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Everything but arms

4
2023

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Wydział Nauk Politycznych
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Uniwersytet Warszawski

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Solidarność europejska
Wszystko oprócz broni

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Warszawa

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THEORIES AND METHODS IN EUROPEAN STUDIES

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Federalizzazione dell'Italia: the transition of the Italian political system through the lenses of constructivist institutionalism

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Abstract
Italy is a state, standing at the crossroads of federalisation. This article traces the ideational and practical application of the federalisation process in Italy, from the lenses of the constructivist institutional theory by Colin Hay and with the application of process-tracing methodology. The research is concentred on the critical junctures and the ideas behind each stage of federalisation since the Tangentopoli crisis of the 1990s. The research findings demonstrate that, firstly, federalisation in Italy is an elite-driven process, where the politicians' interpretation of Italian federalism affects the outcome of institutional change. Secondly, federalism is a politicised idea, which Italian society and political elite interpret as "the tool for efficient governance" or "the remedy for corruption". Thirdly, federalism is a supplementary topic in the Italian discourse, which yields ideas connected with economic, social, and political reforms. However, federalism can be used to reinforce the policies from these three layers.
Keywords: constructivist institutionalism, Colin Hay's constructivist institutional theory, process-tracing methodology, federalisation, institutional change, Italian federalism

Federalizzazione dell'Italia: transformacja włoskiego systemu politycznego przez pryzmat konstruktywistycznego instytucjonalizmu

Streszczenie
Włochy są państwem stojącym na rozdrożu federalizacji. W niniejszym artykule prześledzono ideowe i praktyczne zastosowanie procesu federalizacji we Włoszech, z perspektywy konstruktywistycznej teorii instytucjonalnej Colina Haya oraz z zastosowaniem metodologii *process-tracing*. Badania koncentrują się na krytycznych momentach i ideach stojących za każdym etapem fede-

ralizacji od czasu kryzysu w Tangentopoli w latach dziewięćdziesiątych. Wyniki zrealizowanych badań wskazują, że, po pierwsze, federalizacja we Włoszech jest procesem kierowanym przez elity, a interpretacja włoskiego federalizmu przez polityków wpływa na wynik zmian instytucjonalnych. Po drugie, federalizm jest ideą upolitycznioną, którą włoskie społeczeństwo i elity polityczne interpretują jako „narzędzie skutecznego rządzenia" lub „remedium na korupcję". Po trzecie, federalizm jest tematem uzupełniającym w dyskursie włoskim, z którego rodzą się idee związane z reformami gospodarczymi, społecznymi i politycznymi. Federalizm można jednak wykorzystać do wzmocnienia polityk z tych trzech warstw.
Słowa kluczowe: konstruktywistyczny instytucjonalizm, metodologia śledzenia procesów, federalizacja, zmiana instytucjonalna, federalizm włoski

The Italian political system and its transformations are unique for political analysis and the study of federalism. Symmetrical bicameralism, weak regional representation in the Senate on the one hand, but considerable decentralisation of the state authority and devolution of legislative competencies to the regions – on the other hand. The controversy between the national and subnational levels of governance is inherent in the Italian political system. The ambiguous development of this relationship presupposed the appearance of federal ideas. The difference in social, political, and economic characteristics of the Italian regions prevent this topic from disappearance. Hence, Italy is a unitary state, which has been going through a federalisation process.

This article traces back the process of Italian federalisation with the pursuit to analyse: how the federalisation has been developing and what is the prominence of the process today. The article presents the ideational and practical application of the federalisation process in Italy, from the lenses of the constructivist institutional theory by Colin Hay. Accordingly, the research is concentred on the critical junctures and the ideas behind each stage of federalisation since the beginning of the 1990s with the assistance of the qualitative **process-tracing methodology**. In particular, this method is applied to analyse the micro- and macro-processes of federalisation and to answer the following **research questions**:

RQ1: What is the pattern of micro-process of federalisation in Italy after Tangentopoli?

RQ2: What is the pattern of the macro-process of federalisation in Italy after Tangentopoli?

There are **two hypotheses** formulated in the research:

H1: The pattern of micro-process of federalisation in Italy is elite-driven, the federalisation reforms are essentially politicised, while federal reforms are not isolated and usually supplementary to major reform.

H2: The pattern of macro-process of federalisation in Italy is non-linear, depending on the success of the major reform.

By answering the above-mentioned questions, it can be possible to analyse the prospects of the federalisation process and probable inferences for the Italian political system.

Constructivist institutionalist vision of federalisation and the process-tracing method

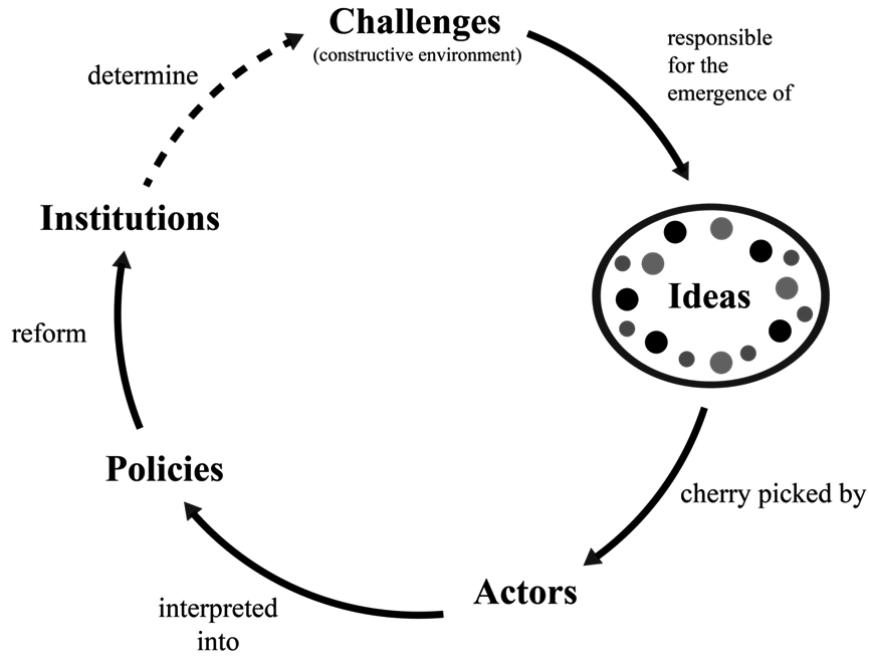
Before turning to theoretical and methodological description, it is vital to articulate the terms *federation, federalism* and *federalisation.* The *federation* is an entity that reifies the federal principles such as "*self-rule* of the regions and *shared rule* with the central government" (Elazar 1991: p. 5). It also can be defined as a system, where "the central government incorporates the regions into the decision-making processes, entrenched by the constitution" (King 1982: p. 77). Hence, the decentralisation and the division of competencies between the state and its regions are crucial for a federal state. However, the definition of this concept hardly describes all features of the federal state as the establishment of the federation depends on the particular vision of the national-subnational arrangements. The theory of federation or *federalism* stands behind these arrangements, "advocating federal principles" (Watts 1998: p. 119–120) and articulating the set of ideas on the development of the federal characteristics inside the state. It is important to distinguish the visions of federalism from *federalisation*. The latter characterises the process through which federalist ideas are implemented into the institutions. The subject of the article is the process of implementing visions of federalism into federalisation.

Constructivist institutional theory by Colin Hay is congruent with the analysis of this topic. Hay distinguishes two main sources of his theory: social constructivism and historical institutionalism (Hay 2008: p. 8–10). The former theory brings up the notion that the political realm is the consequence of social mobilisation so that the ideas construct reality (Reus-Smit 2005). However, Hay states that Peter A. Hall's version of historical institutionalism (HI) constitutes the lion's share of his theoretical framework. Correspondingly, HI is concentred less on the analysis of the institutions per se, but more on the history of their construction and canvasses path dependency of institutional construction, "focusing on socioeconomic development and diffusion of ideas" (Hall, Taylor 1996: p. 10). Another merit of HI is the concept of the critical juncture that reifies "the moments of profound fluidity where important events create the need for institutional responses" (Koppa 2022). In practical terms, these are usually the reforms that considerably influence the subsequent federalisation efforts and establish the dynamic of the process.

Initially, constructivist institutionalism analyses the process of institutionalisation in the political context. Hay takes Hall's idea of institutional path dependency, stating that the process of institutionalisation assures the state of the institution itself (Hay 2008: p. 9). The process, however, is realised by the political actors that are strategic in nature and endeavour "contingent and constantly changing goals" (Hay 2008: p. 8). Dissimilar to rational theories, the actor's interests are not materially constructed. Hay accurately links the theory with the essence of social constructivism, claiming that the environment and ideas influence actors' decisions (Hay 2008: p. 12–13). The actors ideationally interpret the ideas of the policies originating from the society and afterwards, try to implement them into the institutions. As a result, the theory intentionally politicises

institutionalisation, concentrating on the interest of the actors and the environment. Hay's approach includes two main chains of relations: ideational environment and actor's interest on the one hand, and the actor's actions influence on the institutional design – on the other. The first one is the micro-process of institutional change, where the particular institutional path is created. Accordingly, institutional change "is the strategic conduct of the actors in the context" (Hay 2008: p. 9). In the micro-process of institutional change, the actors choose the policy options, based on the idea that they have. *Figure 1* presents the theoretical framework of the micro-process of federalisation based on constructivist institutional assumptions. Actors adopt federalist ideas from the *constructivist environment* of Italian politics. Afterwards, the actors tried to reify their vision of federalism into a particular policy for reforming the Italian unitary constitution. In the end, the reform shaped the political institutions following the federal reform. Thus, the micro-process is *actor-centred*, *politicised, ideationally constructed*, and implemented via *federal reform*.

Figure 1: Micro-process of federalisation.



Source: author's own elaboration

Essentially, the micro-process of federalisation exists at the moment of critical juncture, which allows the political actor to promote federal change. The macro-process of the federalisation trajectory, though, connects through the critical junctures and

concentrates on the change in the federalisation process, putting it into the broader context. As historical institutionalism is part of new institutionalism, the path dependency wanes and loses its importance in the macro-process. Macro-process of federalisation is unpredictable and politically determined, and the direction of the change is not linear or progressive, it can roll out as well. Moreover, the macro-process does not only involve the critical junctures, because between them there is the process of reform adaptation and implementation, which can also influence the trajectory of the federalisation process. Hence, the macro-process model can be formulated only after the analysis.

For the application of the theoretical framework, a qualitative process-tracing method will be used (Bennett, Checkel 2015; Checkel 2008; Collier 2011). Essentially, this method is focused on tracing the sequences of events that lead to particular developments in the present. The method will be applied from two dimensions. Firstly, the article is concentred on tracing Italian federalist ideas through the analysis of key federal scholars since the 19th century. Italian federalism is the basis for the contemporary debates in the state, so analysing federalism will pave the way for analysing the micro- and macro-processes of federalisation. The former will be analysed through the description of particular developments during the critical junctures of federal transition in Italy on the brink of *Tangentopoli*. The applied method will assist in tracing the process of reform creation, juxtaposing it to a constructivist institutionalist vision of micro-processes. The review of academic books and journals will also be used for analysis of the federalisation process in Italy in both dimensions.

Italian federalism

There are three influential traditions in Italian federal studies. Firstly, there was the idea to create a federation with the leading role of the central authorities, developed mainly by Carlo Cattaneo. His federal vision of unification was based on the idea of liberty. In *Sulla legge comunale e provinciale*, he supported human autonomy, which would result in the emancipation of the regions, allowing their self-determination (Cattaneo 1865; Cattaneo, Bobbio 2010). For him, federalism is a down-top phenomenon (Lis 2022: p. 425). When his ideas were lost in "a battle for unification" during *Risorgimento*, he proposed the devolution of the state competencies to the Italian regions. Cattaneo's thought, albeit, devoted an extremely important role for the central authorities to control the process of federal development. This view of federalism relates to the later theory of *cooperative federalism*, which determines the partnership between national and subnational levels of governance, in pursuit of common ground and more efficient decision-making process (Weiser 2001: p. 664–673), merging in polyphony – "the true sound of federalism" (Schapiro 2005: p. 13–15).

Secondly, as a counterweight to cooperative federalism, there exists the concept of *dual federalism*. The proponents of the idea claim that the interaction between the levels should be a zero-sum game of independent players on the policy issue, leading to a clear distribution of competencies (Greve 2000). Gaetano Salvemini (1955)

supported this approach, delineating Italian federalism from the Southern perspective, aiming for progress in the *Mezzogiorno*, the other name of the Southern Italy (Lembo 2020: p. 23). In particular, he was a proponent of local taxation, resource allocation, and political regionalism in the South (Lis 2022: p. 429). Being a socialist, Salvemini relied on the state in the questions of the national interest and external safety (Colombo 2014: p. 126). However, the economic difficulties that the South faced at the beginning of the XX century forced Salvemini to reconsider the intransigence of his views. *Mezzogiorno* heavily relied on the more industrialised North, so his idea of Southern autonomism waned. Another proponent of southern autonomism was Luigi Sturzo, who supported the idea that Sicilian autonomism would resolve economic exploitation (Gargano 1999). To draw parallels with contemporary terminology, Sturzo was a proponent of *asymmetric federalism*. Asymmetries determine the different levels of authority over particular issues in the subnational units (Watts 1998: p. 122–123).

The last category of the Italian federal scholars involved in the issue of *decentralisation* of the Italian regions. For instance, Giuseppe Ferrari was the proponent of forming the decentralised polity from below, arguing that each Italian state has to create a separate constitution. As a result, these states will merge into a single alliance, based on their commonality (Ferrari 1852: p. 120). Consequently, cultural diversity determines the consociation, but linguistic similarity constitutes the natural unification (Schiattone 1996). Finally, he proposed the idea of "the Senate of Sovereigns", consisting of the regional rulers and convoked for the decision-making process of the regional-state competencies (Ferrari 1854). Some of the traits of these approaches even could be presented as the proponents of confederalism, such as Ciccotti, who was inspired by the Swiss example of a confederal state (Ciccotti 1899). Hence, the proponents of decentralisation suggested the Italian union, instead of the Italian unity (Ulloa 1867). In conclusion, the Italian federalist ideas had to develop inside the unitary state, so that decentralisation became the main topic for discussion. Most of them were involved in the making of the Italian state, but their practical contribution turned out to be feeble. However, their influence on the idea of federalism brought up the concepts, creating the constructive environment for the federalisation process.

Constructive environment

The dynamics of the micro-process of federalisation can be harnessed through the critical junctures that shaped this process. Those critical junctures essentialise the environment of the reforms, a federalist vision of the political actors and the attempt to introduce this vision into the policies to reform the political institutions for a particular federalist vision. From 1990s eight important events fit the description of federal critical junctures in Italian context: establishment of the Law Nº 142 in 1990, 1992–1994 De Mitta–Iotti Commission, Bassanini's reforms and Constitutional Amendments 1999–2001, Judgement Nº 303/2003, Constitutional Reform in 2005, Law Nº 42/2009 or fiscal federalism reform, Constitutional Reform in 2013 and, finally, 2017 Advisory referendum

in Lombardia and Veneto. This part of the analysis applies the theoretical model of the micro-process of federalisation to the following critical junctures.

The preconditions before reform implementation constitute a constructive environment. It also presupposes the conditions, under which the possibility of reform implementation increases. The Law Nº 142/1990 was an attempt to provide clarity on the role of the regions and localities by the *Pentapartito* government, consisting of five parties with the leadership of *Partito Socialista Italiano* (PSI) and *Democrazia Cristiana* (DC), belonging to the First Italian Republic. The lack of regional diversity in the legislation and the demand to resolve this issue were among the primary motivations for the law adoption. During the next years, Italy has been actively reforming in the sphere of regionalisation. The main catalyst for the active reform phase was the revelation of the first republic deficiencies in the form of the *Tangentopoli scandal*, which was accompanied by the detention of Italian politicians on corruption grounds. As a result, there was a need to revitalise the political system by resolving structural issues. Those issues assured the Grand Reform attempt by the 1992–1994 De Mitta–Iotti Commission.

After the informal collapse of the First Republic due to *Tangentopoli scandal,* the new elections presupposed the new political actors with the ideas to significantly revise Italian governance. The success of left-wing parties in 1996 determined the direction of the reforms from 1997 until 2001, as well as the Judgement Nº 303/2003, which determined the direction of reform implementation. Subsequently, the 2001 elections, in which the right-wing coalition won, augmented the effects of the reaction to the left-wing reforms. In pursuit of superseding the amendments of 1997–2001 and promoting the alternative vision of federalism, the right-wing coalition proposed the 2005 Constitutional Reform. As the Grand Reform of the right-wing coalition was rejected in the 2006 referendum, ensuing federal reforms were convoked under the 1997–2001 framework umbrella, such as Law 42/2009.

Lastly, the political turmoil of the 2010s was provoked by the collapse of the right-wing coalition in 2011. The President of the Republic, Giorgio Napolitano, being in the destabilised environment, took the lead in the reform process. Those conditions resuscitated the idea of the Grand Reform, which was, initially, unsuccessfully attempted by Enrico Letta and, later, subjugated to Matteo Renzi's leadership. Nonetheless, the reform failed in the 2016 referendum, the decentralisation idea found solid ground in Lombardia and Veneto, where two *Lega Nord* (LN) regional presidents organised the advisory autonomist referendums in 2017. All in all, the constructive environment has always predetermined the political foundations of the federalisation process and determined the need for action.

Visions of federalism

The added value to the constructive environment was the federal ideas in the above-mentioned critical junctures. The content of the reforms conforms to the federalist visions described in the historical part of the analysis. In particular, Cattaneo's view of localities' independence and cooperative federalism was actual for four reforms. Firstly, the main

motivation for the Law Nº 142/1990, according to Giannini, was "to satisfy the regional diversity, more than to improve the public administration" (Vesperini 2009: p. 958). Secondly, the 1997–2001 reforms were focused on the re-allocation of the competencies to the regional level of governance and the reduction of the governmental control over the subnational units (Bassanini 2011: p. 9), as well as increasing the level of autonomy and regionalisation (Cento Bull 2002: p. 190). Those changes introduced the cooperative federalist principle. Thirdly, Judgement Nº 303/2003 not only reinforced the cooperative federalist vision of the 1997–2001 reforms, but also enhanced the unitary integrity of the state. The principle of *loyal cooperation,* which determimed the Constitutional Court's support of the central government in the allocation of shared competencies, determined also the less decentralised direction of the reform (Panzeri 2017: p. 159–185). Lastly, the Law Nº 42/2009, unlike the other reforms of the 2000s, implemented the 2001 reform, so Claudio Tucciarelli accurately concluded the reform of fiscal federalism in 2009, stating: "Si scrive «federalismo fiscale» ma si legge «attuazione del Titolo V»" that can be translated as: "It is written «fiscal federalism», but it reads «implementation of Title V»" (Tucciarelli 2010: p. 27).

Unlike Cattaneo's federalism, Sturzo's and Salvemini's ideas were partially revised. Essentially, their vision of dual federalism persisted, but the Southern Regions were not accentuated in the process. The other four reforms counterweigted Cattaneo's cooperative federalism. In 1992–1994 De Mitta–Iotti Commission attempted to allocate the competencies between the regions and the central government. Constitutional Reform in 2005 assured the high level of devolution, demanded by LN, entitling the regional exclusive competencies over healthcare, police, and education (Bull 2007: p. 104). Importantly, this vision met the intellectual support from the contribution of Gianfranco Miglio to the ideological backbone for parties' federalism. Miglio was overtly critical of the political corruption of the politicians, insinuating their influence on economic problems in Italy, and proposing a federal solution. He demanded a more autonomous development of the north from the "southern laggard" (Miglio 1991; Miglio 1994: p. 35).

Constitutional amendment in 2013 proposed legislation that contained similarities with the 2005 reform, relating the initiative to majoritarian premiership and extensive decentralisation (Blokker 2020: p. 22–27), with stricter distribution of competencies. Lastly, 2017 Advisory Referendums conform to Sturzo's asymmetric federalism and autonomism, though applied to the Northern Regions instead of the Southern. Ferrari's decentralisation vision was visible in all of the reform attempts with different levels of devolution: higher in dual federal cases and lower in cooperative federalism. All in all, federalism is responsible for the ideational part of the federalisation process.

Political Actors

Political parties and politicians, responsible for adopting the federal idea in the constructive environment, differentiated through time. In the last period of the First Republic, the parliamentary group led by PSI's member Massimo Severo Giannini

formulated the initiative that would become the Ordinary Law N° 142 in 1990. During Mani Pulite investigation, President Scalfaro took an active role in appointing Carlo Azeglio Ciampi with the main task of providing the pivotal reforms of the public administration for countering the economic burden of the administration costs (Cananea 1996). The goal was to revive the parties of the First Republic in line with the extensive corruption scandal, thus Ciampi's government established the Constitutional Committee on 6 August 1993, consisting of the inter-party collaboration between DC's leader Ciriaco De Mita and PCI's Nilde Iotti.

After the unavoidable collapse of the First Republic, the new parties entered the political scene. *Lega Nord* (LN), *Forza Italia* (FI) and *Partito Democratico della Sinistra* (PDS) were new factions, while *Alleanza Nazionale* (AN), *Partito della Rifondazione Comunista* (PRC), and *Democrazia Cristiana* (DC) – the rethinking of the predecessors. Almost immediately, the parliamentary committee was established by the agreement of the major party leaders: Silvio Berlusconi, Gianfranco Fini, and Massimo D'Alema. The commission was led by Giuliano Urbani (FI), Domenico Fisichella (AN) Cesare Salvi (PDS), and most notably Franco Bassanini (PDS) (Bassanini 2011). Later, the left-wing forces led by Prodi and D'Alema facilitated constitutional reform by establishing another constitutional committee in January 1997. AN and FI were reluctant to accept the reform, insisting on the majoritarian electoral system and stronger position of the government's leader instead of reinforcing the President of the Republic proposed in the reform (Pasquino 1998: p. 47), which assured AN, FI, and RC opting out of it. D'Alema, as the next leader of the government led the "Title V" of the constitution, regarding the regions, provinces, and municipalities, formulated into constitutional laws 1/1999 and 3/2001.

The further period was charcterised by the reaction of the dissatisfied right-wing forces against the 1997–2001 reforms. The main critique was coming from *Lega Nord*, which was reluctant to accept the concurrent legislation between the central and regional authorities and supported the strict division of competencies as well as the expansion of regional autonomy. At the same time, AN and FI were dissatisfied with the lack of reform of the chief executive, which they endorsed, similar to the De Mita-Iotti draft. However, the Constitutional Court sided with the 1997–2001 reform on the grounds of the loyal cooperation principle, usually ruling in favour of the central authority in "Title V" cases, which in 2003 and 2004 amounted to 24.35 and 49.33 of all Constitutional Cases accordingly (Rullo 2022: p. 7).

Before Law 42/2009, there were no contentions on the subject of the reform, so the parliament adopted it without significant impediments. The chief perpetrators were *Il Popolo della Libertà* (PdL), led by Silvio Berlusconi, while the other parties were also mainly standing for reform. Even the salient political opponents of PdL – *Partito Democratico* (PD) – have not endeavoured to reject the bill, simply abstaining from the vote. The only exception was UdC, which was strong in the South and did not endorse the reform (Farinelli, Massetti 2011: p. 700). However, after the dissolution of Berlusconi's government in 2011, the political climate destabilised. After the brief technocratic

government of Mario Monti, the results of the 2013 elections assured the difficulty in the government formation, leading to the broad government with the PD leadership of Enrico Letta.

The Presidential position one more time started stabilising the political system, so Giorgio Napolitano has been the main reason for the PD-UdC – PdL-RI government. Reluctant to be elected for the second term, Napolitano initiated the motion for constitutional reformation in Italy. He did not have any position of federalisation and never contributed to the content of Letta's reform. What he did was an impetus to improve the Italian system, no matter how (Pasquino, Valbruzzi 2017: p. 148). Enrico Letta started the implementation of the Constitutional Reform, but after another political turmoil, Matteo Renzi became the leader of the Cabinet. Renzi continued Napolitano's direction of the Constitutional Reform; though he refused to harness Letta's draft proposals (Blokker 2017: p. 132) and together with Minister Boschi, he proposed the 2013 Constitutional Amendment.

Lastly, after the collapse of Renzi's government, the 2017 referendums in Lombardia were initiated by Luca Zaia and Roberto Moroni accordingly. These referendums provoked the spill-over of the autonomy discussions in twelve other Italian regions, so the motion is not exclusively Northern (Giovannini, Vampa 2020: p. 593–594). Hence, even with the failed 2016 reforms the internal motions from the regions demand the extension of federalisation in Italy. All in all, the political actor's leadership in the process assured politicisation and actor-centredness of the federalisation.

Policies, effects and outcomes

Finally, the political actors formulate policies in the last coil of the federalisation process. There are four policies in the analysis, which were successfully implemented. Law N° 142 in 1990 enhanced the liberties of the regions and localities and was the basis for subsequent reforms, so 77% of the law articles have been reviewed in the reforms of the 90s (Vesperini 2009: p. 961). The reforms of 1997–2001 concerned the re-allocation of the competencies to the regional level of governance, the reduction of the governmental control over the subnational units (Bassanini 2011: p. 9) rationalised and simplified public administration by reducing the number of politicians and attuning some public administrative processes (OECD 2001: p. 13). Cooperative federalism is still the basis for the relationship between regions and the central authority. Judgement N° 303/2003, reinforced the role of the government *vis-à-vis* the regions in concurrent competencies allocation. Fiscal federalism reform in 2009 made the regions more responsible for the allocation of finances, as well as the tax rates (Rodean 2012: p. 223), so that the local and regional taxes are established, while the reform avoids the issue of double taxation of the same amount both by the state and the region (Scuto 2010: p. 77). After the reform, the reliance on the own taxes in budgeting increased to more than 40%, making the regions less dependent on grants than before, even if they constitute a considerable part of the revenues (Mussari, Giordano 2013: p. 35).

However, the other half of the reforms never made it into policies. In 1992–1994, De Mitta–Iotti Commission attempted to allocate the competencies between the regions and the central government as well as enhance the competencies of the leader of the government. The state was to be responsible for 16 policy competencies (Bassanini 2011: p. 6) but failed after the government's collapse. In the 2005 Constitutional Amendment, LN demanded a high level of devolution and entitled the regional exclusive competencies over healthcare, police, and education (Bull 2007: p. 104), while Berlusconi and Gianfranco Fini, similarly to De Mita–Iotti proposal, strived to enhance the position of the President of the Council, or *presidentialismo* (Bull 2007: p. 104). The referendum in 2006 decided the fate of the reform and the government, as 61.3% of the voters rejected the reform. Similarly, Renzi bet his Council of Minister leadership on that referendum, promising to step down from office, what he did after the referendum failure (Bergman 2019). He proposed the reform of the Senate into a body of regional representation, consisting of 95 senators elected by the Regional Councils plus senators for life and was to enhance the role of the President of the Minister's Council. Lastly, 2017 referendums were adopted with an overwhelming majority: Veneto – 98.1% for the reform with a 57.2% turnout; Lombardy – 95.3% also supported the changes with a 38.3% turnout, but were advisory. In conclusion, federalisation is reform-based and non-linear, depending on the success of the policy adoption. Moreover, it is usually a supplementary topic to political contentions or strives for other purposes such as legitimisation of the system, resolving the political crisis or enhancing *presidentialismo*.

Table 1: Critical junctures and micro-process of federalisation

Reform	Constructive environment	Ideas	Actors	Policies and effects	Outcomes
Law 142/1990	*Pentapartito* government, the *partito-crazia* and *transformismo*. Regional diversity over improvement the public administration	Independence of localities and regions *vis-à-vis* the state (similar to Ferrari's and Cattaneo's vision)	*Democrazia Cristiana* (DC): *Partito Socialista* (PS); *Partito Socialista Democratico Italiano* (PSDI): *Partito Repubblicano Italiano* (PRI); *Partito Liberale Italiano* (PLI). Reform led by Massimo Severo Giannini	The provinces and municipalities became more autonomous from the central state	Adopted. Raw regionalisation reform that demanded further amendments, pushed federalisation in the 90s and was the basis for subsequent reforms

1992-1994 De Mitta–Iotti Commission	*Tangentopoli* attempted to legitimise "the First Republic"	Dual federalism (Salvemini's & Sturzo's visions, but without referring to the North/South divide)	All major parties of the First Republic, with the leadership of Ciriaco De Mita (DC) & Nilde Iotti (PCI)	Stricter allocation of competencies between the regions and the state; stronger Presidency	Failed due to the dissolution of "the First Republic". Was a basis for the later Grand Reforms.
1997-2001 Constitutional Reforms	Beginning of "the Second Republic", new parties, demanded extensive reforms of the governance	Cooperative federalism (Cattaneo & Ferrari), continuation of 142/1990	Centre-left coalition with the leadership of Franco Bassanini, Romano Prodi and, later, Massimo D'Alema with Giuliano Amato	Reform of Title V. Establishment of cooperative federalism with shared competencies between the state and the regions	Adopted. Has become the basis of the Italian system to this day. Extreme dissatisfaction with the right-wing coalition
Judgement 303/2003	Implementation of 1997–2001 Constitutional Reforms	Cooperative federalism (Cattaneo & Ferrari), loyal cooperation of the Constitutional Court	Constitutional Court	Assigned to the national government the task of locating public and private infrastructures and strategic production sites pertinent to developing and modernising the country	Approved. Set the state dominance in concurrent legislation
2005 Constitutional Reform	Reaction to 1997–2001 Constitutional Reforms from the right-wing coalition	Dual federalism, based on the 1992–1994 De Mitta–Iotti Commission. LN with Miglio's ideas backing and upended Salvemini's/ Sturzo's vision on the North/ South divide. AN & FI – *presidentialismo*	FI, LN & AN, led by Silvio Berlusconi, Umberto Bossi & Giancfranco Fini accordingly	Stricter division of competencies, *presidentialismo*. Rejecting 1997–2001 Constitutional Reforms	Failed on 2006 referendum and dissolution of the right-wing government

Law 42/2009	Reforms under the 1997–2001 Constitutional Reforms umbrella. Need for fiscal competencies allocation between the state and the regions	Fiscal federalism (Cattaneo's & Ferrari's view of regional liberty)	PdL with the support of the other parties and PD abstention	Regional taxation is more for the region, avoiding double taxation, and more autonomy for regional expenditure	Adopted. The reliance of the regions on their own taxation increased to more than 40%
2013 Constitutional Reform	The collapse of the right-wing coalition in 2011. President Giorgio Napolitano demanded for reform of the governance. Faile Letta's reform	Dual federalism, based on the De Mitta–Iotti Commission (Salvemini & Sturzo). Enhancing *presidentialismo*	PD under Matteo Renzi's leadership	Making the Senate a body for regional representation, decentralisation, majoritarian premiership	Failed on 2016 referendum and Renzi's resignation
2017 Advisory referendums in Lombardia and Veneto	Pro-autonomist presidents of Lombardia and Veneto. Failed 2016 referendum	Autonomism & asymmetric federalism (Sturzo)	Luca Zaia & Roberto Moroni (LN)	Autonomy of both Lombardia and Veneto	Positive results of the referendum, but advisory. Surge of autonomism in other regions

Source: author's own elaboration based on research material.

The dynamics of micro- and macro-processes of institutional change

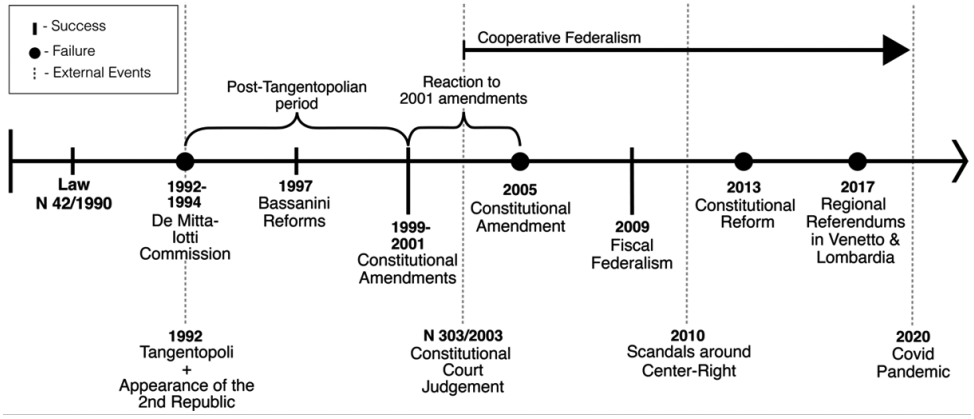
The ideas of Cattaneo, Salvemini, Sturzo, and Ferrari influenced the formulation of the system problems and ideational proposed solutions. Ferrari's decentralisation was a focal point of each critical juncture. The contention between cooperative and dual federalist visions was prominent throughout the process. Furthermore, the federal reforms are inseparable from the political actors, who initiated the reform based on their vision. Therefore, the process is actor-centred and pushed by the political class. Besides, federalisation is extremely politicised in Italy. Almost every federal reform was influenced by political conflicts over the reform formulation.

Federalism has become the political obligation for all parties (Roux 2010: p. 64). It is claimed to resolve the inefficiencies of the system of governance and usually is tried to be established along the other reform initiatives, but only 56% of the Italian public considers the federal issue important; it yields the topics of unemployment, immigration, justice, education, etc. (Roux 2008: p. 335). Consequently, federalism is the topic that is generally endorsed, but not essentially preoccupied with and supplementary to the other reform areas. The micro-process can end either in reform institutionalisation or in failure to be adopted, making the macro-process trajectory non-linear. It depends on multiple circumstances: stability of the parliamentary majority, resistance from the opposition, or even failure of the referendum. Nonetheless, the activity of either institutionalised or non-institutionalised reform usually persists and influences the later constructive environment.

From the macro-process perspective, federalisation is achieved through reforms consisting of critical junctures. *Figure 2* exemplifies the macro-process of federalisation through the critical junctures. The constitutional reforms of 1997–2001 set the current federalisation dynamics. *Figure 2* also identifies the external shocks that the Italian political system overcame through federalisation, usually conforming to the same periods when critical junctures occur. The only exception is the COVID-19 pandemic ,but there is not enough time passed to conclude that there would be no other critical juncture of federalisation. However, the confusing regional competencies have led to the disorganisation of the regional response to the state of emergency. Health policy is one of the concurrent competencies, which the regions have been striving for. So, the health policy in Italy is extremely differentiated from region to region (Bosa et al. 2021). The difference in responses was the source of inefficiency and differentiation in response. As a result, the national government *de facto* took hold of the situation, by issuing common rules during the pandemic. Nevertheless, the regions had the right to implement their regional legislations, these legislations depended on the central state agenda. In particular, the regions could introduce stricter quarantine measures, but not softer than the central government announced (Alber 2020). Hence, after 2001 all subsequent federal reforms occurred under its umbrella of cooperative federalism.

Other macro-processes reiterate through the federalisation, especially *La Grande Riforma* of De Mitta–Iotti Commission in 1993–1994, Constitutional amendments after Bassanini acts in 1999–2001, Constitutional reform in 2005 proposed by the centre-right, and 2013 Renzi's Constitutional reform. Only in 2001 was Constitutional reform made into the legislation, while the other efforts have never been in place. Lastly, the conflict between the regions and the centre is the leitmotif of Italian federalisation. After the 2001 reform, the position of the regions was reinforced with the concurrent competencies in legislation and the conflicts in the Constitutional Court increased. However, the framework of cooperative federalism decreases the ability of the regions for self-sufficient actions and reinforces the position of the central authority. As a result, the system has the comparative decentralisation of the regions, but the central government sets the rules for cooperation. Based on reiterative trends of both micro- and macro-processes, there is no expectation that this dynamic of federalisation would change.

Figure 2: Macro-process of federalisation



Source: author's own work

Conclusions

The author used in this article the process-tracing method to explain the dynamic of federalisation in the Italian context, while constructivist institutional theory is perfectly applicable to the explanation of trends in this process. The Italian federalism of the 19th century influenced the process of federalisation. The issue of differentiation between the South and North provided Salvemini with a federal solution. Carlo Cattaneo's federalism attempted to resolve the contention between the regions and the state on the grounds of liberty. Luigi Sturzo was among the ideological drivers behind the idea of regional authorities. The others developed the concept of decentralisation and devolution in the Italian context. The following problems and solutions justified the federal solution for the non-federal state to improve Italian governance.

Generally, federalisation can be divided into two processes. Firstly, the micro-process of reform implementation is based on the ideas from the constructive environment of federalism. The political actors choose those ideas and attempt to interpret them into reform proposals. Subsequently, actors try to implement those reforms to the political institutions. Therefore, federalisation is an actor-centred, elite-driven, and politicised process. The actors are involved in political interactions to implement the reform. On the basis of conducted analysis, it can be said that the federal solution usually supplements the other reform proposals to legitimise those ideas from the efficiency dimension.

Secondly, the macro-process of federalisation is based on the critical junctures of institutional development. Such critical moment, occurred in the 2001 Constitutional Amendment, determined the subsequent federalisation development under the framework of cooperative federalism. The Great Reform (ital. *La Grande Riforma*) was also a salient direction of federalisation development, but four out of five attempts to

establish the Great Reform have failed due to different circumstances. Hence, the macro-process is non-linear and usually supplementary to other reforms.

However, the idea of *La Grande Riform*a persists as there are visible demands for more decentralisation from the regions. The crisis caused by COVID-19 pandemic has been the latest external shock for federalisation, which provoked new discussions. The current right-wing government under the leadership of Giorgia Meloni look into the issue of regional differentiation. The so-called Calderoli Bill is under formulation right now, and it has already been accepted by the Italian Senate. The reform's aim is to establish the amendment of the Constitution to clarify art. 116, or the conditions, under which the regions can demand the differentiated autonomy over certain parts of legislation. This reform satisfies the requests of such regions as Veneto, Lombardia and Emiglia-Romania, which are demanding more regional autonomy. Concurrently, *Fratelli d'Italia* (FdI) is interested in enhancing the role of the head of the government, so-called *premierato reform*. Thus, there is a potential for this bill to become a new Grand Reform, similar to the dual federalism of reforms in 1992–1994, 2005 and 2013. Therefore, the macro-process of federalisation is active at the moment, with the potential for new developments in the near future, but the dynamics of these processes will hardly change for the next reform.

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Significance of Rules of Origin in European Union's unilateral Generalised System of Preferences (GSP) for *Everything But Arms* system's beneficiaries[1]

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Abstract
Least developed countries (LDC) play marginal role in the global economy and in the global trading system. The international community has introduced a series of initiatives to provide these countries with more favourable market access conditions. One of them is the European Union's programme – the *Everything But Arms* (EBA) scheme providing duty-free and quota-free market access to all products except weapons and ammunition. Conditions for access to the EU market, are contingent not only upon the level of customs duty rates, but also rules of origin (RoO), as it is the latter that determines whether a lower rate of customs duty can be applied to imported goods or not. This article's aim is to assess the significance of the rules of origin of goods in the European Union's unilateral Generalised System of Preferences for the EBA system's beneficiaries, with special attention given to changes introduced in 2011. To meet the objective hereof, not only empirical methods were employed (indirect observation and description), but also general methods, including deduction and induction. The following research techniques were used: a cause and effect analysis, a comparative analysis and synthesis. The research is based on statistical data provided by Eurostat and UNCTAD.
Keywords: rules of origin, Generalised System of Preferences (GSP), *Everything but Arms* (EBA), the European Union (EU), least developed countries (LDC), customs duty.

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Znaczenie reguł pochodzenia towarów w Powszechnym Systemie Preferencji (GSP) Unii Europejskiej dla beneficjentów systemu *Everything but Arms*

Streszczenie

Kraje najsłabiej rozwinięte (LDC) nie odgrywają znaczącej roli w gospodarce światowej. Podjęto szereg inicjatyw, aby zapewnić tym krajom korzystniejsze warunki dostępu do rynku. Jednym z nich jest unijny program – inicjatywa *Wszystko oprócz broni* (EBA), zapewniająca bezcłowy i bezkwotowy dostęp do rynku wszystkich produktów z wyjątkiem broni i amunicji. Warunki dostępu do unijnego rynku uzależnione są jednak nie tylko od poziomu stawek celnych, ale także od reguł pochodzenia (RoO), gdyż to od tych ostatnich zależy możliwość zastosowania niższej stawki celnej stosowanej do towarów importowanych. Celem artykułu jest ocena znaczenia reguł pochodzenia towarów w ramach jednostronnego Ogólnego Systemu Preferencji Unii Europejskiej dla beneficjentów systemu EBA, ze szczególnym uwzględnieniem zmian wprowadzonych w 2011 roku. Aby osiągnąć postawiony cel, zastosowano nie tylko metody empiryczne (obserwacja pośrednia i opis), ale także metody ogólne, w tym dedukcję i indukcję. Zastosowano następujące techniki badawcze: analizę przyczynowo-skutkową, analizę porównawczą i syntezę. W badaniu wykorzystano dane statystyczne Eurostatu i UNCTAD.

Słowa kluczowe: reguły pochodzenia, Powszechny System Preferencji (GSP), Wszystko oprócz Broni (EBA), Unia Europejska (UE), państwa najsłabiej rozwinięte, stawka celna.

Non-reciprocal tariff preferences are an essential element of the special and differential treatment (SDT) of developing countries in a multilateral trading system. Reducing import tariffs in developed economies for developing ones should contribute to income from exports and investment, and consequently, be conducive to sustainable development and lower poverty. Hence, derogation from the GATT/WTO rules was introduced,[2] under which developed countries were permitted to grant tariff preferences to developing countries in the form of the Generalised System of Preferences (GSP).[3] The GSP enables developed countries to apply various rates of customs duty to each category of trading partners (e.g. developing and least developed countries, without violating Article I of the GATT, under which trading partners must be treated in a non-discriminatory and equal manner (most favoured nation, MFN). Tariff preferences are granted unilaterally and not negotiated with beneficiary countries. The very granting the tariff preferences or duty-free access to the market for goods originating from beneficiary countries does not automatically ensure that the trade preferences will be utilised effectively. Preferences depend on the fulfilment of a number of requirements related to rules of origin (RoO), which in many cases beneficiary countries are unable to meet (UNCTAD 2023b: p. 3).

The European Union (EU) introduced the GSP on 1 July 1971, being the first one ever in the world (UNCTAD 2023b: p. 7). In order to support least developed countries (LDCs),

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[2] The General Agreement on Tariffs and Trade (GATT), as of 1 January 1995 replaced with the World Trade Organisation (WTO). (see more: WTO 2023; UNCTAD 2023b).

[3] The Generalised System of Preferences (GSP) was established at the second session of UNCTAD conference held in New Delhi in 1968 and was targeted on developing countries. It was decided then that developing countries were incapable of competing with developed countries in the international trade system and customs tariffs would enable them to boost exports and increase profits on trade. This is necessary for the diversification of exports, increasing the economies of scale and reducing dependence on foreign aid (Kennedy 2012: p. 598).

in March 2001 the European Union launched the initiative *Everything but Arms* (EBA) as a part of the GSP.[4] Conditions for access to any market, including also the EU market, are contingent not only upon the level of customs duty rates, but also rules of origin (RoO), as it is the latter that determines whether a lower rate of customs duty can be applied to imported goods or not. RoO are rules (in the form of provisions of law) that make it possible to establish the economic nationality of goods in relation to a specific country or region and provide the proof of such origin.

The aim of the article, hypothesis and used methodology

This article's aim is to assess the significance of the rules of origin in the European Union's unilateral Generalised System of Preferences to the EBA system beneficiaries, with special attention given to changes introduced in 2011. A hypothesis formulated herein suggests that changes to the rules of origin of goods, which have been made over the past two decades, led to their simplification and relaxation for least developed countries in relation to specific groups of goods, which are of relevance from these countries' point of view. Consequently, this contributed to a higher preference utilisation rate and boosted trade. Nevertheless, this does not mean that rules of origin of goods do not serve for beneficiaries as barriers to preferential access to the EU market, specifically, for certain goods.

To meet the objective hereof, not only empirical methods were employed (indirect observation and description), but also general methods, including deduction and induction. The following research techniques were used: a cause and effect analysis, a comparative analysis and synthesis. The research is based on statistical data provided by Eurostat and UNCTAD.

Main assumptions of the initiative *Everything but Arms*

The GATT Enabling Clause of 1979 allowed not only preferences for all developing countries, but additional preferences for the least developed countries, as defined by the UN. In February 2001, the European Union launched an initiative for LDCs, which entailed duty-free and quota-free (DFQF) access to the EU market and covered all goods except for Chapter 93 of the Combined Nomenclature, i.e. arms and ammunition.[5] This concerns

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[4] The European Union provides three different GSP schemes: the general GSP scheme, the GSP+ (GSP Plus) scheme and the GSP-LDC scheme called the initiative Everything but Arms (EBA). (UNCTAD 2023b: p. 10).

[5] A list of least developed countries was compiled for the first time in 1971 by the UN. Throughout almost fifty years, the number of LDCs increased from 25 countries, as included in the 1971 list, to 50 countries between 2003 and 2007, and decreased to 46 countries in 2021. "As of 2021, forty-six countries are designated by the United Nations as least developed countries (LDCs). These are: Afghanistan, Angola, Bangladesh, Benin, Bhutan, Burkina Faso, Burundi, Cambodia, the Central African Republic, Chad, the Comoros, the Democratic Republic of the Congo, Djibouti, Eritrea, Ethiopia, the Gambia, Guinea, Guinea-Bissau, Haiti, Kiribati, the Lao People's Democratic Republic, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mozambique, Myanmar, Nepal, the Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra Leone, Solomon Islands, Somalia, South Sudan, the Sudan, Timor-Leste, Togo, Tuvalu, Uganda, the United Republic of Tanzania, Yemen and Zambia. [...] The list of LDCs is reviewed every three years by the

99.9% of imports to the EU from those countries (UNCTAD 2003: p. 34). As at 2023, 46 countries are covered by the EBA initiative.

The reduction of tariffs on bananas, rice and sugar was spread out in time, and was completed in 2009 (see: Council Regulation (EC) 416/2001). This means that neither (*ad valorem, ad spetiem*, compound) duties nor the entry price system are applied to imports to the European Union.[6] Therefore, the EBA initiative encompasses all agricultural products, including sensitive goods, covered by the common agricultural policy, such as meat, dairy products, fruit and vegetables, cereals, sugar and others.[7] For most of those products, the pre-EBA GSP provided for a percentage reduction of *ad valorem*, MFN rates, which meant that specific duties were not subject to reduction. The EBA preferences were incorporated under the Council Regulation No 2501/2001 into the Generalised System of Preferences as a special arrangement (see: Council Regulation (EC) 2501/2001). These preferences were granted for indefinite period of time, and what is more, they do not have to be reviewed periodically, which is the case with the GSP.

A beneficiary country ceases to be covered by the EBA if it has graduated from the LDC status and is no longer on the UN's LDC list. The European Commission reviews countries on an ongoing basis to verify their eligibility for the EBA and makes the decision on removing a country from the EBA after a three-year transitional period.

General characteristics of rules of preferential origin

Conditions for access to any market, including also the EU market, are contingent not only upon the level of customs duty rates, but also rules of origin (RoO), as it is the latter that determines whether a lower rate of customs duty can be applied to imported goods or not. RoO differ across countries and products. RoO are rules (in the form of provisions of law) that make it possible to establish the economic nationality of goods in relation to a specific country or region and provide the proof of such origin. Strict rules of origin received a lot of criticism from many researchers, as being too much exaggerated and impracticable, especially from the small and less developed countries' point of view. Some even call them "hidden protectionism" (Baldwin at al. 2009), as they can constitute significant non-tariff measures in trade (Hoekman, Inama 2017). Procedures for conformity with specific rules of origin generate extra costs, and consequently, can lead to the undesirable trade diversion effect in global value chains and the trade deflection effect, they also disrupt trade in

Committee for Development Policy (CDP), a group of independent experts that report to the Economic and Social Council (ECOSOC) of the United Nations." (UNCTAD 2022b: p. XI; UNCTAD 2021: p. X). It is expected that until 2026, seven countries will no longer be categorised into the LDC group. These will be such countries as: Bhutan (2023), Angola (2024), the Solomon Islands (2024) and São Tomé and Príncipe (December 2024), as well as Laos, Nepal and Bangladesh (2026). (United Nations 2023).

6 "Regarding fresh fruit and vegetables (28 tariff lines at a level of 8-digit CN code), the so-called entry price system (EPS) is deployed, which was implemented in 1995 and entails collecting customs levies calculated as the sum of ad valorem duty and extra specific duty (a so-called tariff equivalent) imposed when an import price is lower than an entry price" (Czermińska 2019a: p.56). Specific arrangements relating to the entry price system are contained, inter alia, in the document: Commission Regulation (EC) 1580/2007.

7 A greater scope of preferences for LDCs, with all the goods being covered, has been applied only by Australia (since 1 July 2003) and New Zealand (since 1 July 2001) (see: UNCTAD 2012: p. 12).

intermediate goods.[8] Less developed countries which have little potential for competing with other states cannot have access to cheaper semi-finished products or raw materials in the global value chain, as this can lead to a loss of tariff preferences due to the failure to comply with rules of origin.

Compared to other commercial policy instruments, such as customs duties and quotas, rules of origin are relatively less often the focus of research. This also follows from the fact that rules of origin change relatively rarely. Nevertheless, there are several works on the impact of the liberalisation of rules of origin on trade (Andersson 2016; Bombarda, Gamberoni 2013; Conconi et al. 2018), yet these researchers do not pay attention to least developed countries, where rules of origin are particularly onerous. In recent years, a few publications have been released on the significance of rules of origin to EBA beneficiaries and for trade (Crivelli, Inama 2021; Crivelli et al. 2021). Providing empirical evidence, the authors came to the conclusion that utilisation rates are conditional mainly on the strictness and/or complexity of rules of origin of goods. Tobias Sytsma (2021) focused on changes to rules of origin of apparel products under the EU Generalised System of Preferences to examine beneficiaries' preference utilisation rate. The author found that relaxing rules of origin for apparel products from least developed countries had a significant impact on preference utilisation rates. Some researchers limit their study to selected countries (Rahman 2014) or goods (Brenton, Özden 2009; Tanaka 2020; Curran, Nadvi 2015; Masum 2016; Habib 2016).

There are three elements of preferential origin which means the utilisation of reduced or zero rates of duty:

1) Meeting rules of preferential origin specified for a given product;
2) Providing a valid certificate of origin (prescribed by the regulations of an importing country, but issued by authorities of an exporting country);
3) Direct transport of goods from a beneficiary country to a country granting preferences. For transit, there must be "no manipulation", which has to be confirmed by a country of transit – commonly referred to as the Non-Manipulation Rule.

Rules of origin are an essential element that defines the scope of economic benefits following from preferential origin. The origin of goods is determined based on the rule that they originate from the country where they have been wholly obtained (WO) – this is a criterion applied to the majority of agricultural products, working or processing, if any, concerns wholly obtained materials; it also covers non-originating goods that have been worked or processed to the extent that is sufficient to accord the originating status in accordance with rules of origin set out for a given product or sector. The criteria allowing to consider processing sufficient to accord the originating status under the EU GSP are as follows:

1) "Tariff jump criterion" (change in tariff heading, CTH), meaning that the finished product that is obtained is classified under a four-digit heading of the Harmonised System nomenclature, which differs from that under which all non-originating materials used to manufacture that finished product are classified (European Commission 2016a; UNCTAD 2022a).

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[8] For more information on this subject see: Geraets et al. 2015: p. 296 et seq.

2) Percentage criterion (value or weight limitation), including the X% added value rule, namely, working or processing that leads to an increase in value by at least X% of the product ex works (EXW) price; it means a fixed maximum threshold for non-originating goods or a minimum threshold for goods originating from a country of processing.[9]
3) Technological criterion (specific forms of working or processing, SP), i.e. specific forms of working or processing which are required for non-originating goods (Czermińska 2019b: p. 339). Under the EU GSP, specific technical processes are used to meet required origin criteria for exports to the EU. Some of them are characteristic of particular product categories, e.g.: A. Timber products – planning, sanding, final joining and cutting; B. Textiles – weaving, spinning, printing and colouring. Similarly, as regards petroleum products, specific processes were defined, which are sufficient to accord the originating status under the EU GSP, and their details, including the HS code to which they apply are provided in Note 8 of Annex 22-03 to Commission Delegated Regulation (EU) 2015/2446 (see: Noida Special Economic Zone 2022: p. 14). With respect to certain goods, only one, or a combination, of the aforesaid criteria can be applied.

The percentage criterion is considered to be the least discriminatory and the simplest, compared to all other rules, in particular, when it applies to all goods. However, as regards its disadvantages, one has to mention a complicated calculation method and changes to prices and foreign exchange rates. For instance, when a "local currency depreciates, imported materials are relatively more expensive, which increases their relative share in the total value" , meaning that the value of non-originating goods exceeds the permissible threshold. Added value is also "subject to cyclical fluctuations of raw material prices or price changes during a recession" (Naumann 2009: p. 6).

The CTH methodology (a tariff jump) is generally the easiest to implement, but it has certain drawbacks. It is based on the HS nomenclature, which was not devised specifically for RoO. Hence, it happens that both "unprocessed and processed goods are classified under the same heading" (e.g. rough diamond and polished diamond are assigned the same four-digit HS code), whereas others, for which disaggregation is considerable, even very little processing (or no processing) can mean a "tariff jump" (e.g. fresh and dried vegetables have different four-digit HS headings). (Naumann 2009: p. 7).

EU reform of EBA Rules of Origin

As from 1 January 2011, there have been new, simplified GSP rules of origin in place, which were introduced by virtue of Commission Regulation (EU) No 1063/2010 of

[9] The European Union estimates added value using the indirect method, under which the non-originating material share in the total value of originating goods is determined as a percentage. The direct method is employed by the United States. When calculating added value, the US GSP system considers the cost or value of materials manufactured in a beneficiary country and the direct costs of processing (Bhattacharya, Mikić 2015: p. 23).

18 November 2010,[10] and implementing provisions in the form of Commission Delegated Regulation (EU) 2015/2446 of 28 July 2015 and Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015. Prior to 2011, rules of origin were the same for each of the GSP subsystems and did not change substantially. The 2011 rules of origin brought in for LDCs mainly with respect to industrial goods are different, i.e. they are less stringent than the RoO applicable to the other GSP beneficiaries. Compared to the previous Regulation EU on GSP rules of origin, the following changes concerning the below three main areas were introduced, all of which apply to LDCs:

1) Changes to rules of origin for individual products, leading to the introduction of less stringent criteria for many sectors, in particular, with regard to least developed countries. The new Regulation also differentiates between developing beneficiary countries and least developed countries – where no such difference was specified under the previous legislation. Less stringent rules of origin of goods were set for developing and least developed countries in many HS chapters and headings, especially in the textile and clothing industry, as well as the machine-building and electronic industry.
2) Cumulation of origin. An important element of making the rules less stringent is cumulation of origin, which allows countries that are obliged to abide by identical rules of origin to collaborate in order to manufacture goods eligible for preferential treatment. The effect of cumulation is that materials originating from countries engaged in it are exempt from the obligation to satisfy the processing criterion that is a sufficient precondition for giving the originating status, which entails treating them as if they were originating materials. Thus cumulation of origin is the exception to the rule that preferential rules of origin apply to products from only one country, which benefit from preferences in a country of the consignee. The new Regulation contains changes to regional cumulation, it also introduced extended cumulation.
3) The reform modified the administration of rules of origin thoroughly. The origin certification system based on certificate of origin Form A was superseded after the end of a transitional period by statements on origin submitted directly by registered exporters. All exporters which export or intend to export to the EU under the GSP (including also under the EBA) are required to register in the system of registered exporters (REX) of the European Commission. An exporter registered in the REX system makes a statement on origin on their own, which serves then as a basis for applying tariff preferences to goods brought to the EU. "The paperless REX self-certification system has replaced the system where paper Form A certificates are approved by customs. From 1 January 2021 all GSP proofs of origin are made only by means of a REX statement on origin" (*Customs Manual* 2023: p. 56; see also: European Commission 2023b). Detailed rules concerning the issue of certificates of origin, declarations in invoices and Form A are laid down in Commission Implementing Regulation (EU) 2015/2447 of 24 November 2015.

[10] No longer in force.

As for the first group of changes introduced (rules of origin), the following modifications are the most significant from the least developed countries' perspective:

- The share of non-originating materials (used for the manufacturing of a finished product) from a country of processing which is an LDC has risen in the case of many industrial and processed agricultural goods (e.g. the automotive industry: for LDCs – a threshold of 70% of an ex works price for non-originating materials, the other GSP countries – 50% of an EXW price; similarly for chemical and related products). For machinery and electronics included in the HS chapter 84, the RoO which previously required CTH and the maximum share of non-originating materials amounting to 40% of EXW price was replaced by CTH or the maximum share of 70% of non-originating materials at an EXW price both for developing countries and LDCs (Crivelli, Inama 2021: p. 5).
- The relevant change is related to "the specific process criterion, when certain operations or stages in a manufacturing process have to be carried out on any non-originating materials used" (UNCTAD 2022a: p. 24). "In 2010, the European Union moved from a "double transformation" to a "single transformation" requirement for HS chapters 61 and 62 on apparel articles, the leading product groups traded under the European Union's GSP preferences" (UNCTAD 2023b: p. 16; see also: UNCTAD 2013: p. 4).

As regards apparel, the requirement for only the first processing was imposed on the group of countries in question. This requirement is related to the first processing in a beneficiary country, i.e. manufacturing from fabrics, which means that they go through the CMT (cut, make & trim) processes. Hence, there is no longer any requirement that fabrics must originate from a country of processing (which benefits from preferences). "This is an essential change, which allows for choosing the most competitive suppliers of fabrics, and this, consequently, has a bearing on the level of prices and contributes to enhanced competitiveness of exported goods" (Czermińska 2021). For the other system beneficiaries, it is necessary to carry out weaving operations accompanied by finishing, including trimming (see: Commission Regulation (EU) 1063/2010: Part II).[11] Textiles and apparel are the key sector for many GSP beneficiaries, whereas rules of origin applicable to this industry constitute a criterion for the assessment of RoO stringency (Naumann 2011: p. 8). That sector is considered in the EU to be sensitive, hence tariff barriers are quite high and the preferential access to the Union market entails a relatively huge preference margin – resulting from a difference between preferential and non-preferential treatment. The changes in the rules of origin are of great significance to exporters of products made of fabrics (Rahman 2014: p. 22).

Earlier, apparel manufacturers had been required by the EU rules of origin to use textiles originating from local sources. Under the then provisions, apparel producers from LDCs could be given an access to reduced rates of customs duty in the EU only when apparel products were made of textiles manufactured also in LDCs. Failure to meet that

[11] No longer in force.

rule of origin resulted in the application of non-preferential MFN customs duty rates. This rule prevented apparel producers in least developed countries from procuring textiles from low-cost countries, such as China or Taiwan.

A good example here is Bangladesh and apparel, which is a product being most often exported from this country to the EU. Using duty-free access to the EU market was traditionally limited by RoO requirements (before 2011), specifically, in the case of the export of finished apparel. The Union's RoO for the export of apparel required "two-stage conversion": from yarn, fabrics, to clothes. Bangladesh did not have strong backward links for textiles, in particular, for fabrics, therefore, it is dependent, to a large extent, on imported fabrics. This also precluded duty-free access offered under EBA (only approx. 28% of knitted material could benefit from a zero rate of customs duty, the remaining 72% was covered by an average MFN rate – 12.1%). As a consequence, Bangladesh-based exporters were losing potential competitive advantage. In the case of knitted material, Bangladesh has been able to build strong backward links over the years due to private investment in yarn and knitted material production. For Bangladesh, the Union's RoO played an important role in stimulating investment in activities related to backward linkage, although this was mainly limited to the knit sector (Czermińska 2023: p. 19; Rahman 2014: p. 14).

Cumulation of origin under the EBA initiative encompasses: (a) cumulation with a country granting preferences, in this particular case this is the EU (bilateral cumulation); (b) cumulation with EU GSP beneficiaries (regional cumulation); (c) cumulation with countries which signed free trade agreements with the EU (extended cumulation) and (d) cumulation with Norway, Switzerland and Türkiye.

Bilateral cumulation means that materials originating from the EU may be used for products manufactured in an EBA country, and subsequently, deemed as originating from that EBA country, provided that processing operations carried out in the EBA country go beyond minimum activities. The same applies to materials which come from an EBA country and are processed in the EU. Hence, this kind of cumulation means, for instance, that European materials can be used, undergo the working or processing process which is sufficient to gain the originating status; in practice, such cumulation can encompass mainly labour-intensive, but low-tech products. An example of goods that can benefit from bilateral cumulation includes apparel made in LDCs of materials purchased in the EU.[12] In practice, such cumulation can also refer to the import of materials originating from beneficiary countries to the Union, and their processing by European manufacturers (Piotrowski 2011: p. 54–55).

Regional cumulation was always included in the EU GSP rules of origin. Mercosur was added, as a new entity that benefits from regional cumulation. By virtue of the previous Regulation, the originating status was accorded to a country in which the last manufacturing operations were made, only if added value was higher than the customs value of raw materials imported from another member country of a regional organisation. In practice, that meant, for instance, that a manufacturer from Cambodia which desired to use fabrics originating from Thailand was not accorded the Cambodian originating status, as the value

[12] For more information on bilateral and regional cumulation of origin – see: Commission Delegated Regulation (EU) 2015/2446: art. 37.

of fabrics was higher than added value obtained in Cambodia. Under the new Regulation, the said requirement was eliminated on condition that working operations from other regional group member underwent working or processing going beyond minimum operations. Regional cumulation is functioning within one of four regional groups recognised by the EU GSP.[13] Materials coming from one member country of a group, which are further worked or processed in another country of the same group, are considered to be originating from that last country. The previously applicable conditions of regional cumulation of origin, divided into three groups of countries located in close geographical proximity, were seen as not only conservative, but also complicated and too stringent. The new rules of origin increased the number of groups covered by regional cumulation, introduced the fourth group of countries from South America, i.e. Mercosur. Moreover, at the request of an interested country, cumulation among group I and group III countries is possible, provided that a number of specific administrative requirements have been met. However, cumulation among group II and group IV countries was not introduced, despite the fact that Bolivia, Colombia, Ecuador, Peru enjoy the associated country status in Mercosur and benefit from a free trade area, yet they do not belong to a customs union. Regional cumulation among member countries of the same regional group can be applied only under the condition that working or processing carried out in a beneficiary country, in which materials are further processed or included, goes beyond minimum operations and, in the case of textile products, also beyond the operations specified in Annex 22-05 to Commission Delegated Regulation (EU) 2015/2446. If the aforesaid condition has not been met, a country of origin of products will be a regional group country having the biggest share in the customs value of materials used, which originate from other countries of a regional group (European Commission 2010: p. 17). Therefore, the utilisation of components among member countries of the same group is allowed in practice (e.g. Bangladesh may use components from Bhutan because both countries belong to group III). Attention must be given to the following principles: regional cumulation among member countries of the same group can be applied only when countries involved in cumulation are beneficiary countries at the time of export of a product to the European Union, not only eligible countries; when goods originating from one beneficiary country are further processed in another member country of that group, then goods can be deemed as originating from that last country (provided that processing goes beyond minimum operations). (European Commission 2019).

It needs to be highlighted that the countries mentioned as belonging to regional cumulation groups are countries eligible for the GSP (some of them are not beneficiaries). Both the provisions on bilateral and regional cumulation may be applied jointly (European Commission 2016b: p. 17). Currently, regional cumulation of origin covers only two groups that can benefit from it, namely: "Group I: Cambodia, Indonesia, Laos, Myanmar/

[13] Originally: "Group I: Brunei, Cambodia, Indonesia, Laos, Malaysia, Philippines, Singapore, Thailand, Vietnam; Group II: Bolivia, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Panama, Peru, Venezuela; Group III: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka; Group IV: Argentina, Brazil, Paraguay and Uruguay." (Commission Regulation (EU) No. 1063/2010: art. 86; this regulation is no longer in force). Out of these countries, Cambodia, Laos, Bangladesh, Bhutan and Nepal are LDCs.

Burma, the Philippines and Vietnam (it was GSP Plus beneficiary only until the end of 2022); Group III: Bangladesh, Bhutan, India, Nepal, Pakistan and Sri Lanka. The other two groups include only one country each (Group II: Bolivia and Group IV: Paraguay)", hence, cumulation among individual countries is possible only on request and under certain conditions (Gwardzińska, Chowaniec 2021: p. 12; European Commission 2023a).

Extended cumulation (with countries which signed free trade agreements with the EU) encompasses only industrial goods and processed agricultural products. Agricultural products classified under HS chapters 1-24 are excluded from extended cumulation. This cumulation of new type must be applied unilaterally, which means that it should enable exclusively the utilisation of materials in a beneficiary country, however, before it is granted, an interested beneficiary country should submit a request in writing to the Commission, which needs further to be examined, and that country should also satisfy specific requirements, including for co-operation between customs authorities and ensuring the proper application of Union provisions.

As regards cumulation with Norway, Switzerland and Türkiye, it covers goods categorised into HS chapters 25–97. Materials originating from Norway, Switzerland or Türkiye, which undergo more than a minimum operation in LDC benefiting from preferences are considered as coming from that beneficiary country and may be exported to the EU, Norway, Switzerland or Türkiye. This rule does not apply to agricultural products or products which are subject to derogation. "For this type of cumulation to apply, the EU, Norway, Switzerland and Türkiye need to grant the same preferential treatment to products originating in EBA countries" (European Commission 2019).

Instead of the provision on necessary direct transport, the non-manipulation rule was imposed, meaning that products cannot be altered, processed or subjected to operations other than operations designed to preserve them in good condition, products remain under customs supervision in the country (countries) of transit. Compliance requirement is deemed to be met, unless customs authorities have good grounds to believe otherwise; in such cases, customs authorities may request that the declarant present a proof of compliance, which may be submitted in any manner, including in the form of transport documents or specific proofs based on packaging marking or numbering (*Customs Manual* 2023).

Significance of changes in Rules of Origin of goods for EBA system's beneficiaries and for trade between them and the European Union

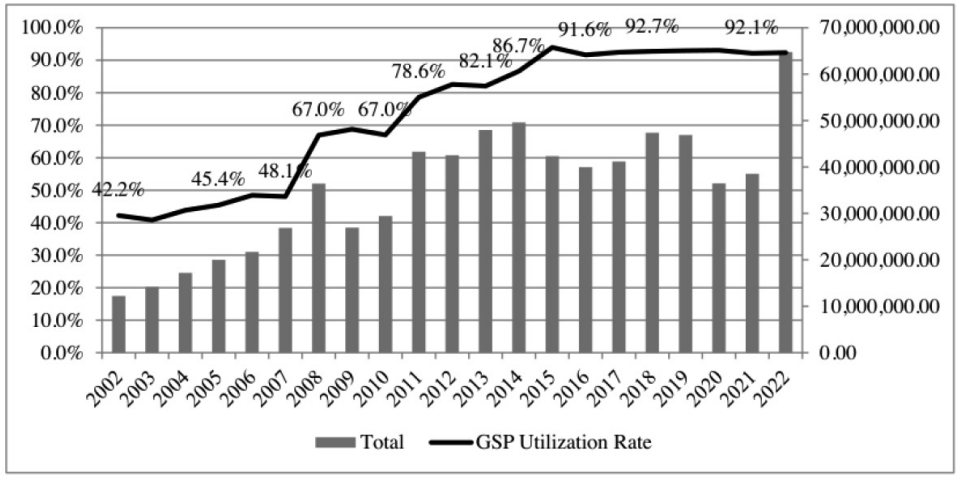
Whether a system of preferences is effective from the rules of origin perspective or not is reflected by the degree to which preferences are utilised, along with the structure of trade in goods. Whereas the degree to which preferences are utilised is demonstrated by the preference utilisation rate and utility rate.[14] Those rates may vary significantly, which depends

[14] The preference utilisation rate is defined as the share of preferential import value in the value of import eligible for preferences. Whereas the preference utility rate is the share of preferential imports in the total imports (European Commission 2019).

on the product coverage of preferences. If the preference utilisation rate is high, with the utility rate being low at the same time, then it can mean that the scope of preferences is narrow (many goods are excluded from the system), but preferences being offered are in line with the beneficiary's export structure. However, if that correlation is opposite, i.e. where the scope of goods covered by preferences is huge, yet the degree to which they are utilised is small, this can imply that preferences are not adapted to the beneficiary's export structure. As for the goods which are mainly imported by LDCs, these goods include, first and foremost, apparel and textiles (which accounted for approx. 58% of imports in 2021) (Eurostat data WWW).

It must be stressed that these are the groups of goods, in which RoO play a significant role for beneficiaries of tariff preferences. The starting point of the research is 2009 (before the changes in the rules of origin were introduced) and 2011, which was the first year, in which the new rules of origin came into effect. Subsequently, the volume of preferential imports for major GSP beneficiaries in consecutive years was presented in two-year cycles.

Figure 1: Volume of EU's Imports from LDCs (in thousand US dollars) and utilisation rate (in %).

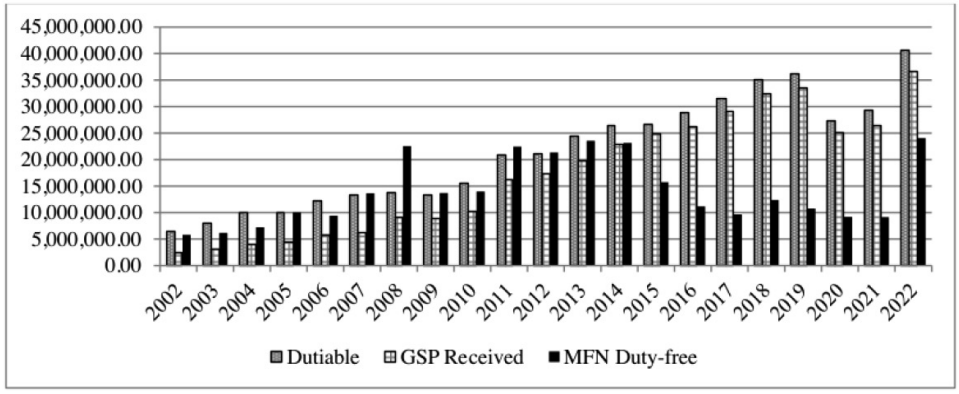


Source: own elaboration based on UNCTAD 2023a.

The volume of imports to the EU from LDCs shows a growing trend, but is subject to certain fluctuations (see: *Figure 1*). In this regard, 2022 reached a record high, when imports exceeded USD 60 billion (compared to approx. 12 billion US dollars in 2002). Whereas in the years 2002–2022, the utilisation rate of the EU GSP-LDC increased from slightly more than 40% to above 90%. When combined with the full extent of products covered by duty-free treatment (zero MFN rate, see: *Figure 2*), more than 90% of maximum value of preferences was in fact utilised under the Union GSP-LDC scheme. The driving factor behind that trend is the reform of rules of origin under the Union GSP-LDC. In 2010, the European Union shifted from a "double transformation" to a "single transformation" requirement for

HS chapters 61 and 62 on apparel articles – the groups of products that are leading in preferential import from LDCs (UNCTAD 2023b). The reform enabled exporting LDCs to use imported fabrics for the manufacturing of finished products, instead of using imported yarn. The RoO reform allowed for the greater utilisation of preferences under the scheme.

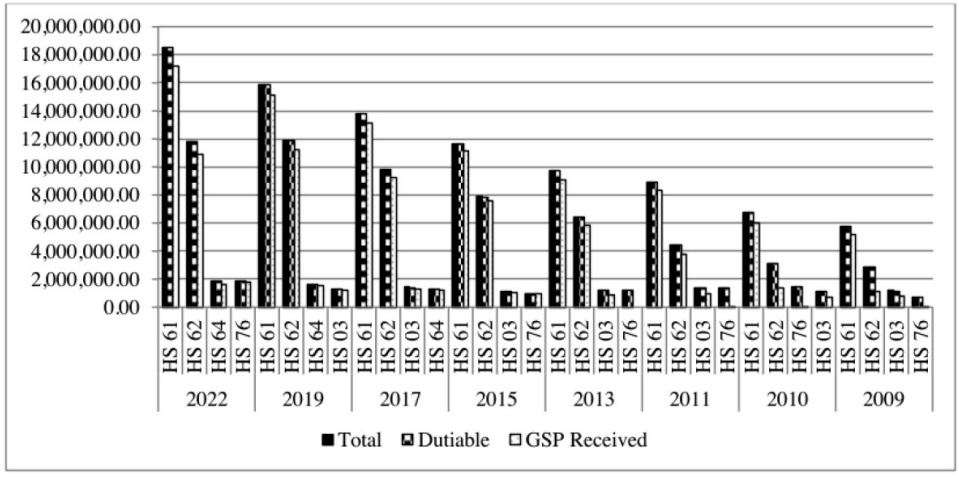
Figure 2: EU imports by tariff treatment from LDCs (in thousand US dollars)



Source: own elaboration based on UNCTAD 2023a.

Throughout the years, the value of dutiable imports from LDCs has been rising (non-zero rates of customs duties), but the value of imports covered by GSP preferences has been also on the increase (see: *Figure 2*). This applies, first and foremost, to articles of apparel and clothing accessories (HS chapters 61 and 62) (see: *Figure 3*).

Figure 3: Top four dutiable products imported by European Union from least developed countries (imports in thousand US dollars).

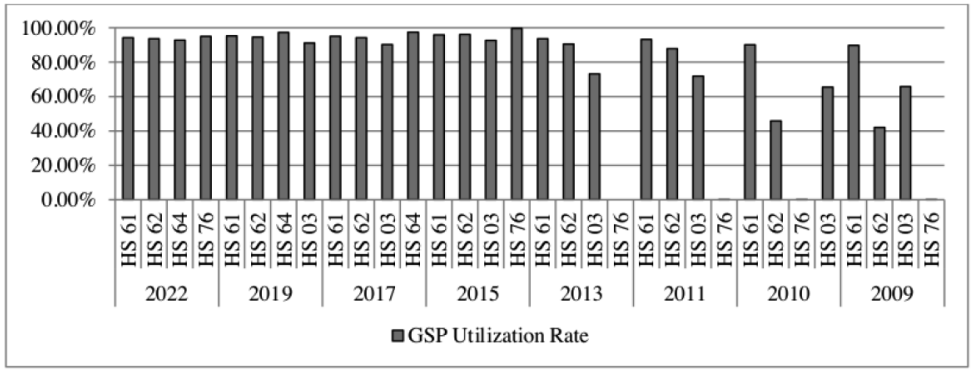


HS 61: Art of apparel & clothing access, knitted or crocheted.

HS 62: Art of apparel & clothing access, not knitted/crocheted
HS 03: Fish & crustacean, mollusc & other aquatic invertebrate
HS 64: Footwear, gaiters and the like/ parts of such articles
HS 76: Aluminium and articles thereof.
Source: own elaboration based on UNCTAD 2023a,b.

The largest exported product groups, classified at the HS chapter (2-digit) level, represent between 65 and 95% of total effective preference values under the GSP schemes are goods classified under HS chapters 61 and 62, i.e. articles of apparel and clothing accessories, knitted or crocheted (chapter 61) and articles of apparel and clothing accessories, not knitted or crocheted (chapter 62) (see: *Figure 3*). A considerable increase of exports of goods categorised as chapter 61 and 62 to the EU can be observed, as from the beginning of 2011 (the change to the rules of origin).

Figure 4: Utilisation Rate – Four Major Dutiable Products Imported by European Union from Least Developed Countries (in %)



HS 61: Art of apparel & clothing access, knitted or crocheted
HS 62: Art of apparel & clothing access, not knitted/crocheted
HS 03: Fish & crustacean, mollusc & other aquatic invertebrate
HS 64: Footwear, gaiters and the like/ parts of such articles
HS 76: Aluminium and articles thereof
Source: own elaboration based on UNCTAD 2023a.

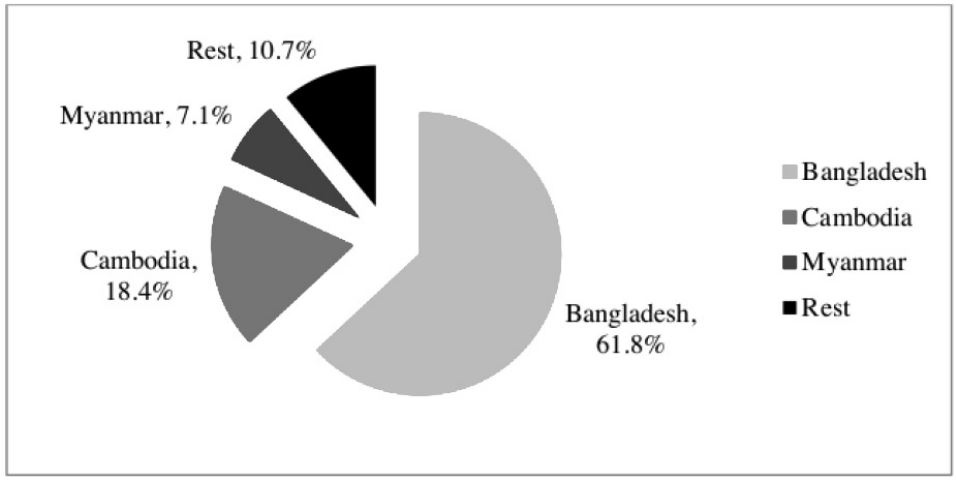
The utilisation rate for Art of apparel and clothing access, knitted or crocheted (HS 61), both prior to the change to the rules of origin and in the consecutive years, was high and fluctuated around 90%, over the years, it had showed a growing trend (90% in 2009, 94% in 2022).[15] The rise in utilisation rates of knitted or crocheted garments (HS chapter 61) has been moderated as the latter started from a much higher value than in the case of HS chapter 62 (see: *Figure 4*). For Art of apparel & clothing access, not knitted/crocheted

[15] It must be noted that an average MFN customs duty rate applicable to the import of textiles and apparel (HS 61 and HS 62), trade/free trade agreement with the European Union equals 9%.

(HS 62), the utilisation rate has risen considerably after the change to the rules of origin: 42% in 2009, 87% in 2011 (it doubled) to 94% in 2022. This results from introducing the requirement for only first processing in a beneficiary country, manufacturing from fabrics, which means that they go through the CMT (cut, make & trim) processes; and from the fact that there is no requirement that fabrics must originate from a country of processing (which benefits from preferences).

The distribution of the value of preferences of the EBA schemes is highly concentrated in a small group of products and exporters (UNCTAD 2023b). The major EBA beneficiaries are, in order of magnitude: Bangladesh, Cambodia and Myanmar (see: *Figure 5*). In aggregate, these three countries account for nearly 90% of the total EBA preferential imports.

Figure 5: Major beneficiaries of *Everything But Arms* arrangement in 2018* (share in %).



*based on the latest available report of the European Commission.

Source: European Commission 2020: p. 12.

"The biggest share of imports under EBA came from Bangladesh (61.8%), followed by Cambodia (18.4%); and Myanmar (7.1%). In terms of overall GSP beneficiaries, Bangladesh overtook India in 2018 (with EUR 16.8 billion preferential imports against EUR 16.4 billion from India)." (European Commission 2020: p. 11). In Bangladesh, textile & textile articles (HS section XI) comprise approx. 92% of exports to the EU (all the figures showed below are retrieved from UNCTAD data base). In 2009, the utilisation rate in this group of products stood at 78%, whereas in 2011, it rose to 95% (in 2022 – 95%). Hence, relaxing the rules of origin had a considerable impact on the greater use of preferences with respect to the major export goods. The similar effect is seen also for the other major EBA beneficiary, namely, Cambodia. As regards the main group of goods exported to the EU, i.e. Textile & textile articles (HS section XI), the utilisation rate in 2009 amounted to 70%, whereas in 2011, it rose to 89%. After 2011, Cambodia's export of apparel to the EU increased by 112%, which coincided with the rapid rise in import of textiles from China to Cambodia

(Tanaka 2020: p. 6). As for Myanmar/Burma, the effect of relaxing the rules of origin on trade volumes and preference utilisation rate is also observed. That country had been a beneficiary of tariff preferences since 2013 (before that date, preferences were removed for political reasons), the main group of exported goods includes also commodities classified under section XI. In 2013, the utilisation rate in this group of goods was 48%, but in the consecutive years it continued to grow, to reach 96% in 2022.

Conclusions

The GSP is an important development policy instrument that provides developing countries with better access to the European Union's market by applying lower (or zero) rates of customs duties to most of the goods. Special importance is attached to preferences granted to least developed countries. Characteristic feature of the GSP is the fact that these are unilateral preferences, meaning that they do not have to be reciprocated by the beneficiary. At the same time, the "benefactor", that is to say – in the case of the EU system – the European Union, decides about a preference margin and eligibility rules applicable both to countries and goods.

There are several factors that diminish the importance of preferences under the GSP to its beneficiaries. Those which are of key relevance include the rules of origin of goods. They mean that in order to benefit from preferences, economic operators must comply with complex rules of origin, which lead to higher costs relating to administrative procedures and specific technical requirements, e.g. concerning appropriate documentation, requirements for the transport of goods from countries that benefit from preferences, etc. The exporter will decide to incur extra costs if reductions in customs duties, and related benefits following from a reduction in customs duties under the GSP compensate for these costs. Furthermore, rules of origin are often excessively restrictive as regards basic criteria for using imported materials and components in developing countries' production.

With average MFN rates in the EU being low, tariff preferences are significant mainly in the event of tariff peaks (which occurs, among other things, for textiles, apparel and footwear). When justifying restrictive rules of origin in the clothing sector, it is argued that they are necessary to support actions having a clear added value in developing countries and promote integrated manufacturing processes. As for drawbacks of rules of origin, they include additional requirements that must be met in order to consider processing sufficient to accord the originating status (in addition to the percentage and technological criterion), namely, a "double tariff jump" in place of an ordinary change of the tariff heading.[16]

Rules of origin (before 2011) were perceived in the European Union as too complex and difficult to satisfy. The changes introduced in 2011 contributed to the simplification

[16] A double tariff jump, also referred to as two-stage processing, means, for instance, the making of fabrics from fibres (stage 1) and then the production of apparel (stage 2), or, for example, making apparel from yarn.

and relaxation of the rules of origin. Tolerance for values of non-originating materials, stipulated in the EBA, are less stringent. Cumulation of origin with goods originating from Norway, Switzerland and Türkiye makes it possible to apply the origin of goods included in chapters 25 to 97 of the Harmonised System. Regional and extended cumulation is also possible. The most significant change (given the structure of goods covered by LDCs' trade) refers to the relaxing of rules of origin applicable to apparel and textiles, in which case MFN rates remain at a relatively high level. Compared to the other GSP beneficiaries, the new rules of origin in this sector are less restrictive for LDCs. As regards apparel, the requirement for only the first processing was imposed on the group of countries in question. There is no longer any requirement that fabrics must also originate from a country of processing (which benefits from preferences). This is an important change, which allows for choosing the most competitive suppliers of fabrics, which in turn affects the price level and contributes to the increase in the competitiveness of exported goods.

Relaxing the rules of origin in this group of goods for EBA countries not only translated into a higher share of these countries in preferential trade in the EU, but also contributed to a higher preference utilisation rate. This refers, in particular, to Bangladesh and Cambodia, but also other LDCs. The elimination of customs duties on almost all goods under the EBA, accompanied by relaxed rules of origin, is beneficial to least developed countries, whose preference utilisation rate is also high. The major beneficiary is Bangladesh, which was able to adapt and take advantage of the opportunities for exporting textiles to the EU. A shift from the Union's three-stage RoO requirement (cotton, yarn, fabrics and apparel) to two stages (from yarn to fabrics and apparel) contributed to the growth of the knitting sector in Bangladesh.

RoO play an important role in using EBA preferences, especially by least developed countries. Nevertheless, the extent to which they are utilised depends on individual production and export capabilities of respective system beneficiaries. Where preference margins are high enough, rules of origin are significant indicator of preference utilisation. The European Union's example demonstrates that the reform of rules of origin by relaxing the requirements for the processing of apparel products has considerably increased the utilisation of GSP preferences in the case of LDCs' export.

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Radical right-wing Eurosceptics as public orators in the European Parliament: the logic of persuasion as an instrument to break consensus

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Abstract
The aim of this article is to examine how members of the political group *Identity and Democracy* (I&D) attempt to break the existing pro-Ukrainian consensus in the European Parliament (EP). The adopted hypothesis is that I&D MEPs do that through the mechanism of the logic of persuasion. It was verified by analysing speeches during EP plenary debates on the situation in Ukraine and looking for evidence of this mechanism within them. The analysis demonstrated that almost 1/4 of the I&D political group uses the logic of persuasion in all their speeches to break the pro-Ukrainian consensus in the EP, but only six MEPs are likely to do that intentionally. However, some of the analysed MEPs use this mechanism in their speeches to undermine the consensus on migration and asylum policy.
Keywords: Euroscepticism, European Parliament, logic of persuasion, public orators

Radykalnie prawicowi eurosceptycy jako publiczni oratorzy w Parlamencie Europejskim: logika perswazji jako instrument przełamywania konsensusu

Streszczenie
Celem artykułu jest zbadanie, w jaki sposób członkowie grupy politycznej *Tożsamość i Demokracja* (ang. *Identity and Democracy,* I&D) próbują przełamać istniejący w Parlamencie Europejskim (PE) proukraiński konsensus. Przyjęto hipotezę, że europosłowie I&D robią to za pomocą mechanizmu logiki perswazji. Hipoteza ta została zweryfikowana poprzez analizę wystąpień podczas debat w PE na temat sytuacji w Ukrainie i poszukiwanie w nich dowodów na istnienie tego mechanizmu. Analiza wykazała, że prawie 1/4 grupy politycznej I&D wykorzystuje logikę perswazji we wszystkich swoich wystąpieniach w celu przełamania proukraińskiego konsensusu w PE, ale tylko sześciu eurodepu-

towanych prawdopodobnie robi to celowo. Jednak niektórzy z analizowanych eurodeputowanych wykorzystują ten mechanizm w swoich wystąpieniach, aby podważyć konsensus w sprawie polityki migracyjnej i azylowej.
Słowa kluczowe: Eurosceptycyzm, Parlament Europejski, logika perswazji, publiczni oratorzy

Although the concept of Euroscepticism was firstly proposed in 1998 by Taggart, it is still difficult to claim that it exists as a concrete idea. Studies that attempt to operationalise Euroscepticism tend to lead to vague categories (Szczerbiak, Taggart 2018). This vagueness also applies to far-right Eurosceptics, who are in the focus of this article. Minkenberg and Perrineau have attempted to operationalise this category. According to them, it encompasses "a collection of nationalist, authoritarian, xenophobic and extremist parties that are defined by the common characteristic of populist ultranationalism" (Minkenberg, Perrineau 2007: p. 30). Nevertheless, the scope of this definition remains somewhat unclear. It seems certain, however, that far-right Eurosceptics oppose the EU on both strategic and ideological grounds. Strategic grounds mean that they are a party driven by a protest strategy and motivated to oppose the EU in order to differentiate themselves from their mainstream rivals, while ideological grounds are that the EU project is in opposition to the core values of the far right. Hainsworth (2008: p. 82) states that "European integration serves to undermine constructs and values, such as the nation state, national identity, state sovereignty […] and national belonging". Therefore, such politicians fear that European integration will have detrimental consequences for national interests, traditions and identity. For this reason, they largely focus their criticism on undermining EU migration and asylum policy as one that directly strikes at the nation-state and the national identity of the Member States' societies (Stockemer et al. 2018). Politicians representing such views in the European Parliament (EP) of the ninth legislature sit in the political group *Identity and Democracy* (I&D)[1], and the speeches of its representatives will be analysed in this article.

The behaviour of this group of Eurosceptics in the context of the situation in Ukraine is worth investigating, above all because their political and financial ties to the Kremlin are quite widespread and well documented. For several years, the Russian government, based on politicians from parties such as the *National Rally*, the *League or Alternative for Germany*, has been trying to create a so-called conservative movement as an alternative to the traditional right-wing parties (Futàk-Campbell 2020; Polyakova 2014). Behind this plan, money has been flowing to the parties forming this political group in the EP over the past years, whether in the form of loans or camouflaged, indirect support (Dalton

[1] *Identity and Democracy* is the sixth largest political group in the European Parliament in its ninth term. It comprises MEPs from eight countries: Italy (Lega); France (Rassemblement National); Germany (Alternative für Deutschland); Austria (Freiheitliche Partei Österreichs); Flanders (Vlaams Belang); Estonia (Eesti Konservatiivne Rahvaerakond); Denmark (Dansk Folkeparti); Czech Republic (Svoboda a Prima Demokracie). The group is chaired by Marco Zanni (Italy), with Jordan Bardella (France) and Gunnar Beck (Germany) as vice-chairs.

2022; Datta 2022).[2] The events that took place in Ukraine 24 February 2022 was a shock for them, as it made fundraising more difficult, but also made the entire political project less credible. In addition, a pro-Ukrainian consensus clearly emerged within the EU, resulting on the one hand in high public sympathy for the attacked state, and on the other hand – in unprecedented EU activity in the area of foreign and security policy (Steiner et al. 2023). The consequence of the latter was the adoption of successive sanctions packages hitting Russia and its elites, the creation of the framework, within which arms purchases for Ukraine could be coordinated and financed. This, in turn, not only struck at the interests of their foreign 'sponsor', but also resulted in a deepening of co-operation between EU Member States in the area of external action and security policy on an unprecedented scale. The latter, in turn, contradicted the Eurosceptic identity of I&D members. Therefore, this topic is important for far-right Eurosceptics both strategically (it allows them to distinguish themselves from the mainstream parties) as well as ideologically (it gives them the opportunity to express their opposition to deepening cooperation within the EU).

The second reason why exploring this topic is important, is because Eurosceptic MEPs can put pressure on other parties to change their political positions (Meijers 2017). As Winzen (2020: p. 4) rightly points out, MEPs use parliamentary means to change European policy. Therefore, it is worth investigating the position of I&D members in relation to the situation in Ukraine. Indeed, it may be that their position will translate into the views of other MEPs and indirectly into the policies of national governments. Thus, in the future, they may lead to a modification of policy towards the situation in Ukraine and the financial and military aid provided to Ukraine by the EU and its Member States.

In this study, I borrowed the concept of the 'public orator' from Nathalie Brack (2015: p. 339). According to her, orators concentrate on two aspects of their actions: public speaking and spreading negative information about European integration. This leads them, according to Brack, to be characterised by a preference for anti-conformism and an attitude of frontal opposition to the EU. This is important because the subject of the Russian-Ukrainian conflict, due to the existing consensus within the EU institutions, allows them to present both attitudes, demonstrate their anti-conformism and criticise the EU's actions. Thus, they can play the role of advocates for citizens, who do not share the pro-Ukrainian and anti-Russian narrative dominant in politics and the media. Most importantly, however, their speeches, according to Brack, are primarily aimed at shattering the so-called consensus in the EP (Brack 2015: p. 341). For the purposes of this article, therefore, the research assumption has been made that a similar phenomenon also exists in the case of the situation that occurred in Ukraine after 24 February 2022.

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[2] For example: Marine Le Pen, former leader of the *National Rally* party, took out a loan from First Czech Russian Bank in 2014. The bank has since gone bankrupt, transferring the loan to the Russian company *Aviazapchast*. Italian party *Lega* struck an oil deal with Russia, the profits of which were to be donated to the *Lega* to fund the 2019 European Parliament election campaign. The case is being investigated by the Milan prosecutor's office. In 2019, Heinz-Christian Strache, then Austrian vice-chancellor and leader of the far-right *Freedom Party*, was filmed trying to accept a bribe from a fake Russian oligarch while on holiday in Ibiza.

Therefore, the following two **research questions** are posed:

(Q1) to what extent do public orators belonging to the I&D political group attempt to shatter the existing pro-Ukrainian consensus in the EP?

(Q2) by what mechanism do they attempt to do so?

For the purposes of this study, the **working hypothesis** is that the analysed MEPs mostly try to shatter the existing pro-Ukrainian consensus in the EP and do so using the mechanism of the so-called logic of persuasion. This hypothesis will be verified by analysing I&D members' speeches during the EP plenary debates on the situation in Ukraine (March 2022 – February 2023) and looking for evidence in them that the aforementioned mechanism was used to break the pro-Ukrainian consensus in this EU institution.

This article is innovative in three areas. Firstly, there are few studies that analyse the impact of Eurosceptic parties on the EU's external action and security policy in the broadest sense (Keith 2017; Müller et al. 2021; Pardo, Gordon 2018; Tereszkiewicz 2016). Secondly, the approach of Eurosceptic parties to the Russian-Ukrainian conflict has been little studied (Ivaldi, Zankina 2023; Tereszkiewicz 2015). The third innovation stems from the application of the mechanism of the logic of persuasion to explore the potential for Eurosceptics to influence politicians of other political groups. While this mechanism has been quite widely described in the political science literature, it has been little applied to the analysis of Eurosceptic behaviour in the EP.

This article consists of three sections, an introduction, and conclusions. Section one presents the materials analysed, the methodology adopted in the research, and the theoretical assumptions. In the second section the author describes the results of the study, including the occurrence of elements constituting the mechanism of the logic of persuasion in the speeches examined. Finally, the third section contains an analysis and discussion of the results obtained in the context of the role of public orators played by some members of the I&D political group.

Materials, methodology and theoretical assumptions

This study will use a method of discourse analysis, based on the assumption that EP debates are a form of it due to the real-time exchange of views (Habermas 1984). Some scholars in political science tend to downplay the importance of the speech act. Following Jeffrey Checkel, it has been assumed that it is important because it can be used to persuade actors to change their position. Thus, it can change people's beliefs about what goals are valuable and what roles they play or should play in social life. When a speech act produces such effects, it does important social constructionist work, creating new understandings and new social facts that reconfigure politics (Checkel 2001). It is therefore important to explore whether this also applies to the attempt to construct – in opposition to the mainstream – a new perception of the situation in Ukraine, and consequently to the attempt to change European policy in this area.

Eurosceptic politicians seek to transform not only the structures in which they operate, but also the EU's actions. This reshaping can take place through various mechanisms,

among which the so-called logic of persuasion should certainly be mentioned. It is based on rhetorical action, consisting of challenging opponents' positions and demonstrating the correctness of one's own positions by referring to common norms and values. However, its aim is not to shape a compromise position, but to persuade one's own views and change the position of the opponent.

This study uses Checkel's concept of argumentative persuasion, which fits the above definition. According to him, it is a social interaction process that involves changing attitudes in the absence of overt coercion (Checkel, Moravcsik 2001: p. 220–222). It is a mechanism, by which a change in the preferences of the particular actor can be influenced only through the strength of the used arguments. Thus, it is an action or process, in which one person attempts to induce a change in another person's belief, attitude or behaviour by communicating a message in a context, in which the persuaded person has some degree of free choice. Therefore, persuasion is not manipulation, but rather a process of persuading someone through arguments that are appealing to them and informed debate (Mutz et al. 1996). Checkel also identified five conditions when actors should be particularly open to socialisation and preference change (Checkel, Moravcsik 2001: p. 221–222). From the point of view of the present study, the most relevant observation is that "argumentative persuasion is more likely to be effective when the persuader does not [instruct] and demand, but instead [follows the] principles of serious deliberative argumentation" (Jorgensen et al. 1998: p. 297). This is the situation in the EP. The socialisation and the formal nature of the debates that take place (e.g. presentation of a political group's position, limited speaking time, possibility to ask a question under the so-called blue card procedure) mean that presented speeches are usually deliberative in nature. It seems legitimate to assume, therefore, that they will use the mechanism of the logic of persuasion in its argumentative variety, especially by Eurosceptic MEPs with limited influence on other EU institutions.

At the first step, in this study I sought public orators among the members of the I&D political group participating in the EP plenary debates on the situation in Ukraine. Public orators will be identified by measuring their involvement in the discourse taking place in the EP. As the rules of this EU institution do not always allow everyone willing to participate in a debate (e.g. a debate may be limited to only one representative of a political group), it is difficult to identify a hard percentage of engagement as an indicator of being a public orator. Therefore, the assumption was made that MEPs, who are clearly more likely to participate in debates on the topic under analysis, would play the role of public orator.

At the second step I looked for elements of the mechanism of logic of persuasion used to undermine the pro-Ukrainian consensus in their speeches. These statements had to be constructed in such a way that in one speech the MEP supports the dominant narrative in the EU on the situation in Ukraine, i.e. criticising Russia, supporting pro-Ukraine actions, while on the other hand – trying to undermine the European, or more broadly Western, consensus on the issue (e.g. criticising sanctions, pointing to the costs borne by the EU/Europe, indicating that a prolonged war could threaten European security). Thus, the ex-

amined statements referred to values relevant to political opponents, but at the same time there were elements in them whose aim – intentional or unintentional – was to bring about a change in the policy of the EU and its Member States. Therefore, the statements that were considered during the debates had to contain both elements – both referring to the opponents' beliefs and questioning the actions taken. This construction of the speech will demonstrate that the speaker's intention is to bring about a change in European policy, but without coercion, by appealing to arguments acceptable to the other side.

In the EP, 28 debates were held on the subject during the year (March 2022 – February 2023). In these debates, the members of the I&D political group spoke 74 times, of which only in seven debates the political group's position was presented. However, it should be noted that this may have been due to procedural restrictions adopted by the EP. Only one debate did not arouse the interest of the I&D representatives.

The above-mentioned information allowed to assume that the involvement of Eurosceptic MEPs in the debate on this conflict was significant. Therefore, an analysis of the statements made by members of this political group during the debates will provide representative insights into their use of the logic of persuasion to break the existing consensus in the EP on the need to support Ukraine.

Research Results

General characteristics of the speeches

Of the 64, and as of December 2022, 62 deputies of this political group[3], as many as half, i.e. 32 took part in the debates. Thus, since half of the members of this political group chose to speak in debates on the situation in Ukraine, it can be assumed that this topic was significant to them. Among all speeches, 36 were classified as using the mechanism of the logic of persuasion to undermine the pro-Ukrainian consensus in the EP. It was, in turn, used by 21 MEPs of the analysed political group (by 2/3 of the speakers). Among them, therefore, we can find public orators. However, only in the case of six of them it can be assumed that the analysed mechanism was used intentionally, as it was present in every speech. These MEPs can be mentioned here: Ch. Anderson, J. Bardella, G. Beck, H. Vilimsky, M. Zanni, and B. Zimniok. In the case of the 10 MEPs, it is difficult to determine the intentionality of this mechanism, because they only appeared once, but the mechanism was identified in their statements. MEPs who did not use this mechanism at all can be positioned on the opposite side. First and foremost, among them are J. Madison and A. Bonfrisco, who, in their numerous speeches, fully supported the EU's policy in the area under consideration. A separate group is formed by MEPs, who spoke more than once, but only in part of their speeches I've identified the use of the logic of persuasion mechanism to undermine the pro-Ukrainian consensus in the EP, and in the rest – to challenge other EU policies (mainly migration and asylum). Thus, it seems that they apply the analysed mechanism intentionally, using it – depending

[3] In December 2022, True Finns members moved to the European Conservatives and Reformists political group.

on their needs – to undermine a selected area of EU activity. Certainly N. Fest, who spoke eight times, can be included in this category, because in only three statements contained elements of the logic of persuasion in the context of undermining the pro-Ukrainian consensus, and in the rest – for other purposes. A similar situation exists with G. Lebreton and T. Vandendriessche, who spoke several times, but only in some of their statements was found the mechanism of the logic of persuasion in the sought context. The last group of MEPs includes P. Kofod, M. Dreosto and G. Reil, who spoke several times, but only used the mechanism of the logic of persuasion to contest EU asylum and migration policy.

Element 1: Criticism of Russia

Members of the I&D using the mechanism of the logic of persuasion in their speeches mainly emphasised their negative assessment of Russia's attack on Ukraine. They used phrases such as: "shameful attack", "unjustified aggression", "unacceptable step", "aggression war", "military aggression". They clearly indicate that Russia is the aggressor here and that Ukraine is merely defending itself against attack. These statements do not include the phrase "special military operation", which is present in the Russian narrative, or any reference to the fascist nature of the Ukrainian regime, and no indication of the need to defend the oppressed Russian-speaking population. In a number of speeches, MEPs from this political group simply condemned Russia's attack on Ukraine and pointed out that it was a violation of international law.

Element 2: An attempt to change the pro-Ukrainian consensus

Persuading that sanctions are damaging the European economy

One of the aims of the members of the I&D was to undermine the need not only for new economic sanctions on Russia, but also for the extension of existing ones. The conducted analysis made it possible to distinguish three types of arguments used by I&D representatives. First of all, they noted that sanctions have and will have negative consequences for the Union in the future, lowering the standard of living of average Europeans. In this context, they pointed to rising fuel and energy prices and soaring inflation. Their statements also often referred to the recent pandemic and its negative consequences, which the European economy still has to overcome.

The second argument discouraging the adoption of another package of sanctions against Russia was the claim that they would be counterproductive, because they would actually strengthen the Russian economy. MEPs often pointed out in their statements the ineffectiveness of the sanctions introduced so far, because despite them Russia's revenues from the sale of raw materials increased. The last group of arguments related to the thesis that sanctions serve other countries. MEPs pointed in this context in particular to the United States, which had increased its income from gas exports, as well as China, India and Turkey, which had not joined Western sanctions. In their view, the continuation of the current policy will lead to economic collapse in Europe and a decline in its importance on the international stage.

Appeal for de-escalation

The second objective, which is clearly driven by some members of the I&D political group, is to bring about a cessation of the sending of arms to Ukraine and to bring about a so-called de-escalation. In this context, the analysed Eurosceptics often referred to European values such as peace and prosperity for all people. In their view, the EU, by supporting the sending of arms to Ukraine, de facto opposes the values, on which it was established. Some MEPs referred in this context to the fact that the EU is the winner of the Nobel Peace Prize. They also pointed out that supplying weapons is pointless because Ukraine has no chance of winning a confrontation with Russia anyway. In their view, prolonging the conflict only means more deaths and destruction. Some members of the analysed political group indicated that the EU's aim should be to encourage Ukraine to make concessions and work towards finding a diplomatic solution to the conflict. Finally, it should be noted that there was some embitterment on the part of the analysed Eurosceptics, because they believed that those who call for peace are automatically seen as pro-Russian and hostile to Ukraine.

Call not to impose censorship

The third objective pursued by members of the I&D was to stop the actions taken by the EU to prevent the spread of Russian narration. Among the analysed MEPs, the argument related to European values was frequently raised. One argument was that we should not use the same methods in Europe that we criticise elsewhere, and that closing down the media would go against democratic values. The second type of argumentation emphasised the need to treat Europeans as intelligent people, who themselves know when they are being misled. A third line of argumentation was to point out that it is the EU, Member States' governments and the mainstream media who are in fact manipulating Europeans in the topic of the Russian-Ukrainian conflict.

Discussion

The conducted analysis has demonstrated that there are three clear areas, in which some of the far-right Eurosceptics of the I&D attempt to break the European consensus about Ukraine using the logic of persuasion: sanctions imposed on Russia, arms supply to Ukraine, and combating Russian propaganda. An interesting observation is that those members of the analysed political group, who used the indicated mechanism, fitted into Brack's defined role of public orator. She notes that they oppose almost everything, because they oppose EU competence as a matter of principle (Brack 2015: p. 341). Also, in the analysed topics, they opposed the measures taken at EU level: introducing sanctions, coordinating arms supplies and purchases, and combating Russian propaganda. In their speeches, they questioned the rationality of the taken measures, their effectiveness, while emphasising the disconnection of the European bureaucracy from the needs of normal people. The second fundamental aspect of this ideal type identified by Brack is the focus on spreading negative information about the EU (Brack 2015: p. 341). This element is also

found among the members of the I&D using the logic of persuasion. Here, a narrative describing the EU as subservient to the USA or manipulable to the Ukrainian president predominates above all. The third characteristic of public orators that Brack points out is that they consider as their duty to inform the public about the negative consequences of EU decisions. They also try to remind their colleagues that the EP's decisions are not supported by a certain segment of society (Brack 2015: p. 341). This behaviour is also clearly visible in the analysed statements.

It is difficult to find these characteristics in the case of the other political group members, who took part in the debates but did not use the logic of persuasion mechanism. They mostly supported the EU's initiatives in the area under consideration. They also mostly convey positive messages about it in this context, stressing the importance of European and transatlantic unity. It becomes legitimate to ask whether they can be categorised as public orators or even Eurosceptics. To answer this question, it would be necessary to analyse their speeches on other areas of the EU's activity. Perhaps it is only the issue of supporting Ukraine in its conflict with Russia that pulls them out of the framework of Euroscepticism, while on other issues, however, they continue to present a position hostile to the EU.

The analysis also demonstrated that the other two characteristics of public orators identified by Brack are not present in the case of the Russian-Ukrainian conflict. Firstly, this group of Eurosceptics uses insults or personal attacks, and disrupts parliamentary work or causes controversy in order to draw attention to themselves and break up the overly consensual nature of the EP's work (Brack 2015: p. 341). In the analysed debates, no such behaviour was identified. Moreover, very often speeches were of a serious nature, indicating concern for the future of the continent, even if their aim was to break the pro-Ukrainian consensus. In fact, the only identified speeches in which MEPs attacked political opponents, concerned the issue of Russian funding of European politicians. A significant proportion of the members of the I&D – and this is irrespective of whether we classify them as trying to break the consensus or as pro-Ukraine – tried to demonstrate in their speeches that such accusations should not be directed at them, but rather at members of mainstream parties. Secondly, public orators do not refer to the content of European politics, but rather tend to give speeches of a general nature (Brack 2015: p. 342). In the case of the analysed topic, in fact, all speeches referred to specific actions taken by the EU and its Member States. This may suggest that they were interested in the EU's activity in this area. Perhaps, this was due to a genuine concern for what is happening in the east of the continent. But in the case of the members of the I&D, who used the mechanism of the logic of persuasion to break the pro-Ukrainian consensus, the source of this interest may have been the negative consequences of the EU's actions for Russia. If we assume that the aim of this group of Eurosceptics was to limit the negative consequences for Russia, it seems obvious that they had to refer in their speeches to specific actions taken within the EU. Unfortunately, the behaviour of a group of MEPs from the I&D, who did not use the mechanism of the logic of persuasion, cannot be explained in this way. Rather, their aim was to support the actions of the

Union and its Member States in the area under analysis. Thus, it can be assumed that their reference to a specific policy stemmed from a genuine interest in the subject, which may be indicative of the scale of the shock that situation in Ukraine and the human dramas associated with it, represented for them.

Finally, it is also worth mentioning a group of MEPs from the I&D, who admittedly used the mechanism of the logic of persuasion in their speeches, and did not do so only to break the pro-Ukrainian consensus, but also – and sometimes especially – to argue for changes in EU migration and asylum policy. The consensus in the literature is that it is opposition to irregular migration that is one of the essential elements of the far-right Eurosceptic agenda. It is hardly surprising that some representatives of the I&D political group have used debates about the situation in Ukraine to mark their opposition to EU migration policy. What is interesting in this context, however, is that in their speeches they supported the reception of refugees from Ukraine, opposing them to illegal migrants from Africa and Asia. In this sense, the logic of persuasion consisted of appealing to the common support for sheltering Ukrainians and demonstrating in the second part of the speeches that the previous EU migration and asylum policy was wrong and should be changed. In this context, Poland and Hungary were cited as models for migration and asylum policy. It seems that this group of Eurosceptics was not interested in deviating from the pro-Ukrainian consensus, but rather in pursuing their core agenda. Therefore, it is difficult to classify them as pro-Russian politicians.

Conclusions

The conducted analysis only partially confirmed the adopted working hypothesis. It demonstrated that nearly 1/4 of the I&D political group used the mechanism of the logic of persuasion in all their speeches in order to break the pro-Ukrainian consensus in the EP. However, if we consider that 32 members of this political group spoke in the debates, as many as half of them used this mechanism. Of this group only six MEPs probably do so intentionally (Ch. Anderson, J. Bardella, G. Beck, H. Vilimsky, M. Zanni and B. Zimniok). Thus, this is not a large group, especially when set against the size of the entire political group. Nevertheless, all the analysed MEPs, who tried to undermine the pro-Ukrainian consensus in the EP, in the first step criticised Russia and verbally supported the Ukrainian people, but in the second step tried to bring about a weakening of specific anti-Russian measures (sanctions, sending arms to Ukraine, closing down media spreading Russian narration). The question that arises is whether they are doing this intentionally in order to implement Russian policy or whether it is part of the externalisation of their Eurosceptic identity. It is difficult to give a clear answer, and this will require further research in the future.

An interesting observation is that Brack's view that the public orators – I&D members who clearly participated more frequently in debates on the situation in Ukraine – form a relatively coherent group (Brack 2015: p. 342) was not confirmed. It is possible to

identify five MEPs who focused on speeches in the EP on the Russian-Ukrainian conflict, because they were responsible for delivering 26 speeches. However, some of them took rhetorical action, i.e. used the logic of persuasion, in order to break the pro-Ukrainian consensus (12 speeches), some undermined the consensus on migration and asylum policy (9 speeches), and some explicitly inserted themselves into this consensus by supporting the actions of the EU and its Member States (5 speeches). In case of the latter, however, it is questionable whether they are public orators or even Eurosceptics. Nevertheless, this topic is a dividing line not only among the public orators, but also – and perhaps especially – within the analysed political group. So far, the source of this differentiation is not entirely clear. It is certainly not the possible Kremlin funding of the activities of individual political groups. Indeed, among the MEPs strongly supporting the pro-Ukrainian consensus are members of the Italian *Lega*, against which there are well-documented suspicions of receiving Kremlin support (Morley, Soula 2019). It is possible that the factor that has modified their approach to the topic under analysis is their entry into the government coalition in Italy. They now have other channels to influence the EU institutions and the decisions made within them, which makes them probably less interested in influencing the preferences of other actors through the use of deliberative processes, including the mechanism of the logic of persuasion. Therefore, it can be hypothesised that the entry of a Eurosceptic party into the government of a Member State causes its representatives in the EP to start using other mechanisms to influence the EU and its institutions, and modify the role they play in this institution. However, verification of this hypothesis requires separate research.

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European solidarity: perceptions and declarations of party leaders in Poland

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Abstract
The research presented in this article is the attempt to analyse Polish parliamentary discourse concerning the European solidarity. The European solidarity is one of the greatest challenges of the second decade of the 21st century. This phenomenon can be analysed from the perspective of three dimensions: its roots in the EU treaties – as values and principles; institutionalised solidarity mechanisms – measures against internal shocks, cohesion policy, social policy; *ad hoc* solidarity in moments of crisis – e.g. migration crisis, COVID-19 crisis.
This article addresses the issue of European solidarity from the perspective of political leaders. The analysed utterances allow us to conclude that the problem of European solidarity does not dominate in the parliamentary discourse of the most important Polish politicians. The parliamentary speeches of the Polish party leaders revealed various aspects of the perception of the title concept, especially in the context of shared values, although perceived in different ways. Good relations between EU countries, a common social and economic policy, as well as the sustainable development of Europe proved to be important.
Keywords: European Union, Poland, political parties, political leaders, parliamentary discourse, European solidarity

Solidarność europejska: postrzeganie i deklaracje liderów partii politycznych w Polsce

Streszczenie

Badania przedstawione w niniejszym artykule stanowią próbę analizy polskiego dyskursu parlamentarnego na temat solidarności europejskiej. Solidarność europejska jest jednym z największych wyzwań drugiej dekady XXI wieku. Zjawisko to można analizować z perspektywy trzech wymiarów: korzeni solidarności w traktatach UE – jako wartości i zasad; zinstytucjonalizowanych mechanizmów solidarnościowych – takich jak działania przeciw szokom wewnętrznym, polityka spójności, polityka społeczna; solidarność *ad hoc* w momentach kryzysu – np. kryzys migracyjny, kryzys związany z Covid-19.

Niniejsze badanie podejmuje problematykę solidarności europejskiej z perspektywy przywódców politycznych. Przenalizowane wypowiedzi pozwalają sądzić, że omawiana problematyka nie dominuje w dyskursie parlamentarnym najważniejszych polskich polityków. Wystąpienia parlamentarne liderów polskich partii ukazały różne aspekty postrzegania tytułowej koncepcji, zwłaszcza w kontekście wspólnych wartości, choć postrzeganych w różny sposób. Ważne okazały się dobre relacje pomiędzy krajami UE, wspólna polityka społeczna i gospodarcza oraz zrównoważony rozwój Europy.

Słowa kluczowe: Unia Europejska, Polska, partie polityczne, liderzy polityczni, dyskurs parlamentarny, solidarność europejska

The European solidarity is one of the greatest challenges of the second decade of the 21st century. It is important to thoroughly scrutinise the position and arguments of the Polish government as well as Polish opposition parties. The research presented in this article constitutes the attempt of analysing Polish parliamentary discourse concerning the European solidarity. The problem mentioned in the title has not been so far thoroughly investigated, and that is why the present text will be a valuable contribution to the knowledge on particular attitudes towards the crisis and possible concepts of solving it, as well as its impact on the public opinion in Poland.

The concept of solidarity has been mentioned in the documents of the European Union (EU) since its inception and developed over time in legal acts (Sangiovanni 2013). European solidarity has its origins in the law and practice of sharing resources between citizens (Ross 2010; De Witte 2012; Eberl 2018).

The notion 'solidarity' can be found in the preamble of the Treaty on European Union (TEU). The signatories of the treaty wish "to deepen the solidarity between their peoples while respecting their history, their culture and their traditions" (TEU: Preamble). It is also mentioned in Article 2 of the Treaty on European Union as a core value: "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" (TEU: art. 2). The analysed notion is also used for solidarity between generations, solidarity among the Member States, solidarity and mutual respect among peoples. The Treaty on the Functioning of the European Union (TFEU) addresses this issue by stating that the policies of the Union and their implementation

shall be governed by the principle of solidarity and fair sharing of responsibility, including its financial implications, between the Member States. In the context of legislation, solidarity between the Member States is also related to ensuring the functioning of the energy market and the security of energy supply in the European Union, as well as promoting energy efficiency, energy saving, the development of new and renewable forms of energy and the interconnection of energy networks. Another significant case, when solidarity is of utmost importance, is the threat of terrorist attacks and natural disasters (TFEU: art. 222). What should be emphasised in this respect, is Poland's declaration of "having regard to the tradition of social movement of 'Solidarity' and its significant contribution to the struggle for social and labour rights, it fully respects social and labour rights, as established by European Union law, and in particular those reaffirmed in Title IV of the Charter of Fundamental Rights of the European Union" (TFEU: Declaration no. 62). In the context of relations between states, we can also distinguish between direct reciprocity, as exemplified by the EU Solidarity Fund, and enlightened self-interest,[1] as in the case of cohesion policy (Fernandes, Rubio 2012). What is also worth mentioning, is the European Solidarity Corps initiative (see: Regulation (EU) 2021/888).

Therefore, European solidarity can be analysed in at least two dimensions, namely the ties that bind together European citizens and the Member States, on the one hand, and the idea of Europeanness in political and social terms, on the other hand (Tava 2021). Contemporary understanding and evolution of this concept in academic discourse includes social and political issues (Karagiannis 2007; Schmale 2017; Lahusen, Grasso 2018; Hobbach 2021), in particular as analytical tool for deconstructing it, showing its meaning both in historical terms and in terms of the current practice of citizens and institutions (Greiner 2017).

Accordingly, solidarity within the European Union can be analysed from the perspective of three dimensions: its roots in the EU treaties – as values and principles; institutionalised solidarity mechanisms – measures against internal shocks, cohesion policy, social policy; *ad hoc* solidarity in moments of crises – e.g. migration crisis, COVID-19 crisis (Ferrara, Burelli 2019; Gerhards et al. 2019; Pornschlegel 2021; Miró 2022; Salvati 2023; Kyriazi et al. 2023). European solidarity can also be examined from the perspective of its level of impact, which allows us the identification of the macro-structural level with principles and laws, meso-level with activities of social organisations, as well as micro-level including the implementation of the main principles by citizens (Ciornei, Ross 2021).

The concept of European solidarity is not precisely defined, although it can be generally said that it refers to mutual cooperation between people and the Member States, and can be understood as simply refraining from harming the interests of the EU (Grosse, Hetnarowicz 2016).

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[1] Enlightened self-interest is a philosophy in ethics, which assumes that individuals who act to advance the interests of others (or the interests of the group, to which they belong) ultimately serve their own self-interest.

This article addresses the issue of European solidarity from the perspective of political leaders. Its aim is to provide the missing information on the perception of this concept by key Polish politicians.[2] The research is also justified in terms of a broader international context, representing the academic and public discourse concerning attitudes towards the European Union, as well as the identification and perception of contemporary challenges by state leaders, including the way, in which they define and perceive European solidarity and the words that they use to describe it. The conclusions of the research will be useful for comparative studies, both theoretical, focusing on the definition of the concept, and empirical ones, analysing statements by state leaders from other countries.

Previous analyses of parliamentary discourse in Poland did not address the title issue, although they are related to many interesting issues (Siewierska-Chmaj 2006; Żukiewicz 2009; Zimny, Żukiewicz 2010; Radiukiewicz 2017; Kwiatkowska 2017; Hartliński, Klepański 2022). European solidarity in the title context has so far received little attention from researchers, although many studies have appeared in the context of the migration crisis (Potyrała 2015; Adamczyk 2017; Klepański et al. 2023).

Research methodology and materials

We propose to reframe and highlight the issue of European solidarity from the perspective of Polish political leaders. The utterances are examined considering the research questions:

- How do they define European solidarity?
- Which actions, attitudes and motivations do they qualify as European solidarity?

The study is based on quantitative and qualitative analysis, thanks to which it is possible to compare the frequency of utterances concerning the European solidarity. A comparative analysis of the positions and statements of key Polish politicians will identify how they perceive and understand the title concept.

The authors of this study analysed parliamentary speeches of party leaders since the beginning of the 3rd term of the Polish Sejm (1997) till the end of 8th term (2019). The choice of the time frame for the study was based on parliamentary terms: from the beginning of intensified preparation for Poland's accession to the European Union and the preparation of the National Integration Strategy, which coincided with the beginning of the new parliamentary term to the end of the 8th term, when material collection was finalised and the actual research process began.

The research process was based on quantitative analysis, that is getting to know the figures concerning speeches of the analysed politicians. Particular steps of the process were aimed at: determining the number of speeches of the analysed politicians in the selected period of time (1997–2019); determining the number of speeches with fragments

[2] See below Table 1.

addressed the analysed issue; calculating the frequency, with which the politicians in question talked about the analysed issue.

The study employs methods and techniques used in research on similar subject matter. The research material consists of 1287 speeches, which were presented by 16 political leaders representing four major Polish parties. The references to the issue of European solidarity were found in 92 speeches. The research material for analysis was collected mainly from the Sejm sessions records available on its official website[3].

This research broadens knowledge about perception of the concept of European solidarity and brings new content in the context of Polish political leaders' positions and declarations on the issue. Thus, the research reveals diverse arguments and perceptions of what European solidarity means to them, which may become a reference point for researchers analysing similar issues in their research projects. It is also an important evidence of the attitudes and statements in the public debate.

Quantitative analysis

In the qualitative analysis, we present compiled data on the number and frequency of Polish political leaders' speeches concerning European solidarity. We also found it relevant and interesting to make a division in terms of individual leaders, as well as political party. This will make it possible to demonstrate the different levels of activity of individuals and entire groups in the context of European solidarity. Therefore, we used two indicators: the total number of speeches (TNS) as well as the number of speeches concerning the issue of European solidarity (NSES). Finally, the proportion of TNS to NSES was determined.

Regarding the years included in the research, it can clearly be seen that the topic of European solidarity was most often addressed by leaders of *Civic Platform* (pl. *Platforma Obywatelska,* PO). The issue appeared in 17% of their utterances. Leaders of the remaining parties referenced the topic rather more rarely (SLD – 7%; PiS – 6%; PSL – 3%). The figures in *Table 1* demonstrate that the topic appeared most often in the speeches of Donald Tusk (27 times). It was mentioned by others less often: Leszek Miller addressed it 17, while Jarosław Kaczyński – 14 times. The topic was never considered in the parliament by Lech Kaczyński, Krzysztof Janik and Grzegorz Napieralski.

When it comes to the temporal distribution of the topic of European solidarity in the analysed speeches, it varied for particular periods. The greatest number of references appeared in the period of negotiations preceding Polish accession to the European Union. Moreover, the topic tends to become an issue during electoral campaigns. Then, European matters become essential for politicians. This concerns especially politicians of *Civic Platform*, who support the idea of European integration, and oppose the Eurosceptic position adopted by *Law and Justice* (pl. *Prawo i Sprawiedliwość*, PiS).

[3] https://www.sejm.gov.pl

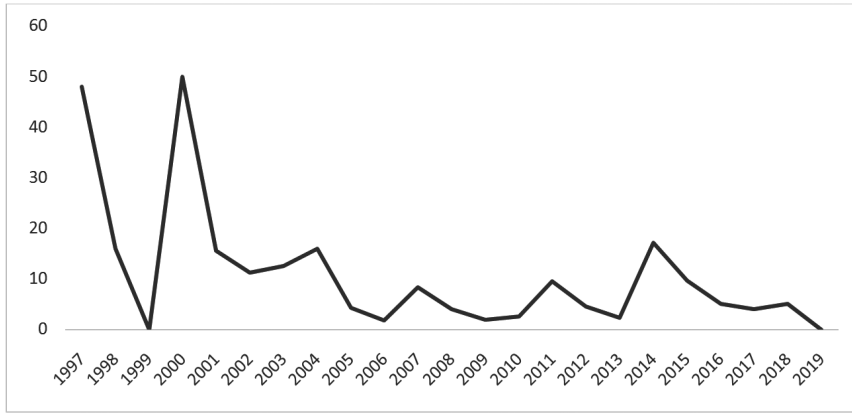
Table 1: Total number of speeches, and number of speeches concerning the issue of European solidarity.

Political party	Leader	1997-2019					
		TNS	NSES	%	TNS	NSES	%
PiS	L. Kaczyński	15	0	0	236	14	5,93
	J. Kaczyński	221	14	6,33			
PO	Płażyński	10	4	40	236	40	16,95
	Tusk	198	27	13,6			
	Kopacz	9	3	33,33			
	Schetyna	19	6	31,6			
PSL	Kalinowski	54	5	9,26	464	14	3,01
	Wojciechowski	3	1	33,33			
	Pawlak	205	4	1,95			
	Piechociński	28	1	3,6			
	Kosiniak-Kamysz	174	3	1,72			
SLD	Miller	132	17	12,87	351	24	6,84
	Janik	16	0	0			
	Oleksy	3	1	33,33			
	Olejniczak	105	6	5,7			
	Napieralski	95	0	0			
Total		1287	92	7,14			
Average		80,44	5,75	-			

Source: authors' own elaboration based on research materials.

The same trend is visible considering the percentage of utterances including references to European solidarity in all speeches made by the party leaders analysed for the purpose of this study (see: *Figure 1*). Proportionally, this topic was addressed most often

Figure 1: Average percent of speeches concerning the issue of European solidarity.



Source: authors' own elaboration based on research materials.

in the pre-accession period and during the Ukrainian crisis (2013–2014) and the European migrant crisis (2015–2016). This can be said, although the trend is slightly distorted because of a small number of utterances in 2000, with 3 out of 6 concerning the topic in question.

Another significant aspect of quantitative analysis is the number and type of words used in the studied speeches (see: *Table 2*). A given keyword was included in the table only if it was uttered in relation to the European context, and was used in a fragment of speech concerning the analysed topic. This means that the presented numbers of keywords concern only those fragments of speeches, in which the analysed topic is mentioned. All forms of a given keyword were considered, e.g. the category of "Europe" included also its derivatives, such as "European", "Europeanness", "Europeanisation" etc.

Table 2: The number and type of words used in the studied speeches.

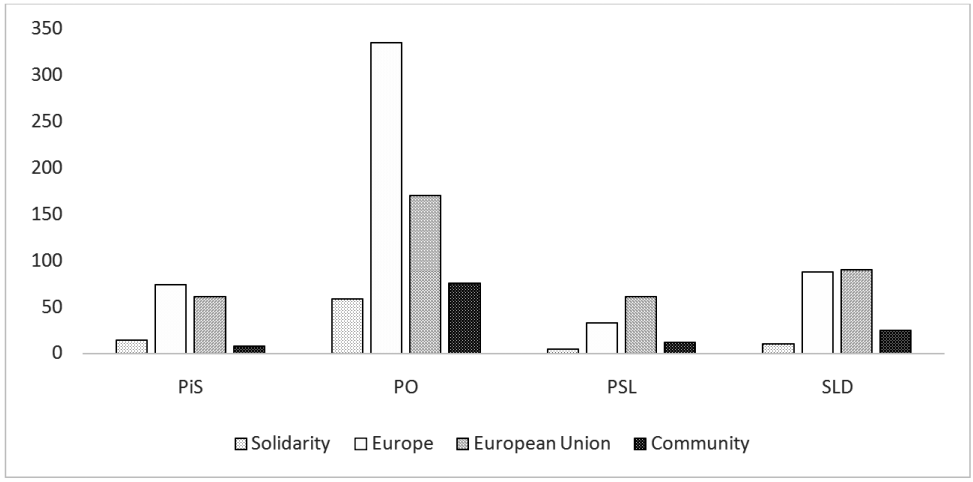
Political party	Leader	European solidarity	Europe	Integration	Collaboration	Community	Co-responsibility	European Union	Alliance	Partnership	friendship	Loyality	Aid	Total	
PiS	L. Kaczyński	0	0	0	0	0	0	0	0	0	0	0	0	0	175
	J. Kaczyński	14	74	0	6	8	0	61	2	1	0	2	7	175	
PO	Płażyński	4	10	9	0	4	1	23	1	1	0	0	0	53	774
	Tusk	36	265	15	18	60	0	104	8	13	11	0	12	542	
	Kopacz	17	18	0	0	1	0	9	0	3	0	0	4	52	
	Schetyna	2	42	3	3	11	0	34	7	14	10	0	1	127	
PSL	Kalinowski	0	2	18	0	1	0	14	0	0	0	0	1	36	144
	Wojciechowski	0	4	0	0	0	0	12	0	1	0	0	0	17	
	Pawlak	1	22	0	1	6	0	13	0	0	0	0	6	49	
	Piechociński	2	5	0	2	2	0	2	0	0	1	0	0	14	
	Kosiniak-Kamysz	2	0	2	0	3	0	20	0	0	0	0	1	28	
SLD	Miller	8	72	22	8	23	2	62	0	1	2	0	2	202	270
	Janik	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Oleksy	1	1	0	0	0	0	3	0	0	0	0	0	5	
	Olejniczak	1	15	0	13	2	0	25	5	2	0	0	0	63	
	Napieralski	0	0	0	0	0	0	0	0	0	0	0	0	0	
	Total	88	530	69	51	121	3	382	23	36	24	2	34	1363	

Source: authors' own elaboration based on research materials.

The words which were used most frequently by party leaders in their parliamentary speeches include: Europe (530), the European Union (382), community (121) and European solidarity (88). The least often used words are: loyalty (2), co-responsibility (3), alliance (23), and friendship (24). The collected data demonstrates that the keywords were used decidedly most often by *Civic Platform's* leaders (774). On the other end of the spectrum there are: *Polish People's Party*[4] (144) and *Law and Justice* (175), whose leaders used words related to European solidarity rather sparingly.

The analysis of the most frequently selected words demonstrates that "Europe" and "the European Union" are used mainly by leaders of *Civic Platform*, while very rarely by leaders of *Law and Justice* (see: *Figure 2*).

Figure 2: The most frequently selected words.



Source: authors' own elaboration based on research materials.

The quantitative analysis unambiguously shows differences between leaders of *Law and Justice,* as well as *Civic Platform*. Through the utterances of their leaders, these two most important political parties demonstrate disparate levels of interest in the issue of European solidarity – in their speeches they use different words with different frequency.

Qualitative analysis

The next stage of the research is an analysis of the content of speeches addressed the issue of European solidarity, as well as comparing views and declarations of party leaders. However, it is worth recalling a selection of statements that illustrate the diverse approaches to European solidarity. There is often a lot said about the disputes and sub-

[4] pl. *Polskie Stronnictwo Ludowe*, PSL.

jects of public debate at the time, but also about the wider context and perception of the European Union.

Jarosław Kaczyński does not pay much attention to European issues in his parliamentary speeches. The last speeches, where he mentioned them, were from 2014 and 2015. Considering their content, it can be said that he referenced mainly the idea of cooperation of nation states and their shared cultural heritage. Despite a number of reservations towards the functioning of the EU, he maintained that: "The key indicator of our position is our participation in the European Union. We want to be in the European Union, I'd like to emphasise this really strongly. We want to participate in all the activities, which can help overcome the present crisis in the European Union, […] to find a new basic solution […]. Within the EU's solutions we must keep the ability to take our own decisions, just like many other countries which enjoy it, in matters which are related to our unique historical and geopolitical situation. This is simply a sort of necessity, a necessity which is resulted from, for instance, the issue of energy, and that is why we are definitely going to have it granted".[5]

J. Kaczyński also spoke about the principle of solidarity, while stressing that this principle should apply to strong nation states: "...there is also the question of the shape of Europe, one that suits our interests, our views. A Europe based on tradition, not rejecting tradition, not undermining traditional social institutions, a Europe of nation states bound firmly to the principle of solidarity, which unfortunately did not find full expression in the Polish Accession Treaty. This is the Europe we should aspire to".[6]

J. Kaczynski also referred to the issue of decision-making processes and decisions concerning finances in the context of European solidarity. About the decision-making processes, he pointed out that: "What we received in Nice, was an expression of historical justice, it was a kind of reparation for everything that happened in our country in the last few decades, what happened at the end of the Second World War [...]. It was a decision in favour of all the smaller, weaker countries of the European Union. It was a decision in favour of European solidarity, that principle, thanks to which within 46 years it has been possible to build this great and extraordinary construction, given the history of Europe and the history of mankind".[7]

In the context of finances, on the other hand, J. Kaczyński pointed out that: "We wanted to enter Europe that would be the Europe without hegemony, because that's how it was constructed and, of course, with some deviations, because life is life, politics is politics, that's how it was for many years. And it was at the same time a Europe of solidarity. The aid that Ireland, Greece received, on a *per capita* basis, was an expression

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5 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP V kadencji,* 5th term, 22nd session, 2nd day (19/07/2006), Prezes Rady Ministrów Jarosław Kaczyński, https://orka2.sejm.gov.pl/Debata5.nsf (own authors' translation of the quoted fragment, from Polish to English).

6 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP IV kadencji,* 4th term, 40th session, 2nd day (22/01/2003), Poseł Jarosław Kaczyński, https://orka2.sejm.gov.pl/Debata4.nsf (own authors' translation of the quoted fragment, from Polish to English).

7 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP IV kadencji*, 4th term, 67th session, 2nd day (21/01/2004), Poseł Jarosław Kaczyński, https://orka2.sejm.gov.pl/Debata4.nsf (own authors' translation of the quoted fragment, from Polish to English).

of solidarity. If we were to receive such assistance today, it would indeed be a very, very serious change for the better in terms of our development possibilities, in terms of our ability to catch up with historical backwardness. But today we see a Europe, in which solidarity is in short supply, while hegemony is clearly constructed".[8]

Donald Tusk is a leader, who addressed the European Union most often and most positively. In his speeches he usually quoted common economic policy and strengthening the economic integration. Among the main priorities, he mentioned the position of Poland: "Why am I talking about this so much on the eve of the Polish Presidency? Because these six months of the Polish Presidency may also be a key moment of a positive breakthrough as regards, on the one hand, the atmosphere of scepticism, the turning of Europeans themselves away from the European Union, and, on the other hand, the current trend that Poland is trying to represent effectively, of the revitalisation of belief that the Union makes sense and that European solidarity, especially in a time of crisis, should be something to be protected and strengthened, not only in the interests of countries like Poland – I am convinced of this – but also of the entire European Union".[9]

D. Tusk also referred to solidarity as a value that is particularly important for Poles, but also for the functioning of the European Union: "We can speak – and we will speak very loudly as the Polish Presidency – about the fundamental values, on which the European Union is founded, because history has made them the values that are of particular importance for Poles. In the first place will undoubtedly be solidarity, because it is also understood as the willingness to sacrifice one's own egoistic interest or part of it for the benefit of the weaker ones, especially in critical moments. This is something that the Poles have practiced over the last few decades with good results, and it is something that still needs to be taught to some in Europe, but which is already accepted and recognised by Europeans today as one of the main principles that the Union should follow. The principle of solidarity as the foundation of the European Union is a challenge for Poland, but also, I believe, an opportunity to push this way of thinking in the most credible way".[10]

D. Tusk also recognised the economic dimension of solidarity, both in bearing the benefits and the negative consequences: "I want to say that it is directly in the interest of Poland, the Polish taxpayer and the Polish borrower that Europe as a whole also finds the readiness to equip institutions such as the International Monetary Fund with this tool for rapid action when needed. [...] I say this because recent months have demonstrated that even a crisis or perturbation in a relatively small country like Hungary has a direct impact on our region. [...] Whether we want it or not, for a long time global financial markets will assess not precisely Poland, but the entire region. This region is Central and Eastern

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8 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP IV kadencji,* 4th term, 57th session, 3rd day (18/09/2003), Poseł Jarosław Kaczyński, https://orka2.sejm.gov.pl/Debata4.nsf (own authors' translation of the quoted fragment, from Polish to English).

9 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP VI kadencji*, 6th term, 95th session, 1st day (28/06/2011), Prezes Rady Ministrów Donald Tusk, https://orka2.sejm.gov.pl/Debata6.nsf (own authors' translation of the quoted fragment, from Polish to English).

10 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP VI kadencji*, 6th term, 95th session, 1st day (28/06/2011), Prezes Rady Ministrów Donald Tusk, https://orka2.sejm.gov.pl/Debata6.nsf (own authors' translation of the quoted fragment, from Polish to English).

Europe. Therefore, it is not only a requirement of solidarity, but also the cold interest of the Polish taxpayer that Europe equips the various institutions with solid response tools where needed".[11]

Grzegorz Schetyna's numerous speeches were focused on solidarity and cooperation in foreign policy. In one speech, he pointed out that: "The responsibility of Polish foreign policy, European alliances, wise alliances, bilateral, built in common relations, the European Union, the most important partners. Not looking for enemies, adversaries, but those with whom we can be side by side, speak a common language, build a common belief, influence politics with them [...]. We should not be afraid to talk about difficult things, also in Europe, we should not be afraid to talk about solidarity when it comes to refugee issues, we should not be afraid to talk about the eurozone. These are the challenges we need to talk about. You can't plug your ears and say that we are not interested in it, because we are here and now, because we are getting up from our knees".[12]

Ewa Kopacz drew attention to the important issue of solidarity, which should work in a variety of conditions and on both sides. In the context of the migration crisis, she pointed out that: "Today, of course, we will hear voices from one side and the other. Somebody will say: we should accept everyone, others will say: no one. Demons will be born. I am just asking: Does solidarity today only work one way? Today, do Europe and our partners in Europe, but above all these people who are fleeing death, deserve the solidarity of the Polish nation? [...] So, I ask all those who are the elected people of Poland here in the Sejm: Can we today afford to make a gesture of solidarity towards those who are actually fleeing their country simply because they are afraid of losing their health or their lives? Can a nation of 40 million afford a gesture of solidarity towards those people who need this help? At the same time, I would like to say that we are weighing Poland's credibility in the European Union on one scale and the real fears of the Polish people on the other. Therefore, the government in this situation has to be responsible, it has to be credible, it has to be prepared to take the decisions...".[13]

Władysław Kosiniak-Kamysz pointed to values as issues that build solidarity: "A new Europe will not be created immediately or in its entirety. It can only arise through action that first builds genuine solidarity. Today, we need a pact of Europeans, of European unity and community, a pact based on solidarity and respect for the universal values, on which the Union was founded. Only on this basis we can rebuild the community. Only in this way we can overcome the fear and apprehension accompanying Europeans of the

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11 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu*, 7th term, 3rd session, 2nd day (15/12/2011), Prezes Rady Ministrów Donald Tusk, https://www.sejm.gov.pl/sejm7.nsf/wypowiedz.xsp?posiedzenie=3&dzien=2&wyp=2&view=4 (own authors' translation of the quoted fragment, from Polish to English).

12 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu*, 8th term, 60th session, 2nd day (21/03/2018), Poseł Grzegorz Schetyna, https://www.sejm.gov.pl/sejm8.nsf/wypowiedz.xsp?posiedzenie=60&dzien=2&wyp=5&view=3 (own authors' translation of the quoted fragment, from Polish to English).

13 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu*, 7th term, 99th session, 3rd day (11/09/2015), Prezes Rady Ministrów Ewa Kopacz, https://www.sejm.gov.pl/sejm7.nsf/wypowiedz.xsp?posiedzenie=99&dzien=3&wyp=3&view=4 (own authors' translation of the quoted fragment, from Polish to English).

future". He said that "the European Union is also a cohesion policy, it is a support for other countries, not just a free market agreement. If we reduce the European Union to just a common market and trade, and migration of people, then it has absolutely none of the characteristics of the Union that Schuman envisaged".[14]

Long-time PSL's president Waldemar Pawlak also pointed to values: "If we are talking about Europe, Europe cannot be reduced to currency alone. Europe is a common Christian heritage, it is a culture, it is an economy, it is diversity, but diversity united by common values. In economic terms, we are talking about four freedoms: the movement of people, the movement of goods, the movement of services, and the movement of capital. These freedoms creates the European space, and in this space various additional support measures are taken, such as a common currency on some part, such as the European patent, where everything has been agreed, only one thing cannot be agreed: whether the main patent court will be in Paris, Munich or London. This is a European problem. I wish we only had such European problems in Poland that you only have to agree on seats, and everything else goes well. In this context, it is important that, when we talk about Europe, we also look at it in a way that is imaginative and relevant to today".[15] He also declared earlier: "The PSL proposes a European Declaration for the people and a treaty for the institutions. The European Declaration should encapsulate all core values. While we appreciate the importance of solidarity in this symbolic and practical dimension, we emphasise that it is also necessary to mention values, such as subsidiarity or proportionality, for these types of principles guarantee that Poland will be a subject in the European Union and not an object of decisions".[16]

The PSL' leaders mainly highlighted issues related to equal treatment, particularly in agriculture. Jarosław Kalinowski emphasised, years before accession: "Another problem is the costly adjustments to integration into European structures with the limited own financial capacity of farms and budget, and the short time available to build the necessary institutions and systems. From the point of view of Poland's integration into the European Union, the countryside and agriculture is a specific and sensitive area. On the one hand, an enormous effort and high adjustment costs are required, because around 40% of the EU *acquis* is related to the agricultural sector. The costs of adjustment across the agricultural-food sector will include farms, the processing sector, the administration. On the other hand, integration presents a huge opportunity for agriculture because of the general economic improvement and the potential benefits created by the Common Agricultural Policy".[17]

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[14] Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu*, 8th term, 23rd session, 3rd day (21/07/2016), Poseł Władysław Kosiniak-Kamysz, https://www.sejm.gov.pl/sejm8.nsf/wypowiedz.xsp?posiedzenie=23&dzien=3&wyp=151&view=3 (own authors' translation of the quoted fragment, from Polish to English).

[15] Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu*, 7th term, 3rd session, 2nd day (15/12/2011), Poseł Waldemar Pawlak, https://www.sejm.gov.pl/sejm7.nsf/wypowiedz.xsp?posiedzenie=3&dzien=2&wyp=14&view=3 (own authors' translation of the quoted fragment, from Polish to English).

[16] Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP V kadencji*, 5th term, 41th session, 4th day (11/05/2007), Poseł Waldemar Pawlak, https://orka2.sejm.gov.pl/Debata5.nsf (own authors' translation of the quoted fragment, from Polish to English).

[17] Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP IV kadencji,* 4th term, 15th session, 1st day (27/02/2002), Wiceprezes Rady Ministrów Minister Rolnictwa i Rozwoju Wsi Jarosław

Janusz Wojciechowski pointed out that: "Today, the European Union, invoking Article 23, is unilaterally changing these rules. If such policy on the part of the Union is pursued, it will be difficult to convince the Polish people to support the European Constitution. This is why we appeal to the Polish government, as well as to the EU side, to treat Poland as a partner and full member of the Union, not as second-class members in all those instruments that were not included in the negotiations".[18]

Leszek Miller drew attention to, among other things, security solidarity: "In order to effectively confront global terrorism, it is necessary to strengthen our European solidarity, cooperation and unity, European security. I am convinced that the adoption of the Constitutional Treaty will be an important fact leading to the achievement of this objective. This treaty has the potential to make the Union more united, more solidary, more transparent and more agile".[19]

The politician also pointed out some contradictions regarding solidarity: "European unity was built on a substance, without which it will collapse. This substance is moderation and a willingness to seek constructive solutions. Poland is moving further and further away from the EU's centre of gravity. This is the answer to the question of why Poland is not participating in the most important talks about Ukraine. Our language, often confrontational, and ideas, in response to which many people in Europe are tapping their foreheads, created the image of irresponsible state. If Poland does not exercise restraint, if it does not start behaving responsibly, it will unfortunately lead to the disintegration of European unity".[20]

Józef Oleksy, for example, drew attention to pragmatism and the play of interests in achieving goals and benefits for individual states: "This magical thinking that just joining the EU takes care of everything for Poland – is a misunderstanding. The European Union is a playing field of interests. With all the solidarity that we exhort for, with all the support for cohesion policy, for regionalism, for equalising disparities, the Union is still a field of a game of interests, in which the stronger one tend to dominate the weaker one, and the weaker ones must group together or skillfully manage their own affairs to win".[21]

Therefore, it can be concluded that the statements and positions of the party leaders exemplify the diverse perceptions and invocations of European solidarity. Particularly noticeable is the aspect of how individual statements fit into current issues and the shape of parliamentary discourse. The following table presents the positions and declarations

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Kalinowski, https://orka2.sejm.gov.pl/Debata4.nsf (own authors' translation of the quoted fragment, from Polish to English).

18 Source of the empirical material: *Wypowiedzi na posiedzeniach Sejmu RP IV kadencji,* 4th term, 72th session, 4th day (02/04/2004), Poseł Janusz Wojciechowski, https://orka2.sejm.gov.pl/Debata4.nsf (own authors' translation of the quoted fragment, from Polish to English).

19 Source: *Wypowiedzi na posiedzeniach Sejmu RP IV kadencji,* 4th term, 72th session, 4th day (02/04/2004), Prezes Rady Ministrów Leszek Miller, https://orka2.sejm.gov.pl/Debata4.nsf (own authors' translation of the quoted fragment, from Polish to English).

20 Source: *Wypowiedzi na posiedzeniach Sejmu*, https://www.sejm.gov.pl/sejm7.nsf/wypowiedz.xsp?posiedzenie=91&dzien=2&wyp=41&view=3 (own authors' translation of the quoted fragment, from Polish to English).

21 Source: *Wypowiedzi na posiedzeniach Sejmu RP IV kadencji,* 4th term, 96th session, 3rd day (21/01/2005), Poseł Józef Oleksy, https://orka2.sejm.gov.pl/Debata4.nsf (own authors' translation of the quoted fragment, from Polish to English).

of the analysed politicians on the issue (see: *Table 3*). The qualitative analysis of the collected utterances referring to European solidarity indicates that it is perceived differently by different party leaders presented in the study.

Table 3: Declarations of party leaders concerning the issue of European solidarity.

Political party	Name	European solidarity as…					
		Common social and economic policy, etc.	Good relations with EU countries	Help for people in need	Sustainable development of Europe	Common historical and cultural heritage, etc.	Coexistence and cooperation of nation states
PiS	L. Kaczyński						
	J. Kaczyński			+	+	+	+
PO	Płażyński		+		+		
	Tusk	+	+	+	+		
	Kopacz	+	+	+			
	Schetyna	+	+				
PSL	Kalinowski		+		+		
	Wojciechowski				+		
	Pawlak	+		+	+	+	
	Piechociński				+	+	
	Kosiniak-Kamysz	+	+		+	+	
SLD	Miller		+	+		+	
	Janik						
	Oleksy	+	+		+		
	Olejniczak	+	+				
	Napieralski						

Source: authors' own elaboration based on research materials.

It can be concluded that the leaders of PiS and PSL have made the greatest reference in their arguments to common historical and cultural heritage, as well as support for sustainable development. The leaders of PO and SLD have emphasised the values of common social and economic policy, as well as good relations with EU countries. The conducted analysis demonstrates that leaders of political parties in Poland use the concept of European solidarity in parliamentary debate according to general understanding, however, with a focus on its different aspects. On the one hand, they emphasise the EU's principles of economic support and social development. On the other hand, they refer to a common history and shared values leading to sustainable development. What is noticeable, is ideological division in the parliamentary discourse between leaders and political parties, into the centre-right (PSL, PiS) and the centre-left (PO, SLD).

Conclusions

The assessment of the concept of European solidarity through the quantitative and qualitative analysis of party leaders' utterances made it possible to draw some conclusions. First of all, it is necessary to point out that European solidarity is not a crucial motif of party leaders' speeches. The analysis of 1287 parliamentary speeches presented by 16 party leaders led to identifying 92 speeches concerned broadly understood European solidarity. The temporal perspective demonstrated that the issue in question was referenced most often in relation to the election campaign to the Polish Sejm and Senate. Moreover, the most intensive period coincided with the time preceding Polish accession to the European Union (before 2004), the crisis in Ukraine in 2013–2014, and the European migrant crisis in 2015–2016.

As regards the quantitative approach, the issues related to European solidarity were mentioned most often by Donald Tusk as a single politician[22] and *Civic Platform*'s leaders as party representatives. They were addressed least often by *Law and Justice*, as well as *Polish People's Party*.

The most frequently used terms included "Europe" and "the European Union," which were also most often mentioned by *Civic Platform*'s leaders.

The issue of European solidarity is not perceived in a unanimous manner. A clear division into two groups is discernible. *Civic Platform* and *Democratic Left Alliance*[23] emphasise the need of further integration in Europe and common social and economic policies. On the contrary, *Law and Justice* as well as *Polish People's Party* foreground the shared historical and cultural heritage.

Further research seems crucial in the context of the above-mentioned conclusions. The results of the analysis contribute to the literature on the subject, providing new knowledge, as well as indicating next steps that should lead to a more thorough understanding of the problem posed in the title. It is especially important to consider two new directions of research. Firstly, analyses of activities should be extended to include other political leaders (president, prime minister, minister of foreign affairs) on various levels of public debate or parliamentary work. This would allow researchers to gain a deeper insight into the way political leaders use "European solidarity" for their own purposes. Secondly, it is worth paying more attention to the behaviour of voters in the context of "European integration".

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[22] See research results presented in Table 2: the biggest number of speeches – 542 by D.Tusk.
[23] pl. *Sojusz Lewicy Demokratycznej*, SLD.

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WTO after the 12th Ministerial Conference – the effects of the arrangements in the light of the reform of the World Trade Organization[1]

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Abstract
This article reflects on the outcomes of the 12th WTO Ministerial Conference (MC12), which took place on 12–17 June 2022 in Geneva. The aim of the article is to analyse the effects of this meeting in the context of the reform of the multilateral system. For this purpose, the following research questions were posed: (1) What arrangements were made during MC12? (2) Are the adopted agreements relevant for the future reform of the multilateral system within the WTO? The analysis presented in the study demonstrated that this conference, which had been postponed several times due to the COVID-19 pandemic, was a confirmation that the negotiating crisis of recent years had been overcome. Additionally, the author emphasised that the agreements reached among the representatives of 164 member countries should be seen as a success, especially in view of the international tensions accompanying the meeting. The arrangements that were made, therefore, also provide a deeper understanding of the functioning of the multilateral system within the WTO and its complexities.
The structure of the article consists of an introduction, two sections presenting the results of the analysis, and conclusions. Methodologically, the article is mainly based on a critical analysis of WTO source documents and academic studies on international trade policy.
Keywords: Ministerial Conference, MC12, European Union, World Trade Organization, WTO reform

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WTO po 12 Konferencji Ministerialnej – efekty uzgodnień w świetle reformy Światowej Organizacji Handlu

Streszczenie

W artykule zawarto rozważania na temat wyników 12. Konferencji Ministerialnej WTO (MC12), która odbyła się w dniach 12–17 czerwca 2022 r. w Genewie. Celem badania jest analiza efektów tego spotkania w kontekście reformy systemu wielostronnego. W związku z tym postawiono następujące pytania badawcze: (1) Jakie ustalenia poczyniono podczas MC12? (2) Czy przyjęte uzgodnienia mają znaczenie dla przyszłej reformy systemu wielostronnego w ramach WTO? Przedstawiona w niniejszym artykule analiza pokazała, że konferencja ta, kilkakrotnie przekładana z powodu pandemii COVID-19, stanowiła potwierdzenie przełamania kryzysu negocjacyjnego z ostatnich lat, a uzgodnienia poczynione wśród przedstawicieli 164 krajów członkowskich należy traktować w kategorii sukcesu, szczególnie w obliczu towarzyszących spotkaniu napięć międzynarodowych. Wyniki analizy umożliwiają zatem głębsze zrozumienie zasad funkcjonowania systemu wielostronnego w ramach WTO oraz jego złożonych uwarunkowań.

Struktura artykułu obejmuje wstęp, dwie części przedstawiające wyniki analizy oraz podsumowanie. W wymiarze metodologicznym badanie oparto głównie na krytycznej analizie dokumentów źródłowych WTO oraz opracowań naukowych dotyczących międzynarodowej polityki handlowej.

Słowa kluczowe: Konferencja ministerialna, MC12, Unia Europejska (UE), Światowa Organizacja Handlu (WTO), reforma WTO

Since 2016, the World Trade Organization (WTO) has had 164 members[2] representing over 98% of world trade. Since its creation in 1995, this organisation has played a very important role in shaping the multilateral trading system. Having replaced the General Agreement on Tariffs and Trade (GATT), it covered a much broader thematic area, which corresponded with changes in the global market. Its establishment did not, therefore, entail merely taking over the previous achievements of the GATT and expanding its activities – it was the beginning of a new stage in the history of the multilateral trading system (Majchrowska 2021a: p. 67). However, the system has not changed at the same pace as global economic realities, leading to a growing impasse in negotiations that, combined with the crisis of other WTO functions, raises questions about the future of the institution that serves as the overarching negotiating forum and regulator of world trade. Therefore, given the need to reform the WTO, the Ministerial Conferences (MCs) of the Member States are also seen as a way out of the above-mentioned impasse. Such hopes were also pinned on MC12, which was finally held in June 2022 and concluded with the adoption of the "Geneva Package".

The **aim of this article** is to analyse the results of this meeting and their relevance to the WTO, in the context of the need to reform the organisation. The research hypothesis was formulated as follows: The results of MC12 represent a breakthrough from the negotiating impasse of recent years and lay an important foundation for the modernisation of the multilateral system within the WTO. In connection with the hypothesis, the following research questions were posed:

[2] On 29 July 2016, Afghanistan was the last country to join the WTO.

1) What arrangements were made during MC12?
2) Are the adopted agreements relevant to the future reform of the multilateral system within the WTO?

Methodology, materials and research background

For years, there has been a debate in the literature about the need to reform the WTO as an organisation that regulates international trade on a global scale. After each emerging negotiating crisis[3] the need of special attention to this problem and the challenges facing such an important organisation for the development of international trade has been emphasised. This could be seen as early as after the first Ministerial Conferences, just five years after the establishment of the World Trade Organization, but the failure of MC11 was particularly significant in this context, as it was then that an internal discussion began in the WTO regarding the need to modernise the organisation. A number of reports and studies[4] pointed to specific areas of WTO activity that needed reform. Of particular importance here, however, are the modernisation proposals outlined in the concept paper and the trade strategy of the EU, which, as a key WTO's member, is spearheading numerous efforts to modernise the multilateral system (European Commission 2018, 2021).

The aforementioned EU concept paper on WTO reform was published by the European Commission in September 2018. It refers to three main areas of the organisation's activities, i.e.: the rulemaking process (updating regulations to adapt them to the challenges of the 21st century), strengthening the WTO's monitoring role and transparency, and improving the Dispute Settlement System (DSS) at the WTO (with a special focus on the Appellate Body – AB). With regard to the latter, it is also crucial to note that, at the initiative of the EU, an alternative mechanism, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), has been established, which, in the face of the paralysis of the AB, provides for a binding, two-tiered and independent adjudication process (Majchrowska 2023) and, despite the assumed provisional nature of its duration, is an important element on the way to the restoration of the fully functioning DSS.

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[3] The reasons for the growing crisis at the organisation over the years are complex and involve several issues. Undoubtedly, the terms of liberalisation of market access to agricultural goods and commitments to reduce the volume of financial support for agriculture by developed countries should be considered the main point of divergence of positions. In addition, the development of a consensus is not facilitated by both the increase in the number of members of the organisation, who represent different interests, and the expansion of the scope of the negotiations themselves. The emergence of important new members such as China, India and Brazil has weakened the relevance of the existing powers, and the change in the balance of power in the world economy has also been reflected in the WTO negotiations. There has also been a significant increase in the involvement of other developing countries, compared to the situation in earlier rounds. As a result of these developments, there has been great difficulty in reconciling the defensive and offensive interests of different groups of countries, and, thus, a polarisation of positions between developed and developing countries. The slow progress in the negotiations has also been attributed to the adopted negotiating formula, namely the concept of a single undertaking, i.e. "nothing is agreed until everything is agreed," which, as it turned out, did not favourably affect the making of arrangements (Majchrowska 2021a: p. 73; Majchrowska 2021b: p. 66-68).

[4] Valuable contributions to this debate have been made by Deere-Birkbeck and Monagle (2009), Steger (2009), Hoekman and Mavroidis (2021), Fitzgerald (2020), and Wolff (2021), among others.

Restoring the WTO's position as a leader in global trade liberalisation and its role as a central forum for trade negotiations therefore requires a strong sense of responsibility and cooperation on the part of all members of the organisation. An important role in this context is attributed to meetings at the highest level. Therefore, the eventual holding of the MC12 in June 2022 was the main rationale for choosing the topic of the study. Particularly in view of the enormous difficulties in organising this meeting and the economic and political background that accompanied it, this event calls for an analysis and summary of its impact.

Therefore, it can be assumed that the issues raised in this article are both timely and relevant, and at the same time they are insufficiently researched. The paper will highlight the implications of the arrangements and their relevance for the implementation of WTO reform in the near future. This enables a deeper understanding of the system's principles and its complex conditions. Moreover, the study is an up-to-date analysis and, from this point of view, it adds value to the existing knowledge in this field. In addition, the body of scientific work on the issues in question is much better represented in foreign literature, which corresponds to the limited number of scientific studies in this area in Poland, and thus speaks in favour of the validity of the conducted research.

Methodologically, this study was based primarily on a critical analysis of WTO source documents and academic papers on international trade policy. Materials from the Director General's opening remarks at the MC12 were also analysed to better illustrate the issue. This helped to verify the hypothesis and to provide substantive answers to the research questions.

MC12 on the background of previous ministerial meetings

The Ministerial Conference, attended by trade ministers and other senior officials from 164 member countries, is the WTO's highest decision-making body. According to the Marrakesh Agreement establishing the WTO, "the Ministerial Conference is to meet at least once every two years" (Agreement Establishing The World Trade Organization 1994). The purpose of these meetings, like the negotiating rounds, is to negotiate trade issues between individual members. They also evaluate the WTO's activities to date and outline the organisation's prospects for the future.

According to the original agreement and convening guidelines, MC12 was to be held in June 2020 in Nur-Sultan, Kazakhstan, but due to the COVID-19 pandemic, this date was not met. In April 2021, members agreed that MC12 would be held in Geneva, from November 30 to December 3. However, problems arising from the spread of a new mutation of the virus SARS-CoV-2 and related travel restrictions led to the decision by the General Council on 26 November 2021 to postpone MC12 indefinitely. Only less than six months later, the decision was made to hold MC12 on 12–16 June 2022 at the WTO headquarters in Geneva. Kazakhstan continued to co-host the event, and the meeting was extended by one day to allow for the completion of the discussions (see: WTO WWWc).

Since an important background for analysing the results of MC12 are the arrangements of previous Ministerial Conferences, the following table synthetically presents the results of the previous meetings.

Table 1: Overview of the WTO's Ministerial Conferences.

MC	Place and time	Key outcomes
1	Singapore: December 9–13, 1996.	Information Technology Agreement (ITA) – an agreement to bring tariffs on communications technology equipment and components down to 0; addressing trade and competition and transparency in government purchases, the so-called Singapore topics.
2	Geneva: May 18–20, 1998.	A positive assessment of WTO activities; formal launch of the process of discussion and preparation for the start of the next round; declaration on global e-commerce.
3	Seattle: November 30 – December 3, 1999.	A suspension of proceedings, revealing existing contradictions among members; no formal document agreed upon by member states emerged, mainly due to disagreements between developed and developing countries.
4	Doha, November 9–13, 2001.	The decision to launch the Doha Development Round.
5	Cancún: September 10–14, 2003.	Another negotiating failure, attributed to the reluctance of rich countries to stop subsidising agricultural production and exports.
6	Hong-Kong: December 13–18 2005 r.	The main arrangements concerned mainly the level of trade-distorting domestic support (i.e. market price support and direct payments to farmers) for agri-food production, the level of tariff protection (market access) and the reduction of export subsidies (target dates for their elimination were not met).
7	Geneva: November 30 – December 2, 2009.	A very brief final report highlighting the participation of 153 members and the importance of the WTO, especially in view of the global economic crisis; topics covered: the issue of LDCs, including their free access to the markets of developed countries, the cotton issue and the LDC Waiver[5] for Services); an analysis of the growing number of bilateral and regional agreements in terms of their complementarity with the WTO system.
8	Geneva: December 15–17, 2011.	Documents on the accession of Russia (as well as Montenegro and Samoa) were adopted; the focus was on developing and least developed countries (among other things, issues of TRIPS waivers, the services market were raised, and issues related to accelerating WTO accession were discussed); the arrangements did not contribute to finalising the provisions of the Development Round.

[5] Waiver is an individual exception to the MFN - it is time-bound and subject to justification.

9	Bali: December 3–6, 2013.	A breakthrough in the ongoing negotiations; the adoption of the so-called "Bali Package" consisting of 10 agreements on key negotiating issues (Trade Facilitation Agreement, agriculture, cotton trade issues, and problems of developing and least developed countries) – the first global deal signed by all WTO members.
10	Nairobi: December 15–19, 2015.	The adoption of the so-called „Nairobi Package", which included selected elements related to the DDA negotiations; the main element of the package was provisions on agricultural export competition (elimination of agricultural export subsidies, immediately for developed countries and by 2018 for developing countries); however, a number of exceptions were provided, affecting the extension of the mentioned periods; the same decision imposes additional restrictions on the use of other agricultural export support mechanisms; the signing of the ITA-2 agreement, extending the scope of the ITA; a new agreement on cotton trade eliminating export subsidies; in terms of agricultural trade liberalisation, a commitment to further negotiations on the adoption of the so-called „Special Safeguard Mechanism" (SSM), giving developing countries the ability to raise tariffs when imports rise or prices fall.
11	Buenos Aires: December 10–13, 2017.	The commitment to adopt a fisheries subsidisation agreement by the start of the 12th MC then planned for 2019; take initiatives on e-commerce, investment facilitation, and elimination of barriers for small and medium-sized enterprises; meeting was assessed as a demonstration of disagreement between countries, tensions, and modest capacity for decision-making.
12	Geneva: June 12–17, 2022.	The adoption of the so-called „Geneva package" (discussed in detail further below).

Source: author's own elaboration based on WTO's publication concerning ministerial conferences (see: WTO WWWa).

Looking at the effects of earlier conferences, it can be noted that conflicts of interest often led to negotiating failures and even the temporary suspension of deliberations. If we look at the most significant results of the ministerial meetings prior to MC12, we should certainly point to the decision to launch a new round of multilateral negotiations[6], the ninth

[6] The Doha Development Round formally began on 31 January 2002, and includes negotiations under: agriculture, services, market access for non-agricultural products, trade aspects of intellectual property rights, the relationship between trade and investment, the relationship between trade and competition policy, transparency in government purchases, trade facilitation, anti-dumping and subsidies, regional trade agreements, dispute settlement arrangements, the relationship between trade and the environment, e-commerce, countries with low economic potential, trade, debt and finance, trade and technology transfer, technical cooperation, least developed countries, special and

in the entire GATT/WTO system, but the first since the establishment of the organisation, and the adoption of the first multilateral trade agreement concluded since the establishment of the WTO – the Trade Facilitation Agreement (TFA). The agreement aims to simplify and harmonise international trade procedures, which are expected to facilitate trade in goods and lead to a significant reduction in transaction costs[7]. It is estimated that the full implementation of the TFA[8] will lead to significant growth, as well as export diversification, especially in the least developed countries, which is also in line with the main objective of the Doha Development Round – the intensive integration of these countries into the world economy.[9]

The above table (see: *Table 1*) provides valuable information – by analysing the intervals between the MCs, it can be seen that the period that passed between MC11 and MC12 was by far the longest in the entire history of WTO operations.

The main effects of the MC12 arrangements in the context of WTO reform

At the outset, it should be noted that in her opening speech at MC12, Director General Ngozi Okonjo-Iweala pointed to six key areas for agreeing on outcomes. Among them were the TRIPS waiver, fisheries, WTO reform, agriculture and the food crisis, the extension of the moratorium on e-commerce, and the Special and differential treatment issue. She also stressed that the uncertainties and crises[10], which the global economy is currently facing, are creating increasing expectations for entities such as the WTO (see: WTO 2022a). Thus, as can be seen, complex conditions of a political and economic nature undoubtedly became the backdrop for the talks held at this meeting.

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differential treatment for developing countries (WTO 2001). The expansion of the list of issues and placing the problems of developing countries at the center has necessitated an adjustment in the way negotiations are conducted, which take place in the framework of so-called negotiating groups, with the aim of simplifying the negotiating process. At present, it is possible to distinguish already more than 20 such groups, such as African group, G-90, RAMs (Recently Acceded Members), Cairns group, Cotton 11, G-33 (see: WTO 2017).

7 According to the WTO, the benefits to the world economy from the signed agreement will range from $400 billion to as much as $1 trillion, due to, among other things, a 10-15% reduction in trade-related costs. This includes a reduction in the duration of export-import procedures (by almost 2 days on average) and the number of documents required (WTO 2018: p. 95).

8 Entry into force of the TFA required ratification by 2/3 of WTO members. This process was completed on 22 February 2017. The results of the analysis conducted five years later indicated a positive impact of the TFA on cost reduction, but overall trade costs have increased significantly over the past few years, mainly related to disruptions in transport services during the pandemic (Duval, Utoktham 2022). The latest figures demonstrate that TFA has contributed more than $230 billion to trade growth (in the first years of implementation) especially in agriculture, and least developed countries that have made commitments have seen the largest gains (see: WTO 2023).

9 The adopted changes are also expected to boost global trade and global GDP growth - estimated to add as much as 2.7 p.p. to global trade growth and 0.5 p.p. to global GDP growth annually by 2030 (WTO 2018: p. 95).

10 This mainly concerns the situation in Ukraine and the related international security crisis, in addition – extreme weather events, which, combined with Covid-19 and pandemic-related bottlenecks in the supply chain, have led to an increase in food prices worldwide, compounded by the aforementioned armed conflict (see: WTO 2022a).

The final MC12 outcomes included ten decisions and declarations that addressed a number of key trade initiatives. The following summarises the fundamental elements of the so-called "Geneva Package" adopted by members, which includes:

- "an outcome document;
- a package on WTO response to emergencies, comprising:
  - A Ministerial Declaration on the Emergency Response to Food Insecurity;
  - a Ministerial Decision on World Food Programme (WFP) Food Purchases Exemptions from Export Prohibitions or Restrictions;
  - a Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics;
  - a Ministerial Decision on the Agreement on Trade-related Aspects of Intellectual Property Rights;
- a Decision on the E-commerce Moratorium and Work Programme;
- an Agreement on Fisheries Subsidies." (WTO WWWc).

Two decisions were also adopted (on the *Work Programme on Small Economies* and on the TRIPS non-violation and situation complaints), as well as a *Sanitary and Phytosanitary Declaration for the Twelfth WTO Ministerial Conference: Responding to Modern SPS Challenges*.

An analysis of the effects of MC12 should certainly begin with the agreement to reduce fisheries subsidies. The reason for this is, firstly, that this agreement is only the second (after the TFA discussed earlier) in the history of the WTO to be concluded by all members of the organisation, and secondly, it is the first agreement relating to sustainable development (Sustainable Development Goal, SDG). Moreover, negotiations in this regard were initiated more than two decades ago, as reflected in the provisions of the 2001 Doha Development Agenda, which aimed to "clarify and improve" existing WTO disciplines on fisheries subsidies[11] taking into account the importance of the sector to developing countries. Additional arrangements were made during the aforementioned MC6 in Hong Kong, and, although the topic was a key element of the negotiations at MC11 as well, an agreement was not reached at that time. Only the difficult and protracted talks at MC12, based on previously prepared documents[12] allowed a consensus to be reached and a meaningful multilateral agreement to stop the use of harmful fisheries subsidies to be agreed upon.

The fisheries subsidy agreement therefore implements the MC11 mandate and SDG 14.6, which is a part of the *2030 Agenda for Sustainable Development* and affirms the WTO's role in this regard.

The signed agreement includes, among other things, a ban on subsidies that contribute to illegal, unreported and unregulated fishing (Agreement on Fisheries Subsidies 2022: art. 3) and includes unprecedented transparency provisions.[13] It also includes a

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[11] "Participants shall also aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries" (WTO 2001: par. 28).

[12] A few days before the start of the meeting in question, the MC12 chairman presented a new draft text.

[13] In addition to regular, periodic notifications of subsidies under the Agreement on Subsidies

complete ban on subsidies for unregulated fishing on the high seas, which is particularly important for vulnerable areas that lack a coordinated fisheries management system. The agreement, on the other hand, did not cover issues such as reducing subsidies for shipbuilding or fuel purchases. However, members agreed to continue negotiations on outstanding issues, with an eye toward the MC13.[14]

Developing countries were given a two-year transition period to comply with the provisions of the agreement. It also announced the creation of a special fund for technical assistance and capacity building for developing countries to implement the agreement[15]. For the agreement to take effect, two-thirds of the members must ratify it. As of September 18, seventeen members have formally accepted the protocol to the fisheries subsidies agreement by filing an "instrument of acceptance" with the WTO, including Japan, the US, the EU, China and Canada (WTO WWWb).

Another significant result of the negotiations is the extension of the moratorium on the imposition of tariffs on e-commerce, first agreed in 1998, which is expected to contribute to the further development of the digital economy. However, the agreement reached was a compromise between supporters and opponents of this debate[16]. Therefore, with some reservations[17], the moratorium was eventually extended until the MC13, and its provisions oblige members to revitalise and intensify their work programme in this regard.

Some progress was also made on food security during the talks. In a joint declaration, WTO members pledged to avoid unjustified export restrictions on food, as well as to improve the transparency of any export restrictions that occur (*Ministerial Declaration on the Emergency Response to Food Insecurity*, see: WTO 2022e). In addition, a decision was made to fully exempt humanitarian purchases for the World Food Programme from export restrictions. Thus, the declaration was a confirmation of WTO members' readiness to respond to certain emergency circumstances[18]. Unfortunately, however, the organisation's members were unable to overcome their differences of opinion on the agricultural work programme, with the result that the last of the three agricultural texts submitted to the negotiating table – the draft decision on agriculture – was not adopted.

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and Countervailing Measures, each member is required to provide information relevant to the implementation of the agreement. This information includes e.g. the type or type of fishing activity for which the subsidy is provided, or information on the vessels benefiting from the subsidy (Agreement on Fisheries Subsidies 2022: p. 6).

14 The next ministerial conference is to be held in Abu Dhabi, 26–29 February 2024.

15 The Agreement stipulated the establishment of a WTO Fisheries Financing Mechanism for targeted technical assistance and capacity building to help developing and least-developed country members implement the Agreement (Agreement on Fisheries Subsidies 2022: art. 7). The fund became operational on 8 November 2022. The contributors to date include Australia, Japan, Canada and EU countries.

16 Some states, mainly developing countries, have indicated the need of changes in this regard. In particular, India, Pakistan, Sri Lanka, Indonesia, and South Africa have not supported extending the moratorium.

17 "Should MC13 be delayed beyond 31 March 2024, the moratorium will expire on that date unless Ministers or the General Council take a decision to extend" (Work Programme on Electronic Commerce, see: WTO 2022g).

18 The issue is mainly related to the limitation of supplies as a result of situation in Ukraine and problems with Ukrainian grain exports (Ministerial Decision on World Food Programme Food Purchases Exemptions from Export Prohibitions or Restrictions, see: WTO 2022d).

One of the important provisions of the Geneva package under discussion was also the adoption of a *Ministerial Declaration on the WTO Response to the COVID-19 Pandemic and Preparedness for Future Pandemics* (see: WTO 2022f). In response specifically to requests from developing countries, ministers agreed to waive certain procedural obligations under the TRIPS Agreement (TRIPS waiver) – allowing the suspension of intellectual property rights for COVID-19 vaccines, for the next five years (*Ministerial Decision on the TRIPS Agreement*, see: WTO 2022c). The decision, which was adopted, is expected to contribute to more efficient production and distribution of these preparations around the world, which could make it much easier to stop the development of a pandemic. The aforementioned agreement should be viewed in yet another slightly different context, namely a reference to developing country status. Developing countries that have the capacity to produce these preparations have been encouraged to make a binding commitment not to take advantage of the provisions of the above-mentioned decision (WTO 2022c: footnote 1). This is important in the context of China, which has made such a declaration and still considers itself a developing country.[19]

However, one of the most complex issues and significant challenges remains the reform of the WTO, as its core functions of monitoring, negotiation and dispute settlement have not evolved to adequately reflect changes in the global economy. These aspects were also addressed by the DG during her opening remarks, emphasising the need to modernise the organisation in the indicated areas of its activities.[20]

Despite the lack of concrete agreements in this respect, members committed themselves to a thorough reform of the WTO that takes into account all areas of the organisation's operations. WTO members agreed, writing in the *MC12 Outcome Document* (WTO 2022b: art. 3), to conduct a comprehensive review of all WTO functions to ensure that the organisation is able to respond more effectively to the challenges facing the multilateral trading system. The review will be conducted by the WTO General Council and its subsidiary bodies, with the aim of submitting possible reform proposals to the MC13.[21]

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[19] This relates to the new "opt-out" approach, which allows members to voluntarily relinquish the developing country status on a case-by-case basis. This approach could also further contribute to results by allowing parties to a particular multilateral agreement to stay out of it if they are unable or unwilling to join at a given time. Members choosing to withdraw from an agreement could ultimately benefit from and be bound by its provisions, having decided to join a particular agreement. This would provide additional flexibility to the WTO's negotiating function (González 2022).

[20] The DG stressed the WTO's preference for the principle of single undertaking. However, she recalled that this approach has repeatedly been a source of negotiating impasse, which implies the need to consider a different set of tools, consisting of different negotiating instruments or approaches, which would modernise the negotiating function. A key part of the reform is to make sure that the WTO works for developing and least developed countries. That is why it is so important to reaffirm the relevance of special and differential treatment in the WTO. The priority for most members, however, is reform of the dispute settlement system (WTO 2022a).

[21] It should be noted that informal talks on reform are underway (General Council 2023a). In turn, at the General Council meeting held in the second half of July 2023, WTO members examined a "roadmap" for progress in the organisation's reform talks. They outlined emerging milestones requiring analysis to ensure a successful resolution of the WTO reform issue at MC13. Proponents or advocacy groups presented eight reform proposals to members, providing an opportunity for constructive debate on the modernisation agenda (General Council 2023b).

Significantly, however, a commitment was made to restore a fully functioning dispute settlement system no later than 2024 (WTO 2022b: art. 4). This is particularly important since the DSS was considered a central pillar of the multilateral trading system, a key achievement of the WTO[22] and the "jewel in the crown" of the organisation (Hoekman, Mavroidis 2021: p. 9). However, by blocking the appointment of new judges, the United States[23] paralysed the WTO's central appellate body (Appellate Body, AB) in its rulings in international disputes, depriving the global trading system of a two-stage, enforceable dispute settlement mechanism. At the end of 2019, the terms of two of the three AB judges[24] expired, causing it to lose its authority to adjudicate trade disputes, disorganising the operations of a vital area of the WTO's functioning. As mentioned earlier, to solve this issue, an alternative mechanism called the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) was established at the initiative of the EU, providing a binding, two-stage and independent adjudication process (MPIA 2020). Therefore, the commitment made to resolving the AB impasse and strengthening the dispute settlement function is critical for preserving the WTO's relevance and is, thus, a key element of the organisation's future reform.

Conclusions

The weakening of the WTO's position and the need of comprehensive reform in all key areas of its activities raise a dilemma regarding the organisation's present and future role. This is particularly crucial in the context of its contribution to the development of the world economy and the fight against protectionism, which may be a priority in the current global economic situation.

The analysis presented in this article demonstrated that the effects of MC12 in the form of the adopted "Geneva package" strengthened the credibility of the organisation and confirmed that it is possible to achieve the stated goals even in the face of international tensions.

The aforementioned package contains crucial decisions that address both current challenges (including pandemics and the situation in Ukraine) and topics that have been negotiated for many years – in particular, the symbolic importance of concluding the *Agreement on Fisheries Subsidies* should be highlighted, as it represents a historic achievement. It is the first fully achieved Sustainable Development Goal (SDG), the first WTO multilateral agreement focusing on the environment, the first broad, binding, multilateral agreement on sustainable development of the oceans, and only the second agreement reached at the WTO since its creation, after the TFA. It is also important that

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[22] While a dispute settlement procedure existed in the "old" GATT, rulings were more easily blocked, and many cases were prolonged without resolution. The Uruguay Round Agreement introduced a more structured process with clearly defined steps in this procedure and a timetable to be followed in resolving disputes.

[23] A comprehensive document has been issued pointing out numerous flaws in the operation of the AB. (More on the subject – in the report: USTR 2020).

[24] The normal functioning of the seven-member panel requires the presence of three members. The Appellate Body is currently unable to hear appeals due to ongoing vacancies.

the agreement illustrates the founding objective of the WTO, as stated in the preamble to the Marrakesh Agreement establishing the WTO, which refers to the use of trade to promote sustainable development.

The challenge remains the need of fundamental reform, i.e. streamlining and strengthening the organisation's negotiating, monitoring and dispute settlement functions, in order to restore and maintain the WTO's critical role as a global governance institution coordinating the world trade. Despite the lack of concrete arrangements in this regard, the members committed to modernise the WTO and, thus, also began the institutional process of reform, recognising that all of the organisation's core functions need to be updated in order for the WTO to continue to serve its purpose. Therefore, in the face of such a difficult situation in the global economy, the very fact of obtaining a mandate for reform should be considered a momentous achievement, as it confirms that reform is feasible.

However, it should be borne in mind that until an agreement on reform is reached, it will also be crucial to maintain the aforementioned interim arrangements, such as the MPIA, which is crucial to maintaining the effectiveness of the DSS and is, thus, a critical component of future reform of the multilateral trading system.

The WTO's activities in the near future will also be significantly hampered by the current complicated international situation. Therefore, taking concrete steps to re-establish the organisation's credibility is necessary so that the importance and contribution that the WTO has made to the development of the world economy is not lost. Indeed, a stable trade environment with the centrality of the WTO is essential, especially in view of the challenges ahead. That is why the successful outcome of MC12 is so important. Despite widespread scepticism about the organisation's ability to achieve it, WTO members have shown that they have been able to respond to emergencies and pressing global problems. The agreements reached are therefore also key to the future reform of the multilateral system within the WTO, as they lay the groundwork for supporting the multilateral trading system and provide a platform for further discussion that can help restore the organisation's relevance. Indirectly, they may also provide an opportunity to conduct effective negotiations and, thus, revitalise the system, confirming the WTO's ability to function with the participation of more than 160 members. Their involvement reflects the growing importance of the global economy. Broad international cooperation will, therefore, be crucial. This ability will be verified soon, at MC13, scheduled for February 2024. Let's hope the "thirteen" turn out to be lucky.

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Światowej Organizacji Handlu, polityka handlowa UE oraz krajów regionu Indo-Pacyfiku, procesy regionalizacji i globalizacji światowego systemu handlowego.

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Analysing the ICJ's advisory opinion on Kosovo's independence: a multilateral perspective

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Abstract
This article scrutinises the International Court of Justice's advisory opinion on Kosovo's independence declaration, exploring submissions from Serbia, Kosovo, and key stakeholders like the USA, United Kingdom, Russia, Germany, Spain, and France. The authors delve into legal arguments regarding Kosovo's secession, emphasising state sovereignty *versus* self-determination. By dissecting the ICJ's decision and legal principles invoked, they shed light on complex international law dynamics related to geopolitical conflicts over statehood and self-determination. By synthesising analysed perspectives, the article offers insights into the intricate legal and geopolitical dynamics surrounding Kosovo's independence and contributes to the broader discourse on self-determination and statehood in international law. Ultimately, this research can be a valuable resource for policymakers, scholars, and practitioners interested in the questions of sovereignty, self-determination, and the application of international law in contemporary conflicts.
Keywords: International Court of Justice (ICJ), Kosovo, independence, advisory opinion.

Analiza opinii doradczej Międzynarodowego Trybunału Sprawiedliwości w sprawie niepodległości Kosowa: spojrzenie z multilateralnej perspektywy

Streszczenie
W niniejszym artykule przeanalizowano opinię doradczą Międzynarodowego Trybunału Sprawiedliwości (MTS) w sprawie deklaracji niepodległości Kosowa, uwzględniając uwagi przekazane przez Serbię, Kosowo i kluczowych interesariuszy, takich jak USA, Wielka Brytania, Rosja, Niemcy, Hisz-

pania i Francja. Autorzy zagłębiają się w argumentację prawną dotyczącą secesji Kosowa, kładąc nacisk na suwerenność państwa zamiast samostanowienia. Analizując decyzję MTS i przywołane zasady prawne, rzucają światło na złożoną dynamikę prawa międzynarodowego, związanego z konfliktami geopolitycznymi dotyczącymi państwowości i samostanowienia. Syntetyzując analizowane perspektywy, artykuł oferuje wgląd w zawiłą dynamikę prawną i geopolityczną, otaczającą niepodległość Kosowa, oraz wnosi wkład w szerszy dyskurs na temat samostanowienia i państwowości w prawie międzynarodowym. Ostatecznie badania te stanowią cenne źródło informacji dla decydentów, naukowców i praktyków zajmujących się kwestiami suwerenności, samostanowienia i stosowania prawa międzynarodowego we współczesnych konfliktach.
Słowa kluczowe: Międzynarodowy Trybunał Sprawiedliwości (MTS), Kosowo, niepodległość, opinia doradcza.

The 2008 Kosovo Declaration of Independence sparked a complex legal and geopolitical debate that reverberated across the international community. Central for this debate was the question of whether Kosovo's unilateral secession from Serbia was lawful under international law. In response to this contentious issue, the International Court of Justice (ICJ) was called upon to provide an advisory opinion referred by the United Nations General Assembly. The question was posed: "Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?" (see: International Court of Justice 2010a,b,c; General Assembly Resolution A/RES/63/3).

In its advisory opinion, the ICJ considered various arguments presented by stakeholders, including Serbia, Kosovo, USA, UK, Russia, Germany, Spain, France and other interested parties, to make reasoned conclusion. One of the primary factors informing the ICJ's decision was the principle of self-determination, which is enshrined in international law. The Court evaluated Kosovo's claim to statehood in light of this principle, taking into account factors such as historical context, the will of the people, and the absence of viable alternatives for self-governance within the existing framework. Additionally, the ICJ examined the specific circumstances surrounding Kosovo's declaration of independence, including the legal status of the territory under international law and the implications of United Nations Security Council Resolution 1244 (1999).[1] This resolution, which provided for an interim international administration in Kosovo, was a crucial element in the Court's deliberations.

The article's aim and structure, the research methods used

This article delves into the multifaceted legal and political dimensions surrounding Kosovo's quest for independence, with particular focus on the ICJ's advisory opinion and the diverse perspectives expressed by key actors in the international arena. Through

[1] The Resolution 1244 was adopted on 10 June 1999, after recalling resolutions 1160 (1998), 1199 (1998), 1203 (1998) and 1239 (1999). It authorised the international civil and military presence in the Federal Republic of Yugoslavia, established the United Nations Interim Administration Mission in Kosovo (UNMIK), and ensured the withdrawal of all Yugoslav state forces from Kosovo (Annex 2 of the Resolution).

a comprehensive analysis of the submissions made by different parties, the authors try to elucidate the complex legal principles and geopolitical interests concerning the Kosovo's independence.

The aim of the article is to analyse the International Court of Justice's advisory opinion on Kosovo's independence declaration. The authors examine submissions from Serbia, Kosovo, and key stakeholders such as the USA, United Kingdom, Russia, Germany, Spain, and France. They delve into legal arguments concerning Kosovo's secession, highlighting the tension between state sovereignty and self-determination. The structure of the article consists of a thorough examination of the arguments of the above-mentioned stakeholders and the ICJ's decision and the legal principles invoked therein, with a focus on complex international law dynamics.

Research methods include legal analysis, review of scholarly articles and academic literature on the topic (e.g. Ker-Lindsay 2009; Cirkovic 2010; Perritt Jr 2010; Hilpold 2012; Dumitriu 2014; Capussela 2019), case studies, as well as comparative analysis of legal arguments presented by involved parties.

In the first section of this article, Serbia's arguments against Kosovo's declaration of independence are examined, emphasising the primacy of state sovereignty and territorial integrity within the international law. Conversely, Kosovo's assertions of self-determination and statehood are scrutinised, taking into account the historical context and political dynamics of the region.

In the next sections of the article, the perspectives of major international players are explored, shedding light on the diverse interests and motivations shaping their positions concerning Kosovo's independence.

In the final section of this article, the authors analyse the ICJ's advisory opinion, unpacking the legal principles and precedents invoked by the Court in reaching its decision. By synthesising these diverse viewpoints and legal arguments, the authors provide a nuanced understanding of the complex legal and geopolitical dynamics surrounding Kosovo's independence and its implications for international law and state sovereignty.

The perspective of Serbia

In the written statement submitted to the ICJ, Serbia noted that Kosovo "is an autonomous province of the Republic of Serbia which is under international administration pursuant to Security Council Resolution 1244 (1999) and with the full consent and agreement of the Republic of Serbia" (Written Statement of the Government of the Republic of Serbia 2009: p. 21). The Declaration of Independence claimed that "Kosovo to be an independent and sovereign state" (Kosovo Declaration of Independence 2008: art. 1). Serbia's position has been and continues to be that the unilateral declaration of independence was an attempt to unilaterally secede Kosovo from Serbia and that it is invalid and without any legal effect both in Serbia and in the international legal order. The unilateral declaration of independence, as well as the actions of the Provisional

Institutions of Self-Government in Kosovo that followed, flagrantly violate Security Council Resolution 1244 and the international legal regime established by it, as well as the sovereignty and territorial integrity of Serbia and principles of other international law (Written Statement of the Government of the Republic of Serbia 2009: p. 22).

Serbia noted that the right to self-determination has become a legal right in international law, but in a carefully limited manner. The right to self-determination does not authorise non-consensual secession from independent state, and Kosovo does not constitute a valid unit of self-determination under international law. Also, it noted that Kosovo continues to enjoy a regime of substantial autonomy under the administration of the United Nations, such autonomy is also constitutionally recognised by the Republic of Serbia.

Regarding the issues related to Resolution 1244, Serbia considered that it established an international legal regime for Kosovo, according to which this Serbian territory is administered by international civilian presence. This Resolution envisages that the international civilian presence will provide an interim administration for Kosovo, under which the people of Kosovo can enjoy considerable autonomy, and which will establish and oversee the development of interim democratic self-governing institutions and exclude any form of independence for Kosovo, and even more – excludes a unilateral declaration of independence. Security Council Resolution 1244 and the international legal regime established pursuant to that resolution continue to be binding and applicable in their entirety until the Security Council decides otherwise.

Republic of Serbia, considered as "mother state" and recognised as legal sovereign, has never given its consent to the secession of Kosovo, neither before nor after the Declaration. The illegality of secession cannot be cured by recognition, which, as a general principle of international law, is not a component of citizenship. In fact, the long list of states that do not recognise Kosovo reduces the legitimacy of the declaration of independence with legal flaws by the Provisional Institutions of Self-Government of Kosovo.

For the reasons stated in the written statement, the Republic of Serbia concluded as follows (Written Statement of the Government of the Republic of Serbia 2009: p. 359–361):

- "In accordance with Article 65 of the Statute, the Court is competent to give the advisory opinion requested by the General Assembly in this case", because the request came from authorised body (Written Statement of the Government of the Republic of Serbia 2009: p. 359).
- "Kosovo remains under the international legal regime created by the United Nations Security Council, [...and] only the Security Council can modify or terminate this international legal regime" (*Ibidem,* p. 359).
- Security Council Resolution 1244 constitutes "the cornerstone of the international legal regime for Kosovo, which also includes the decisions and regulations adopted by the Special Representative of the Secretary General in Kosovo" (*Ibidem,* p. 359), in particular the Constitutional Framework,[2] which created the Provisional Institutions of Self-Government in Kosovo and regulated their powers.

[2] Regulation No. 2001/9 on a Constitutional Framework for Provisional Self-Government in Kosovo, signed on 15 May 2001.

- The unilateral Declaration of Independence, claiming that it will create an independent state on the territory of Serbia, "violates the internationally confirmed territorial integrity of Serbia guaranteed by the norms of international law" (*Ibidem,* p. 360).
- "The right to self-determination does not authorise non-consensual secession from an independent state" (*Ibidem,* p. 360).
- By unilaterally and illegally trying to change the current temporary legal status of Kosovo, the declaration "violates the procedural requirements for conducting negotiations established by Security Council Resolution 1244 (1999)" (*Ibidem,* p. 361).
- "None of the exceptional situations, in which the "right to secession" may exist under general international law is applicable to Kosovo", because Kosovo has never had the right to secede either under the internal law of Serbia or Yugoslavia, "Kosovo was not unlawfully annexed by Serbia, on the contrary, its integration into Serbia has been internationally guaranteed since 1913" (*Ibidem,* p. 361).
- The alleged existence of the effective "government" in Kosovo is not sufficient for citizenship. Moreover, the requirement to respect the applicable conditions of international law has not been fulfilled in this case.
- However, in any case, "there is no effective independent government in Kosovo, which is still a territory under international administration: KFOR continues to provide security, while UNMIK continues to act in Kosovo jointly with the EU mission of EULEX, which operates under the overall authority of the United Nations and in accordance with Resolution 1244" (*Ibidem,* p. 362).
- The fact that Kosovo has been recognised by a number of countries cannot in any way overturn, correct or legitimise the illegality of the unilateral declaration according to international law.

For the reasons set out in this statement, Serbia considered that:

- the Court was competent to give the advisory opinion requested by the General Assembly in its Resolution 63/3 of 8 October 2008 (see: General Assembly Resolution A/RES/63/3), and there are no compelling reasons that could make the Court refuse to give its opinion,
- the unilateral Declaration of Independence approved by the Assembly of Kosovo on 17 February 2008 was not in accordance with international law (Written Statement of the Government of the Republic of Serbia 2009: p. 362).

The perspective of Kosovo as the authors of the Declaration of Independence

In Kosovo's written contributions it is underlined that the Declaration of Independence was approved by the representatives of the people of Kosovo on 17 February 2008. The declaration was signed by the President of the Republic of Kosovo and by 109 representatives. Kosovo's independence is irreversible (see: Written Contribution of the Republic of Kosovo 2009: p. 13, 188, 251). It will remain so not only for Kosovo

but also for the sake of regional peace and security. Kosovo considered that the Court should bear in mind that the people of Kosovo had a strong and long-standing desire for independence, which was further strengthened by the events of 1998–1999, which consisted of crimes against humanity and violations of human rights suffered by the people of Kosovo. Furthermore, Kosovars are distinct people based on their ethnic characteristics and have no ethnic ties to the Serbian people. "Since 17 February 2008, the day on which the representatives of the people of Kosovo voted upon and signed the Declaration of Independence, many states have recognized Kosovo as a sovereign and independent state. Indeed, most European states have recognized the Republic of Kosovo, including all of its immediate neighbours, with the exception of Serbia. Within Europe, it is widely agreed that Kosovo's status as a sovereign and independent state is an important factor for peace and security in the region" (Written Contribution of the Republic of Kosovo 2009: p. 189, art. 10.10).

Kosovo's authorities reminded the Court that since the Declaration of Independence, Kosovo has taken many steps "to implement the commitments made to the international community regarding the protection of communities, the rule of law, respect for international agreements, and cooperation with international institutions. Importantly, these steps include the adoption and entry into force of the Constitution of the Republic of Kosovo, with its strong protections of human rights and the rights of communities and their members." (Written Contribution of the Republic of Kosovo 2009: p. 189, art. 10.11). Whilst, in terms of international relations, the Republic of Kosovo seeks good relations with all its neighbors, including Serbia. As provided in Constitution, Kosovo has no territorial ambitions, and will not seek union with any state or part of any state. During the final status negotiations, the Kosovar side proposed a Treaty of Friendship and Cooperation, but this was not accepted by the Serbian side (Written Contribution of the Republic of Kosovo 2009: p. 18).

Kosovo mentioned that the question put to the Court is narrow in scope, with a focus on issuing a certain declaration of independence, by certain persons, on a certain day. However, despite its brevity and specificity, there are certain problems. The question asked to the Court is prejudicial, so Kosovars ask the Court to treat it objectively. Furthermore, the question incorrectly suggests that the Declaration was approved by the Provisional Institutions of Self-Government of Kosovo, when in fact it was an act voted and signed by the democratically elected representatives of the people of Kosovo (Written Contribution of the Republic of Kosovo 2009: p. 113).

Kosovo considered that international law does not contain any prohibition for issuing declarations of independence. "Rather, the issuance of a declaration of independence is understood as a *factual* event that, in combination with other events and factors, may or may not result in the emergence of a new state" (Further written contributions… 2009: p. 130–131, art. 6.21). State practice in the context of the Balkans during the 1990s confirms that international law does not prohibit issuing a declaration of independence, even in the face of the central government that does not approve it. Slovenia, Croatia, Bosnia and Herzegovina, Macedonia – all of them declared independence in the face of opposition

from the Socialist Federal Republic of Yugoslavia, and yet other states (and even this Court, with respect to Bosnia and Herzegovina), did not consider those declarations to be in violation with international law.

Kosovo submitted that its Declaration of Independence also did not conflict with UN Security Council resolution 1244 (1999), which provided for a political process that included the possibility of Kosovo's independence if it was "the will of the people." This resolution created a framework that fully anticipated the possibility of the emergence of Kosovo as an independent state and in no way prevented the issuance of the Declaration of Independence. The political process envisaged by Resolution 1244 ended in 2007, when the United Nations plenipotentiaries determined that independence was the only viable option. The preamble of the Resolution 1244, referenced to "sovereignty and territorial integrity", cannot be interpreted as an obligation not to declare independence. Furthermore, the resolution gave the UN Secretary-General broad powers to pursue political negotiations towards a final settlement (and to determine the pace and duration of those negotiations), without predetermining the outcome of that settlement, nor requiring that the solution be approved by the Federal Republic of Yugoslavia, by Serbia or by the Security Council itself (Written Contribution of the Republic of Kosovo 2009: p. 162).

For the reasons outlined in the statement and the written contributions, Kosovo asked the Court, in case it deems it appropriate to respond to the request for an advisory opinion, to state that the Declaration of Independence of 17 February 2008 did not conflict with any applicable right of international law.

The perspective of the United States of America

The United States declared that the US has maintained a long and close engagement with the states and people of the Western Balkans region. "The tragic and tumultuous recent history of the region, and the importance of not letting that history to repeat itself, has clearly shaped the way that the United States and others in the international community have had to deal with events as they unfolded in Kosovo". The United States hoped "that the resolution of this case will play a role in turning the page on this chapter of Balkans history" (Written Statement of the United States of America 2009: p. 1). Kosovo's independence closed one of the most tragic chapters of modern European history – the violent breakup of Yugoslavia.

The USA reminded that historically, "in December 1992, following reports by the United Nations High Commissioner for Refugees (UNHCR), the General Assembly condemned "ethnic cleansing" both in Bosnia and Croatia and within the FRY, including in Kosovo" (Written Statement of the United States of America 2009: p. 11). In early 1995, for example, the General Assembly considered a report by the UNHCR Special Rapporteur describing the discriminatory legislative, administrative and judicial measures, acts of violence and arbitrary arrests committed against ethnic Albanians in Kosovo, as well as the continued "deterioration of the human rights situation in Kosovo, including:
(a) police brutality against ethnic Albanians...;

(b) discriminatory and arbitrary dismissals of Albanian civil servants…;
(e) the dismissals from clinics and hospitals of doctors and members of other categories of the medical profession of Albanian origin;
(f) practical elimination of the Albanian language, especially in administration and public services." (Written Statement of the United States of America 2009: p. 12).

The USA stated that, firstly, while the sequence and nature of the events leading to Kosovo's independence were extraordinary, there were important similarities between the situation that Kosovo was facing in 2008 and that faced by the republics of the former Yugoslavia, which gained independence in the early 1990s (Written Statement of the United States of America 2009: p. 34). Secondly, based on the "assessment of Kosovo's development during the period of UNMIK administration, the United States was satisfied that Kosovo's viability as a state was not in doubt and that it met the criteria for statehood described in Article 1 of the Montevideo Convention (1933): (1) a permanent population, (2) a defined territory, (3) a functioning government, and (4) the ability to enter into foreign relations." (Written Statement of the United States of America 2009: p. 34). "Finally, the United States placed great weight on Kosovo's commitments, assumed in its Declaration of Independence and subsequently in its Constitution, to protect the rights and interests of all communities in Kosovo" (Written Statement of the United States of America 2009: p. 35). After obtaining the independence, Kosovo created "institutions for the few areas of governmental responsibility, in which ministries or other bodies were not put in place and functioning under UNMIK administration, including the ministries of foreign affairs and security forces […]. As of 1 April 2009, Kosovo's executive branch included seventeen ministries, in addition to the Presidency and the Office of the Prime Minister." (Written Statement of the United States of America 2009: p. 36).

Regarding the question, the USA maintained the stance that the question of the General Assembly was relevant with the declaration of Kosovo's independence. The most important aspect of the question is that it is focused on the legality of the act of declaration of independence. "The General Assembly chose not to ask about the "legal consequences" of the declaration of independence, nor did it ask other legal questions concerning the situation in Kosovo, but instead adopted the wording of Serbia's question as Serbia requested" (Written Statement of the United States of America 2009: p. 49).

The USA mentioned that "it is widely accepted that declarations of independence, standing alone, present matters of fact, which are neither authorised nor prohibited by international law. Neither the United Nations Charter, nor other general international agreements, nor customary international law regulate the act of declaring independence" (Written Statement of the United States of America 2009: p. 50). Thus, it is widely accepted that, from the point of view of international law, "the process of state formation is a matter of fact. A declaration of independence is an expression of a will or desire by an entity to be accepted as a state by the members of the international community" (Written Statement of the United States of America 2009: p. 51). Kosovo Declaration of Independence addressed a number of issues besides independence itself, but there is nothing in these other provisions that is not "in accordance with international law" (Written Statement of the United

States of America 2009: p. 56). On the contrary, the provisions of Kosovo Declaration of Independence, including "its emphasis on the protection of human rights for the members of all communities within Kosovo, are consistent with the highest international human rights protections" (Written Statement of the United States of America 2009: p. 56). Among other things, the Declaration of Independence predicted that Kosovo will be "a democratic, secular and multi-ethnic republic, guided by the principles of non-discrimination and equal protection under the law" (Kosovo Declaration of Independence 2008: art. 2; Written Statement of the United States of America 2009: p. 56).

The basic approach of Resolution 1244, according to the USA, was to protect the people of Kosovo, to create the environment, in which Kosovo could develop politically, and then to facilitate a process to seek a solution for the future status of Kosovo. Thus, the statement did not violate the Resolution 1244. Serbia has characterised this resolution as a reaffirmation of the sovereignty and territorial integrity of Serbia. The Court should note that Resolution 1244 only refers to the territorial integrity of the Federal Republic of Yugoslavia, not of Serbia (Written Statement of the United States of America 2009: p. 74).

As a conclusion, the United States submitted that, if the Court decides to answer the question posed by the General Assembly, "it should conclude that Kosovo's declaration of independence is in accordance with international law" (Written Statement of the United States of America 2009: p. 90).

The perspective of Russia

The Russian Federation held the viewpoint that the situation stemming from the Declaration of Independence issued on 17 February 2008 falls within the purview of international law, making it the subject to legal scrutiny.

Consequently, the International Court of Justice (ICJ) possessed the authority to deliver the requested advisory opinion. The dissolution of the Socialist Federal Republic of Yugoslavia in the early 1990s holds significance in the current discourse, primarily due to the absence of substantial deliberation on Kosovo's independence during that period. Notably, the Badinter Arbitration Committee's opinions,[3] acknowledged as authoritative in addressing legal matters arising from Yugoslavia's breakup, notably omitted any mention of Kosovo. Instead, the Arbitration Commission primarily focused on the situation of the Serbian ethnic community. Throughout this period until 2008, Kosovo remained heavily reliant on international presences, such as KFOR and UNMIK police, raising questions regarding its eligibility for citizenship criteria. Despite assertions of sovereignty and territorial integrity, the UNSC Resolution 1244 lacked explicit mention of self-determination or secession possibilities, emphasising the intention to maintain Kosovo's status as a special

[3] The Arbitration Commission of the Conference on Yugoslavia (commonly known as Badinter Arbitration Committee) was an arbitration body set up by the Council of Ministers of the European Economic Community (EEC) on 27 August 1991 to provide the conference on Yugoslavia with legal advice. Robert Badinter was appointed to President of the five-member Commission consisting of presidents of Constitutional Courts in the EEC (see more: Pellet 1992).

territory within a state. The commitment to the sovereignty and territorial integrity of the Federal Republic of Yugoslavia underscored the prevailing principles of international law, leading the Russian Federation to argue that the Declaration of Independence of 17 February 2008, contradicted United Nations Security Council Resolution 1244 (1999). The Russian Federation further contended that the circumstances in 2008 did not warrant extreme self-determination leading to secession, because the situation had considerably improved since 1999, with Resolution 1244 aimed at restoring peace and security in Kosovo.

Therefore, the Russian Federation concluded that the unilateral declaration of Kosovo's independence was inconsistent with international law, primarily due to the overstepping of competencies by the Provisional Institutions of Self-Government and the absence of extreme circumstances necessitating self-determination through secession (see more: Written Statement by the Russian Federation 2009: p. 39–40).

The perspective of the United Kingdom

The United Kingdom emphasised the importance of promoting and maintaining stability in the region. A key strategy to achieve this stability was seen in the membership of the European Union for both Serbia and Kosovo, facilitating progress in a framework conducive to fostering "secure and safeguard interaction between the peoples of both states" (Written Statement of the United Kingdom 2009: p. 5). To understand the current situation in Kosovo and Serbia, it was imperative to reflect on the past and draw lessons from it.

The UK collaborated closely with the government in Belgrade to capitalise on significant progress made in recent years. Regarding Serbia's approach to the request for an advisory opinion, the UK did not perceive it as less than ideal. The Kosovo Declaration of Independence of 17 February 2008, emerged as a legacy of two decades of uncertainty and a decade of pursuit for alternative solutions, against the backdrop of broader historical events. Contextualising this declaration necessitated revisiting significant historical milestones, such as the dispatch of Serbian troops to Kosovo and the declaration of a state of emergency in February 1989, as well as developments during the 1990s, including human rights violations against the people of Kosovo.

The United Kingdom consistently underscored the *sui generis* nature of the situation in Kosovo, citing two primary reasons (see more: Written Statement of the United Kingdom 2009: p. 9). Firstly, it maintained that the circumstances surrounding the Kosovo Declaration of Independence were truly unique, devoid of parallel instances elsewhere. Secondly, articulating the unique character of Kosovo's situation was deemed crucial to ensuring stability in the international system and clarifying that events in the Balkans, including Kosovo's independence, did not pose risks of internal instability elsewhere. Moreover, Kosovo's independence was not to serve as a precedent for secessionist claims or self-determination in other regions globally.

The deep and sustained engagement of the international community, including the United Nations and the European Union, in seeking a mutually agreeable framework for Serb-Kosovar relations underscored the atypical nature of the situation in Kosovo.

The Declaration of Independence, while acknowledging standard-setting instruments, expressed the desire of the people of Kosovo to foster good relations with all neighbors, including Serbia.

Resolution 1244 effectively shifted the determination of Kosovo's future from Serbia to the residents of Kosovo. Despite concerted efforts to negotiate a solution to the Kosovo crisis within the framework of the United Nations, alternative to independence, these endeavors proved futile.

Looking ahead, the United Kingdom maintained that if the Court deemed the Declaration of Independence not in accordance with international law at the time of its issuance, subsequent developments have solidified Kosovo's independence, rendering it irreversible and compliant with international norms (Written Statement of the United Kingdom 2009: p. 127). However, regardless of the Court's interpretation, the United Kingdom stressed the importance of affirming Kosovo's independence as *sui generis*, dependent on its unique circumstances, without setting a precedent for other situations.

The perspective of Germany

Germany in its written statement noted that on 17 February 2008 Kosovo declared independence from Serbia, officially becoming the Republic of Kosovo. Being recognised by over 50 countries worldwide, including the majority of its neighbors and a significant portion of the European Union Member States, Kosovo's independence stood as an established reality (Written Statement of Germany 2009: p. 3). While the posed question implies that the Declaration of Independence was a product of the temporary Provisional Institutions of Self-Government of Kosovo, it is noteworthy that neither these institutions nor the Assembly of Kosovo authored the declaration. The text of the Kosovo Declaration of Independence conspicuously omits mention of the Assembly of Kosovo or the Provisional Institutions of Self-Government. Those who endorsed the Declaration, did so not in their official capacity within these temporary institutions, but as representatives of the people of Kosovo, expressing their collective will.

Germany referred to the document as the "Declaration of Independence of Kosovo" and advocated for the rejection of the term "unilateral declaration of independence" to counteract its implication of unilateralism (Written Statement of Germany 2009: p.7–8). From the legal standpoint, the act of declaring independence and subsequent secession are regarded as factual occurrences, with international law generally maintaining silence on their legality. Legal scholars (such as professor Crawford and professor Alain Pellet, see: Written Statement of Germany 2009: p. 28–29; Bayefsky 2000; Pellet 1992) affirmed that international law neither prohibits nor excludes the right of peoples to secede, recognising self-determination as a fundamental principle alongside sovereignty and territorial integrity.

The events preceding Kosovo's Declaration of Independence underscored a history marked by prolonged repression and the denial of internal self-determination. Germany contends that Security Council Resolution 1244 did not explicitly prohibit Kosovo's independence declaration, nor did it prescribe the precise nature of the "political process"

envisioned within its provisions (Written Statement of Germany 2009: p. 37). Consequently, when Kosovo declared independence in 2008, the absence of a declaration from the Special Representative of the Secretary-General nullifying the act further corroborated the dissolution of the prohibition on unilateral steps toward independence outlined in Resolution 1244.

In conclusion, Germany posited that Kosovo's case is unique, arising from the dissolution of the former Yugoslavia amidst a backdrop of violent conflict and repression, particularly in Kosovo during 1999. The international administration period under Resolution 1244 and subsequent UN-led processes aimed at finding a negotiated solution for Kosovo's final status further underscore its distinctiveness. Kosovo's independence, deemed essential for Balkan stability, has fostered inter-ethnic cooperation and regional development efforts. Restoring uncertainty regarding Kosovo's status would impede democratic progress, economic growth, and reconciliation efforts in the region. Germany advocated for the Court to affirm that the Declaration of Independence does not contravene international law (Written Statement of Germany 2009: p. 43).

The perspective of Spain

Spain contended that the unilateral Declaration of Independence by Kosovo, facilitated by institutions lacking international legal status, constituted the creation of a new state from an existing sovereign state without the latter's consent (Written Statement of the Kingdom of Spain 2009: p. 9). The complexity of the issue notwithstanding, Spain maintained a negative stance, firmly asserting that the unilateral declaration of independence of Kosovo did not align with international law.

Moreover, Spain highlighted the adverse implications of the unilateral declaration on the sovereignty and territorial integrity of Serbia and neighboring states. Emphasising the principle of sovereign equality among states, Spain underscored the inviolability of territorial integrity and political independence, principles reinforced by Security Council's resolutions.

Referring to Resolution 1244 as a foundational document guiding the interim regime of international administration and self-government for Kosovo, Spain argued that the unilateral declaration contravened this framework. Spain argued that the declaration diverged from the negotiation-based process mandated by the Security Council for determining Kosovo's future status, thus violating international law.

Consequently, Spain urged the ICJ to:

- affirm its jurisdiction to provide an advisory opinion on the matter referred by the UN General Assembly;
- conclude that the unilateral declaration of independence by the Provisional Institutions of Kosovo was incompatible with international law due to its disregard for Serbia's sovereignty and territorial integrity, the temporary international administration regime, and the negotiation-based process for determining Kosovo's future status established by the Security Council (Written Statement of the Kingdom of Spain 2009: p. 55–56).

The perspective of France

France conveyed its belief that the Declaration of Independence of Kosovo, ratified by the Assembly of Kosovo on 17 February 2008, marked the conclusion of unprecedented situation stemming from the dissolution of the former Yugoslavia, the oppression faced by the Albanian community in Kosovo, and the conflict of 1999. The declaration, France underscored, must be contextualised within the broader efforts of the international community, including the European Union, to foster peace, stability, and the rule of law in Kosovo and its neighboring regions (Written Statement of France 2009: p. 2–3).

Reflecting on the crisis in Kosovo, France highlighted the critical interventions of the Security Council, particularly through Resolution 1244. This resolution, France noted, demanded an immediate cessation of violence and repression in Kosovo and mandated the establishment of both international security and civilian presences in the region. France delineated three phases envisaged by Resolution 1244 for the administration and status of Kosovo, highlighting the transitional nature of the interim regime established by the Security Council (Written Statement of France 2009: p. 5–7).

France emphasised the democratic legitimacy of the Declaration of Independence, ratified by significant majority of representatives in the Assembly of Kosovo. The declaration, France stressed, underscored Kosovo's commitment to human rights, ethnic diversity, and integration into the Euro-Atlantic community (Written Statement of France 2009: p. 8). Furthermore, France outlined the constitutional framework adopted by Kosovo, which enshrined principles of democracy, pacifism, and human rights.

Regarding the request for advisory opinion from the Court, France asserted the Court's discretionary power to refuse such requests, particularly if the posed question is not of a juridical nature. France argued that international law does not concern itself with the conditions, under which a state is formed, provided that it is not established through the use of armed force. France contended that the Court lacks jurisdiction unless the declaration of independence is accompanied by a threat or use of force in violation of the United Nations Charter.

France contended that regardless of the Court's response, it would have no practical effect. Whether the declaration is deemed in accordance with international law or not, it would not compel states to recognise or withdraw recognition of Kosovo. Therefore, France urged the Court to refuse to respond to the request for the opinion. Alternatively, if the Court chooses to answer the question, France recommended concluding that the Declaration of Independence of 17 February 2008 does not contravene any rule of public international law (Written Statement of France 2009: p. 48).

ICJ's considerations

Some participants in the proceedings had suggested that the question posed by the General Assembly lacked a genuine legal dimension (International Court of Justice 2010a: p. 16). According to their argument, the act of declaring independence fell outside

the scope of international law and should be considered primarily as a political gesture, subject solely to domestic constitutional regulations. They maintained that the Court's authority to provide an advisory opinion was limited to matters within the domain of international law. In this particular instance, however, the Court's mandate was not to assess the adherence of the Declaration of Independence to domestic legal norms, but solely to determine its compliance with international legal standards. Consequently, the Court could address this inquiry exclusively in the framework of international law without delving into domestic legal systems.

Despite its political implications, the Court could not decline to address the legal aspects of the question that entailed a fundamentally judicial task, namely, assessing an action within the context of international law. The Court underscored that, in determining the jurisdictional issue regarding the nature of the question at hand, it did not take into consideration the political motives behind the request or the potential political consequences of its opinion.

As a result, the Court deemed itself competent to provide an advisory opinion in response to the General Assembly's request. The query was specific, seeking the Court's assessment of whether the declaration of independence aligned with international law.

The Court's analysis of the legality of the Declaration was focused on two primary areas: general international law and the specialised legal framework established by UN Security Council Resolution 1244.

In regard to general international law, the ICJ concluded that the Kosovo Declaration of Independence did not violate established principles, because there was no explicit prohibition against such declarations in the international legal framework. Moreover, state practices during the relevant period did not indicate a consensus on the illegality of declarations of independence under international law. The Court had also admitted the evolving recognition of the right to self-determination within international law, leading to the emergence of new states through acts of independence.

Regarding UN Security Council Resolution 1244, the Court examined whether the authors of the declaration acted in violation of its provisions. ICJ determined that Resolution 1244 did not prohibit the declaration of independence, emphasising its humanitarian objectives and the temporary nature of the measures outlined therein. The Court concluded that the declaration operated within a distinct realm from the provisions of Resolution 1244, as the resolution did not explicitly address declarations of independence.

Furthermore, the Court addressed concerns regarding the authority of the entities involved in drafting the declaration. It concluded that the authors of this declaration acted as representatives of the Kosovo people rather than the provisional institutions, based on observed procedural deviations in the drafting process.

In conclusion, the Court asserted its jurisdiction to provide an advisory opinion and, by a majority vote, held that the declaration of independence of Kosovo adopted on 17 February 2008 "did not violate any applicable rule of international law" (International Court of Justice 2010a: p. 53).

Conclusion

The conducted analysis presented in this study underscores the pivotal role played by the ICJ's advisory opinion on Kosovo's independence. Through a comprehensive examination of submissions from Serbia, Kosovo, and key stakeholders such as the USA, UK, Russia, Germany, Spain, and France, this research has highlighted the multifaceted nature of the legal arguments surrounding Kosovo's independence. The tension between the principles of state sovereignty and the right to self-determination, as articulated by involved parties, demonstrates the complexity that inherent in addressing secessionist movements in the framework of international law.

Furthermore, the analysis of the ICJ's decision and the legal principles invoked therein has provided valuable insights into the broader implications for statehood and self-determination on the international stage. By dissecting the legal reasoning behind the ICJ's advisory opinion, this study has shed light on the challenges and opportunities inherent in navigating the delicate balance between territorial integrity and self-determination. This study also contributes to broader discussions on self-determination and statehood in international law, providing policymakers, scholars, and practitioners with a nuanced understanding of the legal and geopolitical dynamics surrounding Kosovo's independence.

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Book review:

M. Fulla, M. Lazar (eds), *European Socialists and the State in the Twentieth and Twenty-First Centuries,* Palgrave MacMillan 2020, 400 pages

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The history is built of crunch moments. During them a set of existential questions is asked, prompting a reflection about the situation, the alternatives, and the preferable way forward. These deliberations happen especially when the circumstances are dire and when there is a cascade of predicaments, which both coincide with and supersede one another. They amalgamate subsequently into a *polycrisis.* It is a phenomenon so profound that in consequence there isn't anything certain, as also nothing should be expected to happen by default. Understanding that speaks for the fact that at the crisis moment, the power to pave the way forward doesn't vanish. But grasping it depends on the stakeholders' ability to push the boundaries of imagination and think about the world completely anew. A fair question to ask after a decade and a half of struggle (if counting from the groundbreaking financial crisis of 2008–2009), is whether traditional political actors and institutions are indeed able to seize the moment and follow another popular wisdom of *never wasting a good crisis.*

Consequently, one of the pertinent queries is whether *a state* could be such a stakeholder. The above-mentioned crash, the pandemics, and the costs of living crisis on one hand, and on the other – global warming the climate emergency, digitalisation, outbreaks of wars, and intensified migration waves – all seem to have brought citizens to think about a sense of collective actions. Many analysts believed that especially in the context of COVID-19, there were circumstances that would favour the expanded power

of the *state* with strong public services and effective policies to safeguard economies. Like in 2007–2008, it was anticipated that these sentiments would fuel support for the centre-left and lead to the return of especially social democrats to power. But looking at the electoral results of the last years, there is no such trend. If anything, the contemporary polls suggest that the crisis of the traditional political parties persists, and while the moderate forces shrink, the radical and extreme ones get to grow. Exemplary to that are the results from Belgium and Germany. Thus, what prevented the pendulum swing? Was it a problem of an ideological nature? Those seeking answers should dive into the edited book *European Socialists and the State in the Twentieth and Twenty-First Centuries.* This excellent volume provides a handful of important articles, which may help in understanding these particular dynamics.

The book is published within the *Palgrave Studies in the History of Social Movements* series, and it is the result of the international colloquium that was held at the *Science Po* in Paris in 2016. The papers initially presented at the event were then thoroughly reworked and updated. They amount to 21 papers, with 4 among them being comparative articles and the remaining 17 – case studies focused on the individual countries. They were then divided into three parts, respectively: *Using the State to Democratise Society, Socialists and Civil Servants,* and *Socialism and Changes in Capitalism and State.* Among the authors we can find 18 senior scholars from across the EU and UK, whilst the editorial work was completed by a tandem consisting of Marc Lazar (Professor of Political History and Sociology, Director of the Centre for History at *Science Po*) and Mathieu Fulla (who is a PhD and the same Faculty Member).

The book is started from a reflection on the relationship between socialism (social democracy) and the state. It is described as *multi-layered, contradictory, and ambiguous* (p. viii), which is an interesting observation. Against the contemporary perception that social democratic parties' doctrine involves the strong belief in a state as an embodiment of a social contract (welfare state) and as a tool for emancipation (democratic state), initially the founding fathers of the movement considered the state to be the opposite, serving only narrowed elites and, in their hands, turning to be a tool of oppression. In that sense the industrialisation and the lessons learned from World War I prompted a change of thinking among many within the socialists' movement, seeing followers of Jean Jaurès, Emile Vandervelde, Eduard Bernstein and others forming a social democratic wing. From that point of view, the split within the Socialist International was at its core about the role of the state as well – whereby the dividing lines would remain between taking over the apparatus on one hand and democratising the country via the reformist agenda on the other. The collection demonstrates that socialism and statism have never been synonymous (as often is mistakenly assumed). And although in the 1920s and 1930s social democrats chose to be the reformist movement in favour of the state and its institutions, and consequently they came to govern and co-create constitutions in many places in Europe, still what "a state" meant for them was very different from country to country. This is how this movement, which to this day is composed of proud internationalists cultivating organisations such as Socialist

International or Party of European Socialists, sees such a variety of member parties' models and programmes.

There was, of course, the famous *French exceptionalism* (p. 57–75); there was a conciliation strategy and nationalisation plan in Belgium (p. 77–96), and there were Scandinavian experiences with the state being made about democratisation and shared ownership, with social democrats exercising the very patriotically flavoured rhetoric (p. 97–118). With time passing, the respective visions would alter. The main turning points were: the period after World War II (when the majority of the social democratic parties would re-emerge and propagate a welfare state as a solution to both a need for reconstruction, democratisation and progress); the 1960s and 1970s (with the rise of new social movement and the oil crisis there was a new set of issues and a different type of pressures, leading to i.e. Swedish social democrats abandoning Keynesianism for good); and the 1990s (when globalisation was in full swing and a search for a new synthesis led to embracing of the Giddens' concept of the Third Way by several of key parties). And one must admit, despite the vehemently expressed criticism about The Third Way in the book, that the conflict over the *active state* and the extent to which it was not only a *corrector, but more of an enabler* for the economy (p. 276–277, 294–295, 352–353, 357) has been the last of the sort of grand intellectual attempts to coherently define a *modern* state. The ambition then was to comprehensively analyse the challenges and prospects, redefining policies and mechanisms of governance (also financial and economic ones).

All in all, the detailed analyses included in the book depict the trajectory that transformed socialists, who had been originally a protest movement, into a party that became a pillar of a system, fulfilling the function of either governing or the main opposition party. With the examples from Germany, France, Austria, Scandinavia, the UK, Spain, and Greece, it shows what made social democrats rise, seize, and share power – until the point at which the latter was no longer possible. As it would seem from the book, due to both intellectual and organisational shortcomings. That period starts from the financial crash, following which social democrats have been muddling through, engaging in rather involuntary support for austerity and further decline under pressures of those, who (for valid or illegitimate reasons) feel more and more oppressed and disempowered by the status quo.

There are several hypotheses about the origin of the above-mentioned deficiency. On one hand, the authors writing about the French case, point to the ideas such as "voluntarism" that were introduced in socialists' narrative already in the 1970s consequently eroding the notion of "new citizenship" in the sense of mix of rights and responsibilities (see p. 68–70). That however was still not as decisive as the reform of Lionel Jospin in 1990s, which antagonised PS (fr. *Partie Socialiste*) and civil servants. The relevance of that is to be understood as cutting off from the roots inside of the public sector, since the majority of the PS leaders had been coming from the *Ecole Nationale d'administration* (p. 71, 275). The presidency of Hollande moved the concept further from Pierre Mauroy's *state that would boost industrial capacity and increase workers' powers* (p. 271) to more ambiguous François Hollande's *state that parents, regulates,*

and anticipates. On the other hand, those treating the question of Sweden, describe the SAP (*Swedish Social Democratic Party*) embracing the *marketisation* as a path to offering more choice and hence more emancipation and efficiency. The change of the party doctrine was driven by a wish to embrace the new reality and rebuild power structures for the benefit of many. Paradoxically, as a logic for how to deal with the recession in the 1990s, it became the reason for a growing divide between the social democrats, public sector workers, and trade unions (p. 338–349). Though the French and Swedish conditions differ, the conclusion that seems to be common is that the centre-left lost its legitimacy as a representative and organisation incorporating the everyday builders of their respective states, as also protectors and promoters of quality public goods and services. And without that, and with no other tools (as unlike liberals they couldn't pledge the allegiance to market), how could they possibly make a viable promise of progress and prosperity for all?

Another theory promoted by several authors in the book suggests that, in addition to the aforementioned antagonism with public servants and the inability to attract innovative thinkers (from creative sectors, intellectuals, and youth), the ideological compass of the social democrats became largely confused due to their flirtation with certain doctrinal aspects of neoliberalism. For some of the other authors, this relates to the flexibilization and liberalization of the market rules, as also with entrusting the logic of the European integration that has been laid out in the Maastricht Treaty. They claim that the EU limited the autonomy of the states, while in the meantime "losing the unifying energy" (p. 20), that social democrats, being in power in the 1990s and 2000s, missed the opportunity to coordinate amongst themselves and bring the Union onto another developmental track (p. 252–253), and that pro-Europeanism meant in several cases embracing "social-liberalism" (p. 275) and pushed parties, such as PASOK, towards even greater incoherence (p. 393–394). This is a bold and risky set of claims, which perhaps would deserve further exploration to determine their accuracy. That is especially true, because social democrats have significantly helped to change the EU over the last two or three decades. At the same time those in the governments openly depended on European cooperation amid the *polycrisis* of the last year. Many among them also believed in the EU's power to unite states, giving them the ability to face the triple transition (green, digital, and demographical). Hence, the question of how far the pro-Europeanism was indeed underpinning the reason for their shortcoming in conceptualising the modern state would be a great material for a separate monography.

All in all, *European Socialists and the State in the Twentieth and Twenty-First Centuries* is an scholarly excellent, gripping book with many relevant takeaways. Scholars of different disciplines (political theory, political party systems, public administration, European studies) will all find their own exciting threads to follow and complement their understanding with diligently examined country case studies. But above all, for both academics and practitioners, it is an elementary reading in a time when so many discussions are taking place about the future of the EU, alongside those regarding the paths towards its enlargement and deepening. The reviewed book demonstrates that it is essential that

such deliberations are taking place. Simultaneously, it is also necessary to pay attention to the role that every segment of the EU governance should play. Eventually that comes down to having a clear idea of the kind of a state and Union desired. And that is a political question, where not only social democrats – but also all the other political families would do well to come forward with convincing, coherent answers. Leaving that issue aside or remaining ambiguous will only further fuel the tensions and hence empower the centrifugal forces, which currently are on the rise.

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Parliamentary elections in Slovakia: Bratislava closer to Moscow?

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Abstract
Summary of the pre-election period and elections to the National Council of the Slovak Republic, which took place on 30 September 2023. As a result, there have been changes in the Slovak political scene, as well as opportunities to create a new parliamentary majority.
Keywords: Slovakia, parliamentary elections, National Council, Robert Fico, *Smer, Progresívne Slovensko*

Wybory parlamentarne w Słowacji: Bratysława bliżej Moskwy?

Streszczenie
Podsumowanie okresu przedwyborczego i wyborów do Rady Narodowej Republiki Słowacji, które odbyły się 30 września 2023 roku. W ich wyniku doszło do zmian na słowackiej scenie politycznej, a także zarysowały się możliwości stworzenia nowej większości parlamentarnej.
Słowa kluczowe: Słowacja, wybory parlamentarne, Rada Narodowa, Robert Fico, *Smer*, *Progresívne Slovensko*

On September 30th, 2023, parliamentary elections for the National Council of the Slovak Republic were held. Twenty-five parties or political coalitions participated, but only 7 of them received enough votes to enter the parliament. The Slovak political scene has been characterised by great pluralism and fragmentation for years.

Pre-election political sine wave

The party *Direction – Social Democracy* (sl. *Smer-SD*), led by former Prime Minister Robert Fico, has been leading in polls measuring support for political parties since March 2023. The increase in the popularity of this group resulted from several aspects. First

of all, there was a permanent political crisis within the (centre-)right coalition, which emerged a few months after the parliamentary elections in 2020. As a result, frequent changes within the government occurred, and even the collapse of the government coalition happened. Meanwhile, there was a COVID-19 pandemic, and immediately after its weakening, Russia–Ukraine conflict began. In such troubled times, personal conflicts were the biggest problem for Slovak politicians in the government. Ultimately, the constitution was changed to allow early elections, and Slovakia was able to form its first technocratic government. During this turmoil, Robert Fico began to actively advocate a pro-Russian foreign policy, which he claimed was a response to the problems of Slovak society. Thanks to his cooperation with Moscow, the promise of a drop in electricity prices appealed to Slovaks. He also promised not to send "a single bullet" to defend Ukraine. He also used extremely aggressive language, attacking, among others, President Zuzana Čaputová and her children. In this aspect, he was joined by politicians from other parties, including the right-wing ones.

The second political force was *Progressive Slovakia* (sl. *Progresívne Slovensko*, PS), led by Michal Šimečka, who is the President's party leader. There is no doubt that this party ran the most substantive campaign (the rest of the groups debated for a long time about the shooting of bears), although pro-European liberals were under attack by all other groups. The popularity of the party was boosted by strong public support for the president, the most popular political figure in the country. It is worth adding that in the last two polls before the 2023 parliamentary elections, the party advanced to the lead. In 2020, however, the party did not cross the electoral threshold for the coalition.

Stable third place was held by *Voice* (sl. *Hlas*) – a breakaway from *Smer*, which left the party after the great corruption crisis and the murder of journalist Ján Kuciak and his fiancée Martina Kušnirová. The face of the party is also former Prime Minister Peter Pellegrini. The group is more Euro-enthusiastic than *Smer*, but it manoeuvres in its politics.

The other parties fought to get into parliament, and it was not clear if they would succeed. *Freedom and Solidarity* (sl. *Sloboda a Solidarita*, SASKA) fought to remain in the National Council. Their participation in the center-right coalition turned out to be a burden. The party's idea to solve the bad PR problem was rebranding – a change of acronym for SASKA and a new colour identification. It is worth noting that the group has been strongly emphasising social issues, not only economic ones, lately. The party advocated LGBTQI rights, and the issue of legalising same-sex relationships was related to freedom and tax justice.

The far-right and pro-Russian *Slovak National Party* (sl. *Slovenská Národná Strana*, SNS) saw a relative increase in support, although it was not in parliament after the 2020 elections. As a result of internal conflicts, the neo-Nazi faction disintegrated, claiming the heritage of the 1st Slovak Republic and the Marian Kotleba movement, and a large part of its activists joined the existing but marginal party *Republic* (sl. *Republika*), which could expect 8% support in the polls.

Christian Democratic Movement (sl. *Kresťanskodemokratické Hnutie*, KDH) returned to the political mainstream. Christian democrats, like the SNS, were out of the parliament

as a result of the recent elections. The winners of the previous elections, *Ordinary People and Independent Personalities* (sl. *Obyčajní Ľudia a Nezávislé Osobnosti*, OĽaNO), who competed in the coalition as *OĽaNO a Priatelia* were not certain of their success. It was not clear whether they would cross the electoral threshold.

Tatra political landscape after the elections

Despite the exit polls, which showed a more or less decisive victory for *Progresívne Slovensko*, *Smer* eventually won the election. Pro-European liberals secured the second place, and the podium was completed by *Hlas*. No major surprises occurred as *Slovenská Národná Strana* and Christian democrats from KDH returned to the parliament. Despite the initial uncertainty, the National Council also included *OĽaNO a Priatelia* and SASKA.

The failure of *Republika* to surpass the electoral threshold, not expected by almost any survey, was the biggest surprise of the elections. The votes of the pro-Russian party were probably transferred to Smer on the final stretch. There is also no room in the National Council for the party *We are a Family* (sl. *Sme Rodina*), whose leader, Boris Kollár, a member of the center-right coalition government and the chairman of the National Council, admitted to bullying his girlfriend. An important element is that the politician wanted to defend "normal Slovakia" while having 12 children with 10 women.

Electoral geography pointed to *Smer*'s dominance in most of the country, especially in the east. In the west (mainly in Bratislava) and in large cities, PS was more popular. Christian democrats won in two high-altitude counties in the north of the country; in the previous elections, their residents voted against Smer. An attempt to create a government is currently underway – President Čaputová entrusted this mission (in accordance with the constitution) to the winner of the election, Robert Fico. The head of state, however, was also in talks with leaders of other groups in order to try to create an alternative majority in parliament. The new parliamentary majority depends on *Hlas*, but this party eventually decided to join the government with populist *Smer* and the far-right-wing SNS.

As a result of the social democrats' decisions, the *Party of European Socialists* and the *Socialists & Democrats Group* at the European Parliament decided to suspend members of both parties. Political commentators are worried about the rule of law and democracy under the new government. Robert Fico has been increasingly moving away from the ideals of European social democracy in recent years.

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