastern borders of Turkey would be more than certain (Koçyiğit 2017). While the fear of birth of Kurdish statehood is not so unjustified as the Kurdistan Workers' Party (Kurd. *Partiya Karkerên Kurdistanê*, PKK) has been operating in the East for over 40 years, the same panic about Armenian territorial expansion seems to be exaggerated. In other words, however Turkey-Armenia bilateral relations are indeed complicated and have never been good, it would be difficult to legitimize theories that concerns existence of alleged Armenian lobby interested in territorial division of Turkey and absorbing its lands. As answering the question whether this kind of public statements reflects real fears of ruling forces or are more a propaganda tool aimed at making the voters worry about stability of own state and support current authorities is not possible, it must be said that regardless of which of the answers is correct, both versions have the same effect: increasing reluctance towards Armenian minority in Turkey. Particular symptoms of this phenomenon, analogously as in the case of Jews, will be indicated in further part of the text.

Third group granted a minority status under the Treaty of Lausanne – the Greeks – also became an object of media witch-hunt, especially after the helicopter with generals suspected for preparing the coup attempt crossed the Turkey–Greece border on 16th July. Although Greece is another of historical enemies of Turkey, the orthodox minority does not inflame Turkish imagination as much as Jews and Armenians, what is probably a result of its very low number and the fact that Greece less often than Armenia and Israel becomes a main character of conspicuous theories beloved in Turkey. Thus, there is high possibility that Greek minority would have never become a suspect in process of seeking The Guilty if the helicopter issue hadn't have occurred. In other words, once the news about eight Turkish officers who passed illegally Turkey's border and landed in Greece's territory spread, a wave of suspicions and accusations appeared in media and political commentaries. It reached its climax when Supreme Court of this state refused to extradite them to Turkey and the proper authorities decided that their asylum requests will be considered in accordance with

international humanitarian law. As a response, all pro-government Turkish media immediately announced a verdict that Greece openly supports the coup and uses the Greek minority living in Turkey as a tool of strengthening own influences (Bila 1.02.2017: p. 10). Despite the fact that spiritual leader of orthodox minority, Ecumenic Patriarch Bartholomeus as well as other leaders was present during the Democracy and Martyrs Rally in Istanbul and condemned the events of 15th July, the Greeks living in Turkey became another 5th column acting in cooperation with foreign forces interested in overthrowing legal authorities in Ankara.

Seeking The Guilty and its consequences for members of minority groups

The media witch-hunt and its silent support by the AKP government quickly resulted in concrete events aimed directly at members of religious minorities as well as buildings, places of worship and their other possessions. One of the first consequences of discourse created by mass media was attack on two Christian churches in Malatya conducted on 16th July 2016 by the participants of pro-government demonstration. Orthodox place of worship was thrown with stones, all the window panes were broken and at the same time, over a ten-member group tried to get inside the building of neighbouring Catholic church. Despite the fact that there were no serious victims, both the attacks were only a harbinger of repressions that were yet to come. Lack of condemnation by officials became an additional contribution to the increase of social antipathy towards these people what is perceptible until today. Malatya events were not the only one against minorities' worship places as almost 2 years after the coup attempt, on 30th April 2018, similar attack took place in Kadıköy, part of Istanbul. Surp Takavor Armenian church was covered with insulting and discriminating inscriptions among which "It is only our motherland! Thanks God!" (utr. *Bu vatan bizim! Allaha şükür!*) is the most delicate one. With the purpose of emphasising the message, in front of the church several dozens of rubbish were tipped (Cumhuriyet 30.04.2018). However this time the incident was criticised by the Kadıköy municipality on its Twitter profile, it was at the same time reduced to hooligan prank, not a racist attack on a religious basis. During last two years there were dozens of similar attacks in whole country but none of them has been officially commented by high level authorities. Moreover, the mainstream media also take conformist attitude and thus, either do not discuss such occurrences at all or present them as unfortunate excess of insubordinate youth but never as a symptom of increasing discrimination of minority groups.

While the abovementioned attacks were prepared by anonymous individuals formally not related to the ruling forces, there are also examples of repressions towards persons belonging to minorities used directly by state services as a part of seeking The Guilty. One of the most ridiculous post-coup acts taken against its alleged perpetrators was closing of the in-vitro clinic owned by doctor Aret Kamar, Turkish citizen with Armenian roots. According to his statement for newspaper "Agos", the hospital

was closed without any investigation or other proceedings, only on a basis of unspecified information obtained by the intelligence services (Kuyumciyan 26.07.2016: p.4). In order to specify what 'closure' means it needs to be said that not only documents and financial resources were seized, but also test tubes with embryos fell into hands of agents looking for a proof of relations between the clinic and its owner and Fethullah Gülen and related entities. Despite the fact that Mr Kamar repeatedly emphasised being an Armenian and Christian what is by definition in contrary to membership to Sunni Hizmet community, none of his arguments was taken into consideration. Thus, medical documentation of over 40 000 of patients got under control of state clergies and, what is particularly interesting, fate of embryos remained unknown for a long time as all of them were due to safety reasons transferred to one of public hospitals. It resulted in panic among patients subject to in-vitro therapy as after the test tubes left primary storage place no one could be sure whether they were replaced correctly or not. One of the most striking examples of consequences of these events was the case of Ayşe Öztürk who was forced to transfer own embryos in a special flask, as she decided not to use the services of doctor who she was assigned to in the public hospital the test tubes were transferred to (CNN Türk 2016).

Not only Christians but also Jews became a victim of post-coup repressions supported by media accusations and reluctance of Turkish majority. What is specific for antisemitism all over the world, not only in Turkey, members of Jewish community are often perceived through the prism of own economic situation what occurs also in context of 15th July. According to information of anonymous, close-to-prosecutor's office sources thousands of weird operations were made on Turkey's stock exchange just before the coup attempt and over 50 businessmen with Jewish roots sold own securities and withdrawn from the stock market at all (Özgan 2018). However these kind of news may be not confirmed and any reliable source is not given, it inflames imagination more than any rational attempts to clarify the situation. Thus, a ground for anti-Jewish conspiracy theories was given, regardless of lack of evidence or any other reason for considering them a bit likely. Although Jewish Community of Turkey explicitly distanced oneself from the coup attempt and publicly condemned its perpetrators whoever they are, its members are still being perceived as 5th column of Israel deeply interested in overthrowing the ruling forces. Moreover, as the content of accusations aimed at Turkish Jews applies first of all to their financial relations with Fethullah Gülen the main repressions towards them harms their business enterprises. Countless tax controls, seizing of documentation, lasting many hours interrogations are only examples of Turkish state's acting towards this minority. As a result, about 600 Turkish Jews decide to leave their motherland after 15th July and settle down in Israel despite having no job or place to live or even knowledge of Hebrew (Ekin 25.02.2018: p. 4). However number of 600 people may seem low it shall not be forgotten that according to various sources total population of Turkish Jews is about 20000–25000 what means that 2,5%–3,5% of Jewish minority was forced to leave their country as a result of the coup attempt.

Conclusions

However difficulties and obstructions as well as manifestations of physical aggression mentioned above are only few examples of media and social pressure on religious minorities and much more may be given, information referred in the paper are in the author's opinion enough to answer the question put forward in the introduction. The aim of this paper was to examine whether any changes in the way the minority groups are being perceived has occurred after 15th July 2016 or their situation remains unaffected regardless of these events. It is certain with any doubt that these groups not only became a victim of media 'witch-hunt' but are also considered by a significant part of Turkish society as a 5th column of main perpetrators of the coup attempt. Moreover, according to some accusations mentioned above, Armenians and Jews did not stop at silent support for putschists but actively engaged themselves into preparations of the coup. At the same time, it must be admitted that none of the minority communities enjoyed social sympathy before 15th July but attitudes towards them have been deteriorating day by day, stimulated by mass media and silent permission by main politicians. In other words, however followers of religions other than Islam have always aroused distrust in Turkish people, the coup attempt made them particularly susceptible to power of conspiracy theories and seeking The Guilty among strangers. A deep need of rationalization induced common people to looking for a real and material object for blaming for the trauma of 15th July what has been skilfully used by pro-government media and politicians themselves, particularly interested in consolidation of social moods what in turn entails consolidation of political support. Religious minorities proved to be ideal for this function: small number of members, lack of political representation able to defend their good name, already weak position in Turkish society and first of all religion different than Islam – all these circumstances made Greeks, Jews and Armenians a perfect candidate for being a 5th column of Fethullah Gülen and his worldwide network of influences.

It is significant not to confuse the purpose of this paper with the decision whether any of the minority groups as themselves or their particular members do have any relation to events of 15th July. While the goal of this text has been achieved and the analysis leaves no doubt that on the ground of public discourse the religious minorities groups became one of the Guilties, the latter issue one remains unclarified, just like real reasons and circumstances of the coup attempt of 15th July.

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Hate speech and identity politics. An intercultural communication perspective

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Abstract

Hate speech has become a key element of contemporary political discourse. It has also changed the very structure of communication. With the access to public sphere provided by social media, hate speech engages people in connective action, which allows it to construct and deconstruct collective identity. By doing this, hate speech undermines the idea of multicultural society. In order to succeed, such a society needs to engage its members in inclusive intercultural dialogue while hate speech strongly excludes all dissident voices, deepening political polarisation. This article presents an extensive analysis of hate speech from the perspective of intercultural communication. Drawing from available research and literature, the author puts forward the thesis that hate speech is a communicative phenomenon that not only disrupts intercultural dialogue, but also leads to the disintegration of multicultural society.

Keywords: hate speech, media, intercultural communication, identity politics, intercultural dialogue, political polarisation

Mowa nienawiści i polityka tożsamości. Perspektywa komunikowania międzykulturowego

Streszczenie

Mowa nienawiści na stałe wpisała się we współczesny dyskurs polityczny. Co więcej, doprowadziła do zmiany samej struktury komunikowania. Dzięki mediom społecznościowym, mowa nienawiści przedostała się do sfery publicznej, gdzie łączy użytkowników za pośrednictwem różnego rodzaju akcji społecznościowych, co z kolei pozwala jej na konstruowanie i dekonstruowanie tożsamości. W konsekwencji, mowa nienawiści podważa same fundamenty społeczeństwa wielokulturowego. Tymczasem, powodzenie takiego społeczeństwa zależy od jego zdolności do zaangażowania poszczególnych jednostek do dialogu międzykulturowego. Z kolei mowa nienawiści wyrzuca poza nawias społeczeństwa wszystkie głosy sprzeciwu, pogłębiając tym samym polityczną polaryzację. Artykuł przedstawia zatem innowacyjną i szeroką analizę mowy nienawiści z perspektywy komunikowania międzykulturowego. Posiłkując się dostępnymi badaniami i literaturą przedmiotu, Autor stawia tezę, iż mowa nienawiści, jako komunikacyjny fenomen, nie tylko zakłóca dialog międzykulturowy, ale także prowadzi do dezintegracji społeczeństwa wielokulturowego.

Słowa kluczowe: mowa nienawiści, media, komunikowanie międzykulturowe, polityka tożsamości, dialog międzykulturowy, polaryzacja polityczna

According to a number of analyses, hate speech has become one of the key elements of contemporary political discourse (Drożdż 2016: p. 28). It has proliferated from strong political polarisation that can be observed in almost every democratic country in Europe and elsewhere. What once existed only as the margin of public debate, e.g. dehumanisation of political enemies and defamatory language, has now reached and affected the mainstream thought. Unsurprisingly, hate speech has become an important aspect of political science research, symbolised by the founding of the International Network for Hate Studies in 2013, followed by the establishment of the "Journal of Hate Studies". It must be remembered, however, that hate speech has not only brutalised political discourse. It has affected the very structure of communication as well. Together with the rapid ascent of social media and their growing role in day-to-day communication, hate speech has become a plausible tool in the hands of populists. Politicians and activists alike have realised the great potential of hate speech to construct and deconstruct collective identities, often by excluding others, – however, they would be defined. From the perspective of intercultural communication it means a serious threat not only for intercultural dialogue but for the very idea of the multicultural society.

Thus, the aim of this article is to analyse hate speech and its role in identity politics from the perspective of intercultural communication. Defining intercultural communication as a communication between members of various ethnic, cultural, sexual, and political groups that together form one society, I put forward the thesis that hate speech should be regarded as one of the main obstacles to intercultural dialogue and, consequently, multicultural society. What is more, since intercultural communication takes place via mass media, thus, the multifaceted developments in media systems have enhanced the potential of hate speech while downgrading the ability of intercultural dialogue to engage people. Although, in this study I concentrate on Poland, I also include numerous examples from the other countries, mainly the United States. As the following analysis is largely theoretical in scope, I draw my conclusions from the already published research and literature, applying to this material analytical methods.

Intercultural communication and Hate speech

Intercultural communication is traditionally defined as communication between members of different national and ethnic groups (Ratajczak 2012: p. 16). Still some scholars distinguish between intercultural communication and cross-cultural communication, which involves various groups that comprise one society – or one national culture. However, here I would like to follow those researchers who define intercultural communication broadly, including in its definition not only ethnic groups, but also cultural, sexual, and even political groups that together form one public sphere – or a space where various ideas meet and compete with one another. There is no doubt that such intercul-

tural communication would be severely limited – if not impossible – without the mass media. Naturally, it is easy to imagine a two-person intercultural conversation without the involvement of the media. Still, most of the information that both strangers would have about each other – especially if they represent different ethnicities – would come from the media. It must be noted that media may facilitate understanding among members of various groups, but they may also strengthen stereotypes, reinforcing mutual distrust or even hatred (Keshishian 2004: p. 230). While with the mass media's positive input, intercultural communication takes the form of dialogue, with their negative influence, intercultural communication becomes defined by conflict. Consequently, when separate groups focus on one another's differences instead of similarities, multicultural society is at risk of disintegration. As multiculturalism characterizes most European countries, hate speech should be considered as one of the main threats to the stability of Western societies.

From this perspective hate speech is the most radical form of intercultural conflict. When hate speech becomes part of identity politics, separate groups start defining each other through the opposition to others. According to the Council of Europe, hate speech "covers all forms of expressions that spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance" (Zubčević et al. 2018: p.10). As such, hate speech constitutes a threat to peaceful coexistence within one society. In other words, when hate speech dominates public debate (public sphere), multicultural society is not as much undermined, as it is put into question *en masse*. It must be remembered that although conflict is nothing unusual in intercultural communication – even more, to some extent it is necessary and often precedes dialogue – hate speech takes conflict to the extreme, refusing political opponents the right to participate in public sphere. By consequence, "traditional" public sphere, where intercultural communication could develop, fades and is substituted by numerous "emotional" public spheres, that is "the emotional substrate of democratic politics, the domain of public emotion in which the activities of the political public sphere are always and inevitably embedded" (Richards 2018: p. 2041). Hate speech proliferates in contemporary political discourse and identity politics due to a number of factors, most notably the widespread access to the internet and the growing position of social media in every modern media system. At the same time, the very same factors seem to impede intercultural communication. On the other hand, it must be remembered that both hate speech and intercultural communication depend also on other factors, including those of non-media origin.

Non-media factors

Before I move to the analysis of how media influence intercultural communication, I would like to focus on non-media factors. Among them, a given country's ethnic structure takes priority. Available studies show significant correlation between society's ethnic homogeneity and the ability of its members to engage in intercultural communication (Neuliep, McCroskey 1997: p. 389). It is true that such a situation, where one group remains

dominant over others, facilitates the formation of a group identity. However, at the same time it impedes not only the external dialogue, but also communication within the group. The French sociologist Alain Touraine observes in his book *Can we live together? Equality and difference*, that "intercultural communication is possible only if the subject has already succeeded in escaping from its community. The other can be recognised as such only if it is understood, accepted and loved as a subject, or as an attempt to reconcile, within the unity of a life and a life project, an instrumental action and a cultural identity that must always be released from historically determined forms of social organization." (Touraine 2000: p. 169). In other words, the more homogenous a society is, the less it is likely to succeed in intercultural communication.

Poland is ranked as one of the most monoethnic countries in Europe (Adamczyk, Kaźmierczak 2015: p. 9–26). Although, the *Bill on national and ethnic minorities and regional language*, passed in 2005, officially distinguishes nine national and four ethnic minorities, their overall numbers in the country remain relatively low (Ustawa 2005/141). According to the *Polish Census of 2011*, almost 95 percent of the country's entire population of 38,5 million identified their ethnicity as exclusively Polish. (*Narodowy Spis Powszechny 2011*: p. 29). What is more, out of 2,26 percent who declared double ethnic identification, 2,05 picked Polish identity as their first, whereas only 0,22 percent as the second. In total, only 1,55 percent of the population (some 596,300) declared exclusively non-Polish ethnic identification. Also the recent labor immigration to Poland, especially from Ukraine and other post-Soviet republics, has not reached such a level that could significantly change the ethnic structure of the country.

Together with ethnic homogeneity the lack of religious diversity comes. The *Polish Census of 2011* indicates that some 87,6 percent of the population declares themselves Roman Catholics, which makes 98,56 percent of all who answered the question about their religious denomination (*Narodowy Spis Powszechny 2011*: p. 93). Other Christian and non-Christian churches remain marginal. According to the census, the second-largest is the Orthodox Church with some 156,300 faithful – 0,41 percent of the entire Polish population. With 137,300 members (0,36 percent), the Jehovah's Witnesses secure the third position. The visible predominance of Roman Catholics, as well as the unique role of the Catholic Church in Poland's distant and recent past, has merged religious identity with ethnic identity. Although, according to one opinion poll from 2012, only nine percent believe that being Catholic was a necessary feature to consider oneself a Pole, the role of the Catholic Church in both politics and social relations in Poland cannot be underestimated (*Nie trzeba...* 2012). Moreover, as the Pew Research Center has found out, there is a considerable difference between Catholics in Western Europe and Central and Eastern Europe. As the former appear to be more tolerant and more accepting of other religions (e.g. Islam) than members of other Christian churches, the latter remain conservative and largely distrustful of others (Starr 2018). Polish Catholics are also less open to such topics as homosexuality or abortion. Such a conservative form of Catholicism may additionally impede the ability to engage in intercultural communication. In one of her books, Jane Jackson writes that although "membership in a religious group can offer believers

a sense of community and provide inner fulfilment", strong religious identity "can serve as a barrier to intercultural communication" (Jackson 2014: p. 149).

The above features have direct impact on Poland's identity politics (Zarycki et al. 2017). Much as it is the case in other modern countries, also here strong political polarization can be observed. What is interesting here, however, is the fact that political polarization takes place in a largely monoethnic and monoreligious society, which foretells an important change. Scholars indicate that until recently political polarization most often was taking place in ethnically and religiously divided societies (Westlake 2016). Indeed, it is still the case; yet recent trends indicate that it is political sympathies that – even more than ethnic divisions – are becoming the major factor of polarization in western societies. In its analysis of American politics, the Pew Research Center concludes that "the overall share of Americans who express consistently conservative or consistently liberal opinions has doubled over the past two decades from 10% to 21%. And ideological thinking is now much more closely aligned with partisanship than in the past. As a result, ideological overlap between the two parties has diminished" (*Political Polarization* 2014).

Despite all the differences between the U.S. and Poland, many political trends in the first mentioned country can also be observed in the second mentioned one. Party identification seems to have become one of the main characteristics through which the Poles judge and evaluate one another. Although Poland does not have the two party system like in the U.S., there is a strong division into sympathisers of the ruling Law and Justice Party (PiS) and the liberal and left-wing opposition. To what extent political polarisation radicalizes discourse in Poland exposed the assassination of Paweł Adamowicz, the mayor of Gdansk, on January 13, 2018. In reaction to this, "New York Times" observed that the politician's murder "revealed absolutely horrifying political polarization" (Editorial Board 2019). In fact, the thesis offered by the paper's editorial board finds support in recent research. According to Paulina Górská (2019: p. 2), who conducted studies on political divisions, "the Polish society can be considered as divided". Moreover, those who support the liberal opposition perceive their political opponents in a more negative light than groups that are traditionally regarded by Poles as "others", such as Jews, Muslims, refugees, homosexuals, and transgender. Similarly, sympathizers of the right-wing ruling party (PiS) consider their political opponents as negatively as Jews, Muslims, and others. Keeping in mind that political ideology – together with ethnicity and religion – is the key element in the construction of culture, such strong political polarization impacts the ability of the Polish society to engage in intercultural communication – both within the society and outside it.

Media factors

Contemporary intercultural communication cannot take place without the involvement of mass media (Rider 1994). Until 1989 the Polish media were directly controlled by the communist party apparatus and served first and foremost as a tool to disseminate official propaganda (Goban-Klas 2004). With the transformation of the political and eco-

conomic system, however, the media underwent an in-depth reform. While some scholars argue, that "Poland represents a mixture of Polarised Pluralist and the Liberal model" of the media (Hallin, Mancini 2011: p. 318), according to others, since the early 1990s the Polish media system has experienced the rapid process of "Italianization" (Dobek-Ostrowska 2012; Curry 1990). Just like in Italy and other Southern European countries (e.g. Spain, Greece), also in Poland (and other Central European countries) media are dominated by four factors: state control over the public media; close but often indirect relationship between political parties and media outlets; integration between media and political elites; and ethical divisions among journalists and media personnel (Mancini 1991: p. 139). In addition to political influences, the media content in Poland is determined by economic factors. Bogustawa Dobek-Ostrowska and her team (Dobek-Ostrowska et al. 2013: p. 20), who conducted qualitative research among Polish journalists, point out that "increasingly often it is not the political factors which decide the future of a profession and the way it is practiced but the business ones." Naturally, their research concerned only professional journalists, working for established media outlets.

It must be remembered that at least since the early 2000s, more and more content has been produced by the so-called new media, including social media, which are often run and produced by amateurs. Such outlets usually demonstrate strong political affiliation, with economic gains being rather a by-product than the main strategic goal. There is no doubt that the growing role of the social media in public sphere has a direct impact on intercultural communication. Whereas until the late 1990s, public sphere (in the Habermas' understanding) was strongly controlled by the mainstream media (where radical views from both left and right were marginalised or even silenced), since the "internet explosion" at the onset of the 21st century, the traditional public sphere has been divided into multiple "emotional" public spheres. Even more importantly, these public spheres – regardless how marginal or radical voices they carry – enjoy the same chance to reach general public as the "traditional" public sphere dominated by the mainstream, centrist media. Social media not only make space for radical views; they also foster divisions within the society. With the formation of "information bubbles", which keep people apart from those of different political views, social media make polarization even stronger, as "greater interaction between like-minded individuals results in polarisation" (Kerric 2014: p. 109).

Both the 2015 Polish parliamentary elections and 2016 US presidential elections proved that the ability of the mainstream media to set agenda and establish media frames among users had weakened (Wasilewski 2017). Some extensive research has been made in the case of the latter, which shows that while liberals still prefer traditional media outlets, such as the "New York Times" or CNN, people with conservative views largely rely on their own media, that is social media profiles of their candidates and marginal, often radical, websites. As Yochai Benkler and others point out, media polarisation online in 2016 "was asymmetric. Pro-Clinton audiences were highly attentive to traditional media outlets across the public sphere, alongside more left-oriented online sites. But pro-Trump audiences paid the majority of their attention to polarised outlets that have developed recently, many of them only since the 2008 election season" (Benkler et al.

2017). Among others, it reinforces the thesis that instead of one public sphere, where all political sites could discuss and exchange their views, two and more public spheres have appeared, all of which independent from one another. Unsurprisingly, it has led to the creation of "an internally coherent, relatively insulated knowledge community, reinforcing the shared worldview of readers and shielding them from journalism that challenged it" (Benkler et al. 2017). Such a homogenous environment not only has allowed for the spread of fake news, but it has also significantly impeded intercultural communication within the American society. The same can be said of Poland, where the way people use media largely depends on their political affiliations.

Another media factor that impedes intercultural communication in Poland is the weak position of the minority media. It must be observed that despite the growing importance of online media, minority media still inhabit a marginal place in the public sphere. Although the majority of those national and ethnic minorities which are recognised by the Polish authorities publish their own press titles – often with the financial support of the government – their scope is rather limited (Mieczkowski 2012). Such is the case with the press magazines published by the Roma people or the Polish Tatars (Wasilewski 2013). Moreover, their content focuses on history and tradition, refraining from taking active part in contemporary public discussion (Wasilewski 2018). Other minorities, including sexual minorities, must solely rely on social media to communicate their ideas to general public. With such visible disparities, the chance of a fair intercultural communication to occur remains questionable.

Hate speech and the construction of identity

The above mentioned list of media factors is not exhaustive and includes only the most basic ones. Still, they allow to indicate, how media can reinforce or impede intercultural communication. With the public debate moving from "traditional" media, such as radio, press and television, to the "new media", such as the internet, there is little doubt that also the success or failure of intercultural communication is decided in realm of the world wide web. On the one hand, the widespread access to the internet and the relative ease of establishing one's presence there have allowed for the democratization of public sphere. What was once reserved for the elites, now is available for the masses (Avritzer 2002: p. 29). On the other hand, the internet, most notably social media, has defragmented public sphere and, consequently, has deepened political polarisation. This, as it has already been mentioned, can be regarded as one of the main obstacles to intercultural communication. As Christopher S. Josey (2010: p. 37) points out, "the internet in general represents one of the few spaces of extremely divergent opinions on race, politics and society. As a decentralised media, controlled by the end user, it has allowed a resurgence in the solidarity and power building of hate-based groups."

There is little doubt that in an atmosphere of strong political polarisation, it is extremely difficult for intercultural communication to occur, let alone in the form of intercultural dialogue. According to the definition provided by the Council of Europe, intercultural

dialogue is "a process that comprises an open and respectful exchange of interaction between individuals, groups, organizations with different cultural backgrounds or world-views" (Council of Europe 2008: p. 10). Such a dialogue is possible only in a balanced media environment where all groups (political, ethnic, minority etc.) have equal status and equal access to. With media users living in information bubbles and the appearance of defragmented, "emotional" public spheres, intercultural dialogue easily gives way to hate speech. As a result, the possibility of building a collective identity on the idea of multiculturalism is put into question. Instead, separate groups within the society use their own media to establish and promote their own identities while downgrading the others.

Whereas intercultural dialogue draws from the logic of collective action, hate speech relies on connective action (Bennett, Segerberg 2012). In their studies, Lance Bennett and Alexandra Segerberg remind us that "when people express views online, they do not need to be part of a formal organisation. By sharing links or posting comments, they are already engaging in political activity". This thesis takes from the fact that hate speech has a high uniting potential, since the victimization of one's own group and dehumanization of others answer one's basic needs and feelings. As Matous Hrdina (2016: p. 39) argues, "many different frustrations and grievances can be answered by hate speech against a chosen scapegoat, without further identification with other hate speech producers. Furthermore, hate speech could be perceived as a specific form of civic activism". The very nature of social media allows individual users – whether a professional journalist or an amateur – to public their own opinions, even the very radical ones. Such posts often attract attention from other like-minded users and, by consequence, form a certain collective identity. In other words, hate speech feeds on the "network society". Manuel Castells who coined that term, observes that "mobile phone networks become trust networks, and the content transmitted through them gives rise to empathy in the mental processing of the message. From mobile phone networks and networks of trust emerge networks of resistance prompting mobilization against an identified target" (Castells 2013: p. 348). Remembering that, it is thus hardly surprising that hate speech is often used in identity discourses. In addition to this, the rise of social media and their anonymity – or rather immunity to critique – have reinforced the role of hate speech in the construction of group identity. As Julie Seaman (2008: p. 121) suggests, since "the identification with a social group tends to foster attitudes and behaviors consonant with the norms of the particular group", then "attitudes, behaviors, and group identification can be primed by features in the social and physical environment."

Hate speech as an element of identity politics

The majority of studies on defamatory language and the formation of collective identity focus on radical right discourses. Although hate speech is not limited to only one side of the political spectrum, it is various nationalist, anti-Semitic and racist groups that most often build their identity in opposition to others. However, the contemporary history abounds in examples of how state authorities attempted to build national unity

through dissemination of hate speech. Nazi Germany (1933–1945) is only the most striking one. As Yared Legesse Mengistu (2012: p. 360) reminds us, in Hitler's Germany, hate speech "led to the disfranchisement, imprisonment, and genocide of Jews". There is little doubt that one of the leading role in inflaming anti-Semitic passions in 1930s Germany was played by the Nazi press and radio, which constructed radically negative picture of Jews among the German society. The similar method was adopted by the state RTLM Rwanda radio in 1994. In their paper on the RTLM radio broadcasts, Brittnea Roozen and Hillary C. Shulman (2014) pointed out that "the language used to describe the Tutsis was increasingly dehumanising, and that Hutus were often posited as the victims. Broadcasts that were originally targeted at the Tutsi-led RPF were extended to all Tutsis in Rwanda as the genocide escalated." In response to the RTLM broadcasts, the United Nations International Criminal Tribunal for Rwanda recognised hate speech as a crime against humanity (Biju-Duval 2007: p. 348). One of the latest examples of how media can use hate speech to build a group identity took place in August 2018. It was then that the Myanmar state authorities orchestrated a hate campaign in social media against the country's Muslim minority – Rohingya. According to Reuters, "more than 1,000 examples of posts, comments and pornographic images attacking the Rohingya and other Muslims on Facebook" were recorded in a matter of few days (Stecklow 2018). The acts of violence, which erupted after the online campaign, forced over 700,000 Rohingya to flee Myanmar (Mozur 2018).

What the aforementioned examples have in common is the vast engagement of media to construct group identity through conflict rather than dialogue. People were mobilised by hate speech, which allowed media to quickly identify the enemy and establish the core characteristics of own group. Without a doubt such a strategy succeeded in developing collective identity, since both in Nazi Germany, 1994 Rwanda and 2018 Myanmar, ethnic majorities – encouraged by the media – attacked minorities. It must be remembered that although at first media hate campaigns aimed at ethnic minorities, later they excluded from the group identity other minorities as well, including political and sexual ones. As some researchers point out, political elites are most prone to use media to disseminate hate speech in the times of crises. By dehumanising minorities, politicians – especially populists – manage to veer people's attention e.g. from economic issues to ethnic issues. Bernard Rorke, for example, writes that common features of populism include "authentic anger, unrestrained hatred of the elites, cultural conservatism, euro skepticism, declared nationalism, and undeclared xenophobia" (Rorke 2015: p. 240).

In such a dense atmosphere of political polarization, it is very difficult for intercultural dialogue to prosper. On the contrary, while the idea of multiculturalism broadly and inclusively defines identity, demanding that people at least tolerate one another, hate speech focuses on ethnic and cultural exclusivity. In other words, in the times when people need simple answers, hate speech seems to offer them. As Teresa Koide (2017: p. 166) puts it simple, "when you observe behavior that you find unsettling, something deep-rooted inside of you reacts". This brings us back to the already introduced thought of Alain Touraine, who underlines that in order to engage in intercultural communication

one needs to reach out of one's group. His thought is further developed by Iris Marion Young who claims that "a theory of democratic inclusion requires and expanded conception of political communication if participants in political discussion are to achieve understanding, to resolve problems and ultimately to make proposals that shape new agendas" (Young 2000: p. 56). Hate speech, on the other hand, discourages people from leaving their own group by presenting those outside as the "dangerous others".

It must be remembered that constructing collective identity through hate speech may take less direct forms than in Nazi Germany or contemporary Myanmar. State authorities may pretend to fight with hate speech in public discourse in order to curb dissident voices from various minorities. In her paper on identity politics in Germany, Ann Goldberg writes about Prussia's 1794 law code that "banned expression of incitement against the state and against certain religious groups, as well as speech that dishonored individuals" (Goldberg 2015: p. 483). Interestingly at around the same time, similar laws were introduced in the United States (Wasilewski 2017). In Goldberg's opinion, "anti-hate speech" laws were part of class politics and at first restrained popular resentment against the monarchy and state authorities. Later, however, a shift from class to ethnicity could be observed. State authorities began to use special laws to control ethnic minorities, since every attempt to publicly voice their discontent was labelled as hate speech. As it turns out, "anti-hate speech" laws impeded intercultural dialogue as much as hate speech itself. Even more, they served the same purpose, as forbidding minorities from accessing public sphere not only excluded them from public discussion but also allowed state authorities to build an exclusive identity based on ethnicity and race.

Conclusions

The widespread access to the internet has allowed for new ways of communication to develop. Whereas until the "internet explosion" there was a clear division into the author of a message and its receiver, now the very structure of online media has blurred the traditional communication triangle. As messages published online can be endlessly edited, commented on, shared etc., the author becomes the receiver and vice versa (Jensen 2010: p. 117). Among others, this fundamental change of how modern media function has also affected intercultural communication. With multiplied public spheres and information bubbles, it is more and more difficult to engage individual members of a society in intercultural dialogue. By consequence, the very model of the multicultural society is threatened, as it cannot exist without a strong public sphere where different ideas are discussed and modified in order to reach compromise. Instead, the new media have deepened political polarization in which hate speech has proliferated. The development of social media and their growing position in the entire media system allows various groups to build their separate identities, often in contradiction to other identities. Hate speech, disseminated by media, thus performs a number of functions: it strengthens the group identity, attracts new members, and defines and indicates enemies (often by dehumanising them). It feeds on political polarization and the exclusivity of social

media. The proliferation of hate speech in identity politics is possible due to the fact that it engages people in connective action, whereas intercultural communication requires a more demanding collective action. From this perspective, hate speech is both a by-product of political polarisation and the one of its causes. By consequence it poses a serious challenge to intercultural communication, which can occur only in the stable environment of inclusive politics, and multicultural society as well.

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The role of sports and music in public diplomacy: the case of Kosovo

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Abstract

This article elaborates the influence of sports and music on the diplomatic position of Kosovo. Despite being a new country and struggling with political recognition and diplomatic relations, Kosovo has gained popularity through the global success of its citizens in sports and music. An analysis of international media has shown that there is a significant correlation between the success of individuals in changing diplomatic approaches towards Kosovo and redefinition of constraints towards its citizens. Moreover, the image of a country built through success stories of individuals has a significant effect on the general international public and has changed the negative perception of the country. Kosovo here is used as an example to illustrate how sports and cultural diplomacy have been more successful than classical diplomacy.

Keywords: public diplomacy, small states, nation branding, sports and music diplomacy, Kosovo, image

Rola sportu i muzyki w dyplomacji publicznej na przykładzie Kosowa

Streszczenie

Niniejszy artykuł omawia wpływ sportu i muzyki na dyplomatyczną pozycję Kosowa. Mimo, że Kosovo jest młodym państwem, które stara się o uznanie polityczne i dopiero buduje relacje dyplomatyczne, to już zyskało popularność dzięki światowym sukcesom jego obywateli w sporcie i muzyce. Analiza międzynarodowych mediów wykazała, że istnieje znaczna korelacja między sukcesem poszczególnych osób w zmianie podejścia dyplomatycznego wobec Kosowa a redefinicją ograniczeń wobec jego obywateli. Ponadto, liczne sukcesy we wspomnianych dziedzinach przyczyniły się do poprawy wizerunku państwa na arenie międzynarodowej. Na przykładzie Kosowa zaprezentowano w jaki sposób dyplomacja sportowa i kulturalna odniosła większy sukces niż dyplomacja klasyczna.

Słowa kluczowe: dyplomacja publiczna, niewielkie państwa, branding narodowy, dyplomacja kulturalna, Kosowo, wizerunek

States have always used their culture to transmit political, social, and economic values. Development of information technology, as well as the power and influence of public opinion in creating and shaping political priorities, was also a new thing in foreign policy not long ago. However public diplomacy became important especially among small and newly created states who are struggling for attention, considering it a powerful tool and effective way to represent their national interests and gain visibility in international relations. Kosovo declared independence in 2008, becoming the youngest state in Europe. It brought with it the harsh reality of a disputed narrative. To receive support, Kosovo had to work on getting international recognition. Diplomacy has mainly developed in its classic sense of building relations through diplomatic channels, while other areas such as public diplomacy, culture and sports had been widely neglected.

There is limited research explaining how public diplomacy can act directly in building a small state's image. Reasons for this gap in research are the ambiguity of the term public diplomacy and the difficulty in conducting scientific research where the impact of public diplomacy on the image of the small states can be proven. Achievements of individual citizens as a tool for the promotion of the small states have been left considerably unexplored.

This article aims at justifying the working hypothesis that sports and music, as instruments of the public diplomacy, serve small states through building their image and reputation at the international level, in parallel with classic diplomacy. Further, sports and music may complement traditional diplomacy. As complementary diplomatic tools, arts, sports and culture have bypassed and overwritten classic diplomatic borders. To identify and link these categories, this paper is divided into three parts to address: firstly, the question of public diplomacy and nation branding in general with reflections on Kosovo's actions in that areas; secondly, the issue of sports and arts diplomacy; and finally, some of the most successful events in Kosovo's sports, culture and music between 2008 and 2018. This analysis compares the success of the state's diplomacy and nation branding in Kosovo, with individual achievements in arts, sports, and music, which have served to promote the state and break through diplomatic obstacles where classic diplomacy has failed to penetrate.

Public diplomacy and nation branding

The issue of improving the image of the country is not a matter that belongs only to politics and diplomacy. As a central issue, it is tightly related to the international reputation of a country, which affects equally all state and non-state actors, starting from individuals, NGOs, schools, universities, cultural centres, academia (Wählich, Xharra 2010: p. 9–65). All inevitably contribute to and are beneficiaries of the positive image of the country, and all can be responsible for and affected by negative actions.

The term "public diplomacy" was first used in 1965 by Edmund Gullion, a career U.S. diplomat (Hansen 1984: p. 2), as a replacement for the word propaganda (Cull 2010: p.12), however, variations on this definition have made this area attractive for researchers and

very practical for its application. Jozef Bátora argues that public diplomacy is an opportunity for small states to influence the international agenda beyond their limited size, military and economic power (Bátora 2005: p.1). Additionally, former Australian foreign minister, Gareth Evans, has said that the persuasion and influence of public diplomacy extends beyond traditional diplomacy, leveraging both inside and outside governments (Evans, Grant 1995: p. 66). Gifford Malone suggests that public diplomacy affects perceptions of a government in the eyes of foreigners (Malone 1985: p. 4), by providing understanding for its nation's ideas, culture, institutions, goals and policies (Tuch 1990: p.3). According to Nicolas J. Cull, public diplomacy during the history took the form of contact between governments and publics of other countries, as an attempt to conduct foreign policy through engagement with people from other states (Cull 2009: p.12–17). In the latest researches in this field, Jan Melissen argues that public diplomacy aims to influence foreign audiences, both people and authorities; thus, it is called 'people-to-people' diplomacy, with the aim to create a positive image of the country and to win the hearts and minds of foreign audiences (Melissen 2005: p. 3–25). One of the instruments of public diplomacy that aims to reach foreign nations and people is "nation branding" (Szondi 2008: p.14–23). The term was first used in 1996 by Simon Anholt to describe the behaviour of the states compared to the behaviour of companies, whose advancement depended on prosperity, good management and progress (Anholt 2011: p.6). Although public diplomacy has been described as a "peculiarly American aberration", with nation branding having more European roots and appeal, showing clear British dominance (Laqueur 1994: p.19), public diplomacy and nation branding are synonyms for the same concept (Szondi 2008: p.14), and have a common goal – to promote the nation's image and interest. One of the most well-known nation branding campaigns over the last decades is the Estonian efforts to replace the "post – Soviet" image with more prestigious "pre-EU" image, which aims to replace the old image with a completely new one (Gilboa 2008: p.67).

Kosovo as a case study for this research shows one of the clearest examples of how public diplomacy and nation branding have arisen simultaneously with the existence of the state itself.

After the independence of Kosovo on February 17, 2008, Kosovo's foreign policy immediately took steps towards the advancement of the position of Kosovo especially in deepening the relations with the countries that had supported the independence of Kosovo (Tran, Orr 2008). Having the Euro-Atlantic integration as one of the top priorities of foreign policy, the necessary steps had to be taken in this regard to facilitate the path to good relations (*Declaration of Independence* 2008). In the meantime, civil society urged Kosovo's government to make use of nation branding in order to deal with the key challenges the country was facing (KFOS 2008: p.8), including the association of the image of Kosovo with a war zone and insecurity. Through nation branding and public diplomacy, Kosovo aimed to build a new reputation by overcoming the negative image of a post-war country. As an attempt to improve the image of Kosovo in the international arena and to reach the international public, the Kosovo government developed the "Kosovo – Young

Europeans" nation branding campaign, launched in 2009 and realised by Israeli company Saatchi & Saatchi. The slogan is based on the fact that the Republic of Kosovo is both one of the youngest countries in the world and also home to the youngest populations in Europe (Wählich, Xharra 2010: p. 13–19). The TV commercial was broadcasted in six major international TV channels, namely CNN, BBC World News, Euronews, CNN Turk, Bloomberg, and Eurosport. It was claimed that a successful national brand and a better international image of Kosovo was expected to deliver political and economic benefits (Wählich, Xharra 2010: p.25). Among the first activities of public diplomacy was also the project "Communication with Europe through diplomacy" between the Kosovo MFA and the British Government in 2011, implemented by the British Council office in Prishtina that aimed to promote Kosovo's public diplomacy as an instrument of strengthening relations between Kosovo and countries that have not yet recognised it. The project involved advocacy and information activities to establish channels of communication with targeted countries between government, parliament, civil society, businesses, academia, and media ("Kosovo talks EU | British Council"). The British Government, through its Embassy in Prishtina, contributed 141, 6588 Euro and the Kosovo Government through the MFA contributed 141,172 euro (Telegrafi 2011).

These attempts continued to circulate among the governmental institutions which closed the doors for many countries that had already taken sides over the political status of Kosovo and statehood. This bipolarity had a serious impact on Kosovo's development and brought with it political solitary isolation, which even today continues to barricade the country's communication with the democratised world and other nations. However, the fields which have had the most significant impact in breaking these boundaries (while still being subject to isolation) are sports and music through the efforts of individuals, which this article elaborates from the perspective of public diplomacy.

Sports and music in public diplomacy

Sports and culture have been historically acknowledged for their role in improvement of cross-cultural understanding and engagement, and their role has grown over the years as a tool of diplomacy. Since the era of ancient Olympic Games, sports competitions have facilitated society's efforts to mediate and improve relations, resolve conflicts and glorify competitive desires.

Through sports, cities and countries have introduced and communicated with their counterparts (Spaaij 2012: p.761–774). In this manner, the opposite side – teams and their fans—could meet one another, opening the way for a sustainable relationship (Sport and Diplomacy W/WW).

In contemporary history, sports have been recognised for their role in building relationships. As the former U.S Ambassador H.E. Jim Cain said in the 2nd Hague Conference on Diplomacy in 2009 that: "Sports can be a powerful medium to reach out and build relationships...across cultural and ethnic divisions, with a positive message of shared values: values such as mutual respect, tolerance, compassion, discipline, equality of

opportunity and the rule of law. In many ways, sports can be a more effective foreign policy resource than the carrot or the stick" (Murray, Pigman 2013: p.1103). Sports have often been defined as a universal language that enables individuals of different cultures to meet in an activity common to both, and by doing so, communicate with each other (Hansen 1984: p.228). Meetings of this kind with the "opposite side" were considered to strengthen the national identity of either respective sides or countries. These bilateral and multilateral forms of representation and communication constitute a form of diplomacy which has remained broadly unexplored (though more recently researchers have included an analysis of sports and music as instruments for foreign diplomacy (Redeker 2008: p.494–500, Statler 2012: p.71–75, Murray 2012: p.576–592).

In the last decades there are sufficient examples of the sports matches contracted specifically for the purpose of softening tensions between states who could not reach peaceful agreements through traditional diplomatic routes. Among the most distinguished examples is "the diplomacy of ping-pong," which opened the channels of communication and decreased tensions between People's Republic of China and United States of America at the beginning of 1970's (MacMillan 2008: p.179). Less than a year after the outbreak of so-called "ping-pong diplomacy", the U.S. President Richard Nixon, travelled to Beijing as the first U.S president to visit the People's Republic of China, considered as a unique case of the use of sports in diplomacy (Hansen 1984: p.229). Similarly, sports have played a crucial role in the termination of Apartheid in South Africa (Krotee, Schwick 1979: p. 33–42). In parallel, the Olympic Team of the Republic of South Korea and the Olympic team of the Republic of North Korea marched together in the opening ceremony of Olympic Games in Sydney 2000 (Gittings 2000). These are some of the most recent examples which illustrate that "sports diplomacy" is a pivotal increasing practice of contemporary diplomacy. Countries like Canada, according to Stuart Murray, identify artists, teachers, students, travellers, experts and young people as public diplomats alongside with traditional diplomats, who are involved in representative and diplomatic activities undertaken on behalf and in coordination with their governments (Murray, 2012). In the context of sports diplomacy, this hybrid form of cooperation created favourable conditions of the new forms of diplomacy to emerge (Murray 2012: p.576–592).

In public diplomacy music appears to be a powerful tool for obtaining different goals. As Kathryn C. Statler asked: "Who can dispute the power of music?" a question raised in an exchange prompted by a special issue of Diplomatic History (Statler 2012: p.71–75). Musical institutions and the experience of music making have all contributed to the idea that music can enact social alternatives and cause political change (Mahiet et al. 2014: p.2). For Olivier Urbain, "music has power to move people towards the direction of peaceful and noble goals, or destructive ones" (Urbain, Shorter 2015: p.2). Moreover, Felicity Laurence considered that music was used as "powerful and ubiquitous tool in propaganda," but has also "facilitated progress towards a sense of solidarity beyond cultural and national boundaries, and ultimately toward a sense of universal and connected consciousness" (Laurence, Urbain 2011: p.1–14.). Historically music has been used by both individuals and governments to ease the tense relations over specific periods of time, or in relations

with specific states. The most prominent examples are as follows below. The U.S. State Department sponsored Jazz Ambassadors program exactly for this reason. Organised tours overseas for jazz musicians like Louis Armstrong, Dizzy Gillespie, Benny Goodman, and Duke Ellington, aimed to improve the image of the U.S due to the racial inequality and tensions between 1956 and 1978 by bringing American culture to the Soviet publics in the middle of the Cold War (Von Eschen 2004: p.10–25). *In 1967, Our World* was the first live world-wide satellite program special and featured artists ranging from The Beatles to Maria Callas from fourteen different countries across five continents. Similarly, during the Vietnam War moral crisis, the Beatles decided to perform “*All you need is Love*”, to 400 million people around the world (see: USC Center on Public Diplomacy 2015).

Kosovo: the sports and art diplomacy in the service of national interest

In the case of Kosovo, creation of this hybrid form of diplomacy was not planned or anticipated by the state's government or institutions. Kosovo's foreign policy had not planned to set foundations of public diplomacy on individual global achievements as it happened. Moreover, many domestic researches have emphasised that Kosovo's foreign policy did not take advantage of the favourable environment to set up strong foundations of public diplomacy (Wählisch, Xharra 2010: p. 8–15). As of October 2018, 116 countries recognised Kosovo's statehood (see: Ministry of Foreign Affairs - Republic of Kosovo, *Lista e njohjeve* WWW). Out of 28 EU Member States, Spain, Greece, Cyprus, Romania, and Slovakia continue not to recognize Kosovo, despite relative progress in relations and support in Kosovo's EU integration path. Serbia, Russia, and China continue to reject Kosovo's legitimacy (Morelli 2018: p.1–16) and have blocked the country's path to the United Nations and other international organizations (Palokaj 2015: p.22). These political blockades have been a major obstacle for Kosovo youth, considered to be one of the most valuable assets of the country.

After 10 years, development of youth, sports, culture, and music soon faced barriers that prevented talented individuals from being part of regional, European or global competitions in their respective fields. Some of the major cases that drew international attention were the prevention of Kosovo to participate in the beauty pageant which took place in Moscow, Russia in 2013, even though Kosovo is accepted as a full member of the Miss Universe Organisation (see: B92 2013). Further, in May 2018, the Kosovo Karate Federation team was not allowed to enter Serbian territory on their way to the European Karate Championship in Novi Sad (Die Morina 2018).

Harsh political attitudes towards the status of Kosovo from countries that are economically and politically powerful have managed to suffocate attempts by Kosovo institutions to bring forward initiatives for the development and integration of art and sports, with the aim to offer chances to young athletes in the country. At first sight, these kinds of oppositions give the impression of what Murray calls in his book *Sports Diplomacy*, foolish and bizarre attitudes of those who are against people playing (Murray 2018: p.10).

However, in parallel, Grant Jarvie expresses in his seminar report *Sport, Culture and Society*, that it "is impossible to fully understand contemporary society and culture without acknowledging the place of sport" (Jarvie 2017: p. 2). Thus, these attitudes create the idea that obstacles against sports of one country are an attempt to block the promotion and acknowledgment of its culture. Moreover, from the societal perspective, participation of Kosovo in international sports was far more important than simply a game of any sport, but it was rather a factual recognition of the country's existence, including acceptance and inclusiveness in society. This only validates Murray's view that a sport in diplomacy is a re-conceptualisation of the old practice of bringing strangers together (Murray 2018).

In the light of political events in the region of the Balkans, where Kosovo as a small country was battling on many fronts, it was not in Kosovo's foreign policy plan that individual global achievements in sports and music would represent Kosovo and its statehood for the next 10 years. However, talented individuals in sports and music have decided to "actively engage" in the diplomacy of their country, through the activities that they could do best, by participating in international sports as an act of political involvement, and waved the flag of the new state in the countries where classic diplomatic channels continue to maintain hermetically closed gates. The successes of individuals in Kosovo's public diplomacy have made them actors who have opened opportunities for many generations to come. One of the major achievements in Kosovar sport was the admission of Kosovo as a member of the *Union of European Football Associations* (UEFA) in May 2016 (see: UEFA 2018), and *Fédération Internationale de Football Association* (FIFA), despite the strong opposition from Serbia (see: FIFA 2016). In Kosovo, the decision taken from UEFA and FIFA resonated well beyond the football pitch. It represented a symbolic victory for Kosovo's foreign policy, on its way to full UN membership. Former politician and one of the initiators of public diplomacy of Kosovo, Petrit Selimi said: "Being recognised on the soccer pitch and online has far greater resonance than in some back room in Brussels" (Bilefsky 2013).

Professional athletes, actors, musicians, artists, and so on — frequently operate as "ambassadors"; and they do so to a global audience within the "soft power" or "co-optive" battle for influencing foreign public (Park 2017: p.14), while this achievement for the state of Kosovo is what Joseph Nye defined as attracting others and getting them "to want what you want" (Nye 1990: p.181) through the attraction of a nation's values and culture (Nye 2004: p.11). As Murray describes that powerful sports attracts political elites (Murray, Pigman 2013), Kosovo sports opened a new lead on political battles.

One of the individuals with the highest impacts in promoting Kosovo sports talents was Majlinda Kelmendi, gold medal Olympic winner in Rio de Janeiro in 2016 (see: Masters 2016). In 2012, after Kosovo's participation in Summer Olympic Games "London 2012" was refused, Majlinda represented Albania; however, internationally her success was applauded as a potential champion in judo from Kosovo who was not allowed to represent her country due to political issues (Borger, Walker 2012). This was the case even though the Resolution of the European Parliament requested that the International Olympic Committee allow Kosovar athletes to participate in the upcoming London Olym-

pic Games (European Parliament 2012). As a result, in December 2014, the International Olympic Committee granted Kosovo full membership (New York Times 2014).

Kosovo was able to take part in its first ever Olympic Games in Rio de Janeiro in 2016, and Majlinda Kelmendi became Kosovo's first Olympic medallist as she took gold in the women's -52kg judo in Rio (Samuelson 2016). Kelmendi became "the face of the country" and a model of hope for over 50% of the population of Kosovo who is younger than 30 years old (Sinani 2015: p.275). Majlinda was the judo World Champion in 2013 and 2014 and European Champion in 2014, 2016 and 2017. In 2017 she won Grand Slam in Paris for the fourth time (see: *Majlinda Kelmendi Judoka* W/W). Majlinda Kelmendi became a headline in many giant global media such as BBC, Euro news, Reuters, Eurosport, Channel 4, "The New York Times", "Financial Times" and "Washington Post". Her individual participation in 2016 European Judo Championships in Russia, where she became world champion, represents one of the most victorious diplomatic moments, an achievement that other diplomatic units in Kosovo had aimed to achieve since its genesis in 2008 (see: CNN 2018).

Although Kosovo is strictly prohibited to participate in country's sports represented as an independent state, especially in Russia which was the greatest opponent of Kosovo's advancement in sports, the flag of Kosovo and the anthem were still broadcast and honoured by the Russian guard of honour after Majlinda Kelmendi became the 1st champion. This represents one of the biggest paradoxes in the field of Kosovo's diplomacy, where the achievements, especially in sports, where in places like Russia are a factual recognition of the position of Kosovo. It is important to mention that the position of the political opponents has remained the same towards the status of Kosovo; however, the battle of sport won by an individual broke through an impossible political situation where the athlete was still able to represent their country, even if the hosting country did not recognize it as such (Telegrafi 2016).

Other achievements in other sports have been recorded meanwhile. More than 10 years after independence, the Kosovo national football team won their first match for UEFA Nations League qualifiers, marking its first international match played on home soil (Homewood 2018). Kosovo's first-ever win in UEFA was highlighted in many international media, and as the former president of Football Federation of Kosovo stated for Radio Free Europe, Kosovo athletes have been the best ambassadors of Kosovo so far, throughout the 10 years of independence of the state. From a country connoted with war and trouble, Kosovo athletes comfortably improved the image of the country in the international arena. (Krasniqi-Veseli 2018). Kosovo's football team concluded the year unbeaten, with the chance of European Championship qualification, being labelled by international media as "Brazil of the Balkans" (Zeqiri 2018).

In the light of discussion of public diplomacy of Kosovo, the aim of cultural diplomacy as an instrument of public diplomacy is to facilitate the exchange of the ideas and culture among nations (Waller 2009: p.74).

Examples of the achievements of artists and sportsmen and women from Kosovo which played an important role in Kosovo's soft power strategy, is another illustration

that sports, and culture diplomacy helped to send through the information about Kosovo reality. Just like the sport, which was more an international struggle, art, and specifically achievements of Kosovo artists in music, is more a result of a limitless world that media and social media have created. Rita Ora, Dua Lipa, Majlinda Kelmendi, Era Istrefi, tenor Ramë Lahaj, are only some of the youth who had the chance to broadcast their talent in front of a global audience, bringing forward most highlighted values of the country (Hajdari 2016). The main aim of what Jessica Gienow – Hecht call the role of culture diplomacy in cultural information is a signal of cooperation and reach of people (Gienow-Hecht 2012: p.18). Nye linked public diplomacy with cultural relations considering that information and selling a positive image is part of it, but public diplomacy is more about building long-term relations than creating an enabling environment for government policies' (Nye 2008: p.101).

There has been a link between the success of Kosovar-British artists (especially their top female pop star) rankings and the increase of global interest in Kosovo, their country of origin (Potton 2017). In a few years the comparison in global media reporting about Kosovo has rapidly changed. The terms once used to describe Kosovo as Europe's black hole have been replaced by the global success of these artists to change the image of Kosovo from a former helpless country to one which produces global scale superstars. Search engines like Google have changed search results for Kosovo in the last few years (see: *Google Trends* 2018), from representing Kosovo as a small war-torn country to be an example of courage and changes that it has embraced. Just like Majlinda's case was highlighted by global media in Rio2016, on the same year another de facto recognition was pushed by talented tenor Rame Lahaj in Mexico, where he represented Kosovo in Operalia and received the third-place medal (see: *Operalia* 2016). Many people found out where Kosovo is geographically located through the video of the song "Shine ya light" by Rita Ora, recorded in Prishtina, in 2012. She promoted the image of Kosovo all around the world, becoming the biggest pop symbol of Kosovo (Cooper 2012). In her interview "Hypetrak.com," the Kosovo-British singer said that if anyone from Kosovo manages to break through to success, they must hold the flag for everyone else (MFA-RKS 2018). In the meantime, through her interviews around the world she has taken the opportunity to talk about human atrocities against Kosovar Albanians in the late 90s, and the pride she feels for her background (Armstrong 2015). For the 10th anniversary of Kosovo's independence, Rita put on a free concert in the capital Prishtina which draw over 300 thousand people from all over the world (Acres 2018). Her fame attracted many international media. For her contribution in promoting the image of Kosovo in the world, President Atifete Jahjaga in 2015, named Rita Ora honorary ambassador of Kosovo and described her as the country's "most successful artist" (Powell 2015). Another global pop star who returned to Kosovo in 2018 is the British Kosovar singer Dua Lipa. Her fame and popularity played along with her performing alongside Kosovo and international artists in the Sunny Hill Charity Festival. This festival, aimed at giving people a sense of belonging and the idea that they are part of Europe, put Kosovo on the global cultural map (Walker 2018). The pop star regularly promotes her Kosovo roots through her fame. The breakthrough of Kosovo artists has become

a rising trend in the last few years. Singer and author Era Istrefi broke international music borders with one of her songs including Albanian lyrics. Her song released in 2016 has 608,570,444 views on YouTube and made it into the Top 100 in the UK, Canada, France and Germany (BalkanInsight 2016). Following the song's success in 2017 she won the European Border Breakers Award. Later on, she was featured as one of the singers on the "Live It Up" - Official Song 2018 FIFA World Cup Russia, alongside American actor Will Smith and Puerto Rico-born singer Nicky Jam (Brophy 2018). The international media mainly discussed this topic for the fact that a singer from Kosovo was singing in Russia, a country who has repeatedly prevented Kosovo citizens from being a part of any type of event held in Russia. In December 2018, the American news media, *Politico*, in its annual list, which compiles a list of 28 people who will shape Europe in the year ahead, has listed Era Istrefi as Kosovo's ambassador among the 28 people who will be "shaping, shaking and stirring Europe in 2019" (Politico 2018). Other important events that have promoted Kosovo culturally, artistically and have opened the borders for Kosovo to become a host of international community for artistic competitions, are: "Dokufest" (International Documentary and Short Film Festival), which already became a symbol of cultural diplomacy of Kosovo, making Prizren the city of film and art, and Kosovo a meeting point of ideas and cultural exchanges (Bytyci 2014); equally important short film "Shok", which in 2016 was nominated for the Oscars, as the first movie from Kosovo that has ever been nominated for the Oscars (Popova 2016); the participation of Kosovo in the Venice Biennale International Architecture Exhibition, which was estimated that the cultural diplomacy is necessary to Kosovo's international affirmation (Kosovapress 2018).

Conclusions

States have used sports and music to transmit messages, promote their political, social and cultural values throughout the history, especially to send diplomatic messages. This field, recently emerged for the possibility it provided to the states to influence the public opinion and promote state interests to foreign peoples and societies. Mostly the small states who strive for international recognition and the ones who cannot shape international agenda through their military, political or economic powers, have found public diplomacy as convenient and took advantage of it. Many theories and researches have analysed the role of public diplomacy in general, and the role of sports and arts in diplomacy, however this remained broadly unexplored for small states. In this article a theoretical insight has been provided on public diplomacy of small states and how they can use sports and music to become visible in international arena. Building and re-constructing the image of the state is not always possible through classic diplomacy. In the case of Kosovo, the use of individual achievements in the service of national interest has proven to be successful. Many artists and athletes are influencing the perception of Kosovo values at the international level. Individuals have brought global attention towards Kosovo with their personal successes. This is a big achievement for a country known for being torn apart by war, suffering from the aftermath processes of transition

to democracy and young statehood. Individuals such as Majlinda Kelmendi, Rita Ora, Dua Lipa, Era Istrefi, and all other successful individuals who have openly promoted and protected their Kosovar identity have become political players of public and cultural diplomacy of the country of their origin. The aim of this correlation was shedding light upon the facts that public diplomacy is not only a supplementary tool of classic diplomacy, but rather a complementary tool and equally important, which has managed to open diplomatic routes that classic diplomacy was not able to. The importance of public diplomacy derives from its possibility of direct communication with foreign audiences, without passing through governmental routes.

In the case of Kosovo, individual achievements of Kosovar youth have made possible that the young state and its statehood to be promoted directly to foreign publics, even to those countries where their governments closed any possibility for inter-institutional cooperation. By presenting the individual achievements of athletes and artists in the global scale, sufficient examples have been presented which show a direct correlation between the image of a country in international arena and sports and music as tools of public diplomacy. Whether the state gave support towards these individuals, their achievements have served to the interest of Kosovo's promotion and image building, much more than any attempts and efforts of the government through nation branding. However, how small states should take advantage of public diplomacy and individual achievements to the interest of the state's image should remain an open opportunity for future researches in this field.

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EUROPEAN IMPRESSIONS

The European Union funds in the financial perspective 2021-2027 – Report from the conference opening consultations on the Assumptions of the Partnership Agreement

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On July 24, 2019 was held a conference opening the consultation on the *Assumptions of the Partnership Agreement for 2021–2027*. The conference was organized by the Ministry of Investment and Economic Development, which coordinates work on the implementation of projects co-financed from European Union (EU) funds in the new financial perspective 2021–2027. The conference was divided into two thematic blocks. The first one included negotiations on the 2021–2027 perspective, while the second part presented the project of *Assumptions of the Partnership Agreement*.

First of all, the importance of the early start of preparatory work for the new financial perspective should be emphasized. This is extremely important for the correct implementation of assistance programmes. The complexity of the distribution process, combined with the lower value of the allocation, that we can expect for Poland in the next financial perspective, means that individual operational programmes should be precisely targeted at entities in need of support. Preparation of such programmes in advance will determine the effectiveness of their implementation.

In the introduction, the Minister Jerzy Kwieciński said, that Poland began the preparation of documents regarding the new programming period as one of the first EU countries. This is also evidenced by the fact that the exact distribution of funds between individual EU countries is still unknown. Some delays in the work on the legal framework for the new financial perspective result from the fact that in spring of this year, elections to the European Parliament took place and new EU bodies are being appointed. An additional cause of delays is the issue of Brexit and uncertainty about the UK membership in the EU – this is related, for example, to the amount of the EU budget, which will be available in the new financial perspective (Darvas, Wolff 2018).

During the first part of the conference was presented the state of negotiations of the 2021–2027 perspective. In particular, the positions of the European Parliament, the Council and the European Commission were discussed on the assumptions of the new financial perspective. The most important assumptions that have been presented include:

- 1) Establishment of five priority objectives for the EU under the new financial perspective, which will constitute a basic reference point for development policy until 2027. The indicated thematic objectives are:
 - a Smarter Europe, through innovation, digitisation, economic transformation and support to small and medium-sized businesses,
 - a Greener, carbon free Europe, implementing the Paris Agreement and investing in energy transition, renewables and the fight against climate change,
 - a more Connected Europe, with strategic transport and digital networks,
 - a more Social Europe, delivering on the European Pillar of Social Rights and supporting quality employment, education, skills, social inclusion and equal access to healthcare,
 - a Europe closer to citizens, by supporting locally-led development strategies and sustainable urban development across the EU (New Cohesion Policy W/W/W).
- 2) Regional development investments will strongly focus on the first and second objectives. (65% to 85% of ERDF and Cohesion Fund resources will be allocated to these priorities, depending on Member States' relative wealth).
- 3) The suggestion to divide the financial perspective into two parts 5 + 2 was mentioned, with a mid-term review. Under this proposal, 50% of the funds would be frozen, with the possibility of unblocking after the review.
- 4) Negotiations in finalization are ongoing to determine what investments cannot be financed. For purposes that may not be financed from EU funds, for example, energy security, rolling stock and airport infrastructure should be included. The final types of exclusion will be agreed at the level of EU.
- 5) A more tailored approach to regional development Cohesion Policy keeps on investing in all regions, still on the basis of 3 categories (less-developed; transition; more-developed). In Poland, according to currently available statistical data, we have one region more-developed (Mazovia), two regions in transition (Greater Poland, Lower Silesia) and other regions are less-developed.
- 6) The allocation method for the funds is still largely based on *GDP per capita*. New criteria are added (youth unemployment, low education level, climate change, and the reception and integration of migrants) to better reflect the reality on the ground. Outermost regions will continue to benefit from special EU support.

The above assumptions should be consistent with the basic postulates regarding the new financial perspective, such as:

- Simplification: shorter, fewer, clearer rules;
- A more flexible law framework;
- More opportunities for synergies within the EU budget toolbox;
- Removing cross border obstacles and supporting interregional innovation projects.

During the second part of the conference the *Assumptions of the Partnership Agreement for 2021–2027* were presented. The Partnership Agreement is a document

defining the basic directions of implementation of programmes co-financed from EU funds. It is a document agreed at the EU and Member State level. The assumptions of the Partnership Agreement indicate in a general way the basic directions of state intervention within the framework of development policy with the use of EU funds and set the basic legal framework for the preparation of detailed implementation documents.

Minister Kwieciński pointed out that under the new financial perspective he would strive to increase the use of financial instruments as a tool for development policy. A repayable form of support characterizes financial instruments. Examples of such instruments are loans, guarantees or equity investments. In the financial perspective 2014–2020, the allocation for financial instruments was about 4% of the total allocation of programmes co-financed from the EU. Ultimately, in the financial perspective 2021–2027, Poland will strive to achieve the 10% allocation in financial instruments (Kowalski 2015). Grants alone cannot address the significant investment gaps. They can be more efficiently complemented by financial instruments, which have an advantageous effect and are closer to the market. On a voluntary basis, Member States will be able to transfer a part of their Cohesion Policy resources to the new, centrally managed InvestEU fund, to access the guarantee provided by the EU budget. Combining grants and financial instruments is made easier and the new framework also includes special provisions to attract more private capital (New Cohesion Policy W/W/W).

The conference also presented the initial construction framework for new operational programmes. The Ministry's employees indicated that three proposals for operational programmes are currently prepared. According to the first operational programmes for 2021-2027, they would be analogous to those under the 2014-2020 financial perspective, and a new superregional operational programme would be added. The second concept provides for the merger of two Operational Programmes (Operational Programme Digital Poland, Smart Growth Programme). The third concept assumes that some operational programmes would be double-funded.

In summary, it should be noted that currently ongoing work on the assumptions for the implementation of the new financial perspective, were taken at a very early stage. These actions should be considered positive because, despite the lack of many important findings at the EU level, the early adoption of certain assumptions will allow to fine-tune the legal framework for the implementation of projects and, as a consequence, will allow for a more effective implementation of measures. This is particularly important in the case of much more complex projects, such as energy efficiency or modern technologies. Among the presented assumptions, the increase in the importance of repayable instruments and the focus on fewer thematic objectives should be positively assessed.

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