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CRISES AND INSTITUTIONAL TRANSFORMATIONS OF THE EU[*]

-abstract-

The multifaceted crisis brought about by the Covid-19 pandemic has led to the adoption of the Next Generation EU temporary recovery instrument, which encompassed several major steps towards strengthening of the EU institutional framework, including issuance of bonds by the Commission worth up to 850 billion Euros and conditionality for the disbursement of recovery funds based on the respect of the rule of law. Similarly, the global financial and economic crisis provoked the reform of the Stability and Growth Pact, while the European sovereign debt crisis that ensued prompted the EU Member States to undertake major reforms in the form of the banking, fiscal and capital markets unions. Considering these causal relations, a claim may be made that crises form an indispensable basis of every transformational step along the pathway of EU institutional development. If such claim were true, a question arises whether it means that the path "towards an ever-closer Union" is taken out of necessity or is it simply a consequence of the democratic deficit of the EU, so that only in times of crises political decision-making within Member States becomes susceptible to further EU integration. The analysis shows that it is the intertwining of pragmatic interests on one hand and values and identity aspects on the other that form the basis of EU integration. Such understanding leads to the conclusion that the fact that the EU in recent decades moved forward only in crises is indeed caused by the democratic deficit in the EU.

Key words: institutional reform of the EU, ever-closer union, EU governance, sovereign debt crisis, Covid-19 pandemic relief.

I. INTRODUCTION

The multifaceted crisis brought about by the Covid-19 pandemic has led to the adoption of the Next Generation EU temporary recovery instrument, which encompassed several major steps towards strengthening of the EU institutional framework, including issuance of bonds by the Commission worth up to 850 billion Euros and conditionality for the disbursement of recovery funds based on the respect of the rule of law. Similarly, the global financial and economic crisis provoked the reform of the Stability and Growth Pact, while the European sovereign debt crisis that ensued prompted the EU Member States to undertake major reforms in the form of the banking, fiscal and capital markets unions. Considering these causal relations, a claim may be made that crises form an indispensable basis of every transformational step along the pathway of EU institutional development. If such claim were true, a question arises whether it means that the path "towards an ever-closer Union" is one taken out of necessity, or it is simply a

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consequence of the democratic deficit of the EU, so that only in times of crises political decision-making within Member States becomes susceptible to further EU integration.

The aim of this paper is to provide a framework for determining which of the two logically possible responses to the question outline above is true. In the second, third, and fourth parts of the paper, the major crises the EU faced in the past decade and a half shall be put in the perspective of the present topic. The fifth part comprises a discussion of respective conceptual consequences of both positive and negative responses to the question whether the EU may move forward only in times of crises, upon the EU and its capacity for further institutional transformation, as well as overall conclusions based on the concepts and causalities determined by analysing distinctive features of the recent crises, identified in the operative parts of the paper.

II. THE EURO CRISIS

The breakout of the global financial crisis transpired in the developed world started in summer of 2007 and reached the high point in September 2008, when Lehman Brothers collapsed. The crisis was caused by consecutive bursting of several asset bubbles – first in the US housing market, then in global equities and commodities markets. The response of the EU to those phenomena remained at the level of economic and monetary policies, the implementation of which was envisaged to take mostly within the then-existing institutional framework. In addition to lowering of the main policy interest rate, monetary policy included relatively "non-standard" measures of "enhanced credit support" to commercial banks, in view of the key role banks play in funding of both citizens and businesses in the Euro area. The only such measures that was genuinely new were outright purchases of euro-denominated covered bonds, issued by financial institutions in the Euro area.[1] The task of providing counter-cyclical support to the economy fell on the shoulders of national governments of Member States, as a natural consequence of the absence of fiscal powers at the Union level. The most conspicuous symptom of the then-prevailing view that the institutional framework that was in place would suffice was the approach to provide stimulus to the economy by way of coordination of national budgetary measures, within the confines of the Stability and Growth Pact.[2] Such approach was neither realistic nor constructive, and as such was conducive to an erosion of confidence in the EU institutional framework. As Dabrowski noted, since many Member States had already been running high budget deficits, they breached the constraints of the Stability and Growth Pact in 2008 and 2009, and the Commission initiated excessive debt procedures.[3] Although the high cost of borrowing for certain new Member States was pointing to trouble ahead, a chance for balancing monetary and fiscal powers of the EU was missed.
The Eurozone, or Euro crisis, started developing on the heels of the global financial crisis. It seems to have been triggered in 2009 by the revelation by a newly-appointed government in Greece that its predecessors had been concealing excessive budget deficits that Greece was running.[4] The revelation shook confidence of financial markets in the ability of certain Eurozone members to service their debts. Costs of borrowing increased substantially at first

[1] Gertrude Tumpel-Gugerell, 'The European response to the financial crisis' (speech, Bank of New York Mellon, 16 October 2009), European Central Bank, <https://www.ecb.europa.eu/press/key/date/2009/html/sp091016_1.en.html>, accessed 31 March 2022

[2] Communication from the Commission to the European Council - A European Economic Recovery Plan, COM/2008/0800 final

[3] Marek Dabrowski, *The Global Financial Crisis: Lessons for the European Integration* (CASE – Center for Social and Economic Research, Warsaw, 2009)

[4] Stefan Collignon, `Europe's Debt Crisis, Coordination Failure, and International Effects` (2012) No. 370 Asia Development Bank Working Paper Series, < https://www.adb.org/sites/default/files/publication/156225/adbi-wp370.pdf> accessed 31 Mach 2022

mostly for members of Eurozone periphery – Greece, Ireland, Spain and Portugal. The crisis reached systemic proportions in May 2010.[5] The lack of confidence in the sustainability of the Eurozone spilled over, causing costs of borrowing for larger economies which were running high debt-to-GDP ratios – Spain, Italy and France – to start rising by mid-2012, thus threatening not only stability, but the very survival of the Euro.

Several causes of the crisis seem to have been in effect. The Eurozone periphery suffered from low capital productivity in 1990-s and 2000-s due to low interest rates, causing financial flows into non-productive assets.[6] Some governments, like the Greek one, concealed excessive budget deficits in order to comply with the Stability and Growth Pact. The very possibility that this could have happened was a grave challenge to the credibility of the European Monetary Union. The structural institutional imbalance at the very heart of the European Monetary Union allowed this to happen: the single monetary policy was coupled with very limited EU oversight of national fiscal policies. The immediate causality with regard to the global financial crisis transpired through a banking crisis, which was not only at the root of the Eurozone crisis, as Avaro and Sterdyniak suggest,[7] but permeated its overall development. Banks throughout the Eurozone suffered losses due to the global financial crisis, forcing national governments to come to their rescue. Some national banking sectors, such as the one in Ireland, were disproportionately large in relation to the national economy, stoking fears that the rescue would not be feasible. When the sovereign debt crisis, the banks found themselves in an even more precarious position, holding the risky debt of the indebted countries. In essence, the banking and the sovereign debt crisis fed each other.

The EU, as well as the EMU in particular, addressed this multi-layered crisis by putting in place several measures over the span of three years, from 2010 to 2013, a good part of which consisted of significant institutional reforms, i.e. of strengthening the common fiscal policy dimension of the EU. The most immediate response to rising borrowing costs of Greece, in May 2010, was provided by the European Central Bank (the ECB) through the Securities Markets Programme (the SMP), under which the ECB purchased bonds of over-indebted countries (Greece, Ireland, Portugal and Spain) in the secondary market. In the first seven days of implementation of the programme, the ECB purchased roughly 2% of the outstanding debt of those countries.[8] The purchases continued for two years, included bonds issued by other countries, Italy in particular, and were made at nominal value instead of market price.[9] In order to enable purchases of newly issued debt by the affected Member States, EMU Member States in the summer of 2010 decided to establish a fund in Luxembourg, the European Financial Stability Facility (the EFSF), as a non-public entity jointly owned by participating countries, with the initial lending capacity of EUR 250 bn, which was in summer of 2011 expanded to EUR 440 bn. Lending by the fund was in principle subject to strict conditionality – the borrower had to have negotiated a programme of strict budgetary discipline with the European Commission, the ECB and the IMF.[10] While the SMP remained in the realm of EU law, since it was based on a provision of ECB statute allowing the bank to act in subject manner "in exceptional circumstances", the EFSF clearly represented the first significant circumvention of the then-existing institutional framework.

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[5] Richard Baldwin, Francesco Giavazzi, `The Eurozone crisis: A consensus view of the causes and a few possible solutions` (2015), VoxEU/CEPR <https://voxeu.org/article/eurozone-crisis-consensus-view-causes-and-few-possible-solutions> accessed 31 March 2022

[6] Collignon (2012), 4-5.

[7] Mayalis Avaro, Henri Sterdyniak, `Banking Union: a solution to the euro zone crisis?` (2014) 1 Revue de l'OFCE 196

[8] Maja Lukić, `Evolution through rescue – a legal perspective on mechanisms applied in rescuing the European Monetary Union' (2013) 61 (3) Annals of the Faculty of Law in Belgrade 189

[9] Lukić (2013), 189-190.

[10] Lukić (2013), 190.

The possibilities to provide financial assistance to affected Member States in line and within the bounds of the Treaties were also exploited. The specific grounds in the treaties was Article 122(2) of the Treaty on the Functioning of the European Union (the TFEU), which foresees the possibility of granting Union financial assistance to a Member State "in difficulties or seriously threatened with severe difficulties caused by exceptional occurrences beyond its control." The endeavour took the form of the European Financial Stabilisation Mechanism (the EFSM),[11] whereby the European Commission provided assistance to Ireland and Portugal between 2011 and 2014, as well as to Greece in 2014. The programme enabled the Commission to borrow funds in financial markets and lend them to an affected country, of course subject to conditionalities related to fiscal policy.

In parallel with the enumerated financial assistance facilities, a significant reform of the Stability and Growth Pack was agreed and entered into force by the end of 2011, referred to as the "Six-Pack", since it consisted of six pieces of legislation.[12] The Six-Pack put in place a number of new and enhanced mechanisms of fiscal and macroeconomic surveillance, as well as corrective mechanisms. Additional rules on budgetary coordination and enhanced budgetary surveillance were introduced by virtue of the "Two-Pack" in 2013.[13]

The evolution of the crisis forced EMU Member States to agree on a permanent institution for maintaining confidence in their ability to service debts. Following negotiations that lasted throughout the second half of 2011 and the beginning of 2012, in February 2012 EMU Member States concluded a treaty whereby the European Stability Mechanism (the ESM) was established as a separate international financial organization,[14] with the purpose of serving as a permanent institution for providing assistance to Eurozone members in financial distress. In order to provide a minimal nexus between the ESM and the EU treaties, the signatories of the ESM treaty pushed to a modification of Article 136 of the TFEU, stipulating the possibility that such facility be established.[15] Assistance of the EMS was made conditional to the country's

[11] Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism, *OJ* L 118, 12.5.2010, p. 1–4

[12] Regulation (EU) No. 1175/2011 of the European Parliament and of the Council of 16 November 2011 amending Council Regulation (EC) No. 1466/97 on the strengthening of the surveillance of budgetary positions and the surveillance and coordination of economic policies, *OJ* L 306, 23. 11. 2011, 12–24; Council Regulation (EU) No. 1177/2011 of 8 November 2011 amending Regulation (EC) No. 1467/97 on speeding up and clarifying the implementation of the excessive deficit procedure, *OJ* L 306, 23. 11. 2011, 33–40; Regulation (EU) No. 1173/2011 of the European Parliament and of the Council of 16 November 2011 on the effective enforcement of budgetary surveillance in the euro area, *OJ* L 306, 23. 11. 2011, 1–7; Regulation (EU) No. 1174/2011 of the European Parliament and of the Council of 16 November 2011 on enforcement measures to correct excessive macroeconomic imbalances in the euro area, *OJ* L 306, 23. 11. 2011, 8–11; Regulation (EU) No. 1176/2011 of the European Parliament and of the Council of 16 November 2011 on the prevention and correction of macroeconomic imbalances, *OJ* L 306, 23. 11. 2011, 25–32; Council Directive 2011/85/EU of 8 November 2011 on requirements for budgetary frameworks of the Member States, *OJ* L 306/41-47.

[13] Regulation 472/2013 of the European Parliament and of the Council of 21 May 2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability, *OJ* L 140, 27.5.2013, p. 1–10; Regulation (EU) no 473/2013 of the European Parliament and of the Council of 21 May 2013 on common provisions for monitoring and assessing draft budgetary plans and ensuring the correction of excessive deficit of the Member States in the euro area, *OJ* L 140, 27.5.2013, p. 11–23.

[14] Treaty Establishing the European Stability Mechanism Between the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Malta, the Kingdom of The Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, <https://www.esm.europa.eu/sites/default/files/migration_files/20150203_-_esm_treaty_-_en.pdf> accessed 31 March 2022

[15] "The Member States whose currency is the euro may establish a stability mechanism to be activated if indispensable to safeguard the stability of the euro area as a whole. The granting of any required financial

accession to another out-of-the-treaty-framework agreement, the so-called Fiscal Compact, which was entered into a month after the ESM Treaty was concluded by all EU Member States except the United Kingdom and the Czech Republic.[16] The centrepiece of the Compact was the commitment by the signatories to implement in their legislation a fiscal rule which requires that the general government budget be balanced or in surplus, allowing a structural deficit of not more than 0,5% of GDP, or, if the government debt ratio is significantly below 60% of GDP, not more than 1% of GDP. The signatories also obliged themselves to transpose to their national legislations an automatic correction mechanism, which would be triggered if the structural fiscal balance of the country deviates significantly from its medium-term objective, or from the path of adjustment leading to such objective. The mechanism would conform to common principles regarding the nature, size and time frame of such corrective actions, which would be determined by the Commission. Excessive deficit procedure was further strengthened by virtue of the Compact.
Recognizing the interdependence of the sovereign debt and banking aspects of the Euro crisis, during the summer of 2012 the EU Member States agreed on the need to establish a banking union (the European Banking Union, i.e. the EBU). The plan for the EBU was set out in a Commission document of September 2012.[17] It was envisaged that the EBU be structured in the form of three pillars: a Single Supervisory Mechanism (the SSM) for the banking sector, a Single Resolution Mechanism (the SRM), coupled with a Single Resolution Fund (the SRF), and a single deposit guarantee scheme. It was also envisaged that a single rulebook be adopted, which would contain substantive rules on activities covered by the three pillars. In essence, the EBU was supposed to provide common supervision, deposit insurance and crisis management in the banking sector. The SSM was agreed upon in October 2013 as a new competence of the ECB, subject to a "Chinese wall" separating the responsibility from its monetary policy competence.[18] The establishment of the SRM was stipulated in July 2014 by virtue of the same regulation whereby the setting up of the SRF was also stipulated.[19] That was however not the sole legal basis of the SRF. The SRM Regulation provided that the SRF would be funded by contributions of commercial banks which would be raised at national level, but then "pooled at Union level in accordance with an intergovernmental agreement on the transfer and progressive mutualization of those contributions." Such agreement was signed in May 2014 by 26 EU Member States, i.e. by all Member States except the United Kingdom and Sweden.[20] The agreement was amended in January 2021 in respect of extraordinary *ex post*

assistance under the mechanism will be made subject to strict conditionality". European Council Decision of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (2011/199/EU), *OJ* L 91, 6. 4. 2011, p. 1-4.

[16] Treaty on Stability, Coordination and Governance in the Economic and Monetary Union Between the Kingdom of Belgium, the Republic of Bulgaria, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland and the Kingdom of Sweden, < https://www.consilium.europa.eu/media/20399/st00tscg26_en12.pdf> accessed 31 March 2022.

[17] A Roadmap towards a Banking Union, COM/2012/0510 final - 2012

[18] Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, *OJ* L 287, 29.10.2013, p. 63–89

[19] Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 *OJ* L 225, 30.7.2014, p. 1–90

[20] Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund, < https://data.consilium.europa.eu/doc/document/ST%208457%202014%20INIT/EN/pdf> accessed 31 March 2022

contributions.[21] On the same day, an amendment to the ESM Treaty was also signed, making the ESM more effective and flexible, and, *inter alia,* enabling the ESM to provide a common backstop to the SRF by means of credit line.[22] The least amount of progress so far has been made in respect of the third pillar – the single deposit insurance scheme.[23] While the three pillars are intended to benefit mainly, but not exclusively, Eurozone members, the single rulebook has been made applicable across all Member States.[24]

The role of the ECB in countering the Euro crisis may not be overstated. At the height of the crisis, it boosted liquidity of commercial banks through its Long-Term Refinancing Operation programme, providing 3-year loans at a low interest rate and accepting (troubled) sovereign debt as collateral.[25] Following sharp spikes in yields of Spanish and Italian bonds in the summer of 2012, which not only endangered financing terms of states forming a significant portion of EU economy overall, but threatened to spread contagion to the French sovereign debt as well, the ECB announced that it would provide essentially unlimited support in the secondary market to sovereign debt of those EU Member States which agree with the ESM to an austerity and stabilization programme.[26]

III. THE MIGRATION CRISIS

In 2015, the EU was faced with a sudden and massive flow of migrants, mainly from the Middle East, but also from the sub-Saharan Africa.[27] Its law at the time put a disproportionate burden on the countries of entry, namely Greece and Italy. Relying on explicit authority bestowed upon it by virtue of the TFEU, to enact provisional measures "in the event of one or more Member States being confronted by an emergency situation characterised by a sudden inflow of nationals of third countries", on 15 September 2015 the Council enacted a decision providing for relocation of 40.000 asylum seekers.[28] The decision, however, made relocation of each asylum seeker contingent on approval of the Member State of relocation. Only a week later, on

[21] Agreement amending the Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund between the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Republic of Croatia, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic and the Republic of Finland, < https://www.consilium.europa.eu/media/48068/agreement-amending-the-intergovernmental-agreement-on-the-transfer-and-mutualisation-of-contributions-to-the-single-resolution-fund-27-january-2021_en.pdf> accessed 31 March 2022

[22] Statement by the Eurogroup President, Paschal Donohoe, on the signature of ESM Treaty and the Single Resolution Fund Amending Agreements, 27 January 2021, European Council, Council of the European Union Press Release, < https://www.consilium.europa.eu/en/press/press-releases/2021/01/27/statement-by-the-eurogroup-president-paschal-donohoe-on-the-signature-of-esm-treaty-and-the-single-resolution-fund-amending-agreements/> accessed 31 March 2022;

[23] Christos Gortsos, `A Brief Overview of the European Banking Union` (2017) 383-384 (2) L`Europe en Formation 70-76.

[24] *Ibid.* 63-64.

[25] Justin Kuepper, `Long-Term Refinancing Operations' (2022) The Balance < https://www.thebalance.com/what-is-a-ltro-or-long-term-refinancing-operation-1979094> accessed 31 March 2022

[26] Lukić (2013) 194.

[27] According to the UNHCR, over 80% of migrants were refugees from Syria. From the beginning of 2015 until September 2015, more than 440.000 migrants arrived in Europe. `Refugee and Migrant Crisis in Europe: Children on the move, September 2015 – December 2016' 23 September 2015 UNICEF < https://reliefweb.int/report/syrian-arab-republic/refugee-and-migrant-crisis-europe-children-move-september-2015-december> Accessed 31 March 2022

[28] Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, *OJ* L 239, 15.9.2015, p. 146–156

22 September 2015, the Council enacted a regulation on relocation of 120.000 asylum seekers within the EU, which included mandatory quotas for each Member State.[29]
The mandatory nature of quotas faced strong opposition in the EU, mainly from countries of Eastern Europe such as Poland and Hungary.
In order to avoid being forced to apply its own law on asylum seekers, which was highly unfavourable for the countries in which the migrants entered the EU, and faced with strong opposition to extraordinary accommodations to such rules, the EU moved swiftly to prevent the flow of migrants to reach its borders altogether. In March 2016, the European Council and Turkey reached a deal, under which all new migrants coming to Greece would be returned to Turkey, while Turkey would take all necessary measures to prevent new routes of illegal migration. In return, the EU, *inter alia*, promised visa liberalization for Turkish citizens and EUR 6 billion assistance to Turkey as aid for the refugees located in Turkey.[30] Almost a year later, the government of Italy signed a memorandum of understanding with the Government of National Accord of Libya, recognized by the UN, on the prevention of migratory flows through Libya and to Italy, as well as on the development assistance that Italy would provide.[31] Both deals most certainly contributed to a significant decrease of the migratory pressures in the years that ensued. Several attempts by the Commission to have the rules on asylum-related procedures amended, in order that difficulties faced by frontline countries be reduced in case of a repeated migratory flow, have so far failed.
This migration crisis prompted the EU to also vastly expand the competences and capacity of the agency in charge of its external borders (commonly referred to as Frontex), renaming it from the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union to the European Border and Coast Guard Agency.[32] While before 2015 it had barely any capacity of its own, Frontex now disposes of almost two thousand border guards, and is supposed to have a standing force of ten thousand by 2027.[33]

IV. THE COVID-19 PANDEMIC

The Covid-19 pandemic inflicted unprecedented human, social and economic losses upon EU. The vast challenge that it presented upon the EU as a whole forced the EU bodies and public authorities of Member States to show resolve and responsibility in tackling the dire consequences of the pandemic. Following its high point in the spring of 2020, in July of the same year the European Council reached a political agreement on the EU long-term budget and on a Covid-19 recovery package. The 7-year budget amounted to 1.1 trillion euro, whereas the *ad hoc* recovery instrument, referred to as "Next Generation EU" (the NGEU), comprised 750

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[29] Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece, *OJ* L 248, 24.9.2015, p. 80–94

[30] Philippe Perchoc, `EU-Turkey Statement and Action Plan`, the European Parliament, < https://www.europarl.europa.eu/legislative-train/theme-towards-a-new-policy-on-migration/file-eu-turkey-statement-action-plan> accessed 31 March 2022

[31] Anja Palm, `The Italy-Libya Memorandum of Understanding: The baseline of a policy approach aimed at closing all doors to Europe?`, 02 October 2017, EU Immigration and Asylum Law and Policy, < https://eumigrationlawblog.eu/the-italy-libya-memorandum-of-understanding-the-baseline-of-a-policy-approach-aimed-at-closing-all-doors-to-europe/> accessed 31 March 2022

[32] Regulation (EU) 2016/1624 of the European Parliament and of the Council of 14 September 2016 on the European Border and Coast Guard and amending Regulation (EU) 2016/399 of the European Parliament and of the Council and repealing Regulation (EC) No 863/2007 of the European Parliament and of the Council, Council Regulation (EC) No 2007/2004 and Council Decision 2005/267/EC, *OJ* L 251, 16.9.2016, p. 1–76

[33] Caroline de Gruyter, `Europe Accidentally Built an "Amnesty International" with Guns`, 15 December 2021, Foreign Policy < https://foreignpolicy.com/2021/12/15/europe-frontex-migration-amnesty-international-guns/> accessed 31 March 2022

billion, to be disbursed to the most affected Member States both in the form of loans and grants, whereby the grants portion would need to be allocated entirely by the end of 2023.[34]
Significance of this package, however, surpassed the economic dimension of the crisis. In order to understand the second important aspect of the developments in 2020, one needs to step back several years. Covid-19 pandemic was preceded significant backsliding in respect of observance of the rule of law principle by certain Member States, mainly Poland and Hungary. In order to address that phenomenon, which threatened the very roots of the EU, in 2018 the Commission proposed a regulation whereby it would have been authorized to impose financial penalties upon Member States breaching the rule of law principle, subject to so-called reverse majority voting in the Council (a measure could be rejected only by qualified majority in the Council).[35] The proposal faced stiff opposition and was not enacted.[36]
The final agreement on the Next Generation EU, reached by the European Council in December 2020, enabled the enactment of a legislative package which, in addition to pieces of legislation necessary for financing the NGEU and putting it to work, encompassed a rule of law conditionality regulation, whereby the subject conditionality was attached to granting recovery assistance.[37]
The adoption of the package structured around the NGEU, thus, addressed two very different but chronologically overlapping crises – the urgent need to show EU-wide solidarity in relation to economically and socially most challenged Member States, and the more longer lasting crisis of confidence in the capacity of the EU to address the rule of law backsliding in some of its Member States.
There were significant differences between the adopted regulation on the rule of law conditionality and the 2018 proposal therefor, the focus of the adopted regulation turned to be narrower, i.e. limited to the protection of the financial interests of the Union, the reverse majority was not included, etc. Such differences appeared because Member States which were the immediate targets of the envisaged regulation, namely Hungary and Poland, exploited the pressing need for the adoption of the NGEU to extort such significant departures from the initial text.[38] All that may not change the fact that rule of law conditionality became a permanent instrument for protecting the financial interests of the Union, in accordance with its values.
The significance of the NGEU itself surpasses its immediate economic effect in one other important respect. For the purpose of funding that mechanism, the Member States for the first time accepted to mutualize debt, because the borrowing that the Commission was entitled to undertake in order to secure funding for the mechanism was covered by joint and several liability of all Member States.

[34] Special meeting of the European Council (17, 18, 19, 20 and 21 July 2020) – Conclusions, Brussels, 21 July 2020, EUCO 10/20
[35] Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union's budget in case of generalized deficiencies as regards the rule of law in the Member States, COM/2018/324 final - 2018/0136 (COD)
[36] Maja Lukić Radović, Marija Vlajković, `How firm are the bonds that the EU together? EU rule of law conditionality mechanism and the Next Generation EU recovery fund` (2021) 5 EU and Comparative Law Issues and Challenges Series (ECLIC) 66-68
[37] Regulation (EU, Euratom) 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 [2020] OJ L 433 I/1
[38] Lukić, Vlajković (2021) 71-76

V. CONSEQUENCES FOR THE INSTITUTIONAL SUBSTANCE OF THE EU AND OTHER CONCLUDING REMARKS

Having regard to the fact that during the past decade a half major developments in respect of EU institutions transpired only in response to different crises, the aim of this paper was to examine key features of such developments, and to attempt to offer an answer to the question whether the EU is merely a result of product of pragmatic bargaining of its Member States, or does it embody a longer-term common interest of both its Member States and its citizens, which becomes operative only in times of crises, when the general concern for the common good overcomes the democratic deficit which hampers vertical decision-making within the EU in non-crisis times.

Craig pointed out to what he refers to as the "constitutional responsibility" of the Member States, i.e. the often-overlooked fact that it was the Member States which designed and put in place the EU institutional system, including the democratic deficit thereof, so that the Member States should not discount the value of the EU by pointing out the very same democratic deficit.[39] Such perspective supports the viability of the second possibility which we are examining – that it is in time of crises that the Member State constitutional responsibility becomes obvious to citizens, forcing the national authorities to take responsibility for solutions generated at EU level, i.e. to work constructively towards such solutions.

The same approach is further supported by the fact that the EU treaties entail certain core principles, in particular the principle of solidarity, which were invoked upon when all responses to the crises examined in this paper were being articulated. This seems to be a natural consequence of the assumption that in times of crises the perception of the EU as a polity, responsible for protecting its citizens, sharpens, and so does the perception of its core values and principle.

The former interpretation – that the transformations of the EU that led to its greater internal strength have transpired solely out of necessity – would mean that the pragmatic interests form the core of EU integration, while values and common European identity have negligeable impact. Several arguments may be put forth against such interpretation. One of such arguments may be based on the example of Brexit. The issue of populism and misuse of the political domain aside, it may be said that the United Kingdom acted against its pragmatic economic and even security interests when it resorted to Brexit. The political identity of the UK was so adamantly opposed to becoming part of a broader European identity that it formed sufficient grounds for the Brexit campaign. It was, thus, not about pragmatic interests, it was about identity. This does not mean that the role of pragmatic interests is negligeable either, but rather that the intertwining of pragmatic interests on one hand and values and identity aspects on the other that form the basis of EU integration. Such understanding leads to the conclusion that the fact that the EU in recent decades moved forward only in crises is indeed caused by the democratic deficit in the EU. It is only in times of crises that common interests become so evident to EU citizens that decisions needed for preserving and promoting such interests may be taken and pushed through national governing bodies up to the EU level, thus overcoming parochial national interests and political issues.

The ESM and the Fiscal Compact represented the final and most significant responses to the Euro crisis. It is symptomatic that in formal legal terms, these instruments were introduced outside and in parallel to the EU treaty framework, and so was the agreement on transfer and mutualisation of contributions to the Single Resolution Fund. The most immediate reason for the circumvention may have been the opposition of the UK to those instruments. With the UK

[39] Paul Craig, `The Financial Crisis, the European Union Institutional Order, and Constitutional Responsibility` (2015) 22(2) Indiana Journal of Global Legal Studies 244-255

out of the EU, it remains to be seen to what extent those instruments will be incorporated in the EU treaty architecture. The form in which those instruments were adopted, outside of EU treaties, seems also to support the interpretation that the institutional developments happen in times of crises not solely for pragmatic reasons, but due to a perception of common EU interest. Had it been for solely for pragmatic interests, surely more Member States would have abstained from the subject mechanisms, together with those few who did. The opposite happened – almost all Member States chose to pursue solidarity even outside the framework of EU treaties. The consequence of the responses to the Euro crisis was the strengthening of EU institutional architecture. According to Craig: "There is therefore no doubt that, in vertical institutional terms, the European Union restraints on national political choice, whether exercised by national executives or parliaments, has increased."[40]

Similarly, although debt mutualization in relation to the NGEU is temporary and limited in scope, the rule of law conditionality introduced with the NGEU is intended to stay and serve as a permanent mechanism. As for the debt mutualization, notwithstanding its temporal and financial limits, its introduction at a time of a sudden and grave crisis set a crucial precedent, cementing the perception of the EU as a polity willing and able to undertake whatever may be necessary to protect its citizens.

During the migration crisis, the response based on solidarity, consisting in mandatory quotas for accepting asylum seekers, lasted only while the urgency lasted, and until solutions by other means were found.

Taking all analysed crises and EU responses thereto into account, the conclusion seems plausible that developments of EU institutional framework take place in times of crises because it is at such times that the perception of common values and principles, as well as of the responsibility of national authorities for the proper functioning of EU bodies become sharpened. Said responses also show that collective decision-making remains a problem for EU bodies whenever the EU-wide awareness of citizens for the challenges EU bodies face abates.

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