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The European Union on Cross-Roads: an Overview of Post-Lisbon Crises and a Way Forward

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Summary: The main aim of this chapter is to make a brief and comprehensive overview of various events of crises across the EU member states that arose in the period from the adoption of the Lisbon Treaty until the end of year 2020. The chapter first, examines the period of crisis in the EU after the adoption of Lisbon Treaty and before BREXIT which includes: economic and debt crisis, euro-zone crisis, Ukrainian crisis and migration crisis. The next part of the chapter looks at BREXIT as "another serious test for the EU". In the third stage, the chapter looks at the most recent crisis the EU is facing as a consequence of global spread of COVID19 virus in the world and examines various options for further potential cooperation of member states in this new area. In this part chapter looks at the scope of EU competences and explores measures adopted by the EU since the beginning of the pandemic. In its conclusions the chapter looks at various options and scenarios of further potential developments the "European union on crossroads" at the end of year 2020. This includes reflections on various (and often contradictory) views and arguments on the shape of future euro integration process.

Keywords: European Union, Lisbon Treaty, BREXIT, Crisis, COVID-19.

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1. Introduction

The idea of the European integration was formulated and declared 70 years ago by Robert Schuman, Minister of Foreign Affairs of France, supported by Konrad Adenauer, the Chancellor of the Federal Republic of Germany as well as by Alcide the Gasperi, the Prime Minister of Italy, joined by others. The three founding fathers – Christian democrats with high moral imperatives who believed that Christian values together with the great ideals of enlightenment would function for uniting European nations and for creation of free space of economic stability, prosperity, security and justice.

The project of the European integration was built on sound basis, stemming from values of the three founding fathers – exceptional personalities with no personal ambitions or self-seeking interest behind their political actions. They wished to unite the sovereign nation states of Europe. This unification should be based on voluntary natural need for cooperation, instead exercising centrally regulated control over them. This is one of the reasons why, after decades of the Cold War the concept of unification became attractive for the states from the Central and Eastern part of Europe. Between 2004–2012 thirteen of these states joined the European Union[1] and other countries probably will follow in the years to come.

Seventy years of the European integration, started by the Schuman Declaration of 9 May 1950, might be perceived as decades of successes, but also various challenges. The end of year 2020 has brought the European Union back on cross-roads. It might seem that various challenges and events of crisis that appeared in EU in the past decade, almost immediately after adoption of the Lisbon Treaty, are also a test of both the unity of EU27 Member States, already without the UK in the EU, as well as a test of confidence of citizens in the common EU project.

The main aim of this chapter is to make a brief and comprehensive overview of various events of crises across the EU member states that arose in the period from the adoption of the Lisbon Treaty until the end of year 2020. The chapter first, examines the period of crisis in the EU after the adoption of Lisbon Treaty and before BREXIT. This includes a brief look at: economic and debt crisis (euro-zone

[1] In 2004 (1 May) the EU was enlarged by 10 countries.

crisis), Ukraine crisis and migration crisis. In the next stage the chapter examines BREXIT as "another serious test for the EU". In the third stage, the chapter briefly looks at the most recent crisis the EU is facing as a consequence of global spread of COVID19 virus. In the conclusions the chapter looks at various options and scenarios of further potential developments the "European Union on crossroads" at the end of year 2020. This includes reflections on various (and often contradictory) views and main arguments on the shape of future euro integration process.

As rightly noted by Dinan "*crises are nothing new on the trajectory of the European integration*". He offers an extensive overview to history of crises in Europe before 2017. The term "*crisis*" can be defined as "*any event that is going (or expected) to an instable and dangerous situation, affecting an individual, group, community or the whole society*"[2]. This might concern economics, politics, security, social, environment, energy, or other areas in the society. Crises start at various circumstances. For the purpose of this chapter we will focus on observing the most evident consequences of crises that emerged after the adoption of Lisbon Treaty, rather than on profound reflection on the circumstances at which the respective events of crisis emerged. We share the view of Dinan, Nuggent and Patterson who point out to the "*multi-dimensional*" element of crises that emerged after 2009, "*spanning politics and economics, touching on cultural and identity issues and covering both internal and external affairs*", emphasizing the "*unprecedented nature of the current crisis*"[3]. The crisis had very close links to EU leadership, solidarity principle, decision making[4].

The aim of the sub-chapters 2, 3 and 4 is to offer an overview of crises and the "cross-roads" the EU has been facing in the period after the adoption of Lisbon Treaty and before the BREXIT. This will include a brief retrospective look on economic and debt crisis, Ukrainian crisis and migration crisis. The aim of sub-chapter 5 is to take a brief look on BREXIT as "another tests for the EU" and explore selected views on the concept of sovereignty. Finally, the sub-chapter 6 looks at the first year of global attack of pandemics COVID-19 on the EU – looking at the scope of EU competences and exploring measures adopted by the EU since the beginning of the pandemic.

As shown in table 1, all events of crises the EU was facing after the adoption of Lisbon treaty have an external as well as an internal dimension: depending on whether the factors contributing to crisis originated inside (internal factors) or outside (external factors) of the EU supranational decision making.

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2 LIDELL, H. G., SCOTT, R. *κρίσις. Perseus: A Greek-English Lexicon.* 2020 [online]. Available at: http://www.perseus.tufts.edu/hopper/text?doc=Perseus:text:1999.04.0057:entry=kri/sis

3 DINAN, D., NUGENT, N., PATTERSON, W. *The European Union in crisis*. Palgrave, 2017. 395 p.

4 Compare NOVÁČKOVÁ, D. *Organizácia a manažment inštitúcii Európskej únie.* Eurounion, Bratislava 2008.

EVENT OF CRISIS (starting year)	INTERNAL FACTORS (including supranational decision making)	EXTERNAL FACTORS (outside of the supranational decision making)
Economic and debt crisis (2010)	Rules governing the functioning of euro-zone breached by the EU member states that initiated them, followed by other member states;	After WW2 constant and gradual increase of debt in most EU countries, in particular in Greece; Global financial crisis – start in the US in 2007;
Migration crisis (2015)	EU´s failure to control its own external borders; Mass migration as a consequence of "open door" political messages and initiatives encouraging mass migration (to great extent irregular) without free common consensual decision across EU Member States; EU´s failure to sufficiently prevent these conflict in the countries/ regions;	External military interventions causing conflicts and instability in the region;
BREXIT (2016)	Failure of EU institutions and national (including UK) representatives to convince UK citizens about benefits of the EU membership; EU tendency for centralized policy and decision making ("Ever closer union");	UK politics (Cameron´s referendum as a part of pre-election campaign); UK´s traditional emphasis on "independence", opposing tendencies of further centralisation of EU decision making; UK referendum on withdrawing the EU with final "yes" result;
Ukrainian crisis (2016)	Association Agreement between EU and Ukraine (proposed by EU);	Russia – US/EU relations – opposite/rivalry geopolitical interests; Ukraine in-between of these interests;
COVID-19 crisis (2020)	Unpreparedness of EU member states; Lack of coordination among member states and their potential EU policies;	Disputes on origin of the virus – affecting international relations; Global, uncontrolled impact of COVID-19 on EU and the rest of the world; Part of politics and pre-election campaigns (US);

Table 1: Internal and external factors that contributed to respective events of crises involving EU after the adoption of Lisbon Treaty (2009–2020); Source: own elaboration;

2. Economic and debt crisis

Bondarenko defines debt crisis as "*a situation in which country is unable to pay back its governance debt. A country can enter into a debt crisis when the tax revenues of its governments are less than its expenditures for a prolonged period*"[5].

The economic and debt crisis whose impact in the EU was visible in the end of 2009 can be perceived from two main points of view – first, from the external origin of crisis (US financial crisis); second, from the internal point of view of EU decision makers who decided on how to react to it. Generally, by the economic and debt crisis is understood to be connected to global financial crisis started in the US in 2007 as a consequence of subprime mortgage affecting primarily the banking sector – in the first stage in the US, in the second stage the EU and other countries of the world. In the EU the first Member States hit by the crisis were five members of euro area: in the first place Greece – where the consequences appeared to be most serious, followed by Portugal, Spain, Ireland and Italy (known as PIIGS countries). These countries were not able to finance their debt (bail-out) to banks, operating on their national territory which resulted into a "domino effect", threating the stability of the whole euro-zone. There were options either to leave the consequences of the insolvency on the member state(s) in question, meaning their "default" or to provide an assistance to them (by ECB, IMF, other member states). The member states have on the European Council level decided on the second option. However, the price they had to pay for that was a breach, in first stage of the Stability and Growth Pact; in second stage breach of articles 123 and 125 of the Lisbon Treaty (TFEU) that consequently led to creation of new administrative instruments, first EFSF which was later transformed into an ESM. These sudden *ad hoc* political decisions, executed under the time-constraint and political pressure, in some member states, started turbulences leading, in some cases to pre-term resignation of their governments[6].

It should be not forgotten that the accumulation of debt in some member states emerged as: first, a consequence of various levels of macroeconomic indicators among the member states of euro-zone, before adoption of euro; secondly,

[5] BONDARENKO, P. *Debt crisis*. Encyclopædia Brittanica, 2020 [online]. Available at: https://www.britannica.com/topic/debt-crisis

[6] In Slovakia, 11 October 2011 one of the coalition government party (Sloboda and Solidarita) refused to vote in favour of governmental agreement with the annex to framework treaty between 17 countries of euro-zone and European Financial and Stability Mechanism (EFSM) which meant further commitments for Slovakia in this mechanism. The PM Iveta Radičová connected this vote with voting on the confidence to the Government (by one single vote). As only 55 MPs out of 155 voted in favour of this proposal – the Radičová Government was dismissed. After early elections, the newly formed government led by Robert Fico voted in favour of EFSM.

as a consequence of various level of fiscal discipline of governments of these countries. When speaking about the origin of the euro-zone crisis it should be mentioned the history of discussions between two main camps of views that were at the beginning shaping the ideas of the European Monetary Union (EMU), in times of preparation of the Werner Report in 1970: The Economists and the Monetarists. Economists (led by Germany and the Netherlands) proposed that the EMU would be created only after the level of national economies would get harmonised. Economists favoured fixed exchange rates and high degree of co-ordination and convergence of national economic policies, followed by creation of EMU. Monetarists (led by the European Commission, France, Belgium and Luxembourg) saw creation of EMU as the main precondition for a successful functioning of the EC/EU. Monetarists had a clear political priority to introduce the common currency as soon as possible as they believed this would have a positive impact on the next economic integration of the Member States. Monetarists advocated strong institutional structure of EMU, fixed exchange rates that could be used as an instrument for further integration policies[7].

These opposite views on the fundamental principles of functioning the EMU continued to be present in 1990s in national positions of Member States that negotiated on its future shape: in most pronounced way represented by the most influential actors: Germany and France. In 1992 62 professor of economics mostly from German universities warned the German Chancellor Helmut Kohl about the premature start of the monetary union. This was repeated in 1997 when the petition named "*Es ist zu früh*" ("It is too early") addressed to Kohl was signed by 155 professors of economics[8]. However, this initiative remained unheard. In the final stage of launching the EMU there was an intra-governmental dispute on whether this launch should be done only after the euro-zone members will comply with the Maastricht criteria, or whether there should be fixed date (politically decided in advance) on the start of EMU (1 January 1999). In the end it was the second scenario that prevailed on the European Council level of EU15 member states. This, in fact, as confirmed later, meant a victory of political criteria over absolute necessity to respect simple economic rules defined by Maastricht criteria. "*This unexpected modification of agreed rules ultimately led to a euro-zone based on completely different rules than the EMU was originally designed and foreseen to function. This confirms and underlines the political*

[7] URAMOVÁ, M., ŠUPLATA, M., LACOVÁ, Ž. *The financial and monetary integration in the European Union at the beginning of the third decade of the 21st century: the past and post-Lisbon focus*; 26th Conference GREG-PGV; Grenoble, 10–11 September 2020; In *L´Europe est-elle la bonne echelle pour que les acteurs et les parties prenantes puissent relever les défis du futur?*

[8] The Association Agreement was signed in March 2014 by the Prime Minister Arseyi Yatsenyuk and in June 2014 the President Petro Poroshenko

nature of EMU, instead of EMU based on simple, credible and predictable economic rules that would avoid "ad-hoc" political decisions that in the end might be perceived as speculative"[9]. No surprise, this change of rules "in the middle of the game" significantly predetermined the future of euro-zone and ultimately led to consequences the EU was facing in 2009 as EU economic and debt crisis.

The economic and debt crisis, among other issues, revealed:

- the failure of member states to be able to maintain sustainable fiscal discipline;
- the failure of the European Commission and the Council to preserve all member states to keep (at least) the level of Maastricht criteria (with no exceptions) – political decisions dominated over simple economic criteria;
- EU institutions and member states as a reaction to crisis breached the Stability and Growth pact, as well as some provision of the Lisbon Treaty, articles 123 and 125;
- EU institutions and member states instead of respecting simple and commonly agreed comprehensive economic rules, preferred making further interventions: create additional administrative "solutions" (European Stability Mechanism, European Financial Stability Facility);

3. EU and Ukrainian crisis

Within the EU´s external policies, Ukraine is one of the countries belonging to Eastern Partnership (since 2009) and European Neighbourhood Policy. EU´s closer political and economic relations to Ukraine are officially defined since 2014 by an Association Agreement and since 2016, by Deep and Comprehensive Free Trade Area (together with Georgia and Moldova Ukraine).

The start of Ukrainian crisis is usually associated to 21 November 2013 when V. Yanukovich, the president of Ukraine refused to proceed with implementation of Association Agreement of Ukraine with the EU[10]. Yanukovich´s decision started massive protests organized by the proponents of the agreement – leading to revolution, demission of the president Yanukovich and in February 2014 to his ousting from the territory of Ukraine after that, Russian Federation (directly

[9] ŠUPLATA, M. *Vybrané aspekty inštitucionálneho rozhodovania Európskej únie v migračnej kríze.* In: *Európska ekonomická integrácia v kontexte aktuálneho vývoja a výziev pre členské štáty Európskej únie*. Praha: Wolters Kluwer, 2016. pp 122.

[10] Compare PAWERA, R., ŠUPLATA, M. *Schengenský systém v integrácii Európy – podpora cestovného ruchu v Európskej únii.* In: *Európska integrácia v univerzitnom vzdelávaní: Európska integrácia v procese výučby a tvorby na Fakulte managementu UK*. Bratislava: Eurounion; 2004 s. 234–142.

or indirectly) intervenes on some autonomous territories (Crimea and Donbas, Luhansk) which creates an international conflict. These circumstances led to division of Ukrainian people between proponents who would wish to see their perspective in closer relations with the EU, between those who would wish to have closer relations to Russia and the rest, who would wish to remain "somewhere in the middle" of these two opposite preferences.

The Ukrainian crisis impacted the EU also through so called "gas crisis"-meaning bypassing Ukraine as a transit country affecting access to EU via some member states neighbouring to Ukraine. This came as one of the Russian´s response to political changes in Ukraine. The EU, learned by a similar gas crisis in 2009, in the meantime, responded by preparing the soil for gas diversification via other gas lines. Two of gas projects (North Stream 1 and North Stream 2) aim to transit gas directly from the Russian Federation to EU (via Germany).

The Ukrainian crisis, among other issues, revealed:

- The EU´s offer to sign the Association Agreement with Ukraine showed that Ukraine as a country of the lines of force of power between rivalry geopolitical interests of the West and the Russian Federation. This was expressed in division of the country into pro-EU and pro-Russian camps and ultimately revealed lack of internal preparedness of Ukraine accept this agreement without escalating tensions inside and outside the country.

4. Refugee and migration crisis

In 2015, when the migration crisis was the most apparent, more than a million of migrants and refugees massively crossed the EU borders (BBC, 2016) – in most cases illegally. The vast majority of refugees were coming from Afghanistan, Iraq, Syria, the majority of irregular migrants from North Africa. 83% of all asylum requests were headed to 5 EU member states: Germany (175 000, 61%); Italy (22 300, 8%); France (18 000, 6%); Austria (13 900, 5%) and the UK (10 100, 4%)[11].

Generally, there might be perceived two main reasons for the start of refugee and migration crisis. First: the external and internal factors that caused the instability in the region where the migration crisis emerged. Second reason was the "open-door policy" by both the European Commission, led by J.–C. Juncker who in the beginning of their mandate defined dealing better with migration as one of top ten priorities at the beginning of its mandate, as well as representatives of

[11] Compare PAWERA, R. *Manažment európskej bezpečnosti.* 1. vydanie. Bratislava: Eurounion, 2004, pp. 134.

some EU member states. Probably most known became the quotes by the German Chancellor Angela Merkel: "*alle sind wilkommen*" ("*all are welcome*") and: "*wir schaffen es*" ("*we will manage it*") that sent a strong message to – the incoming migrants, to German citizens and the rest of EU member states.

Whereas in case of refugees who under the international laws, are automatically entitled for international protection, the sudden irregular inflows of illegal migrants to the EU, underlined by this political message, that was interpreted to "invite all" including irregular migrants, to EU, ultimately led to increase of tensions among EU member states. The main reasons of these tensions were: (1) the failure to secure the external borders from irregular inflows (that since the existence of the state traditionally belongs to elementary and necessary area to be exercised by any state); (2) an unclear limit and concept of the integration of migrants, (3) concerns from a potential massive (ab)use of generous social system of EU countries; (4) concerns from cultural incompatibility of the irregular mass inflows. Despite more or less enthusiastic approach towards the "policy of migration of chaos", the criticism of this concept could be underlined by a series of terrorist attack that as broadly believe, increased by the start of migration crisis.

Another source of criticism is a lack of consistency in EU policy making: after the accession of the EU15 by EU10 in 2004 the citizens of the EU10 member states, as a consequence of transitional period adopted by some member states (Germany, Austria) and even as EU citizens were not entitled to work on their territory for 7 years. Moreover, before accession to the Schengen system[12]. Some EU10 member states (for example Slovakia and its Ukraine border, before acceding the Schengen area in 2007) were criticized by the European Commission for failing to preserve their external borders. The migration crisis that emerged in 2015, only 4 years after the end of these transitional periods putting restrictions on free movement of labour for citizens of EU10 countries on the territory of some former EU15 countries, seemed to put citizens from non-EU countries coming to EU territory often in irregular way, in some aspects, in more favourable positions than the citizens of EU10 member states of the enlarged EU between 2004–2011 were.

The migration crisis, among other issues, revealed:

- First: the heterogeneity of views across the EU, on political and in broader terms on societal (public opinion) level on the key fundamental questions, for example: *Was the involvement of some states in the conflict region aiding to*

[12] Bulletin of the European Communities. March 1985, No 3. Luxembourg: Office for official publications of the European Communities. „Report from the Ad Hoc Committee on Institutional Affairs", p. 102–110 [online]. Available at: https://www.cvce.eu/content/publication/2001/10/19/17c22ae3-480a-4637-ad28-e152d86105b7/publishable_en.pdf

avoid or causing the migration crisis? To which extent the EU should be open to economic migration? Would the common approach proposed by EU be in line with the necessity to comply with the minimum security standards?[13] etc. Since the very beginning there was no consensus among EU member states on the focus and on the scope of the new migration policy. The Juncker´s European Commission which defined migration policy as one its 10 priorities at the beginning of their mandate, decided to keep constantly pushing for new common proposals on migration policy, despite of clear strong refusal by some member states from the very beginning of these initiatives.

- Second, the non-functioning EU external border and the lack of ability of the member state in charge of defence of EU external border to avoid irregular inflow. Especially Italy and Greece were exposed to sudden inflows. It became evident they were not able to defend the border from illegal inflow by their own capacities. The situation has shown the necessity to extend the solidarity principle from the principle of binding relocation of migrants to all member states (agreed by the Council by never fully executed, due to disagreement of some member states) also on the protection of common borders (so called "flexible solidarity" was an initiative agreed during the Slovak presidency.
- Third, the lack of clear leadership in the EU institutions unable or unwilling to set-up clear functioning rules that would be acceptable for all EU27, be able to distinguish between refugees – escaping wars, genocide or persecution and between irregular economic migrants. This failure to distinguish and push by the European Commission and larger member states for introducing binding quotas on relocation of migrants have ultimately increased tension and brought a division across member states.
- Fourth, this resulted into divergence in national positions of EU member states on migration. Some member states, mostly of former EU15 were generally supportive for an "open-door" migration policy and were supporting new common EU political initiatives to respond migration, based on centrally regulated of relocations of migrants (quotas). Some member states, especially from former EU10 (most visibly four *Visegrád* countries) refused to accept this "forced way of placing migrants on their national territory", emphasizing, firstly the necessity to start from the protection of external borders and secondly careful considering the reasons, motivation and eligibility to enter the EU territory.
- Fifth: this division based either on positive or negative attitudes from member states towards migration led to a slow-down or even a stuck of any further

[13] BAFOIL, F. *Europe centrale et orientale. Mondialisation européanisation et changement social*. Paris, Presses de Sciences Po; 2006.

common EU initiatives not only on migration policy but in other common policy areas.

5. BREXIT: another test for the EU?

The economic and debt crisis, as well as migration crisis might be perceived as a failure of both the EU and member states in the efficiency of their responsive policies. The initiative for BREXIT, on the other hand, came from the UK domestic policy, triggered by pre-election campaign and internal tensions within the governing Conservative Party, led by PM David Cameron.

On January 31, 2020, for the first time in its history, the EU saw one of its members leaving this unique international organisation that Jacques Delors called the "unidentified political object",[14] a product of 70 years of gradual integration process. The referendum initiated by David Cameron and the state of play about "remain" or "leave" question in his own Government and within his Conservative Party indicated the existing division between fervent Europeans of deeper European integration and between proponents of "sovereignty first" principle. In this sub-chapter we would like to take a brief look on the BREXIT by exploring selected views on the concept of sovereignty.

In the aftermath of the World War II, the European project was first seen as a means of putting an end to fratricidal conflicts on the old continent through the creation of interdependence and economic solidarity. Peace has been found, but in a globalized world where interdependencies have gradually increased, there are other issues requiring a deeper European integration. To defend their interests vis-à-vis other continents and to deal with issues that transcend national borders, the powers of the European institutions have gradually been broadened. The Maastricht Treaty establishing the European Union, the Schengen Agreement or the creation of the euro are often perceived as a sign of gradual transfer of elements of national sovereignty to the European level. This was reinforced by the adoption of the Lisbon Treaty. The EU, an economic giant who was for a long time a political dwarf, wanted to equip himself with tools allowing him to defend his interests and values. Yet there is as much connection to sovereignty as there are states on the old continent. While the Britain have endorsed the plan to create a large European market allowing the free movement of goods, they have been always more hostile towards the idea of a "Europe power" being historically attached to their independence. Various opt-outs and negotiated by the Great Britain achieving

[14] FAREED, Z. *De la démocratie illibérale*, vol. 99, 2nd ed., Le Débat; 1998, p. 17–26.

exceptions in common agricultural policy, (with so called British rebate), for remaining outside the Schengen area as well as the euro zone are an illustration of its particular attitude to sovereignty. The historical relationship of European states to sovereignty differs from country to country. Certain countries such as France have seen the process of the European integration as an opportunity to regain their lost influence on the international scene. The Central European states quickly knocked on the doors of the European Union after the fall of the Berlin wall, but their integration at the cost of "shock treatment"[15] could have created the feeling of a too quick transfer of parts of a newly rediscovered sovereignty. Zakaria developed the concept of "illiberal democracy" to denote the disenchantment that followed the collapse of communism in Central Europe[16]. In this geographic area, as elsewhere in Europe, politicians are trying to react to these realities in the election campaign and after, by their governance approach. The clash between the interests of representatives on the EU level and between the representatives of Poland and Hungary have led to continuous tensions among other issues seriously threatening approval of the EU financial perspective for the next seven years. The actions initiated by the European Commission against these member states is seen by their democratically elected leaders as an attack on their sovereignty. Besides, it was on the issue of sovereignty that Boris Johnson's campaign was carried out. By freeing itself from "European constraints" and regaining its freedom of action, the United Kingdom would be in a better position to defend the interests of its citizens.

Promoting this concept theorized in the 16th century by Jean Bodin[17] raises various questions, for example: *Is there a lasting trend towards a return to the concept of national sovereignty which implies the full power of states or is it a matter of cyclical epiphenomena which are part of an inevitable global expansion of international law, of which European law is the illustration at the scale of the old continent?* The analysis of BREXIT using the tools offered by international law and political science allows finding elements of responses to this question.

The relationship of states to sovereignty has evolved over the time. The emergence of numerous international organizations, with different degrees of integration, the rise of multinationals whose turnover is greater than some of the micro-states' have progressively undermined the omnipotence of states.

[15] BODIN, J. *La république*. 1576.

[16] DELMAS-MARTY, M. *Les forces imaginantes du droit, vol. III. La refondation des pouvoirs, Etudes juridiques comparatives et internationalisation du droit.* Editions du Seuil, 2007.

[17] BODIN, J. *La république*. 1576.

Traditional state governance has given way to more diffuse[18], more complex, less visible and sometimes incomplete modes of regulation. International organizations as well as international law are trying to find solutions based on compromises to face the challenges that are now being played out on a global scale (fight against global warming, regulation of migration, control of pandemics, fight against terrorism). In addition, the specialization of production capacities on a global scale has led to an exponential increase in international flows of goods and services but also an increase in the phenomena of fiscal, social and environmental dumping. The increasing movement of people, capital and information made possible by technical progress has also exacerbated competition, leading to the disappearance of certain sectors of activity in Europe. Many criticisms are raised against globalization described as too liberal and some European political leaders are calling for a return of state sovereignty for better regulation of certain phenomena. The race to supply masks and respirators during the first phase of Covid19 virus expansion in Europe, reminded Europeans of the dependency relationship that is being created in a system of specialization in the production of goods. These changes have adverse effects and can undermine the strategic interests of States and therefore their sovereignty. In his works Jean Bodin developed the concept of modern state, the existence of which is characterized by the sovereignty which he defined in 1576 as "the absolute and perpetual power of a republic". However, in 1625 in his work "The Law of War and Peace" Grotius demonstrated that this sovereignty is limited to the rights of individuals by subscribing to the logic of "natural rights". George Scelle in "Précis du droit des gens" will also challenge the absolute sovereignty of states and elaborate the theory of sociological objectivism in international law. His work, inspired by the research of Léon Duguit and Emile Durkheim, father of French sociology, will contribute to the development of contemporary international law and particularly of international labour law[19]. Many authors have brought to light the limits of the concept of sovereignty in a postmodern world where interdependencies are increasing. Not even the US, a global superpower can act on the international scene without a dialogue, trading, exchanging with the other international powers which tend to assert themselves. For Bertrand Badie, the end of the Cold War and the process of globalization have ended up discrediting what

[18] SCELLE, G. *Précis de Droit des Gens. Principes et Systématique. First part. Introduction*, Le Millieu Inter social. Paris : Recueil Sirey, 1932.

[19] HERRERA, C. M. Un juriste aux prises du social. Sur le projet de Georges Scelle, Revue Française d'Histoire des Idées Politiques [online]. 2005. p. 113–137. Available at: https://www.cairn-int.info/revue-francaise-d-histoire-des-idees-politiques1-2005-1-page-113.htm

he calls "sovereigntist fiction"[20]. He suggests replacing the untenable concept of sovereignty with that of responsibility. Thus, awareness of the existence of issues common to whole of Humanity (preservation of the planet, fight against pandemics, etc.) could lead to the creation of "communities of responsibility" at local, regional and global level. The European Union's desire to assert itself as a pioneer in the fight against global warming is an illustration of this phenomenon. However, it would be perilous to draw conclusions about the weakening of the role of states on the international scene. It is also important to avoid excessive optimism about the future of European integration process, because often, under the guise of defending common interests, states first and foremost defend their own interests. Moreover, by openly showing their desire to become a sovereign power again, the British seem to be going against the current global trend of recent decades which tends towards ever closer integration.

It was under the principle of sovereignty that the referendum on BREXIT was organized and its result accepted by its European partners. The European treaties did not originally anticipate for this possibility of a member state leaving the Union. The Lisbon Treaty established a withdrawal clause which allows a country of the European Union to regain its sovereignty from a legal point of view:

Article 50[21]

1. Any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements.

2. A Member State which decides to withdraw shall notify the European Council of its intention. In the light of the guidelines provided by the European Council, the Union shall negotiate and conclude an agreement with that State, setting out the arrangements for its withdrawal, taking account of the framework for its future relationship with the Union. That agreement shall be negotiated in accordance with Article 218(3) of the Treaty on the Functioning of the European Union. It shall be concluded on behalf of the Union by the Council, acting by a qualified majority, after obtaining the consent of the European Parliament.

3. The Treaties shall cease to apply to the State in question from the date of entry into force of the withdrawal agreement or, failing that, two years after

[20] BADIE, B. Un monde sans souveraineté. Les Etats entre ruse et responsabilité. In: Politique étrangère, n°2. 1999. 64ᵉannée, p. 410–411.

[21] Official Journal of the European Union. Article 50 TFE [online]. 2016. Available at: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12016M050&from=FR

the notification referred to in paragraph 2, unless the European Council, in agreement with the Member State concerned, unanimously decides to extend this period.

4. For the purposes of paragraphs 2 and 3, the member of the European Council or of the Council representing the withdrawing Member State shall not participate in the discussions of the European Council or Council or in decisions concerning it.

A qualified majority shall be defined in accordance with Article 238(3)(b) of the Treaty on the Functioning of the European Union.

5. If a State which has withdrawn from the Union asks to re-join, its request shall be subject to the procedure referred to in Article 49.

In accordance with article 50, BREXIT has become a legal reality since January 31, 2020. To achieve this, the withdrawal agreement concluded between the European Union and the United Kingdom was signed on October 17, 2019. The agreement came into effect on February 1st, 2020[22] and set the conditions for an orderly withdrawal. It consists of the actual Withdrawal Agreement which includes a Protocol on Ireland and a Political Declaration which aims to set a framework for the future relationship. In particular, this agreement aims to protect the three million citizens of the EU who live in the United Kingdom. It resolves many uncertainties relating to the separation: intellectual protection, police and judicial cooperation, etc. It is also expected that the United Kingdom will honour the financial obligations it contracted when it was a member. Although, this agreement also deals with the question of the areas of territorial sovereignty in Cyprus and Gibraltar, it is the question of Ireland that proves to be the most problematic. A solution avoiding the reestablishment of a physical border protecting the Belfast Agreement had been found and incorporated into the Withdrawal Agreement.

This international treaty, duly ratified, created rights and obligations for the signatory parties. However, the UK government has decided to pass a law, making certain aspects of this treaty obsolete. The Internal Market Bill was passed by the House of Commons on Tuesday, September 29. On October 20, 2020 a motion of censure which "regrets" the provisions violating the treaty was adopted by the House of Lords with 395 votes in favour and only 169 against. « I wanted to be an independent country which truly is a beacon unto the nations and I am dismayed that the government, the government which

[22] WALKER, P. Brexit plan to breach international law could face battle in Lords [online]. 2020. Available at: https://www.theguardian.com/politics/2020/sep/10/brexit-plan-to-breach-international-law-could-face-battle-in-lords

I have supported for so long and which I have very, very rarely disagreed with and rebelled against, that that government has chosen as one of the first assertions of its newly-won sovereignty to break its word, to break international law and to renege on a treaty it signed barely a year ago. », said Michael Howard, former leader of the ruling Conservative Party, yet in favour of BREXIT. He even added "*'How can we reproach Russia, China or Iran when their conduct falls below internationally accepted standards, when we are showing such scant regard for our treaty obligations?*"[23]

Although this motion of censure will allow a detailed examination of the text, the members of Parliament will have the last word. If the law on the internal market is adopted, it would allow a unilateral revision of the divorce agreement signed between London and Brussels contrary to international law. Moreover, this law would contradict the Northern Irish Protocol which made it possible to avoid the return of a physical border to Ireland.

The European Commission, in an effort, to respect international law and the signed agreement, has initiated infringement proceedings before the Court of Justice of the European Union. Indeed, even if the United Kingdom is no longer part of the European Union since January 31, it remains subject to European jurisdiction for the next four years for any action started before December 31, 2020. The United Kingdom is notably accused of not comply with the obligation of good faith provided for in Article 5 of the Withdrawal Agreement.

Article 5 *Good faith*

The Union and the United Kingdom shall, in full mutual respect and good faith, assist each other in carrying out tasks which flow from this Agreement.

They shall take all appropriate measures, whether general or particular, to ensure fulfilment of the obligations arising from this Agreement and shall refrain from any measures which could jeopardize the attainment of the objectives of this Agreement.

This Article is without prejudice to the application of Union law pursuant to this Agreement, in particular the principle of sincere cooperation. [24]

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[23] READ, J. Former Tory leader leads fight to strip Boris Johnson's Brexit bill of ‚law-breaking' powers [Internet]. 2020. Available from: https://www.theneweuropean.co.uk/brexit-news/westminster-news/michael-howard-on-internal-market-bill-6217110

[24] Official Journal of the European Union. AGREEMENT on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community [online]. 2019. Available at: https://eur-lex.europa.eu/legal-content/FR/TXT/?uri=uriserv:OJ.CI.2019.144.01.0001.01.FRA&toc=OJ:C:2019:144I:TOC

The transition period will come to its end on December 31, 2020. Until then, the United Kingdom will be treated as a member state but the future relationship between the United Kingdom and the European Union will depend on the agreements currently being negotiated. The possible violation of international law by the British has been the subject of much criticism. The Vice-President of the European Commission, the Slovak Maroš Šefčovič points out in his statement that "if the bill is approved, it will constitute an extremely serious violation of the Withdrawal Agreement and of international law (...) By proposing this text, the United Kingdom has seriously undermined to the trust that prevails between London and the EU[25]".

This unilateral revision, which would be contrary to international law, is a good illustration of the British attitudes towards the concept of sovereignty. By placing British sovereignty above international law, it goes against the global legal order seeking implementation of a hierarchy of norms in which international norms take precedence, similar to that of unlimited sovereignty developed in the 16th century by Jean Bodin. The coming of well thought-out global legal framework in which international law is better respected seems to be a tendency that might perceive the attachment of some British leaders to unlimited sovereignty as it existed in the past in the postmodern era as anachronistic.

The EU member states emphasizing the respect for the rule of law and international law have so far shown high degree of unity in negotiations with the United Kingdom. On December 8th UK government announced it will drop some clauses that rip up parts of the divorce agreement. In a statement, Britain agreed to remove parts of legislation that would have allowed the government to override aspects of landmark BREXIT withdrawal agreement designed to avoid of a hard border between Northern Ireland and Ireland[26] but it will be probably not enough to ratify a trade agreement before December 31th.

EU leaders seem to have realized the need to speak by one voice in international negotiations with other world powers who try to use their divisions. Paradoxically, BREXIT and the departure of a State which was rather hostile to further political integration due to its historical attachment to its independence could open the door to more extensive European cooperation in other areas, mainly in the field of healthcare. The measures taken by European states to deal with the first wave of COVID-19 have shown a lack of coordination, but often it can be the crises that will move forward the European integration.

[25] European Commission. Déclaration du Vice-président Maroš Šefčovič à l'issue de la troisième réunion du comité mixte UE-Royaume-Uni [Internet]. 2020. Available at: https://ec.europa.eu/france/news/20200928/declaration_maros_sefcovic_reunion_comite_mixte_ue_royaume_uni_fr

[26] CASTLE, S. As Brexit Talks Stall, Boris Johnson Offers the E.U. an Olive Branch [online]. 2020. Available at: https://www.nytimes.com/2020/12/08/world/europe/as-brexit-talks-stall-boris-johnson-offers-the-eu-an-olive-branch.html

The BREXIT, among other issues, revealed:

- First, before the referendum, the EU leadership failed to convince the UK government and citizens on the prevailing benefits of EU membership;
- Second, the UK Prime Minister David Cameron in decisive way contributed to BREXIT by his pre-election campaign promise to come-up with the referendum. This decision also led to his later resignation from the post of UK Prime Minister.
- Third, the referendum electorate decided on "too serious" question by "too narrow majority" of votes.

6. The EU and the global attack of COVID-19: a space for new area of co-operation among EU member states?

The COVID-19 pandemic is currently the most debated topic in the EU and its Member States. At the moment it is generally not a consensual view on, neither where this virus originated, nor whether and when it will be definitively eradicated. The first of the questions, asked by some head of states (US, Australia) had already brought some tension in the international relations. The number of cases is growing every day and the major opinion of the experts is that COVID-19 will be with us for some time[27]. However, this is not the first time in this millennium that the EU has been threatened with communicable diseases. Epidemiological threats have recurred over the last 20 years, but none have been as serious as COVID-19[28]. We can claim that the past two decades should have slowly prepared us for the growing threat of viral diseases, as this scenario was foreshadowed by a number of epidemiologists[29][30].

In the context of the COVID-19 crisis, we will focus on the division of competences in the field of public health between the EU and the Member States, and try to assess the effectiveness/ efficiency of a possible deepening of integration in this area.

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[27] Science Alert. When Will The Coronavirus Pandemic End? [online]. 2020. Available at: https://www.sciencealert.com/pandemic-end

[28] SARS, Mumps, H1N1, MERS-CoV, Ebola, Zika.

[29] PMC. EMBO reports. Inevitable or avoidable? Despite the lessons of history, the world is not yet ready to face the next great plague [online]. 2007. Available at: https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2002527/

[30] Foreign Affairs. The Next Pandemic? [online]. 2005. Available at: https://www.foreignaffairs.com/articles/2005-07-01/next-pandemic

6.1. The lack of EU competence?

In general, the EU's competences, by their very nature, are based on the principles of delegated powers, subsidiarity and proportionality. According to the principle of conferral, the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States[31]. In accordance with the principle of subsidiarity – in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level[32]. In accordance with the principle of proportionality – the content and form of Union action shall not exceed what is necessary to achieve the objectives of the Treaties[33].

Following these principles, competences are divided between the EU and the Member States into three categories – exclusive, shared and supporting/cooperative powers. Exclusive competences are areas in which the EU alone is able to legislate and adopt binding acts. EU countries are able to do so themselves only if empowered by the EU to implement these acts. This group includes, for example, the customs union, monetary policy, the common commercial policy – areas where the EU decides in the form of regulations (legal acts that apply automatically and uniformly to all EU countries as soon as they enter into force, without needing to be transposed into national law). In these areas it presents the highest level of integration. After the failure of the original intention of direct political integration through the European Defence Community in 1954[34], the idea of a "European Community" began to be coined with economic instruments to create a free market. By the theory of spill over [35], EU has gradually become a unique organization, which in some forms covers almost all areas of social activities, including criminal law, immigration and asylum policy, defence and

[31] Art. 5(2) TEU.

[32] Art. 5(3) TEU.

[33] Art. 5(4) TEU.

[34] This Community should have been established on the 27th of May 1952, however ratification was blocked by French parliament on the 30th of August 1954. Earlier in French doctrine, there were opinions that ratification of the Paris Treaty of 27 May 1952 would result in a new constitution, and therefore consent to ratify it should be given not by ordinary but by constitutional law. See: „Consultation of six public law professors on the European Defense Community". In: *Droits* 1992, no. 19, pp. 102–111.

[35] LINDBERG, L. N. *The Political Dynamics of European Economic Integration.* 1st ed. Stanford, 1963, p. 367.

security policy, in other words, activities that were (traditionally) considered fundamental powers of sovereign states. The official acknowledgment of this trend was the 1992 Maastricht Treaty, the signing of which can indeed be described as a "tipping"[36]moment in European integration. However, it must be said that long before the creation of the European Union, the doctrine stated that "*it is indisputable that the Community system looks quite original*"[37] and today it is even more true that "*the European Union is a legal and political creation of such originality that we cannot find a suitable model for it*"[38]. However, the Union's exclusive competences still have a predominantly economic dimension, so harmonization at EU level is the most effective way for Member States' economies to work together.

On the other hand, in the area of supporting powers, (we deliberately omit shared powers at this point)[39] – The EU can intervene to support, coordinate or complement the actions of EU countries, but legally binding EU acts must not require harmonization of EU countries' laws or regulations. Protecting and improving people's health belongs precisely in this area. Despite its very limited powers, the EU seeks to improve the health of its citizens and residents, in particular, ensuring health security, healthcare, disease prevention – in these cases, it is the regulation of social relations that are closely and necessarily linked to free movement of workers (protection of health and safety of workers, protection of pregnant workers, etc.). This form of protection is, *inter alia*, an expression of the principle of non-discrimination, where workers must have a level playing field throughout the EU. In these cases, we can see that health is (also / especially?) an economically important aspect of integration in the European area.

Although the EU itself is not yet "endowed" with public health competences[40], there is one clear exception. It is the European Parliament and Council Decision on serious cross-border threats to health[41]. Legal basis for this Decision is Article 168 TFEU which declares a high level of human health protection

[36] TELÓ, M., MAGNETTE, P. *De Maastricht à Amsterdam. L'Europe et son nouveau traité*, coll. Études européennes. Éditions Complexe: Bruxelles, 1998. 15 p.

[37] BOULOUIS J. «À propos de la fonction normative de la jurisprudence. Remarques sur l'œuvre jurisprudentielle de la Cour de Justice des Communautés Européennes», In *Mélanges Marcel Waline*, tome 1, Paris: LGDJ, 1974, p. 150.

[38] MAUS D. «À propos de la Constitution européenne : les mots et les choses», In *Revue politique et parlementaire*. 2003. no. 1022, p. 36.

[39] DOBBS M. „National Governance of Public Health Responses in a Pandemic?" In *European Journal of Risk Regulation*. 2020. 11(2), 240–248.

[40] SPEAKERMAN E. M., BURRIS S., COKER, R., „Pandemic legislation in the European Union: Fit for purpose? The need for a systematic comparison of national laws", In *Health Policy*. 2017, Volume 121, Issue 10, pp. 1021–1024.

[41] Decision No 1082/2013/EU Of European Parliament and of the Council of 22 October 2013 on serious cross-border threats to health and repealing Decision No 2119/98/EC.

(shall be) ensured in the definition and implementation of all Union policies and activities. In particular, the Union has a coordinating role and promotes cooperation between Member States to improve the prevention and control of the spread of major human diseases across Member States' borders and lays down rules for epidemiological surveillance, early warning, in the event of their occurrence, and the fight against them (preparedness and response planning). As the objectives of this Decision cannot be sufficiently achieved by the Member States due to the cross-border dimension of serious health threats and can therefore be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Decision does not go beyond what is necessary in order to achieve those objectives[42].

From an institutional point of view, the Health Security Committee (HSC) and the Early Warning and Response System (EWRS) have been included among the already existing tools in the field of crisis management (rescEU and EERC – assistance in natural disasters, part of the civil protection mechanism) to speed up and increase a quality of coordination and cooperation between the Member States and the Commission in combating serious cross-border threats to health. In particular, the Committee and its sub-groups are intended to ensure the rapid exchange of information and strategies and to address communication challenges in order to coordinate risk and crisis communication based on a thorough and independent public health risk assessment adapted to national needs and circumstances[43]. It is composed of representatives of the Member States[44].

The Early Warning and Response System (EWRS) provides prompt warning, risk assessment and the identification of measures that may be necessary to protect public health. In particular, the EWRS is a prevention tool that serves to improve the action of Member States and the Union to combat cross-border health threats and informs about the type and origin of the disease, the location of the outbreak, toxicological data, etc.[45].

However, we see the greatest benefit in the Commission's ability to recognize emergencies. If human influenza has occurred which may have a pandemic potential or a serious cross-border threat to public health at Union level, the Commission shall, after informing the Director-General of the WHO, declare a state of emergency. At this point, we must again emphasize the reduced nature of the

[42] Ibid Preamble (22).

[43] Ibid. Preamble (22).

[44] Each member state appoints its representatives at its own discretion.

[45] The decision has a broader than purely anti-epidemiological dimension, as it can also be used effectively for threats of chemical or environmental origin.

EU's powers in the field of public health, as, by analogy, at Member State level, a declaration of an emergency would mean a further extension of the powers of the executive, where it has only one legal effect at Union level. The Regulation 182/2011 of the EP and of the Council shall apply to the adoption of Commission implementing acts in connection with the declaration of an emergency situation[46].

The declaration of a state of emergency has only one legal effect, namely the application of the Commission Regulation on the examination of variations to the terms of a marketing authorization for medicinal products for human and veterinary use[47] under simplified conditions. Chapter 5 of the Regulation provides specific procedures for the placing vaccines on market, in the event of a human influenza pandemic. In principle, this means that in the absence of non-clinical, resp. clinical data, the Commission may authorize the use of such a vaccine, thus speeding up and simplifying the administrative procedure in the event of pandemics.

Decision 1082/2013 on serious cross-border threats to health contributes to building and strengthening the EU's comprehensive framework for health security and enables the Union to protect the population from such threats. The development and implementation of this Decision and relevant health security activities at EU level, including funding programs, is complex, due to the large number of actors and complicated structures operating in individual countries as well as from a legal point of view. Member States have the main responsibility for health policy, and the EU's action in this area is only intended to complement and support Member States' action. The role and responsibility of the Commission therefore lies in particular in providing support and, where necessary, in taking additional measures. In Special Report No 28[48], the European Court of Auditors addressed, in detail, the functioning of the Decision on serious cross-border threats to health. Court pointed out many shortcomings that could cause significant complications in the application of the Decision. Here, we will list only some of the points necessary for the purposes of this article:

- Draw up a strategic plan for the HSC to implement and develop the aim of Decision

[46] Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.

[47] Commission Regulation (EC) No 1234/2008 of 24 November 2008 concerning the examination of variations to the terms of marketing authorisations for medicinal products for human use and veterinary medicinal products.

[48] European Court of Auditors. Dealing with serious cross-border threats to health in the EU: important steps taken but more needs to be done. In: Special report no 28/2016 [online]. Available at: https://www.eca.europa.eu/sk/Pages/DocItem.aspx?did=%7bAE5B9737-ABB4-4C4B-99FB-27FE08BADD5F%7d.

- To speed up work on joint procurement of vaccines (Commission and Member States)
- To modernize EWRS system
- but in particular to strengthen cooperation and coordination in joint procedures

Although a binding decision has been adopted at Union level, which is so far the only one of its kind, in the words of the Court of Auditors, more needs to be done. Until the start of the COVID-19 pandemic, we have no data on the Commission's efforts to respond to constructive criticism and make the decision a viable document. On the contrary, even in such an important area of social relations, to which health clearly belongs, the Commission seems to be approaching it in a panic-solution-panic-style[49].

6.2. Measures adopted by the European Union since the beginning of the pandemic

The pandemic is in full swing again and criticism of the EU has been relatively constant since February 2020[5051]. Undeniably, the Union is making an effort, especially in the area of economic aid, but criticism is directed mainly at the lack of cooperation, the insufficient involvement of the Member States in decision-making processes and, in particular, the lack of solidarity between states[52]. Although, it could be argued in certain circumstances that solidarity between states goes beyond the framework of EU policies, but it is especially the Union that is designed to encourage and deepen solidarity between its Member States.

The beginning of the current pandemic crisis has inevitably raised the question of how the EU will be able to react and help. In the previous part, we noted that too many requirements were placed on the Union, despite the limited tools available. Especially because the Union's activities and policies have a major impact on the daily lives of EU citizens, so there is a contrast in the subjective perception of the EU during a pandemic crisis. The steps taken by the EU from

[49] RENDA A., CASTRO R. „Towards Stronger EU Governance of Health Threats after the COVID-19 Pandemic". In: *European Journal of Risk Regulation*, 11(2), 273-282.

[50] Investigate Europe. Europe's failure to cooperate on Covid-19 is a universal problem [online]. 2020. Available at: https://www.investigate-europe.eu/en/2020/europes-failure-to-cooperate-on-covid-19-is-a-universal-problem/.

[51] Politico. How Europe failed the coronavirus test [online]. 2020. Available at: https://www.politico.eu/article/coronavirus-europe-failed-the-test/.

[52] PIRKER B. „Rethinking Solidarity in View of the Wanting Internal and External EU Law Framework Concerning Trade Measures in the Context of the COVID-19 Crisis". In: *European Papers*. 2020, Vol. 5, No 1, European Forum, Insight of 25 April 2020, pp. 573–585.

February 2020 to the present day can be counted in the hundreds. The purpose of this paper is not an in-depth analysis of individual actions, but to draw attention to, in our opinion, the most important ones in individual months. We also want to highlight the huge number of steps in the field of economy and economic aid (given the primary nature of the EU) that could be elaborated in a series of several articles. Now, we will focus only on the important non-economic activities of the Union[53].

In early January 2020, DG SANTE (Health and Food Safety) issued an Early Warning and Response System (EWRS) alert, through which most Member States have since shared information on how to react and response to current threats. Subsequently, the first meeting of the Health Security Committee was called[54]. COVID-19 was presented at the meeting as a potential threat, but all representatives of the Member States and organizations present (ECDC, WHO Euro) agreed that no additional safety measures were necessary at this point[55]. A few days later, in view of the accelerated spread of the new coronavirus and France's request for assistance in providing consular support to EU citizens in Wuhan, the Union Civil Protection Mechanism was activated. The first air repatriations from France and Germany, co-financed by the Union's civil protection mechanism, brought 447 EU citizens home from Wuhan.

February 2020 was mostly in a spirit of solidarity with China, which received 12 tonnes of protective equipment, and at the end of the month, following the activation of the Union Civil Protection Mechanism, the Commission co-financed the delivery of more than 25 tonnes of personal protective equipment to China. The EU has launched joint procurement, making the EU one big buyer that encourages suppliers to act quickly, to the sufficient amount and to provide as much equipment as possible at the best possible price.

At the beginning of the "emergency", all the Union's resources may seem to have worked as they should. However, we can see from the example of Italy that this is not quite the case. Italy registered the first case at the end of January and a month later asked the Commission to activate the Union civil protection mechanism. The Union Mechanism was established by a Decision

[53] In the context of economic activities, for example: March – Increased investment in research and funding to combat coronavirus, Temporary framework for stronger economic support, Activation of the general escape clause of the budgetary framework to respond to a pandemic. April – EUR 2.7 billion from the EU budget to support health, Measures to support the agri-food sector ... In addition to partial subsidies, targeted at individual areas of the economy, it is worth mentioning the „Recovery Plan" totaling € 2.5 trillion, provided Member States in the form of grants and loans free of charge for the period 2021-2027.

[54] On which 13 member states have participated.

[55] At this point, 59 cases have been identified in Wuhan. On January 16, the WHO declared that there was no evidence of human-to-human transmission.

of the European Parliament and of the Council[56]. The Union Civil Protection Mechanism aims to strengthen cooperation between the Union and the Member States and to facilitate civil protection coordination in order to improve the effectiveness of systems for preventing, preparing for and responding to natural and man-made disasters, while contributing to the implementation of Article 222 TFEU[57]. In other words, a Member State can request assistance through the CECIS (Emergency Communication and Information System) and the Commission, as well as other Member States, should provide this assistance in a form of various assets, for example staff, resources, material aid. Italy requested material aid[58] (in particular a protective masks), but none of the Member States replied. Before the Union mechanism was launched, Italy received personnel and material equipment on the basis of bilateral agreements, namely from: China, Cuba, Germany, Russia, the Czech Republic, Albania, Poland[59] etc. None of the countries made use of the possibilities offered by the Union mechanism until the intervention of the European Commissioner for the Internal Market[60]. This raises the legitimate question of the extent to which this mechanism is effective and useful[61].

March 2020 was a critical month for Member States as well as for the EU. The increase in cases has triggered an avalanche of countermeasures by Member States that have not fully aligned with the philosophy of free movement of persons, services and capital, which is essential for the EU[62]. Travel restrictions, lock downs, quarantine zones have had a non-harmonious impression, especially since each Member State has determined its rules according to its own criteria, regardless of the will of the neighbour. However, viruses do not respect sovereign boundaries. The Commission has therefore prepared a number of guidelines[63],

[56] Decision No 1313/2013/EU of the European Parliament and of the Council of 17 December 2013 on a Union Civil Protection Mechanism.

[57] So-called Solidarity clause.

[58] Politico. Italy needs Europe's help [online]. 2020. Available at: https://www.politico.eu/article/coronavirus-italy-needs-europe-help/

[59] See also: TOSSERI, O. Coronavirus, cit.; Coronavirus, Mosca manda in Italia virologi e medici militari e attrezzature sanitarie, in La Stampa, 22 March 2020.

[60] Thierry Bretton, Twitter, 15.3.2020, twitter.com.

[61] BEAUCILLO, C. International and European Emergency Assistance to EU Member States in the COVID-19 Crisis: „Why European Solidarity Is Not Dead and What We Need to Make It both Happen and Last", *European Papers* [online]. 2020. Available at: http://www.europeanpapers.eu/en/europeanforum/international-and-european-emergency-assistance-eu-member-states-during-covid-19-crisis

[62] Coronavirus: Europe plans full border closure in virus battle [online]. Available at: 2020. https://www.bbc.com/news/world-europe-51918596

[63] COMMUNICATION FROM THE COMMISSION: Commission Notice Interpretative Guidelines on EU passenger rights regulations in the context of the developing situation with Covid-19

practical advices[64] – "soft-law" acts, which were intended to synchronize national action on border restrictions. They were aimed at ensuring the continuity of the flow of goods by air and road, and the free movement of medical personnel and equipment. Subsequently, the first ever reserve of medical equipment, within the rescEU system, was created to help individual countries fight the pandemic[65].

In April 2020, a team of European doctors and nurses from Romania and Norway was sent through the Union Civil Protection Mechanism to help Italian medical staff. In the words of the Commissioner for Crisis Management: "*I thank Romania, Norway and Austria for helping Italy at a time that is so difficult for the whole continent. This is EU solidarity in practice. Our EU Emergency Response Coordination Centre works 24 hours a day, 7 days a week, in cooperation with all Member States, to ensure that assistance is directed where it is most needed*"[66]. Italy, after a few weeks, has finally seen European solidarity. At this point, the EU's "managerial skills" have shown itself in a full glory. This is evidenced by the wide range of activities aimed at supporting the economy, the development of new control materials enabling reliable testing[67], guidelines on drug distribution between Member States, assistance (in the form of financial and material assistance) to Member States but also to non-European countries, and international organizations[68]. While all this was happening, the EU worked on vaccine development, mobile applications, data sharing platforms among researchers, supported biology development and helped repatriate half a billion EU citizens through consular assistance.

In the spring and summer of 2020, the EU continued to act in all the above areas, notably through soft law[69], which can be seen as a positive necessity (due to the lack of powers to issue binding public health legislation), however, the legitimacy, legal binding nature and "democracy" of soft law may be unclear

[online]. 2020. Available at: https://ec.europa.eu/transport/sites/transport/files/legislation/c20201830.pdf

64 The Commission provides practical guidelines to ensure the continuity of the flow of goods within the EU „green lanes" [online]. 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/sk/ip_20_510.

65 Medical equipment: intensive care medical equipment such as ventilators, personal protective equipment such as reusable drapes, vaccines and therapeutics, laboratory supplies.

66 LENARČIČ, J. [online]. 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/sk/ip_20_613

67 Regulation (EU) 2020/461 of the European Parliament And of the Council of 30 March 2020 amending Council Regulation (EC) No 2012/2002 in order to provide financial assistance to Member States and to countries negotiating their accession to the Union that are seriously affected by a major public health emergency.

68 EU global action to fight the pandemic [online]. 2020. Available at: https://ec.europa.eu/commission/presscorner/detail/sk/ip_20_604

69 Dozens of soft-law acts were issued during 2020.

in some cases[70]. From the end of the summer to the end of 2020, EU action aimed in particular at ensuring a sufficient supply of vaccines[71] for the citizens of member states[72] and the preparation of new legislation. Strengthening powers, in other words, deepening integration in the field of public health, is one of the ways in which the EU could respond better to future threats. For the time being, the Union has only supporting powers, consisting in the coordination of national policies, in accepting the significant differences in the health systems of the Member States. Experience in 2020 has shown that, although support powers can be useful in combating a pandemic, they have limits due to their nature that limit their effect.

At this point, in the face of the threat of a third wave of coronavirus, the Commission has presented a proposal for a Regulation[73] to achieve the creation of a "Health Union". The Regulation would strengthen the Union's competences[74] in the field of public health, introduce better threat monitoring and establish crisis management plans (at both EU and national level), thus strengthening preparedness and action at all levels. Although the EU does not have the necessary scope of the powers conferred on the founding treaties, the scope of the proposed actions can be better achieved at Union level (subsidiarity principle), as was the case with Decision 1082/2013 / EU.

The COVID-19 crisis, among other issues, revealed:

- First, no consensual view on the origin and expected end of the COVID-19 crisis;
- Second, lack of preparedness in most EU member states;
- Third, strong negative impact on EU and global economy;
- Fourth, new space for area of co-operation among EU member states;
- Fourth, pandemic, and response to it became strong political issue inside and outside the EU: influencing US pre-election campaign and election results in 2020 as well as international relations (US, Australia, China disputes).

[70] See also STEFAN, O. „COVID-19 Soft Law: Volumious, effective, legitimate? A research agenda", In *European Papers*, Vol. 5, 2020, No 1, pp. 663–670.

[71] PIROZZI, N. COVID-19 Emergency: Europe Needs a Vaccine. In Rome, IAI, March 2020, 4 p. Issue: 20|08.

[72] At the end of November, the EU already had contracts with various pharmaceutical companies for a total of 700 million vaccines.

[73] The regulation is intended to replace the current Decision 1082/2013 / EU on serious cross-border threats to health.

[74] The proposal extends the competences of the Union's institutions and bodies, for example, the Commission can formally declare a state of emergency with more legal effects – issuing delegated acts to ensure rapid assistance to Member States during a crisis situation and coordination of crisis management.

7. Conclusions

The political nature of European integration has been clear since its inception. In the famous Schuman Declaration, Robert Schuman foreshadowed that the Coal and Steel Community is not the last step in bringing nations closer together; on the contrary: "*Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity*. *By pooling basic production and by instituting a new High Authority, whose decisions will bind France, Germany and other member countries, this proposal will lead to the realization of the first concrete foundation of a European federation indispensable to the preservation of peace*"[75]. Schuman´s one of the closest collaborator, Jean Monnet, declared: "*experience has shown us that cooperation between states at intergovernmental level does not guarantee peace and prosperity in Europe. Only common institutions and rules can prevent a repeat of world wars, build a sustainable framework of democracy, prosperity and peace*"[76]. History so far shows us that the integration process is being accelerated by various crises, whether internal or external, and each of these events has so far led to EU´s strengthening.

One of the dominating political arguments of proponents of introduction the Lisbon Treaty was that the adoption Lisbon Treaty will allow better functioning of the European Union. Paradoxically, almost immediately after the adoption of Lisbon Treaty, the European Union has been facing an unprecedented and more-dimensional crisis: starting by economic and debt crisis in 2009, continuing by Ukraine crisis in 2014; migration crisis in 2015, followed by BREXIT started in 2016 and by global attack of COVID-19 pandemic in 2020. This had significant impact on the EU economy that might be felt by economic turmoil and general downturn of economic indicators. Much more than economy, however, might be perceived the risk of crisis related to citizen´s potential increase of mistrust in politics, politicians and governance both on EU and on national level. BREXIT is the top of an iceberg of other serious tests of unity that might follow.

In particular, the migration crisis has revealed completely opposite views preferences on future integration between the supranational approach (led by the European Commission) and approach of most Western countries basically focusing on acquiring and integrating the incoming migrants and the national approach (led by some CEE countries) emphasising to secure and control the common borders first and accept migrants only on a selective basis. The sudden

[75] The Schuman Declaration was presented by French foreign minister Robert Schuman on 9 May 1950.

[76] MONNET, J. *Mémoires*. Paris: Fayard, 1976.

and uncontrolled inflow of irregular migrant and the disability of the member states to control external borders, combined by an unlimited "open-door" policy efforts by European Commission and Angela Merkel, have in some member states brought back questions on national identity, and Christian roots of Europe. These issues were further reflected in various discussions where some member states (most explicitly the Polish and Hungarian governments) opposed the "over-regulatory approach" by the European Commission which they perceived contradictory with their national laws. Another conflict was visible during the negotiations on the multiannual financial framework (2021–2028). In autumn 2020 the European Commission proposed and the European Parliament approved that the funding from the common EU budget during 2021–2028 to each member state should depend on the respect of rule of law and democracy. This condition was refused by the governments of Hungary and Poland that were concerned about potential abuse of this provision for political purposes to use it "as a stick against disobedient member states" and threatened to put veto on the final package of the multiannual financial framework on the European Council. Hungarian Prime Minister Victor Orbán was even talking about an option that Hungary would leave the EU. However, on 11 December 2020, in the last month of the German presidency, after 22 hours of intensive negotiations under the leadership of German Chancellor Angela Merkel the conflict was solved on 11 December 2020 and the budget for 2021–2028 finally approved. However, the discussion and arguments revealed during the summit and past months have pointed out to a division on the perception of the further integration process which might come back later again.

The discussion between both camps basically includes: First, the extent (by simplified narrative: "more" or "less") of the European integration; Second, the subsidiarity principle where the politicians of some national governments feel threatened by some supranational initiatives by the European Commission which for example keeps proposing actions that are undesired in some member states. This is particularly sensitive in areas that some member states wish to govern on their own (for example issues related to family, ethical or moral issues)[77]. It is clear that if the EU27 would like to have a perspective to continue as a common

[77] For example: Commission´s proposal for financing research from common EU budget that includes research practices that are illegal in some member states: During the first Barroso Commission in case of proposal by Commissioner for Research Janez Potočnik on financing research on embryo stem cells, that is bioethical illegal in some member states. Even the European Commission that usually proposes initiatives in a consensual way, remained divided on this issue. Even if this this concrete initiative has passed through the Council by vote of one singe member state (Slovenia) – the result was a common EU initiative that funds activities that are in some member states illegal and globally from bioethical point of view controversial.

entity for the future, this kind of "political wrestling" should be avoided. The future initiatives by the European Commission should be governed by the common good of all member states which is clearly justified and easy to explain.

In 1957, at a Conference in Brussels, one of the founding fathers of the integration project Konrad Adenauer declared: "*European integration should not be a straight-jacket for European nations, but should be their common basis for sound, individual development of each of them*". If citizens of any member state will perceive the EU membership and policies to be a "straight-jacket", which is "*in uncontrolled way influencing their lives*", but "*outside of their control*", it is not excluded that discussion on "lack of sovereignty" and on "exit(s)" across the EU member states might still be an issue. Even after the important EU´s lesson learned: the BREXIT. Obviously, it is neither in the interest of the EU´s unity, nor it follows the great vision the founding fathers had about Europe. It can be said that historically all events of crisis have led to strengthening of the processes of European integration. The search for response to the most recent COVID-19 crisis will be another test for the EU´s ability to respond.

Considering the future of the EU there are basically seven options where the EU can move further on: first, to continue in the same manner it did in the last months. Second, to strengthen the supranational power by new competences. Third, to reduce the scope of supranational cooperation, for example within the border of the actual common market with four freedoms (persons, goods, services, capital); Fourth, to create new platforms for enforced cooperation for the member states that would wish to collaborate more closely; Fifth, to come back in the process of integration and reduce the common initiatives and policies only to areas that are really perceived as beneficial to member states. This would probably, among other issues, require reconsidering the actual qualified majority voting in the Council and possibly come back to unanimity principle, at least in most of EU decision making process areas; Sixth might be an option of other qualitative/quantitative change in the relations guiding the European integration; Seventh and the last option is total disintegration. However, it is clear, this option would lead to loose-loose position of all member states. In a globalized world, none of the member states is strong enough to succeed with the perspective offered by the founding fathers. Therefore, it is indispensable that representatives of all member states look for solution in a sincere, open way, respecting the legacy and moral imperatives of the founding fathers that need to be recognised, nourished, and commemorated.

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