Przegląd Europejski, ISSN: 1641-2478
vol. 2021, no. 3
doi: https://doi.org/10.31338/1641-2478pe.3.21.4

Between national interests and European values: towards the theory of Principled Intergovernmentalism

Krzysztof Feliks Sliwinski, *Hong Kong Baptist University (Hong Kong S.A.R., China)*
E-mail: chris@hkbu.edu.hk
ORCID ID: 0000-0001-7316-3714

Abstract
The aim of the article is to theorise on the role of principles as important variables influencing European politics. Recent Europe-related events, including but not limited to the immigration crisis, international economic and political competition on a global scale (as well as relations with third parties such as Russia and the United States), prompt us to revise liberal intergovernmentalism as proposed by Andrew Moravcsik at the beginning of 90s last century.
The study is based on the analysis of four cases: immigration crisis, posted workers directive, multiannual financial framework post-2020, and relations with Russia concerned energy security. The article puts forward an idea that principles of European law (such as the principle of solidarity or the principle of the rule of law) have been successfully instrumentalised by a range of actors (major governments, as well as European Commission acting on their behalf) to the greatest benefit of the most powerful governments in Europe.
Keywords: intergovernmentalism, theory of liberal intergovernmentalism, Andrew Moravcsik, European Union (EU), European politics, principles of European law

Między interesami narodowymi a wartościami europejskimi: w kierunku teorii pryncypialnej międzyrządowości

Streszczenie
Celem niniejszej publikacji jest zaprezentowanie ujęcia teoretycznego, pozwalającego na wyjaśnienie roli zasad (pryncypiów) jako istotnych zmiennych wpływających na współczesne relacje wewnątrz Unii Europejskiej.
Ostatnie wydarzenia, które warunkują dynamikę integracji europejskiej, takie jak kryzys imigracyjny 2015 roku, międzynarodowe stosunki polityczne i gospodarcze (w tym zwłaszcza relacje z Rosją

i Stanami Zjednoczonymi), stanowią istotną przesłankę do krytycznego podejścia do teorii liberalizmu międzyrządowego autorstwa Andrew Moravcsik'a, zaproponowanej na początku lat 90-tych. Niniejsza analiza jest oparta na wnikliwych studiach czterech przypadków: kryzysu imigracyjnego 2015 r., Dyrektywy o Pracownikach Delegowanych, Wieloletnich Ram Finansowych UE po 2020 r. oraz relacji UE - Rosja w zakresie bezpieczeństwa energetycznego. Niniejszy artykuł prezentuje tezę, iż zasady (pryncypia) prawa UE – takie jak zasada solidarności, czy zasada rządów prawa – zostały zinstrumentalizowane przez najbardziej wpływowych aktorów (rządy państw członkowskich oraz Komisję Europejską, która często działa w ich imieniu) w celu maksymalizacji wpływu i pozycji najsilniejszych rządów europejskich.
Słowa kluczowe: podejście międzyrządowe, liberalizm międzyrządowy A. Moravcsika, Unia Europejska (UE), polityki europejskie, zasady europejskie

Theoretical debates in academia still revolt very much around the question of state actorness in the international system *vis-à-vis* non-state actors. In the case of the European Union, the category of a non-state actor can be quite flexible and include whole industries, transnational companies, labour organisations, trade unions, influential individuals or finally EU institutions such as the European Commission, the European Parliament, the Council of European Union, the European Council or the Court of Justice of European Union.

The general aim of this article is to attempt to explain how the European Union works today as an organisation of its own kind - *sui generis.* The author undertakes to demonstrate how the principles promoted by the European Union, serve as tools in the course of fostering practical public policy solutions, often "pushed" onto the EU Member States, and how the very same EU Member States "defend" their national interests by citing some of the very same European principles.

By analysing four different cases, this article prepares the ground for the new, more up-to-date theoretical apprehension on the functioning of the European Union as an institution. The proposed theory of Principal Intergovernmenatialsm (PI) puts forward an elaborated and much more nuanced interpretation of the Liberal Intergovernmentalism (LI) explanation of the European Union dynamics.

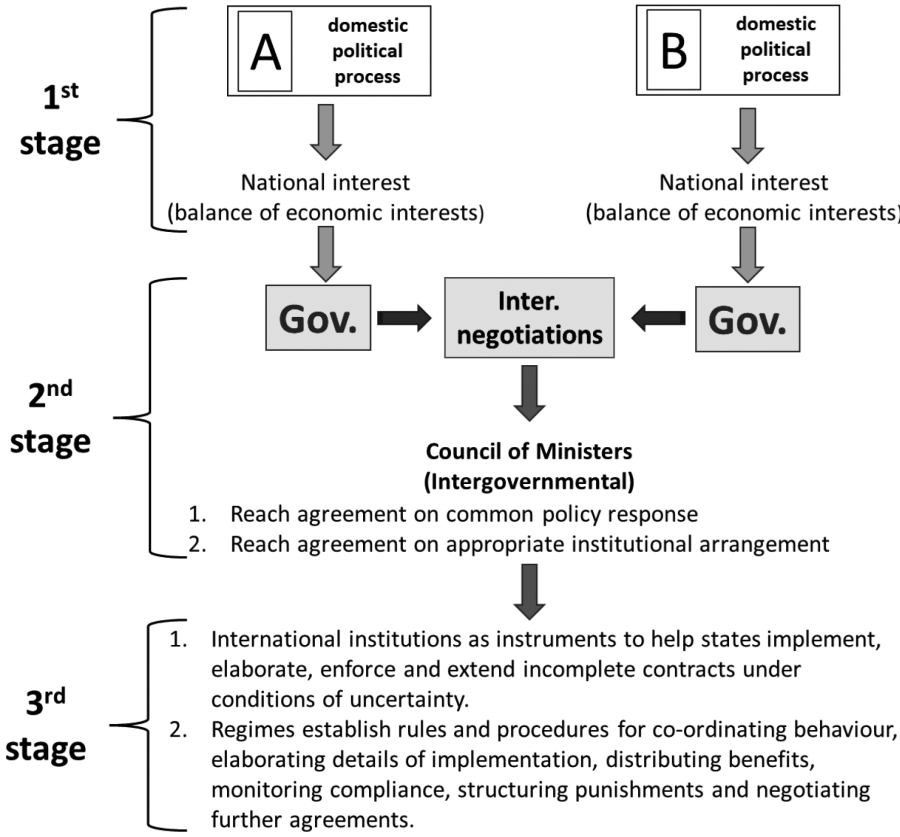
Liberal Intergovernmentalism (LI) and its critics

In his original formulation, Moravcsik starts with a set of assumptions that are shared by the proponents of the intergovernmental "camp". First and foremost, by drawing on an earlier approach (intergovernmental institutionalism), Moravcsik stresses the need to incorporate theoretical elements of International Political Economy, such as endogenous tariff theory, negotiation analysis, and functional explanations of international regimes (Moravcsik 1993: p. 473).

Secondly, he puts three essential elements at the core of his theory: (1) rational state behaviour, (2) the liberal theory of national preference formation, and (3) intergovernmentalism analysis of interstate negotiation.

Thirdly, a three-stage model is built whereby governments: firstly, define a set of interests; secondly, they bargain among themselves to realize those interests; and finally, they create institutions, which facilitate the applications of policies designed to realize those same interests (see *Figure 1*).

Figure 1: Liberal Intergovernmentalism (LI)



* Tenets: 1. States – rational. 2. Non-state actors. 3. Three-level game.

Source: Moravcsik 1993.

The first stage derives from the realist conception of state behaviour in as much as it opens the "black box" of the state. Consequently, it is understood that liberal domestic political process gives room to many actors such as pressure groups or lobbyists who compete to influence the formation of the national interest. In the second stage, the interstate bargaining takes place under the prevailing conditions of economic interdependence. According to LI, national governments have an incentive to cooperate, especially where policy coordination increases their control over domestic policy

outcomes and, in particular, when such corporation allows them to achieve goals that would otherwise not be attainable. This happens mostly then, when such coordination permits national governments to minimise or preferably eliminate negative international policy externalities – a situation, whereby due to the economic interdependence, particular policies of one government create costs or benefits for politically significant social groups in other countries. Alternatively, national governments may be inclined to cooperate at the intergovernmental level for such corporation increases their legitimacy in the domestic political context.

Ultimately, according to LI, the outcomes of intergovernmental negotiations are determined by the relative bargaining power of governments, as well as the functional incentives for institutionalisation created by high transaction costs and the desire to control domestic agendas.

Once states with diverse preferences strike a substantive agreement, LI theory moves to a third stage, in which governments pool and delegate the power to European institutions. Here choice relies on "regime theory", which treats international institutions as instruments to help states implement, elaborate, enforce, and extend incomplete contracts under conditions of uncertainty. Regimes establish rules and procedures for coordinating behaviour, elaborating details of implementation, distributing benefits, monitoring compliance, structuring punishments, and negotiating further agreements (Moravcsik 2018: p. 1648).

Since its first iteration, LI was criticised by numerous authors who published extensively or gave presentations at international conferences related to European politics, trying to debate or even negate the relevance of LI. It seems that one of the fundamental arguments in this regard is rooted in the very foundations of conflictual understanding of the basis of the international system in general, and European integration in particular. Intergovernmentalists claim that states represented by national governments are the most important actors in international relations due to two unique features: legal status and political legitimacy (Hoffmann 1966: p. 862). The proponents of intergovernmentalism usually include a well know list of arguments, such as:

1) Major events of the Union – the founding treaties and the subsequent evolution utilising new treaties (for example, Maastricht, Amsterdam and Lisbon) are intergovernmental agreements of essentially confederal kind);
2) The roles of the Council of Ministers, as well as the European Council;
3) Decision-making in the European Council and much of the work of the Council of Ministers are also intergovernmental or confederal;
4) Political systems in Europe – the patterns of party organisation, voting and the like – are still nationally organised;
5) There is no European Government accountable to a European electorate or European public opinion.

To this rather obvious list, one should add the Brexit puzzle. The fact that the UK finally left the EU, should be seen as a justification of the above-presented arguments to the extent that the national government is ultimately in control of the

fate of a country and whatever sovereignty was shared or submitted, it can always be repossessed.

Additionally, the critics of LI usually point out that Moravcsik does not fully grasp the complexities of economic interdependence or that he focuses on big-scale events such as intergovernmental conferences leaving behind the everyday realities of European Integration (Scharpf 1999).

Indeed, Moravcsik developed his theory analysing five key episodes in the construction of the EU:

1) the negotiation of the Treaties of Rome (1955-1958);
2) the consolidation of the common market and the Common Agricultural Policy (CAP) (1958-1983);
3) the esteblishment of the first experiment in monetary cooperation and of the European Monetary System (EMS) (1969-1983);
4) the negotiations of the Single European Act (SEA) (1984-1988);
5) and the negotiation of the Treaty on European Union (TEU) (1988-1991).

Accordingly, he claims that the major dynamics of the European integration since 1955 are reflected by three characteristics: patterns of commercial advantage, the relative bargaining power of important governments, and the incentives to enhance the credibility of interstate commitments of which the most fundamental appears to be the commercial interest (Moravcsik 1998).

When criticising LI, Leon Lindberg (1994) stresses the role of supranational institutions such as the European Commission, whereas Daniel Wincott (Wincott 1995: p. 597), emphasises the part of the Court of Justice of the European Union. Smith and Ray (Smith, Ray 1993), on the other hand, question the simplicity of the three-level model, expanding the number of levels up to not less than five, including non-member government exchange.

Admittedly, the author of LI did acknowledge some weaknesses of his approach by identifying three possible criticisms. The basic framework of LI, which is based on the assumption that state behaviour is purposive and instrumental and that the preference formation precedes the formulation of strategies let alone that's the national preference, and intergovernmental bargaining is mostly controlled by national governments without the manipulation by supranational officials. Secondly, the explanation of national choices is based on the liberal understanding of state preferences employed. Thirdly, the intergovernmental theory of bargaining, which stresses the bargaining power rooted in unilateral alternatives and competing coalitions leads to the possibilities for linkage and the controlled delegation of power to supranational institutions and the conditions specified by functional theories of regimes and two-level games.

Over the years, Moravcsik further elaborated on his approach by specifically developing the third stage of his theory, which includes institutions as important actors in preference formulation, as well as international bargaining. Additionally, he added the instrumentalisation of norms, practices, and rules, thereby drawing on Social Constructivist approach.

The third stage of LI attempts to explain the establishment and design of international institutions. Here LI relies mainly on regime theory. In broad terms, international institutions are seen as beneficial for states, because they can serve as useful instruments to cope with unintended, unforeseen, or even unwanted consequences when states commit to coordinate the policies (Keohane 1984).

Arguably, institutions help states to achieve a collectively superior outcome mostly by reducing the transaction costs of international negotiations on specific issues and by providing the necessary information to reduce the uncertainty of the state about each other's future preferences and behaviour. States establish rules for the distribution of gains according to the pre-existing bargain and reduce the costs of coordinating the activities monitoring the behaviour of others and mutually sanctioning non-compliance.

In the original formulation of LI, Moravcsik followed the arguments of the functional regime theory. He saw institutions as passive, at least when it came to decisive intergovernmental bargaining. For example, he claimed that the *acquis communautaire* of the European Community functions to stabilise a constantly evolving set of rules and expectations, which can only be altered by unanimous consent. Consequently, institutions were seen as promoting international cooperation by serving as a negotiation forum for disseminating information and policy ideas as well as a platform for representatives of business, political parties, national bureaucracies, and interest groups to discuss issues of common concern, joint decision-making procedures or a common set of underlying legal and political norms. Finally and importantly or monitoring and defining national compliance (Moravcsik 1993: p. 473).

Admittedly, when applying the LI to the process of "everyday" legislation, administration and enforcement, the EU no longer behaved as a passive institution. This is supposed to depend on two major features of the EU: pulling national prerogatives through qualified majority voting and delegating sovereign powers to semi-autonomous central institutions. Still, when accounting for these, Moravcsik's explanation seems entirely conventional. Firstly, the potential gains from cooperation – time pressure, previous failures, desire to implement the prior decision or shifting national preferences may all 'push' the government to delegate and pool, especially if it's not content with the *status quo*. Secondly, the level of uncertainty regarding the details of specific delegated or poolled decisions is an important factor behind the decision of governments to opt for qualified majority voting. Thirdly, both national governments and interest groups face political risks when engaging in international bargaining. Consequently, risk-averse governments tend to favour procedures, where the potential losses are minimised, that is to say, the outcome of the final bargaining is favourable to all other major domestic groups.

All in all, LI has been one of the leading schools of thought in contemporary EU studies. Yet, it continues to attract a lot of criticism from the EU theorist community. Recently, according to Klein and Pollack, regarding the future of LI: "An important research question for the future will be to explore if or under what conditions identity is overtaking functional interests in the formation of national preferences, and to what extent these dynamics impact European integration and, potentially, disintegration. (Klein, Pollack 2018: p. 1493).

It is precisely along with this query that the author of this article proposes the term "Principled Intergovernmentalism" (PI) as a logical synthesis of LI and Social Constructivism. **The working hypothesis** that is at the core of this project is that the principles, which European institutions and national governments refer to (such as the principle of solidarity or the principle of the rule of law) have been successfully instrumentalised by a range of actors (major governments, as well as European Commission acting on their behalf) to the greatest benefit of the most powerful governments in Europe. Herein lies the most significant novelty of the proposed hypothesis. According to existing studies and the mainstream approach (deriving from Social Constructivism), it is the "smaller", as well as economically and politically "weaker" states that successfully utilise the norms to maximise their benefits (Wiener et al. 2018).

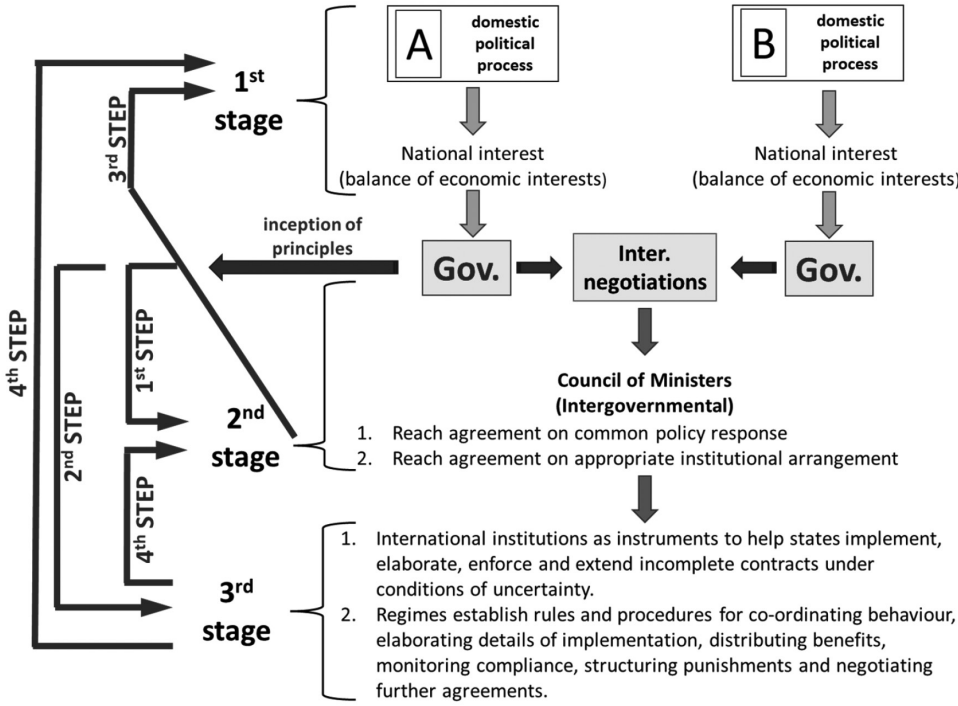
The proposed study will put forward that, firstly, all national governments do invoke principles to maximise their benefits during day-to-day bargaining. Secondly, the economically "stronger" governments are able to benefit comparatively more than the "weaker" ones. They achieve that by employing pressure, which operates through a number of platforms: from mainstream media, through non-governmental organisations up to the European Parliament, the Court of Justice of the European Union and the European Commission. Thirdly, the "weaker" states will also invoke the very same other European principles to protect their interests, but are likely to benefit less than the 'strong' states.

The term "Principled" is suggested, because the EU itself makes reference to principles in the Treaty of Lisbon in the context, which is especially relevant to the analysis presented in this paper. Chapter 1, article 10A titled: General Provisions on the Union's External Action defines those core principles as: "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law". (Treaty of Lisbon 2007/C 306/01).

Consequently, the role of principles in contemporary Europe is so imminent that the term PI is proposed instead.

The PI is based on a three-stage model (see *Figure 2*), which differs substantially from the one proposed by the LI. Firstly, the advanced model adds the inception of principles at the national level, drawing on the intergovernmentalism approach, which favours the role of national governments. Secondly, the proposed model is rooted in the understanding that the same principles are then instrumentalised at the intergovernmental level during intergovernmental bargaining. The same phenomenon is alleged to take place with regards to the third stage – operationalisation of principles – institutionalisation). The most important and interesting, it appears that the feedback mechanism takes place, which operates on three different levels: intergovernmental bargaining influences the national domestic process, institutional level influences the intergovernmental bargaining level, as well as to the national domestic political process.

Figure 2: Principled Intergovernmentalism (PI)



*Tenets: States are rational actors, principles do matter in policymaking, Non-state actors, three-level game, feedback mechanism

1 step - Operationalisation of principles (foreign policy goals);

2 step - Operationalisation of principles – Institutionalisation level;

3 & 4 steps - Feedback mechanism.

Source: own elaboration.

Two caveats need to be mentioned to meet the expected criticism/perceived weakness of the presented theorising. Firstly, the put forward PI should be understood as a mid-range theory. Consequently, its explanatory power will automatically be limited in terms of geographical scope or epistemological universalism. Secondly, and most important, the offered theory of PI does not claim its omnipotence in terms of explanatory utility. This is meant as a reminder that the author is well aware of the inherent limitations of conceptualising and theorising. Conversely, the presented arguments are to be seen as inductive rather than deductive. In turn, as long as we assume that the premises (such that the principles do matter) are "true", the conclusion that follows (as visualised with the "PI comprehensive model") is "strong" and "cogent".

Methodological tenets of PI

This study is based on the analysis of four cases, which will be presented to allow us to validate the working hypothesis. Namely, that the principles (such as the "rule of law" or "solidarity") have been instrumentalised by a range of actors (major governments and European Commission acting on their behalf) to the greatest benefit of the most powerful governments and consequently used to the advantage of the strongest economies in the European Union. These case studies include:

a) the bargaining concerning the next Multiannual Financial Framework (MFF) for the years 2021–2027;
b) the energy policy of the European Union *vis-à-vis* Russia;
c) the posted workers directive (Directive 96/71/Ec);
d) the immigration/refugee crisis (as culminated in the 2015 massive influx of people to EU Member States.

There are several reasons behind such a choice. Firstly, all of these cases relate to a day-to-day international (in the context of the EU) bargaining rather than the intergovernmental conferences that started or shaped general policies of the European Community (such as the Maastricht conference). This will allow us to discount the original criticism regarding LI, which revolved around the high politics or big scale political bargaining.

Secondly, the selected cases cover some of the most critical events in short and medium term – budget talks, as well as pressing challenges (such as the immigration phenomenon). It is assumed that these decisions will influence very much, not only the future of the EU, but will set the" balance of power" in the EU.

Finally, the choice of cases reflects the fundamental division within the EU that is between the "old" Member States (such as France or Germany) and the "new" Member States (such as Poland or Hungary). This division and its consequences have so far produced the most intriguing dynamics within the EU, and it is likely to continue to do so in the near to midterm future. Ultimately, if the above-mentioned division is not addressed in a mutually satisfying manner, the EU is likely to face the most significant challenge to its unity to date.

Principles vs. national interest – the rule of law

Let us start with the proposed conditionality of the EU budget upon the state of the rule of law in EU Member States. The analysis of this case will outweigh the remaining three cases, as the principle of "the rule of law" is, currently, the most often used principle by the European Commission or the European Parliament when criticising Warsaw.

In May 2018 the European Commission proposed the new mechanism to protect the EU budget from financial risks linked to "generalised deficiencies regarding the rule of law" in Member States. This would allow the Union to suspend, reduce or restrict access to EU funding in a manner proportionate to the nature, gravity, and scope of the rule of law deficiencies. Such a decision would be proposed by the Commission and adopted by the Council through reverse qualified majority voting, making it all but impossible for one or two countries to block punitive measures. As the Commission elaborately puts it in the

document: "[…] In order to protect the Union's financial interests from the risk of financial loss caused by generalised deficiencies as regards the rule of law in a Member State, the European Union should be granted the possibility to adopt appropriate measures in such cases." (European Commission 2018).[1]

Notably, the reactions of top European politicians have been positive. In his comments, Guy Verhofstadt, the leader of the Alliance of Liberals and Democrats for Europe (ALDE) and a Member of the European Parliament, applauded this situation: "Good news for democracy: Parliament is proposing EUR 1.8 billion funding for a new Rights and Values MFF Programme. Civil society will be our strongest ally to protect the #RuleOfLaw & fundamental rights across the EU!" (Verhofstadt 2019).

Sophie in 't Veld, the ALDE shadow rapporteur of the report commented: "Today, the European Parliament is taking an important step to defend European values. There is a consensus about setting up a mechanism to withhold EU money from the Member States that fail to respect human rights and the rule of law." (ALDE group 2018).

Other, equally firm and supportive examples include most members of the political establishment in France, Germany and Belgium – the limited nature of this paper does not permit further elaboration along these lines, let us say that the example of ALDE is relatively typical and representative. As POLITICO reports, Budget Commissioner Günther Oettinger allegedly asserted that: "It's not a question of sanctions *per se*, it's a question of the protection of European money" (Bayer 2019).

Increasingly scholars look at the problem and concur claiming that the existing state of disconnection between the rule of law and redistributive policies of the EU will forever perpetuate the state whereby membership will realistically fall into two categories. "If the EU does not undertake an effective reform of its redistributive policies to ensure that progressivity and solidarity within the EU become a matter of the rule of law and not of governance through conditionalities and fines, in the foreseeable future the Union will bear less and less resemblance to a democracy […]" (Georgiev 2019: p. 117). Neuwahl and Kovacs seem to support the gist of the EC proposal (regarding Poland and Hungary) asserting that: "suspension of funds, and decreasing appropriations in future years if it can legitimately be done, would be sure to have a negative impact on the functioning of the Hungarian economy, and therefore indirectly, on the popularity of the ruling party" (Neuwahl, Kovacs 2021: p. 17).

Furthermore, it is also proposed that: "Across the EU, we see signs of increasingly popular autocratic leaders coming closer and closer to power. EU Member States need to wake up to the fact that the actions of Hungary's Orbán and Poland's Kaczyński provide a model that can easily spread to other EU countries led by populists with autocratic ambitions." (Pech, Scheppele 2017: p. 3).

Such arguments, however, deserve to be met with a reality check. Firstly, especially in the context of the Eurozone crisis, proposed and implemented institutional solutions

[1] Ultimately, on the 16 December 2020, the protection of the EU budget in the case of breaches of the principles of the rule of law in the Member States "conditionality close" has become law (see: Regulation 2020/2092).

have led to an increased reliance on non-majoritarian institutions, such as the European Central Bank, at the expense of democratic accountability. Moreover, it has led to a new emphasis on coercive enforcement at the expense of the voluntary cooperation that previously characterised (and sustained) the EU as a community of law (Scicluna, Auer 2019: p. 1420). Secondly, common sense suggests that there is no "one fit for all solution", consequently, there is not one interpretation and application of the "rule of law" principle, there are 27 different interpretations and applications of the "rule of law". Thirdly, the right of the European Commission to actually "punish" any Member State for the alleged nonconformity with the principle of the rule of law is questionable, to say the least (in fact in 2008 in response to the mass petition of Polish Judges, allegedly the European Commission claimed that it could not take actions in domestic cases). Finally, it is not clear when and to what extent the Court of Justice of the European Union (CJEU) can influence national legal frameworks with regards to the vaguely defined rule of law (interestingly in a recent case, the Spanish Supreme Court prevented a convicted Catalan independence leader – Oriol Junqueras, from taking a seat in the European Parliament, regardless of an earlier ruling by the CJEU that allowed so, in effect challenging the allegedly unchallenged principle of the supremacy of the EU law over the national laws (Comunicación Poder Judicial 2020). Similar cases include an earlier decision of the CJEU stipulating that the principle of judicial independence does not preclude a temporary reduction in the remuneration paid to members of the Portuguese Tribunal de Contas (Court of Auditors – decided by Portugal government) in the context of austerity measures linked to an EU financial assistance programme (Bonelli, Claes 2018: p. 622). Let alone the Lisbon Judgment of 2009 when the German Constitutional Court (FCC) asserted its own jurisdiction of the final resort to review future EU treaty changes and transfers of powers to the EU (Beck 2011: p. 470).

To summarise this part of the analysis, it seems that the principal argument of the proponents of the "discipline" camp rests upon the premise (again taken for granted) that the new EU Member States (such as Hungary, Poland or Czechia) have benefitted thanks to the redistributive function of the EU budget (Cohesion Policy and Common Agricultural Policy) immensely or even since the accession talks started (pre-accession funds). Thus, if the recently elected "illiberal governments" do not follow the EU interpretation of the principle of the rule of law, their societies should be punished by funding cuts, which in turn should persuade them to vote in new, progressive and liberal politicians, that would follow political models applied in "older democracies".[2]

The reality, however, does not conform with such presumptions. Apparently, the money, which Western countries send to Eastern Europe through the EU budget pales in comparison with the profits Western companies make from investments in the East.

---

[2] This difference between older established democracies with somewhat higher legal culture seems to have been recently confirmed by the opinion of the Venice Commission. (See more: European Commission for Democracy Through Law (Venice Commission), Opinion No. 977/2020, https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)017-e. This invites a discussion regarding the differences between nomocracy – the "rule of law" vs. democracy – the rule by, of and for the people.

Between 2010 and 2016, Hungary, Poland, Czechia, or Slovakia received the equivalent of 2% to 4% of their GDP in EU funds. Nevertheless, the flow of capital exiting these countries over the same period was between 4% and close to 8% of GDP. Western European companies have also been making big money from EU-funded public procurements in Eastern Europe. Spanish, German and French firms are designing the first high-speed train line crossing the Baltics. The project's first large construction contract was awarded to a Belgian company (Armand 2019).[3] This was earlier signalled by Günther Oettinger, European Commissioner for Budget and Human Resources in the college of the Juncker Commission, who openly admitted "[…] a large part of every euro the EU gives Poland comes back to Germany." (Berschens, Afhüppe 2017).[4]

Moreover, it appears that the so-called old members of the EU are far more protectionist with regards to their national economies than the newly admitted states. Since the EU's Eastern enlargement of 2004, "old" Member States have granted around nine times more public aid (EUR 65 billion per year on average) than "new" ones (EUR 7 billion). The European Commission's DG Competition questions aid granted by "old" Member States much less often than that provided by "new" ones. Big countries – Germany and France – are particularly privileged. For unclear reasons, the Commission only orders "new" Member States to suspend public aid. The Commission is currently conducting the most proceedings concerning infringement of EU law against "old" Member States like Spain, Germany or Italy. The biggest number of proceedings for "systemic" infringements are being conducted against Germany (Polish Economic Institute 2019).

Finally, the Centre for European Policy (CEP) has recently published a timely and very much relevant report entitled *20 Years of the Euro: Winners and Losers.* In this analysis, CEP concludes that Germany has gained the most from the introduction of the euro: almost EUR 1.9 trillion between 1999 and 2017. This amounts to around EUR 23,000 per inhabitant. Otherwise, only the Netherlands has gained substantial benefits from introducing the euro (Gasparotti, Kullas 2019).

Principles vs. national interest – the solidarity principle (immigration crisis)

The years 2015-2016 found Europe experienced an influx of over a million asylum seekers, a phenomenon considered even by mainstream media to be the most serious immigration crisis in its history, and perhaps even the greatest ever challenge to its political stability in the short and long term. Greece and Hungary felt overwhelmed with significant numbers of immigrants. At the outset of the immigration crisis, EU institutions declared a need to address the challenges and rectify the plight of refugee seekers. European Commission issued the *Communication COM(2008)359 final,* whereby it stressed the importance of helping those in need.[5]

---

[3] For more data, including renowned Thomas Pikkety analysis, see: http://piketty.pse.ens.fr/files/ideologie/pdf/G12.10.pdf

[4] In fact, Polish politicians, including the opposition Civic Party members estimate that out of each Euro transferred to Polish economy, anything between 80 to 86 cents goes right back into German pockets. See more: https://acton.org/publications/transatlantic/2017/06/23/eu-refugees-west-pays-east-obeys

[5] See more: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0359:FIN:EN:PDF

These proclamations followed, in fact, German Chancellor Angela Merkel, who famously uttered: "We have managed so many things — we will also manage this situation" (germ. *"Wir haben so vieles geschafft – wir schaffen das."*) in August 2015.[6] Starting the so-called "open door policy" that lead to an influx of one million-plus immigrants within just a couple of years. German Chancellor did assert this position, however citing humanitarian reasons on numerous occasions.

At the same time, the above-mentioned *Communication COM(2008)359 final* of the European Commission invoked the principles of solidarity and shared responsibility as a preface to what was later utilised to press those EU Member States such as Hungary, Poland or Austria, who declined to participate in the obligatory mechanism of immigrants/refugees redistribution (Communication 2008). "We need to restore confidence in our ability to bring together European and national efforts to address migration, to meet our international and ethical obligations and to work together in an effective way, in accordance with the principles of solidarity and shared responsibility." (Communication 2015). [7]

Principles vs. national interest. Posted workers – the freedom of movement principle

In September 2019, the EU Parliament's Transport Committee gave the green light to begin negotiations with the European Commission and the Council on rules for reforming the EU's transport sector. The goal was to reach a compromise on the laws known as the "Macron Package", which introduced new regulations for posted drivers, including a higher minimum wage and regulation of their stay in hotels. The most contentious issue appeared to be the return of empty trucks to their country of origin once every four weeks. This would prevent transport companies from Central and Eastern Europe from providing their services to the market of Western Europe, the so-called "cabotage" (Euractiv Network 2019).

Bulgaria, Romania, Poland, Hungary, Latvia and Lithuania opposed the proposed regulation claiming that the obligation to return empty trucks would be an illegal protectionist measure that would seriously affect companies in their respective countries, and lead to the loss of jobs and increased economic emigration. Bulgarian politician and a Member of the European Parliament Peter Vitanov is among the most vocal opponents of the contested package. Vitanov estimated that the Bulgarian government and the local transport industry should make compromises with some of the changes to negotiate the cancellation of the most controversial proposals. "The return of the empty truck [to the country of origin] is contrary to a fundamental principle [author's annotation] of the EU – the free movement of goods and capital". This means that Bulgaria can begin negotiations to seek a compromise with the threat of a dangling court case. "There is no way to oblige anyone to go somewhere else. It is contrary to the free market", according to the Bulgarians[8].

---

6 See more: https://www.politico.eu/article/the-phrase-that-haunts-angela-merkel/

7 See more: https://eur-lex.europa.eu/legal-content/ga/TXT/?uri=CELEX:52015DC0240

8 Hungary (Case C-620/18) and Poland (Case C-626/18) each brought an action seeking the annulment of Directive 2018/957, which disfavours competitive transport companies from Central and Easter Eu-

Principles vs. national interest. EU – Russia relations (the principle of solidarity)

In the face of the ongoing Covid-19 crisis and the consequent emerging of the global economic crisis, Nord Stream 2 AG,[9] a subsidiary of PJSC Gazprom (Gazprom), responsible for the delivery of the *Nord Stream 2* gas pipeline from Russia to Germany via the Baltic Sea attempted to exclude the project from the Energy Charter Treaty (ECT)[10] as well as the European Gas Directive as amended in May 2019.[11] In brief, EU rules stipulate that import pipelines should not be owned by gas suppliers and that third parties should also be able to use them. As of early May 2020, German regulator, Federal Network Agency (BNetzA) decided against such exclusions complicating the completion of *Nord Stream 2*. This decision was met with much relief in Central and Eastern Europe, where prominent Eastern EU Member States (such as Poland) criticised the German stance on energy procurement. The main reason and principle that was invoked on many occasions with regards to *Nord Stream* and *Nord Stream 2* has been the principle of solidarity. In particular, Poland referred to the article 194 of the Treaty on European Union updated by the Lisbon Treaty (Title XXI – Energy), which stipulates in the framework of the principle of European solidarity on energy among others: energy security and promotion of the interconnection of energy networks – points (b) and (d) respectively (see TEU: art. 194).

What Poland and other countries in the region are afraid of, is that Germany is going to monopolise its role as an energy hub in the European Union, which will effectively disadvantage Central and Eastern European countries. EU is already, they claim, too much dependent on Russian gas, and when the *Nord Stream 2* is completed, this dependence will only grow further. The merit of such arguments has been recently confirmed by the ruling of the Court of Justice of the EU (Judgment in Case T-883/16, *Poland vs Commission*) finding the European Commission in breach of the principle of energy solidarity regarding its decision No. C(2016) 6950 of 28 October 2016, enabling the monopolisation of access to the OPAL pipeline (see: Judgement of the General Court 2019).

Conclusions

The recently established European Commission headed by Ursula von der Leyen has declared several priorities. These priorities are not only far fetching but have the potential to further discriminate among the "old" and "new" EU Member States. The proposed "European Green Deal" seems to have already sparked considerable discomfort in Central and Eastern Europe, which for geo-economic reasons is heavily dependent on

rope. The Court of Justice of the European Union however, dismissed both actions in December 2020 (Judgement of the Court 2020a,b).

9 See more: https://www.nord-stream2.com/

10 See more: https://www.energycharter.org/process/energy-charter-treaty-1994/energy-charter-treaty/

11 The European Commission amended its Gas Directive in April 2019, and the amended document entered into force on 23 May 2019. It stipulates that a third-party nation cannot own both the pipeline and gas imported into the EU market unless the conduit was built before 23 May 2019. See more: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0692&from=EN

fossil fuels, especially coal. This is bound to be a source of tensions within the EU and by extension between countries such as Germany and Poland in the context of energy security. The proposed theory of PI should offer some explanation with regards to the future of the "European Green Deal" since the issue relates very much to the core of the question of energy security and economic development of the EU Member States and the whole EU.

The proposed PI facilitates the emergence of numerous research questions, which will be addressed in the future. For example, what are the conditions for the successful inception of principles into the foreign policy process? How does the interlevel interaction work, and to what extent does the feedback mechanism work? To what extent are national governments successful at "using" EU institutions as platforms to project national interests? What is the role of non-governmental actors in such an understood process, especially NGOs? In other words, phases one and two of the proposed model need to be further researched and theorised. Finally, what is the role of "external" environment, in particular, great powers such as the USA, Russia or China with regards to intra-EU bargaining.

Principles, as proclaimed by the PI as a crucial intervening variable, differ fundamentally from the previous take on the norms and identities as put forward by Moravcsik and Schimmelfenning. Firstly, the idea of principles and its role in current European politics is understood mostly in terms of "instrumentalisation". As much as social constructivists focus on the identities of the EU Member States, they seem to idealise their role in shaping the philosophical outlook of particular member states. The proposed theory of PI takes a different approach, drawing on realist conceptualisation of the national interest. It assumes that identity is not carved in stone. In fact, it is rather a vaguely defined set of ideas about norms and corresponding behaviour. Such approach leaves enough room for national or non-state agents' interests to be bargained for with the help of whatever means, including the instrumentalisation of chosen principles, as defined by the treaties. This, in turn, gives much more flexibility to national governments or supranational actors such as the European Commission in creating a conducing environment to facilitate compromise in favour of politically and economically stronger governments. At the same time, one should revisit the idea of an "entrapment" (Schimmenfenning, Thomas 2008), which facilitates the feedback mechanism. Unlike previous approaches, the PI allows for a more nuanced and in depth understanding of the feedback mechanism, which seems to operate between all three stages of the original LI model.

Finally, to make matters even more complicated, the proposed model of PI does not function in a void. Both "old" as well as "new" EU Member States are included in numerous Euro-Atlantic ties and programmes and are therefore subjects to the influence of "external" actors such as the USA, Russia or even China. The above-presented analysis does not include such considerations as the PI model refers primarily to internal – (European) bargaining processes. Further study should therefore have to include the "external" context of the proposed model.

Krzysztof Feliks Sliwinski – Ph.D., Associate Professor at the Government and International Studies Department of Hong Kong Baptist University. Research interests: security and strategy studies, non-traditional challenges and threats to national and international security (digital and environmental security), security in the Southeast Asia region, Polish foreign and security policy, British foreign and security policy, and European Studies.

Krzysztof Feliks Śliwiński – adiunkt w Instytucie Studiów Międzynarodowych (Government and International Studies) na Uniwersytecie Baptystów w Hong Kongu (Hong Kong Baptist University). Główne zainteresowania badawcze: studia nad bezpieczeństwem i strategią, nietradycyjne wyzwania i zagrożenia bezpieczeństwa narodowego i międzynarodowego (bezpieczeństwo cyfrowe oraz środowiskowe), bezpieczeństwo w regionie Azji Południowo-Wschodniej, polska polityka zagraniczna i bezpieczeństwa, brytyjska polityka zagraniczna i bezpieczeństwa oraz Studia Europejskie.

References:

ALDE Group ALDE Group (2018), *The State of Democracy, the Rule of Law and Fundamental Rights in the EU. Safeguarding a Community of Values*, https://alde.livecasts.eu/the-state-of-democracy-the-rule-of-law-and-fundamental-rights-in-the-eu (09.01.2018)

ARMAND Clotilde (2019), *What rich countries get wrong about the EU budget*, "Politico", https://www.politico.eu/article/what-rich-countries-get-wrong-about-the-eu-budget-east-west-euroskeptic-cohesion-policy/ (06.12.2019)

BAYER Lili (2019), *European Parliament backs plan to link EU funds to rule of law,* "Politico", https://www.politico.eu/article/budget-hungary-poland-rule-of-law-european-parliament-backs-plan-to-link-eu-funds/ (17.01.2019).

BECK Gunnar (2011), *The Lisbon Judgment of the German Constitutional Court, the Primacy of EU Law and the Problem of Kompetenz-Kompetenz: A Conflict between Right and Right in Which There is No Praetor*, "European Law Journal", vol. 17, no. 4. DOI: 10.1111/j.1468-0386.2011.00559.x

BERSCHENS Ruth, AFHÜPPE Sven (2017), *Oettinger: Germany may have to pay more to EU*, "Handelsblatt Today", https://www.handelsblatt.com/today/politics/handelsblatt-interview-oettinger-germany-may-have-to-pay-more-to-eu/23567142.html (28.02.2017).

BONELLI Matteo, CLAES Monica (2018), *Judicial serendipity: how Portuguese judges came to the rescue of the Polish judiciary: ECJ 27 February 2018, Case C-64/16, Associação Sindical dos Juízes Portugueses*, "European Constitutional Law Review", vol. 14, no. 3.

COMMUNICATION (2008) FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, A Common Immigration Policy for Europe: Principles, actions and tools, COM(2008)359 final, Brussels, 17.06.2008.

COMMUNICATION (2015) FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS, A European Agenda on Migration, COM(2015) 240 final, Brussels, 13.05.2015.

COMUNICACIÓN PODER JUDICIAL (2020), *El presidente del Tribunal Supremo comunica al del Parlamento Europeo la decisión de la Sala Segunda sobre Oriol Junqueras* (2020), «Poder Judicial Espaňa», https://www.poderjudicial.es/cgpj/en/Judiciary/Supreme-Court/Judicial-News/El-presi-

dente-del-Tribunal-Supremo-comunica-al-del-Parlamento-Europeo-la-decision-de-la-Sala-Segunda-sobre-Oriol-Junqueras (09.01.2020).

EURACTIV NETWORK (2019), E*astern Europe mobilises against 'Macron's mobility package',* https://www.euractiv.com/section/politics/news/eastern-europe-mobilises-against-macrons-mobility-package/ (27.03.2019)

EUROPEAN COMMISSION (2018), Proposal for a regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, COM(2018)324 final — 2018/0136 (COD), Brussels, 02.05.2018.

GASPAROTTI Alessandro, KULLAS Matthias (2019), *20 Jahre Euro: Verlierer und Gewinner,* Centrum für Europäische Politik, Freiburg, Februar 2019, https://www.cep.eu/eu-themen/details/cep/20-jahre-euro-verlierer-und-gewinner.html (31.03.2019)

GEORGIEV Dencho (2019), *The Rule of Law and the EU Budget for 2021–2027: More Solidarity or Renouncing the Values of the EU?*, "Środkowoeuropejskie Studia Polityczne", no. 2.

HOFFMANN Stanley (1966), *Obstinate or Obsolete? The Fate of the Nation-State and the Case of Western Europe*, "Daedalus", vol. 95, no. 3.

JUDGEMENT OF THE GENERAL COURT (2019) of 10 September 2019, *Republic of Poland v European Commission*, Internal market in natural gas — Directive 2009/73/EC — Commission Decision approving the variation of the conditions for the exemption from EU requirements of the rules governing the operation of the OPAL pipeline in regard to third party access and tariff regulation — Article 36(1) of Directive 2009/73 — Principle of energy solidarity, Case T-883/16, https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62016TJ0883&from=EN (08.02.2021).

JUDGEMENT OF THE COURT (2020a) of 8 December 2020, *Hungary v European Parliament, Council of the European Union* (Case C-620/18), Action for annulment — Directive (EU) 2018/957 — Freedom to provide services — Posting of workers — Terms and conditions of employment — Remuneration — Duration of posting — Determination of the legal basis — Articles 53 and 62 TFEU — Amendment of an existing directive — Article 9 TFEU — Misuse of powers — Principle of non-discrimination — Necessity — Principle of proportionality — Extent of the principle of freedom to provide services — Road transport — Article 58 TFEU — Regulation (EC) No 593/2008 — Scope — Principles of legal certainty and legislative clarity (2021/C 44/03), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2021:044:FULL&from=EN (08.02.2021)

JUDGEMENT OF THE COURT (2020b) of 8 December 2020, *Republic of Poland v European Parliament, Council of the European Union* (Case C-626/18), Action for annulment — Directive (EU) 2018/957 — Freedom to provide services — Posting of workers — Terms and conditions of employment — Remuneration — Duration of posting — Determination of the legal basis — Articles 53 and 62 TFEU — Amendment of an existing directive — Article 9 TFEU — Principle of non-discrimination — Necessity — Principle of proportionality — Regulation (EC) No 593/2008 — Scope — Road transport — Article 58 TFEU (2021/C 44/04), https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C:2021:044:FULL&from=EN (08.02.2021)

KEOHANE Robert O. (1984), *After Hegemony: Cooperation and Discord in the World Political Economy*, Princeton University Press.

KLEINE Mareike, POLLACK Mark (2018), *Liberal Intergovernmentalism and Its Critics*, "Journal of Common Market Studies", vol. 56. no. 7.

LINDBERG Leon N. (1994), *Comment on Moravcsik*, in: Simon Bulmer (author) and Andrew. Scott (editor), *Economic and Political Integration in Europe: Internal Dynamics and Global Context,* Oxford, Blackwell.

MORAVCSIK Andrew (1993), *Preferences and Power in the European Community: A Liberal Intergovernmentalism Approach*, "Journal of Common Market Studies", vol. 31, no 4.

MORAVCSIK Andrew (1998), *The Choice for Europe. Social purpose and state power from Messina to Maastricht*, Routledge, London and New York.

MORAVCSIK Andrew (2018), *Preferences, Power and Institutions in 21st-century Europe*, "Journal of Common Market Studies", vol. 56, no 7.

NEUWAHL Nenette, KOVACS Charles (2020), *Hungary and the EU's rule of law protection*, "Journal of European Integration", vol. 43.

TREATY OF LISBON (2007), Amending The Treaty on European Union and The Treaty Establishing The European Community, signed at Lisbon, 13 December 2007, OJ C 306, 17.12.2007.

PECH Laurent, SCHEPPELE Kim Lane (2017), *Illiberalism Within: Rule of Law Backsliding in the EU*', "Cambridge Yearbook of European Legal Studies", vol. 19.

POLISH ECONOMIC INSTITUTE (2019), *Economic Protectionism in the European Union*, March 2019, Warsaw, http://pie.net.pl/wp-content/uploads/2019/01/PIE_Protekcjonizm_EN.pdf (31.03.2019).

REGULATION 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget, OJ LI 433/1, 22.12.2020.

SCICLUNA Nicole, AUER Stefan (2019), *From the rule of law to the rule of rules: technocracy and the crisis of EU governance*, "West European Politics", vol. 42, no. 7.

SCHARPF Fritz (1999), *Governing in Europe. Effective and Democratic?,* Oxford University Press.

SCHIMMELFENNIG Frank, THOMAS Daniel C. (2008), *Normative Institutionalism and EU Foreign Policy in Comparative Perspective*, UCD Dublin European Institute, "Working Paper 08-12", https://www.ucd.ie/t4cms/WP_08-12_Schimmelfennig_and_Thomas.pdf (31.12.2008).

SMITH Dale L., RAY James Lee (1993), *The 1992 Project and the Future of Integration in Europe*, Routledge.

VERHOFSTADT Guy (2019), "Twitter", https://twitter.com/guyverhofstadt/status/1085944202469494784 (17.01.2019).

WIENER Antje, BÖRZEL Tanja A., RISSE Thomas (2018), *European integration theory (Third ed.),* Oxford University Press.

WINCOTT Daniel (1995), *Institutional Interaction and European Integration: Towards an Everyday Critique of Liberal Inter governmentalism,* "Journal of Common Market Studies", vol. 33, no 4.

Received: 18.02.2021. Accepted: 31.10.2021.