

# EUROPEAN STUDIES

The Review of European Law,  
Economics and Politics

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# **EUROPEAN STUDIES**

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## ABOUT THE JOURNAL

**European Studies – The Review of European Law, Economics and Politics** is a peer-reviewed periodical originally established as year-book of the Czech Association for European Studies and Jean Monnet Centre of Excellence in EU Law at Faculty of Law, Palacký University Olomouc. Since present volume (2021) it is published as semi-annual review with two issues per year.

The presented journal reflects the interdisciplinary character of this scientific society, therefore it does not limit to only one discipline within the European studies, but on the contrary, it pursues for a multi-disciplinary approach and analysis of various aspects of the European integration. That is why the concept of the journal accounts with the scientific articles and expertise not only from the field of European law, but also from European economy, European political science, EC/EU history and other relevant disciplines relating to the analysis of supranational entities as well.

It is important to highlight especially the multinational dimension of the year-book. In particular, we mean the fact that the “European Studies...” journal serves as a forum for the exchange of scientific opinions, research analyses, reviews on new important publications, and other relevant information from European studies disciplines for authors and readers all over the world, which enables the better reflection of the diversity of opinions and approaches.

Our journal accepts scholarly articles, reviews, notes and informations related to the topics of European studies. We also pay special attention to promoting the research of early stage scholars. In addition to regular content, we also publish a distinctive parts in cooperation with the foreign scientific and academic institutions on selected contemporary and demanding topics in a form of special symposiums.

The multinational character of the concept of the journal is enhanced by the composition of the Editorial board itself, which involves leading experts from the different countries all over the world.

Publication Ethics rules of the European Studies – The Review of European Law, Economics and Politics are based on the Best practice guidelines for journal editors and Principles of transparency and best practice in scholarly publishing developed by the Committee on publication ethics (COPE).

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Current issue contents the **Symposium** part on the topic: “**Adapting to the Post-Pandemic: Fresh Challenges and Opportunities for Good Governance and Social Entrepreneurship in Europe and the World**”. This part has been prepared in cooperation with ECSA – Latvia and University of Latvia, under co-editorship of prof. Tatjana Muravska.

Symposium part included into current issue comprises of following works: EU – Central Asia Partnership for Conducive Business Environment and Decent Work by *Līga Andersone, Sergejs Stacenko, Bagdat Imasheva, Tatjana Muravska*; Pandemic Lessons for Democracies: High Time to Provide Journalism as Essential Service with a Financial Lifeline by *Denis Dyomkin*; Public Services Client-Accordance Through Coproduction and Digitalization by *Romans Putans, Zane Zeibote*; Analysis of Push and Pull Factors for Starting a Business in Latvia by *Anzelika Berke-Berga, Inna Dovladbekova, Marta Urbane*; Economic and Legal Issues of Climate Change in the EU by *Christiane Trüe*; Greening of European Cities: Social Benefits of Urban Nature for Urban Air Quality by *Marija Bočkarjova, Alexandra Kačalová*; Collaborative Governance for Smart and Sustainable Cities of the 21st Century. Case Study: The City of Oradea by *Edina Lilla Mészáros*.

#### *Foreword to Symposium by prof. Tatjana Muravska*

In the current times social sciences reflect on everlasting transformation of social spaces, the growing plurality, and uncertainties, which exist at various levels, starting from individual identities in the postmodern diversity, growing beyond conventional borders of social groups, nations, and states. Society, politics, and economics of the 21st century can be described by key words such as interdependence and interaction of various processes. This is a clear indication that the problems of society are increasingly complex and interdependent. They are not isolated to particular disciplines, and they are not predictable. Reality is a nexus of interrelated phenomena, which are not reducible to a single dimension.

The symposium reveals that in the 21st century societies are forced to closely interact in the global fluidity and show that the existing debates are the result of increasing pressure, and suggested solutions coming from both scientists as well as politicians who are expected to provide objective and evident-based decisions.

In the framework of the symposium, we invited representatives of various social sciences to reflect upon new global and EU challenges for economic, business, political, legal, communication environment. The collection of studies is

the Latvian European Community Studies Association's initiative and offers the views of academia, senior and young researchers, and practitioners from a variety of disciplines and different countries. The studies intend to contribute to the EU discussion on what will be the responses to the new pandemic lessons for democracies in economic, political, legal, regional, and environmental challenges. The aim of these studies is to have a fresh and different angle of analysis focused on current challenges in the EU and world. The authors try to find answers to a question on how can any research system and society cope with the influx of changes resulting from these interactions and the new thinking that comes along with them?

The articles provide different views on the effectiveness of cooperation between governments, media, universities, business and society as a whole. Authors highlighted that in response to the current health and economic crises; attention is given to the media and legal dimensions. Moreover, regional, cohesion, industrial policies and digital trends have to be implemented locally but in accordance with the global social, climate, economic and technological trends. Some articles suggest ways on how to improve capacities of governments and regions, in particular, by implementing partnerships' processes to interconnect all stakeholders in innovation systems and digitalisation and help in rising innovation and competitiveness of societies at different levels. These issues are illustrated by research discussions and practical examples

While we do not have yet clear answers on how to deal with these many different challenges, some solutions could be found by thinking across the boundaries of economics, law, technology, cultural understanding, and innovation. In other words, by thinking across fields and disciplines within education and research, there is an opportunity to create something new and meaningful for our societies.

Solidarity is one of the fundamentals of the European integration, and very often this is the only opportunity to move EU Member States and EU partner countries out of economic, social, and even political difficulties, out of any type of crises and to keep benefits of the common market, to maintain stability and keep the broad benefits of cooperation within the EU and beyond. The above challenges require further promotion of interdisciplinarity in research, education, and training, which have a key role to play not only to promote growth and employment, but also to guarantee equal opportunities and social cohesion, so that economies and businesses can develop unique products which combine the most advanced knowledge within the humanities disciplines, social sciences, technology, and health sciences.

As the complexity of our world increases, an ever-higher level of skills and knowledge will be needed to manage this complexity. Interdisciplinarity is a valuable tool in decision-making process and for analysing different policy options.

At the same time, we can strengthen the interaction between research, education, and business, so that enterprises can develop unique products, which combine the most advanced knowledge within the humanities, social sciences, technology, health sciences and the natural sciences.

It is anticipated that this publication produces a number of suggestions for the further enhancement of the economic, business, legal and socio-political components in research and national policies for policy makers at local, national, and regional levels.

We would like to express our special gratitude to all of the contributing authors who have enriched the debate on the role of interdisciplinarity in research, allowing to explore the potential complications that inevitably arise when expanding the borders of one's own discipline.

# ARTICLES





# Preventing Hybrid Threats: From Identification to an Effective Response\*

Ondřej Filipec\*\*

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**Summary:** This article proposes a model which addresses the issue of hybrid threats in four stages including 1) the analysis and identification of hybrid threats, 2) the designation and selection of tools, 3) building-up resilience and capacities and 4) assessment and evaluation. The article might be considered as an initial contribution to the debate about the build-up of the security architecture at the state level and may provide some inspiration for policy-makers and academia engaged in international security issues. The emphasis is put on “soft” domains of security, especially in relation to the cognitive-emotional element of the hybrid environment which is in the times of Covid-19 and the new Russian hybrid type of warfare becoming increasingly significant.

**Keywords:** Hybrid Threats, Prevention, Hybrid Warfare

## 1. Introduction

In recent years the security discourse has been consumed with the issue of hybridity including the use of hybrid terms such as hybrid conflict, hybrid warfare, hybrid challenges or hybrid threats. Hybridity has been often used in various contexts and approached mainly from the military perspective. This article focuses on the prevention of hybrid threats merely from the civilian perspective and helps to develop a scheme which might be used for the analysis of hybrid threats and the designation of an effective response. The main aim of the article is to provide a model, which will allow the design of key activities aimed at the prevention of hybrid threats. The model is built on the functional and normative approach to the issue of hybrid threats in four stages: 1) Analysis and identification of

\* This article has been written under the grant scheme of Jean Monnet Network Project 611293-EPP-1-2019-1-CZ-EPPJMO-NETWORK “European Union and the Challenges of Modern Society (legal issues of digitalization, robotization, cyber security and prevention of hybrid threats)” awarded in 2019 to the Faculty of Law, Palacký University in Olomouc.

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hybrid threats, 2) Designation and selection of tools, 3) Building resilience and capacities and 4) Assessment and evaluation.

There are two principal research questions in the article: First, what are hybrid threats and how do they relate to hybrid warfare? And second, how this interrelation might be used to design a model for the effective prevention of hybrid threats *vis-à-vis* hybrid warfare? Here, to answer the question the author is inspired by the work of Sean Monaghan who developed the issue of hybrid threats and hybrid warfare in the context of the continuum of conflict.<sup>1</sup> A response to the research questions provides some clues of how to design effective measures to prevent and suppress hybrid threats and build up capacities of the country and societal resilience.

The structure reflects the research design of the article. In the first part hybrid threats are defined in respect to their nature. This part provides several definitions, mainly proposed by military or academia. It also presents several models on how to approach hybridity in terms of threats and warfare. The second part of the article introduces a new model proposed by the author. The model is based on functional logic and due to its abstract nature can be universally applied in approaching hybrid threats. An individual part is dedicated to each of the four stages. It has to be mentioned, that the presented model is not definitive and shall be considered as an initial contribution to the discussion on how to systematize the prevention of hybrid threats as an official part of state policies and state response. The model shall be adapted to specific institutional structure and security architecture.

Since 2015 when the Foreign Affairs Council invited the High Representative to work with the European Commission (and other institutions) to work on a joint framework to help counter hybrid threats, the issue of “hybridity” is on the agenda of the EU.<sup>2</sup> Four priorities accompanied with 22 measures were designed to 1) raise awareness by establishing a dedicated mechanism for the exchange of information, 2) building resilience by identifying potential strategic and critical sectors, 3) preventing, responding to a crisis and recovering by defining effective procedures to follow and 4) stepping up the cooperation and coordination between the EU and NATO as well as other partner organizations. The presented framework is intended to provide “a robust foundation” to support Member states and to set up some guidelines and recommendation in selected

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<sup>1</sup> MONAGHAN, S. Countering Hybrid Warfare. So What for the Future Joint Force? *Features*, 2019, vol. 8, no. 2, pp. 82–89.

<sup>2</sup> COUNCIL OF THE EUROPEAN UNION. Outcome of Proceedings. Council Conclusions on CSDP, 18 May 2015, [online]. Available at: <<https://www.consilium.europa.eu/media/24520/st08971en15.pdf>>

activities.<sup>3</sup> Moreover, hybrid threats are also an important challenge for NATO's security policy.<sup>4</sup> This means, that the umbrella of cooperation has been created at the level of the EU and NATO and now is the time to develop measures and the security architecture at the level of member states. Hopefully, this article will contribute to the debate about its foundations or at least stimulate thoughts about its crucial aspects.

The pandemic of Covid-19, the Chinese propaganda amid the search for a vaccine and the aggressive activities of the Russian Federation demonstrated by its hybrid activities in Ukraine or the poisoning of Alexei Navalny again highlighted the issue of hybrid operations and more generally also hybrid threats. This article focuses mainly on Central and Eastern Europe, especially on the experience of the Czech Republic, which might provide good illustrative examples of hybrid threats. These might be exploited by hybrid operations or what Mikael Wigell calls "hybrid interference".<sup>5</sup> The article is considered as an empirical case study with a significant theoretical dimension due to its abstraction leading to the creation of the theoretical model. Despite the empirical nature provided by reference to various examples, the second part of the study is has a theoretical and partly normative dimension.

## 2. On the Nature of Hybrid Threats

When one starts dealing with hybrid threats one may simply get confused, as there are various approaches to the issue. When exploring the notion of hybridity we can look at the linguistic which might provide a clue why the notion is understood in different ways. The Merriam-Webster Dictionary provides three definitions of the adjective hybrid: 1) relating to or produced from parents of different species, varieties or breeds; 2) having or produced by a combination of two or more distinct elements: marked by heterogeneity in origin, composition, or appearance; and 3) having two different types of components performing essentially the same function.<sup>6</sup> In the greater abstraction it refers to the contri-

<sup>3</sup> EUROPEAN COMMISSION. FAQ: Joint Framework on countering hybrid threats, 6. April 2016 [online]. Available at: <[https://ec.europa.eu/commission/presscorner/detail/it/MEMO\\_16\\_1250](https://ec.europa.eu/commission/presscorner/detail/it/MEMO_16_1250)>

<sup>4</sup> ZECHERU, T. NATO Challenges in the Context of Hybrid Threats Evolution. *Strategic Impact*, 2015, vol. 55, no. 2, pp. 37–43; KUBEŠA, M., SPIŠÁK, J. Hybrid Threats and Development of NATO's New Operational Concept. *Defence & Strategy*, 2011, vol. 11, no. 2, pp. 5–15.

<sup>5</sup> WIGELL, M. Hybrid Interference as a Wedge Strategy: A theory of External Interference in Liberal Democracy. *International Affairs*, 2019, vol. 95, no. 2, pp. 255–275.

<sup>6</sup> MERRIAM-WEBSTER. Hybrid. Accessed 6. 2. 2020 [online]. Available at: <<https://www.merriam-webster.com/dictionary/hybrid>>

bution of two or more factors on the subject, which is influenced whose nature is influenced by these factors. Because of several conceptual understandings, the term “hybrid” is even more unclear when used in the social context.

Military historians claim that hybrid warfare involving kinetic and non-kinetic means was used for centuries and that there is nothing new behind the concept. What is new is the re-invention of the term and rather fashion tendency of its use to describe the very complex reality of the modern world of security. One of the first definitions is that of the US Army Chief of Staff who defined hybrid threat as an adversary that incorporates “diverse and dynamic combinations of conventional, irregular, terrorist and criminal capabilities”.<sup>7</sup> This definition is quite wide due to the use of general terms allowing it to be covered by a hybrid threat extensive nature of activities. Because definitions using the term “hybrid” tend to be very general, various actors have tried to provide a more precise definition.

For example the European Centre of Excellence for Countering Hybrid Threats (Hybrid CoE) defines Hybrid threats as “*Methods and activities that are targeted towards vulnerabilities of the opponent. Vulnerabilities can be created by many things, including historical memory, legislation, old practices, geo-strategic factors, strong polarization of the society, technological disadvantages or ideological differences*”.<sup>8</sup> The European Council in a press report defined hybrid threats as a “*wide range of methods or activities used by a hostile state or non-state actors in a coordinated manner in order to target the vulnerabilities of democratic states and institutions, while remaining below the threshold of formally declared warfare. Some examples include cyber attacks, election interference and disinformation campaigns, including social media*”.<sup>9</sup> When looking critically closer at the definition, hybrid threats are very close to hybrid warfare, which is not the same, as explained later.

A slightly different definition of hybrid threats is used by the Czech Ministry of Interior defining hybrid threats as “*methods or means used for confrontation/ conflict, e. g. wide, complex, adaptive and integrated combinations of conventional and non-conventional tools, open and hidden activities, which are mainly have a character of pressure and undermining activity, which are conducted*

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<sup>7</sup> CASEY, G. C. America’s Army in an Era of Persistent Conflict. *Army Magazine*, October 2008, [online]. Available at: <[https://www.ansa.org/sites/default/files/Casey\\_1008.pdf](https://www.ansa.org/sites/default/files/Casey_1008.pdf)>, p. 28.

<sup>8</sup> HYBRID COE. Definition of Hybrid Threats. European Centre of Excellence for Countering Hybrid Threats, 2020 [online]. Available at: <<https://www.hybridcoe.fi/hybrid-threats/>>

<sup>9</sup> EUROPEAN COUNCIL. Countering hybrid threats: Council calls for enhanced common action. European Council, 10. 12. 2019 [online]. Available at: <<https://www.consilium.europa.eu/cs/press/press-releases/2019/12/10/countering-hybrid-threats-council-calls-for-enhanced-common-action/>>

by military, semi-military or various civilian actors”.<sup>10</sup> As further mentioned methods are exploiting vulnerabilities of the target while the attacker is trying to create an environment in which it is impossible to declare responsibility, the attacker remains hidden and activities are below the level of armed aggression. From a certain perspective, this definition is also close to understanding hybrid threats directly linked to hybrid warfare.

As for academia, the definition used by Mark Galeotti (2016) is most prominent he defined hybrid threats as: “*a style of warfare that combines the political, economic, social and kinetic in a conflict that recognizes no boundaries between civilian and combatant, covert and overt, war and peace ¼ where achieving victory – however that may be defined – permits and demands whatever means will be successful: the ethics of total war applied even to the smallest skirmish*”.<sup>11</sup> Qualitatively, this is the definition of a different nature in comparison to more “technical” definitions of the institutions and political actors directly involved. Mark Galeotti added several more aspects and succeeded in making the definition more general and better matching the nature of hybridity, despite also linking hybrid threats to warfare.

This is, however, the mainstream term. In the literature hybrid threats are often linked to the *hybrid conflict* or *hybrid warfare* or *hybrid challenges*. In this trinity hybrid conflict may be used as the umbrella term for the conflict involving traditional (state) actors with a non-state actor, such as terrorist groups or insurgents. The example of the ISIS serves the issue well. Fighting ISIS was to a certain degree a hybrid conflict, as a number of states together with organizations and NGOs were fighting ISIS which succeeded in creating a quasi-state entity. In this example a regular “underground” terrorist group succeeded in creating a system of institutions, collected taxes, run schools and hospitals etc. Moreover, its fighters employed hybrid warfare which might be characterized by the use of conventional and non-conventional means (ISIS did not respect international norms) and/or the use of traditional and irregular tactics ranging from frontline and guerrilla warfare to warfare in cyberspace. Extensive use of social networks for recreation and propaganda purposes together with the creation of “Cybercaliphate” added a new domain to merely old concepts, which have been known in military studies for decades or even centuries. However, according to Frank Hoffman it was Hezbollah in 2006 during the war with Israel, who demonstrated the best example of hybridity.<sup>12</sup>

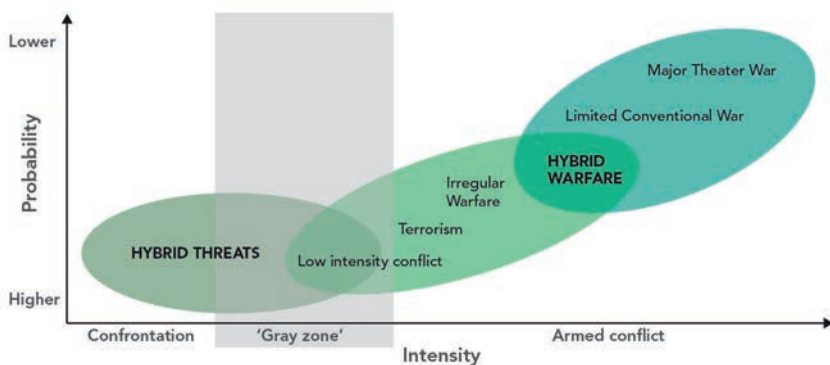
<sup>10</sup> CZECH MINISTRY OF INTERIOR. Co jsou hybridní hrozby? Ministerstvo vnitra, 2020 [online]. Available at: <<https://www.mvcr.cz/cthh/clanek/co-jsou-hybridni-hrozby.aspx>>

<sup>11</sup> GALEOTTI, M. *Hybrid War or Gibrinaya Voyna? Getting Russia's non-linear military challenge right: Prague*: Mayak Intelligence, 2016.

<sup>12</sup> HOFFMAN, F. G. *Hybrid Threats: Conflict in the 21st Century: The Rise of Hybrid Wars*. Arlington: Potomac Institute for Policy Studies, 2007.

The military dimension dominates the notions of hybrid conflict and hybrid warfare. This dimension is also present in the term *hybrid challenges*, however the term covers more issues with a different nature and may overlap with *hybrid threats* which are sometimes used as a synonym for *hybrid warfare*. As pointed out by Sean Monaghan, hybrid threats and hybrid warfare are two different things, but the understanding of it may vary. Inspired by Linton Wells<sup>13</sup> and Frank Hoffman<sup>14</sup> Sean Monaghan presented a chart clearly distinguishing between hybrid threats and hybrid warfare (see chart 1).

**Chart 1** – Hybrid threats and Hybrid Warfare Shown on s Continuum of Conflict



Source: MONAGHAN, Sean. *Countering Hybrid warfare. So What for the Future Joint Force?* PRISM, 2019, vol. 8, no. 2, p. 87.

Based on Monahan's hybrid threats differ to hybrid warfare in the terms of conflict intensity and probability. It is merely a set of threats which are present in any security system of a country due to the inability of the state to respond and eliminate roots of the hybrid threats which may arise naturally or that are being created artificially. As a result hybrid threats are merely potential vulnerabilities which might be exploited for confrontation, also involving the employment of hybrid warfare or other means of post-modern conflict.<sup>15</sup> This might be characterized by the absence or low-level of violence.

<sup>13</sup> WELLS, L. Cognitive Emotional Conflict. *PRISM*, 2018, vol. 7, no. 2, p. 6.

<sup>14</sup> HOFFMAN, F. Examining Complex Forms of Conflict: Grey Zone and Hybrid Challenges. *PRISM*, 2018, vol. 7, no. 4, p. 32.

<sup>15</sup> VALUCH, J., GÁBRIS, T., HAMULÁK, O. Cyber Attacks, Information Attacks and Postmodern Warfare. *Baltic Journal of Law & Politics*, 2017, vol. 10, no. 1, pp. 63–89.

Linton Wells (2018) highlighted especially the cognitive-emotional dimension of hybrid warfare. The cognitive-emotional conflict is “a struggle to affect the thoughts and values of people at all levels of an opponent’s organization and society, using technical and other informational means, while preserving the resilience of one’s own organizations and society, and attracting the uncommitted”.<sup>16</sup> Critically, the definition highlights the non-violent nature of the conflict, but in some aspects such forms of hybrid warfare may result in riots, protests and uprising and turn violent. Also, hybrid warfare may range from non-violent means to means close to limited conventional war, as seen in the conflict in Ukraine.<sup>17</sup> Nonetheless, in the context of Central Europe the thesis of non-violence applies and cognitive emotional conflict has serious implications for addressing hybrid threats as it is at the core of societal and state vulnerability. For example with a focus on Central and Eastern Europe Vitalie Sili stresses that hybrid warfare is taking various forms, but there is a need to dedicate a special focus to the manipulation of public opinion, communication undermining the perception of events, interference in political life and the mobilization of large groups of people.<sup>18</sup> This perception is fully in line with the concept of “hybrid interference” by Mikael Wigell.<sup>19</sup>

A very interesting model using a similar logic to Sean Monaghan is a model presented by Mikael Weissmann who had taken into account the different intensities of conflict based on the Swedish strategic map.<sup>20</sup> The map involves various acts which might be classified as peaceful, war or in between in a grey zone (divided in open conflict and crisis). These activities are ranging from “peaceful” partnership, alliance, joint exercises, intelligence to more conflicting like propaganda, hacktivism, assistance, dependence, power demonstration, power projection, intervention, subversion or sanctions to more hostile (cyber-attacks, sabotage, deception, blockade, ultimatum to open war), involving limited military operations, invasion, skirmishes or even use of the weapons of mass destruction. The idea of hybridity rests in the intensity of the conflict as between war and peace there is a great grey zone, in which activities may always be interpreted as a misunderstanding when revealed.<sup>21</sup> As a result conductors of hybrid warfare are using various tools which are below the intensity of war and may be interpreted as

<sup>16</sup> WELLS, L., op. cit., p. 8.

<sup>17</sup> VALUCH, J., HAMULÁK, O. Abuse of Cyberspace Within the Crisis in Ukraine. *The Lawyer Quarterly*, 2018, vol. 8, no. 2, pp. 94–107; RUSNÁKOVÁ, S. Russian New Art of Hybrid Warfare in Ukraine. *Slovak Journal of Political Sciences*, 2017, vol. 17, no. 3–4, pp. 343–380.

<sup>18</sup> SÍLI, V. Hybrid Threats: Modern Perception and Tactics. *Studia Securitatis*, 2020, vol. 14, no. 1, pp. 37–43.

<sup>19</sup> WIGELL, M., op. cit., p. 255.

<sup>20</sup> WEISSMANN, M. Hybrid warfare and hybrid threats today and tomorrow: towards analytical framework. *Journal Baltic on Security*, 2019, vol. 5, no. 1, pp. 17–26.

<sup>21</sup> Ibid, p. 25.



a “misunderstanding” or any accusation may be labelled as “a provocation”. Especially the last scenario is often used by the Russian Federation when operations are triggered, for example in the case of Sergei Skripal poisoning or poisoning of Alexei Navalny, but also in the case of the shooting down of the Malaysian airline’s civilian airplane over Ukraine. Despite it seems that the grey zone is central to hybrid warfare (and implicitly also to the hybrid threats), the mutual relationship might be questioned from a conceptual perspective.<sup>22</sup>

A different approach to hybridity is provided by Craișor-Constantin Ioniță. In his study he presents a complex model having hybrid challenges and hybrid threats at the core.<sup>23</sup> This model is unique because it combines several factors of the future security environment from a geographic perspective. In the “Arc of instability”, covering most of Africa, Latin America, Asia and Oceania, there are some nuclear armed states, top ten oil reserves, significant drug regions, significant anti-West attitudes and increasing Global interdependence. Moreover, there are emerging global powers, actors using improved anti-access weapons. At the same time, we can observe high urbanization, increased risk of terrorism and crime, relatively frequent earthquakes or famines and diseases. This all contributes to the future security environment. The division is not only between traditional actors or traditional warfare vs. non-state actors and irregular warfare, but also involves a “catastrophic dimension” and disruptive forces.

Despite the great complexity and involvement of the non-military dimension (e.g. societal drivers or environmental issues), the weakness of the model is that it is centred on the third world and focused mainly on the military dimension. However, hybrid threats and hybrid challenges are also the issue of the western world and of its democracies which are developing in a relatively safe and stable environment. For this reason, further parts of the article will focus mainly on the implication of hybrid threats for democracies. Therefore, there will be more focus on the civil rather than the military dimension.

### **3. Towards Effective Prevention of Hybrid Threats?**

The above mentioned models were dealing mainly with hybrid warfare, its potential tools and exploitation of hybrid threats. The look at hybridity was merely approached from outside the state. However, to prevent hybrid threats also requires a look from the inside because many of the roots associated with hybrid

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<sup>22</sup> STOKER, D., WHITESIDE, C. Blurred Lines: Grey-Zone Conflict and Hybrid War—Two Failures of American Strategic Thinking. *Naval War College Review*, 2020, vol. 73, no. 1, pp. 1–37.

<sup>23</sup> IONITĂ, C. Is Hybrid Warfare Something New? *Strategic Impact*, 2014, vol. 53, no.4, pp. 61–71.

threats – especially in the context of cognitive-emotional conflict – are domestic and so shall be the primary response. Hybrid threats are often associated with contemporary developments described by the acronym VUCA. At a certain level of abstraction the emergence of hybrid threats may be the result of systemic, institutional and behavioural failures in the volatile, uncertain, complex and ambiguous (VUCA) environment. In other words, no state is able 100 % to address security concerns and prevent the emergence of an environment unfavourable to its vital interests. However, in a certain amount of time the emergence of a hybrid threat is noticed and might be addressed by a systemic response leading to the pacification of the threat or its marginalization. This is the issue of hybrid threats of a domestic nature, however some hybrid threats are exogenous or artificially created and cultivated by external actors, sometimes actors (mainly non-state) itself emerge as a hybrid threat.

From the perspective above hybrid threats have some kind of life cycle: from emergence to getting significance, from maturity to becoming obsolete, disappearing or to the contrary, getting materialized, activated, and exploited. Due to this functional logic, it is possible to design a set of general processes and activities which might help in the prevention of hybrid threats (chart 2).

Chart 2: Set of Activities Aimed at the Prevention of Hybrid Threats



Source: Author

Each of the phases is examined in the individual sub-chapter. However, it is important to mention that the presented model is simplified and in reality, processes might be more complex and demanding. It may also involve more phases or redirections, for example to various levels of strategic planning or to distinguish between the military and civilian dimension. In practice, various institutions will be involved in the process with some link to international organizations, especially those who provide some conceptual frames, capacity sharing etc.

### **3.1. Analysis and identification of threats**

At the beginning of each prevention is analysis of the phenomenon and identification of its most important aspects. In relation to hybrid threats it is worth focusing on causes and consequences: to discover the roots of hybrid threats, factors vital to the threats, revealing their own vulnerabilities, and vectors. At this stage all relevant available data shall be analysed to specify individual threats and gain a deeper understanding of the causes. What is the threat, how does it emerge and what are its characteristics? This is a key activity, which will later help to design and employ relevant tools. Any analysis requires a certain level of expertise. As a result, it is necessary to involve experts who will conduct an in-depth analysis of the threat. Expert involvement will be necessary in all stages leading to the prevention of hybrid threats. It is important to bear in mind that hybrid threats might be explored by hybrid warfare, combining military and civilian tools. It is a warfare which highlighted the role of non-military expertise in areas such as sociology, political science, linguistic, communication, IT, history and other “social sciences” which might be used by the attacker to exploit vulnerabilities of the target, for example by employing disinformation campaigns and propaganda, get influential people on their side, gain control over some important part of economy etc.

Because fields related to hybrid threats are very complex, it is necessary to structure the analysis and demarcate individual domains. For this purpose, analysts are using different schemes named according to the abbreviations of the areas included. Two frequently used schemes are DIME (covering the Diplomatic, Information, Military, and Economic area) or PMESII (Political, Military, Economic, Social, Infrastructure and Information). The schemes might be extended to some specific areas. For example, the Czech Ministry of the Interior is using the DIMEFIL scheme referring to:

- Diplomacy and politics – using influence and pressure created by the official political representation.
- Information – media, social networks and other channels are used to spread manipulation, disinformation and propaganda.

- Military – used as a threat (military presence demonstration), use of military or its individuals, small groups or infiltration of the enemy.
- Economy – used for pressure (custom duties, embargoes, refusal of delivery, prohibiting use of infrastructure, sectoral destabilization, capture of enterprises etc.).
- Finance – currency destabilization, bourse destabilization, adverse influence on financial institutions etc.
- Intelligence – activities of the intelligence services, spying, recruitment of informers or collaborators etc.
- Law – especially public law and legal state: using various activities aimed at attacking value or legal aspects of societal order. For example, supporting unrest by using ethnical, religious or societal conflict lines in society, using large scale terrorist attacks or criminal methods including kidnapping, black-mailing and threatening.

The focus on one demarcated area has a clear advantage as it allows the employment of the expert knowledge of a particular specialist. However, it shall be mentioned that the nature of hybrid threats is very complex and in reality, the above defined domains may overlap. Let's build up upon the above provided by the Czech Example. Hybrid warfare in the Czech Republic is mainly associated with Russian influence. Various resources stress, that the Russian embassy in Prague is overstaffed and a significant part of its employees (two thirds out of 137 people) are involved in intelligence activities and espionage against the country.<sup>24</sup> It means that diplomatic and political domains have a direct impact on intelligence due to the foreign influence and limits of the Czech intelligence which is due to the lack of resources unable to counter Russian spies. Moreover, the Russian embassy is a hub of promoting Russian national interests aimed at the economy (another domain). In the Czech case it is the building of the Dukovany Nuclear Power Plant, a geo-political bid worth approx. 10 billion Euro and increased dependency for decades. The above-mentioned example well demonstrates, that in analysing hybrid threats (or hybrid interference) experts cannot work in clusters and in-depth analysis of the domains shall be topped by a complex understanding of the threats.

An increasingly important part of the analysis is forecasting and foresight. Under the influence of the bestseller “Superforecasting” by Phillip E. Tetlock and Dan Gardner this part of the analytical process is also gaining a new importance in Central Europe, which is also visible in the project Czech Options

<sup>24</sup> LIDOVÉ NOVINY. Ruská špiónská přesilovka. Česko tiše trpí, ruská strana nepokrytě zneužívá disproporce. Lidovky.cz, 5. 9. 2016 [online]. Available at: <[https://www.lidovky.cz/domov/ruska-spionska-presilovka-cesko-tise-trpi-ruska-strana-nepokryte-zneuzyva-disproporce.A160726\\_132546\\_ln\\_domov\\_sij](https://www.lidovky.cz/domov/ruska-spionska-presilovka-cesko-tise-trpi-ruska-strana-nepokryte-zneuzyva-disproporce.A160726_132546_ln_domov_sij)>

–inspired greatly by the Good Judgement Project in the USA.<sup>25</sup> Forecasting and foresight is also stressed by Iulian Martin and Lisa-Maria Achimescu. While foresight offers multiple or alternative futures (alternatives how threats will develop) forecasting focuses on the most probable alternative scenario. As put by Martin and Achimescu: “*At both organizational and state levels, a preliminary stage of strategic foresight is necessary in order to determine the most favourable future, in order to correctly and efficiently commit the necessary resources and intelligence according to strategic interests*”.<sup>26</sup> Both foresight and forecasting have an important role in the preparation for future threats. This is particularly difficult in a gradually developing environment and that is why talented experts are needed. Public competitions in forecasting are a good point where to start in the search for people, however, expert skills require training and cultivation. This is why employment of forecasters does not match with pressures on saving and is considered a second order issue despite the fact that their opinion might be crucial for modelling the threats and right designation and selection of tools.

### **3.2. Designation and selection of tools**

Another important step in the prevention of hybrid threats is the designation and selection of tools. Similarly as it is impossible to fight a battle without weapons it is impossible to fight hybrid threats without the appropriate tools and resources. Tools might be civilian, military or hybrid. They might be official and visible, unofficial, or even secret. Also, resources may vary from public to private, from financial and material to non-material. It is evident that the availability of tools will vary state to state, depending on institutional, personal, or financial capacities. For example, in the USA the so called “Intelligence Community” is composed of 17 agencies and offices, including the well known Central Intelligence Agency, National Security Agency, Defence Intelligence Agency to the lesser known such as the Office of Intelligence and Analysis or National Reconnaissance Office. With a budget of more than 60 billion USD and employing 100 thousand people the USA has different options for the designation and selection of tools.<sup>27</sup> However, the USA are facing qualitatively different challenges and even its massive apparatus failed to predict and prevent important failures which

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<sup>25</sup> GARDNER, D., TETLOCK, P. E. *Superforecasting: The Art and Science of Prediction*. New York: Crown, 2015.

<sup>26</sup> MARTIN, I., ACHIMESCU, L. M. Can Forecasting Ameliorate the Negative Impact of Hybrid Threats? *Strategic Impact*, 2018, no. 1–2, p. 13.

<sup>27</sup> OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE. U. S. Intelligence Community Budget, [online]. Available at: <<https://www.dni.gov/index.php/what-we-do/ic-budget>>

has something to do with hybridity. The attacks on 9/11 are considered one of the biggest failures of the Intelligence community in modern history, merely because the signs of the threat were ignored, and experts were working in clusters.

Next to finances and resources, the selection of tools is also a matter of political culture and national experience. It is obvious that democratic countries will have different attitudes than non-democratic countries. The level of democracy and political culture will have an impact on the involvement of the state: the state cannot penetrate all areas in society and thus more space in democracies will be given to civil society whose tools might fill the gap by qualitatively different approach, then there are the tools operated by a state. In the area of intelligence investigative journalists may play a similar or even more important role than national intelligence. A good example is the Bellingcat group focusing on the online instigation and use of public resources to report about the downing of flight HM-17, Sergej Skripal and Alexei Navany poisoning, military operations in Syria etc. Factchecking and reconstructions of facts might be vital for preventing the adverse effects of information warfare.

Based on classification scheme tools might be created and developed within individual domains (e. g. DIMEFIL). Most of the tools already exists and just require some adaptation or redesign. For example, the institution of diplomatic consultation within the diplomatic domain might serve well in prevention and reaction. Military IT experts might be well used to countering the hostile content on civilian platforms and social networks (information operations on social networks are an integral part of the Russian military doctrine) as the manipulation of public opinion becomes an important part of hybrid warfare and hybrid interference. In this sense social media are an increasingly important tool of information warfare.<sup>28</sup> Especially in the case of referenda and elections the damage caused by foreign influence might be irreversible. This is also the case of Brexit – which was strongly influenced by Russia on the side of leave. The City University of London analysed 10 million twitter messages and found 13,493 false or automatic generated profiles linked to Russia.<sup>29</sup> According to marketing company 89up, the Kremlin directed channels had thirteen times more impressions for all content shared by Leave.EU website, than the official campaign.<sup>30</sup> The effects have both economic and geostrategic importance. As for 2020 the

<sup>28</sup> PRIER, J. Commanding the Trend: Social Media as Information Warfare. *Strategic studies Quarterly*, 2017, vol. 11, no. 4, pp. 50–85.

<sup>29</sup> MORALES, S. Information warfare: feed information with disinformation. *Global Strategy*, 2019 [online]. Available at: <<https://global-strategy.org/information-warfare-feed-information-with-disinformation/>>

<sup>30</sup> 89UP. 89up releases report on Russian influence in the EU referendum, 2019 [online]. Available at: <<http://89up.org/russia-report>>

costs for Brexit are calculated around 200 billion Pounds<sup>31</sup> and the future of the EU-UK security partnership is uncertain.

Tools and measures designed in accordance with priorities and goals might be utilized as reactionary or pro-active. Most of them are of a conventional nature: starting with legal regulation and enhancement of moral norms, to economic tools including trade restrictions or sanctions, limit of resources, information media and propaganda intervention, intelligence operations, cultural and diplomatic pressures, use and involvement of proxies, covert operations etc. Addressing hybrid threats usually requires a unique and balanced mixture of selected tools to address the hybrid nature of the threat, minimize or paralyze its effects and remove the causes, including factors vital for its emergence. While some effects might be neutralized within a short period of time (e. g. neutralization of a foreign proxy), in some cases the roots might be very dense and deeply rooted into the society and their removal will require a long term approach (typically issues related to national mentality, identity, ideology or history which require change of the discourse or paradigm shift). Despite this the Islamic State was defeated on the ground, the roots of this terrorist organization including ideological resources are still deeply rooted within Iraqi and Syrian society.

Threat modelling has a special position among tools, which might share some common characteristic with an experiment. Great models might succeed in modelling and simulating hybrid threats in the safe environment, which is particularly possible in the IT domain with the use of “white hackers” and other domains challenging human skills. In this environment designed tools might be tested, developed and reviewed and when ready verified and deployed in practice. Typical activities conducted within a modelled environment are penetration tests or “stress tests” verifying resilience, existence of capacities and its utilization to address the threat. Despite this domain is most developed in the area of IT, including online tools such as Tutamantic, My App Security, Irius Risk, Mozilla Sea Sponge and dozens of others, IT domain offers a range of threat modelling methodologies (Trike, Process for Attack Simulation and Threat Analysis or Microsoft’s STRIDE approach) which might be modified to cover hybrid threats and potential hybrid warfare.

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<sup>31</sup> THE LONDON ECONOMIC. Brexit set to cost the UK more than £200 billion by the end of the year. The London Economic, 16. 6. 2020 [online]. Available at: <<https://www.thelondoneconomic.com/politics/brexit-set-to-cost-the-uk-more-than-200-billion-by-the-end-of-the-year/16/06/>>

### 3.3. Building resilience and capacities

Resilience and capacities are necessary prerequisites of a country capable of dealing with hybrid threats (or what Mikael Wigell calls “hybrid interference”) and prevent internal instability, erosion of democratic institutions or in the case of hybrid interference counterbalancing potential.<sup>32</sup> This is hard, because the selection of effective tools and the building up of resilience and capacities is in democracies bound by the rules of law and democratic principles. Building a resilient society and capacities is a long term process which requires analysis and identification of vulnerabilities and unhealthy developments. Effects of hybrid threats are threatening to weaken the state from inside with a focus on civil society and the attempt to undermine the effectiveness or reputation of public institutions to invoke instability or alternation of forces within the elites favourable to the attacker.

In Central Europe hybrid threats are often used almost as a synonym for hybrid warfare, associated mainly with the Russian Federation.<sup>33</sup> This is given by the geo-political nature of the region which was historically an arena of clashes between western and Russian (Soviet) interests and power aspirations. However, contrary to the 20<sup>th</sup> century when these aspirations were accompanied by hard power and military interventions, it seems that in the 21<sup>st</sup> century Russian aspirations have shifted to the on-line environment, diplomacy, and economic activities with geostrategic importance.

Building the resilience of society in Central Europe closely related to the enforcement of identity, especially its historical aspects which goes hand in hand with the refusal of historical revisionism – uncritical adoration of Russia/Soviet history and demonization of the west. The myth of the Red Army liberation and its uncritical glorification is still present in education plans and according to Czech intelligence it helps to create an environment for supporting Russian interests.<sup>34</sup> Unsurprisingly, both the above mentioned narratives are strongly present in pro-Kremlin propaganda on social networks and diplomatic communications. In this regard building resilience requires the development of medial literacy, critical thinking, and quality education in general with a special focus on history, social sciences, medial communication and other relevant fields which are helpful for a better understanding of social reality and the interests of individual actors. From this point of view the building-up of resilience starts at schools and

<sup>32</sup> WIGELL, M., op. cit., p. 255.

<sup>33</sup> This association is very strong in Poland. See for example: BANASIK, M. Building up State Strategic Resistance Against Hybrid Threats. *Journal of Defense Resources Management*, 2017, vol. 8, no. 2, pp. 50–63.

<sup>34</sup> BEZPEČNOSTNÍ INFORMAČNÍ SLUŽBA. Výroční zpráva Bezpečnostní informační služby za rok 2017 [online]. Available at: <<https://www.bis.cz/public/site/bis.cz/content/vyrocní-zprava-vy/2017-vz-cz.pdf>>



universities and also involves the most fragile groups – older people and people from excluded groups who might be exploited for promotion of frustration, dissolution, and activation of protest behaviour.

Well educated citizens might help to elect political representation critical towards foreign interference and hybrid threats. As a result the ministry of foreign affairs can launch initiatives to limit foreign influence, ministries of the interior and defence can develop tools and measures preventing the takeover of strategic enterprises or the ministry of education can work on training and curriculum of a new generation more perceptive to hybrid threats. Civil society plays an important role which might well contribute to the building-up of resilience. Various NGOs are active in delivering social services and care – limiting frustration and the potential of protests. Advising NGOs helping people in difficult economic and social situations which has a positive impact on the unhappiness and frustration, which are exploited by propagandists to stimulate protest attitudes. Other NGOs are focused on the development of critical thinking and promotion of medial literacy, factchecking and are complementing the education not provided by the education system. Various associations contribute to the recruitment of experts, think-tanks offer policy advising and sometimes are also involved in surveillance.

Civil society thus has an important role to play in the building-up of resilience and that is why any attempts to restrict its activities shall be considered as a potential threat and feature of unhealthy development. However, the importance of civil society has been noted by strategists and that is why the so called “political NGOs” are subject to restrictions in illiberal or authoritarian regimes while government or regime friendly NGOs are supported and promoted. Moreover, some parts of the civil society are contributing to the erosion of democracy. This is the case of “uncivil civil society” which might in some cases result in the creation of militias or paramilitary organizations linked or sympathizing with foreign powers. The environment of these organizations might be a potential reservoir for people open to promote foreign interests inconsistent with that of the domestic country. The same is valid for disinformation webs and conspiracy platforms which contribute to the spread of distrust in the government, public institutions, promotion of hostile foreign interests and erosion of democracy by attacks on public institutions. The QAnon affair and Covid-19 highlighted the importance to counter disinformation webs as conspiracies might lead to unprecedented events or loss of lives.

Similarly, important is the build-up of capacities to act. Hybrid threats might be latent or developing slowly and thus offering opportunity to act. However, even when considering this advantage the reaction of state institutions is slow and in many cases insufficient. This might be due to a lack of funds, burden of bureaucracy, overlapping responsibilities, lack of leadership, lack of political will etc.

That is why it is necessary to create a complex strategy aimed at hybrid threats, divide tasks and responsibilities, define tools and departments responsible for maintenance and utilization of the tools. Activities of the individual institutions – e.g. ministries or public offices – shall be the subject of coordination and regular evaluation to ensure synergy and maximum effect in addressing hybrid threats. Nonetheless, to establish a coordinated and effective system might be complicated due to the opposition of the political actors involved. Nationalists and populists tend to undermine the intelligence services. For example, pro-Russian Czech President Miloš Zeman on several occasions criticized Czech intelligence pointing at Russian influence in the Czech Republic for being unprofessional<sup>35</sup> and political parties including the Czech communist party or nationalists (Freedom and Direct Democracy Party) underplay hybrid threats and conclusions of intelligence. It is not surprising, that both illiberal political streams are favourable to the Russian Federation and thus promotes a reduction in expenditures on the military, exit from the EU and NATO or restrictions on civil society, which are also visible in Poland or Hungary, two states experiencing illiberal turn.<sup>36</sup>

The human aspect has a prominent position in resilience and capacity building. That is why a lot can be achieved by training and education. More than ever before (partially because activities are going online including social life and individual electronic footprint is increasing) soft skills such as medial literacy, IT skills and critical thinking are of increasing significance and have a potential to become new cleavage in the society. The scandal with Cambridge Analytica clearly demonstrated that personal data might be misused for persuasion and political manipulation, which might be directed against democratic processes and institutions. Prevention of hybrid threats usually focuses on “traditional” strategic sectors such as energy, transportation, defence infrastructure etc. while “soft” sectors were for a long time being ignored, despite some authors mentions the importance of soft sectors as well (e.g. NGOs, riots and demonstrations, press articles and blogs favouring certain ideological frames) and others.<sup>37</sup> As demonstrated by QAnon conspiracy, unsolved intoxication of the environment can result in the division of society and stimulate radicalization, extremism and

<sup>35</sup> DENIK. Jsou to čučkaři, řekl o BIS Zeman. Jeho výroky bude řešit senátní výbor. Deník, 10. 12. 2018 [online]. Available at: <[https://www.denik.cz/z\\_domova/jsou-to-cuckari-rekl-o-bis-zeman-jeho-vyroky-bude-resit-senatni-vybor-20181210.html](https://www.denik.cz/z_domova/jsou-to-cuckari-rekl-o-bis-zeman-jeho-vyroky-bude-resit-senatni-vybor-20181210.html)>

<sup>36</sup> SÚYUNOVA, K. The Conflict between the Principles of the National Identity of Member States and Values of European Union Such as Rule of Law, Respect of Human Rights and Liberal Democracy – Case Study of Hungary. *International and Comparative Law Review*, 2020, vol. 20, no. 2, pp. 159–173.

<sup>37</sup> CÎRDEI, I. A. Countering the hybrid threats. *Revista Academiei Fortelor Terestre*, 2016, vol. 82, no. 2, pp. 113–119.

political violence. That is why designers of security architecture shall not ignore soft sectors.

### 3.4. Evaluation and lessons learned

Every system identifying and responding to hybrid threats shall have internal evaluation mechanisms aimed at effectiveness on several levels. First it is the level of individual tools and its use, then it is the level of individual institutions involved and finally, it is macro level of the whole environment where fulfilment of more general goals might be evaluated. A necessary part of this phase is also learning the lessons learned based on previous experience. This is because one thing is theoretical preparation and plans, another issue is experience with real confrontation. As put by Field Marshal Helmut von Moltke the Elder: “No plan of operations extend with any certainty beyond the first contact with the main hostile force”.<sup>38</sup> In other words, strategists and actors employing hybrid warfare are very inventive and innovative in their tools and tactics and addressing hybrid threats (which might be exploited by hybrid warfare) will be to a significant degree a reactive tasks. However, even belated, and limited reaction is usually better than any as the hostile acts may be close to critical threshold of threat: latency may turn into materialization and the materialized threat can cause real problems in society and state.

Next to the evaluation and lessons learned from actors directly involved a focusing on the evaluation and surveillance within individual fields which might also lead to fruitful lessons being drawn. For example, cyber-attacks on hospitals might reveal a systemic flaw which might be addressed in the legislative, institutional build-up<sup>39</sup> and responsive efforts.<sup>40</sup> However, many observations are less technical and less formal. When conducting research on one of the hospitals attacked by ransomware, one of the actors was disappointed about the lack of the fora or networks to share practical IT experience, managerial experience, or lack of shared solidarity among stakeholders at the same level. In other words, breaches and failures are treated individually, without the utilization of good experience by sharing and improvement of the system. It is necessary not only to evaluate and

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<sup>38</sup> VON MOLTKE, H. G. *Moltke on the Art of War: Selected Writings*. In: HUGHES, D. J., BELL, H. New York: Presidio Press, 1996, p. 92.

<sup>39</sup> NAPETVARIDZE; V., CHOCHIA, A. Cybersecurity in the Making – Policy and Law: a Case Study of Georgia. *International and Comparative Law Review*, 2019, vol. 19, no. 2, pp. 155–180.

<sup>40</sup> VALUCH, J., HAMUEÁK, O. Use of Force in Cyberspace. *International and Comparative Law Review*, 2020, vol. 20, no. 2, pp. 174–191; FERNICOLA, G. Once Upon a Time in Cyberspace: A Grim Reality about the Dangers of Cyberwarfare. *International and Comparative Law Review*, 2020, vol. 20, no. 2, pp. 77–96.

draw lessons learned, but also on a case by case basis to “distil” aspects which might be used to improve the system on the level of planning or capacity building.

As shown in chart 2, prevention of hybrid threats is a never-ending circle and data mined in the final stage by evaluation and lessons learned are vital for different phases of the cycle. Because the environment is developing data from the last stage might be used for initial analysis and identification of threats, which shall be conducted on a regular and systematic basis. Next to the evaluation system and lessons learned it is critically important to utilize the gathered information at the political level. The effectiveness of any regime depends on the quality of information and how effectively they are processed into policies. When misinformation and lies penetrates the system, then the efficiency of public institutions is undermined. Low quality information in the system creates a visible gap between official policies and reality. This is common for all regimes non-democratic and democratic alike. In the final days of World War II Adolf Hitler was moving virtual units on the map, which were destroyed weeks ago. Communist leaders mismanaged the Chernobyl disaster because flaws in the system failed to provide them reliable information. This example best demonstrates the gap between science and politics. Also, the effectiveness of democratic institutions relies (among others) on the quality of information processed. The Covid-19 pandemic again highlighted this importance.

The Covid pandemic was a critical moment with a potential to destabilize European societies. On one hand there was a force “sticking” people together in the terms of solidarity and help, on the other side there were attempts to polarize society and promote unhappiness with political institutions. The pandemic highlighted the chronic problems of disinformation and propaganda – the tools that are exploiting and cultivating cognitive-emotional conflict and can invoke and shape protest attitudes of citizens which might have destructive consequences. The challenge is how to protect democratic institutions without compromising democratic values, civic liberties, freedoms, and human rights on one side and to ensure the building-up of capacities and societal resilience on the other. More multidisciplinary research will be required in these areas.

## 4. Conclusion

The main aim of the article was to provide a model, which will allow the design of the key activities aimed at the prevention of hybrid threats. The model was built on the functional and normative approach to the issue of hybrid threats in four stages: 1) Analysis and identification of hybrid threats, 2) Designation and selection of tools, 3) Building resilience and capacities and 4) Assessment

and evaluation. There were two principal research questions: First, what are the hybrid threats and how they relate to hybrid warfare? And second, how this interrelation might be used to design a model for the effective prevention of hybrid threats *vis-à-vis* hybrid warfare?

As pointed out in the first chapter hybrid threats and hybrid warfare are two different things, despite being related as hybrid warfare may exploit hybrid threats. The article proposed a complex model for responding to hybrid threats by highlighting a set of activities in the individual stages of the process. During the stage of analysis and identification of hybrid threats, several schemes were presented to conduct analysis, also with reference to forecasting and foreseeing. In the second stage designation and selection of tools was debated including the tools for modelling the threat. In the third stage some tips were provided for building the resilience and capacities and the same is valid for the fourth stage. Because many conceptual documents and approaches focus on traditional domains of security, this article was dealing mainly with examples associated with “soft” domains of security – e.g. public opinion manipulation, disinformation, and propaganda – having close to cognitive-emotional understanding of hybrid threats and hybrid warfare.

This article is an initial contribution to the debate and further research might be done on related aspects. For example: how to effectively implement processes designed in the second part of the article within the security architecture of the state? how to effectively divide responsibilities and powers among individual institutions? Or: how to implement individual activities to create an effective response to hybrid threats without compromising democratic values?

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# Referendum on early elections: The case of Slovakia in the European context

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**Summary:** The referendum initiative of 2021 is the fourth attempt in Slovakia to call a referendum on early parliamentary elections in less than 30 years. The aim of this article is to answer the question of whether the shortening of the parliamentary term by referendum is in accordance with the Slovak Constitution. Since the shortening of parliamentary term by referendum is a constitutional issue which is a question of identity common to all European democracies, the authors analyse the existence of such direct democracy instrument in the Council of Europe member states and compare the relevant constitutional framework with the Slovak Constitution. The authors' opinion is that the referendum on early elections contradicts not only several constitutional provisions, but also the overall philosophy of the Slovak Constitution and Western-type democracy.

**Keywords:** recall, dissolution of parliament, referendum, representative mandate, direct democracy

## 1. Introduction

After two unsuccessful and relatively older attempts in 2000 and 2004, the idea to demand early parliamentary elections through a referendum emerged in Slovakia once again. The initiative comes formally from a popular petition.<sup>1</sup> In reality, this petition is organized by several opposition political parties. Such initiative has naturally invoked not only political reactions, but also revived doctrinal discussions on compliance of such referendum with the Constitution of

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<sup>1</sup> According to article 95 (2) of the Slovak Constitution, a referendum can be declared by the president upon a petition submitted by at least 350,000 citizens (approximately 8 % of eligible voters) or upon a resolution of the National Council (approved by a simple majority of its members).



the Slovak Republic.<sup>2</sup> Although, first referendum on early parliamentary elections in Slovakia was held in 2000, historically first petition concerning such initiative was submitted to the president in 1994. After the signature review procedure, the head of state declined to declare referendum, since the submitted number of valid signatures was significantly lower than the number prescribed by the Constitution (350 000 citizens).<sup>3</sup> The 2000 and 2004 referendums were declared and executed but failed due to insufficient turnout.<sup>4</sup>

It can be therefore determined that the 2021 referendum initiative is the fourth attempt in Slovakia to call a referendum on early parliamentary elections in less than 30 years. At the same time, it is the only topic that is repeatedly brought as the subject of the referendum so far. Resolving the issue of constitutionality of the referendum on early elections is of fundamental importance for the functioning of the Slovak constitutional system. In addition, it has also a European dimension, because all European democracies have at least a few important features in common: the principle of representative mandate and the existence of collective executive responsible to the elected legislature.<sup>5</sup>

The aim of this article is twofold. First, to answer the question of whether the shortening of the parliamentary term by referendum is in accordance with the Slovak Constitution. This is a specific, practical and essential question for Slovakia, which needs a clear answer. Second, it is insufficient to analyse this question only within the norms of the Slovak Constitution, case law and legal theory, but it needs to be answered in broader context: in the context of Western-style democracy. This category covers a set of countries, which can be understood more broadly or more narrowly, depending on the chosen criteria. For the purposes of this article, we focus on the Council of Europe member states. Some of them have long democratic tradition, the other are relatively new democracies, but the common denominator is that membership in the Council of Europe at least

<sup>2</sup> In the first phase and due to shortage of time, these discussions took place mainly in the Slovak daily press. See BUJŇÁK, V.: Prečo skrátenie volebného obdobia referendum nie je ústavné | Postoj (postoj.sk) [cit. 15.4.2021]; GIBA, M.: Referendum o predčasných voľbách alebo rozklad suverenity ľudu pod zámenkou jej výkonu – Denník N (dennikn.sk) [cit. 15.4.2021]; ĽALÍK, T.: Prečo je skrátenie volebného obdobia referendum ústavné | Postoj (postoj.sk) [cit. 15.4.2021]; BĀRĀNY, E.: Protipandemické opatrenia, ústavné limity a ľudské práva | Slovenské národné noviny (snn.sk) [cit. 15.4.2021].

<sup>3</sup> See LĀŠTIC, E.: V rukách politických strán. Referendum na Slovensku 1993 – 2010. Bratislava: Centrum excelentnosti pre spoločenské inovácie Univerzity Komenského v Bratislave, 2011, pp. 31–32.

<sup>4</sup> According to art. 98 (1) of the Constitution, the results of a referendum shall be valid provided an absolute majority of eligible voters have participated and the issue has been decided by an absolute majority of votes.

<sup>5</sup> This common feature is not affected by differences that may exist between the various European democracies, for example in relation to the powers of president and his real strength.

formally signals a commitment to the basic principles of Western democracy. Shortening of parliamentary term by referendum is a constitutional issue which is, so to speak, a question of identity which is common to all European democracies, and a question of philosophy on which European democracy stands. It is therefore necessary to examine whether there are Council of Europe member states whose constitutional system recognizes and allows shortening of parliamentary term by a referendum. Subsequent conclusions will be an important starting point for examining the compliance of the referendum on early elections with the Constitution of Slovakia. In accordance with the aforementioned aims we first analyse the shortening of the parliamentary term by referendum in the Council of Europe member states (1). Afterwards we present an assessment of the referendum on early elections and its compliance with the Constitution of Slovakia (2).

## 2. Shortening the parliamentary term by referendum in the Council of Europe member states

Currently, there are only two states among the 47 Council of Europe members whose constitutional system presupposes the possibility of a popular referendum concerning a collective parliamentary recall. These states are Liechtenstein and Latvia. Identification of these two states is a combination of researching Council of Europe member states constitutions by authors themselves, information provided by the Venice Commission<sup>6</sup> and conclusions of other authors.<sup>7</sup> Before

<sup>6</sup> „There are few European countries where recall at national level is possible. It is provided for in the Republic of Moldova and Romania for the President of the Republic, and for the Parliament as a whole in Latvia and Liechtenstein.“ Report of European Commission for Democracy through Law on the recall of mayors and local elected representatives (20 June 2019), no. CDL-AD(2019)011, p. 7. Available at

[https://www.venice.coe.int/webforms/documents/default.aspx?pdfFile=CDL-AD\(2019\)011rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdfFile=CDL-AD(2019)011rev-e) [cit. 20. 03. 2021].

<sup>7</sup> RATO TRABUCCO, F. The Latvian direct democracy tools in a comparative European context. In: *Oñati Socio-Legal Series*, vol. 10, no. 4, 2020, pp. 770–774; WELP, Y. Recall referendum around the world. Origins, institutional designs and current debates. In: MOREL, L., QVORTRUP, M. (eds): *The Routledge Handbook to referendums and direct democracy*. New York: Routledge, 2018, p. 453; ŁUKASZEWSKI, M. Microstate and monarchy in the face of the challenges of the modern world. The political system of Liechtenstein and its specificity (an outline of the problem). In: *Przegląd Politologiczny*, no. 3, 2015, p. 97; MARXER, W., PÁLLINGER, Z. T. System contexts and system effects of direct democracy – direct democracy in Liechtenstein and Switzerland compared. In: PÁLLINGER, Z. T., KAUFMANN, B.,

proceeding with a closer analysis of the constitutional mechanisms of these two states, it is necessary to focus on the general framework in which the Council of Europe member states operate (1.1). Afterwards, we continue with an analysis of constitutional framework in Latvia (1.2) and Liechtenstein (1.3). Finally, we formulate findings acquired on the basis of examined framework in the form of interim conclusions (1.4).

## 2.1. General remarks on democracy in the Council of Europe member states

As noted by the Venice Commission in its Report on the Recall of Mayors and Local Elected Representatives (20 June 2019), the principle of free political mandate and its corollary, the prohibition of any imperative mandate, are at the foundations of representative democracy. Throughout history, the imperative mandate was eventually replaced by a system – the representative government – where “representatives do not exclusively represent their local electors but an abstract body, the nation, whose will is superior of and different from local constituencies”.<sup>8</sup> The recall of representatives by popular vote touches on the very essence of representative democracy as a system by definition based on the principle of representation, where citizens delegate the exercise of their power (i.e. the right to govern) to elected representatives. They, in turn, adopt public policy decisions and measures on behalf of citizens that are supposed to be in the interests of all. In this system, regular elections which enable to make a decision on renewal or non-renewal of parliamentary mandates constitute main mechanism of political accountability.<sup>9</sup>

It is clear that in such framework there is a question of whether and under what conditions may voters retain the “right” to decide on the dismissal of elected representatives in the event of dissatisfaction with their activities and without waiting for another regular elections. The Venice Commission

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MARXER, W., SCHILLER, T. (eds). *Direct Democracy in Europe. Developments and Prospects*. Wiesbaden: VS Verlag für Sozialwissenschaften, 2007, p. 26; KÄRKLIŅA, A. Dissolution of parliament in Latvia: Legal regulation and practice. In: *Jurisprudencija*, vol. 20, no. 3, pp. 1213–1229; HOLLANDER, S. *The Politics of Referendum Use in European Democracies*. Cham: Palgrave Macmillan, 2019, pp. 284–305.

<sup>8</sup> Report of the European Commission for Democracy through Law on the Recall of Mayors and Local Elected Representatives (Venice, 20 June 2019, no. CDL-AD(2019)011rev, p. 5 and there mentioned authors. Available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)011rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)011rev-e). [cit. 20. 03. 2021]

<sup>9</sup> See also DOMIN, M. *Volebné právo a volebné systémy*. Bratislava: Wolters Kluwer, 2017, pp. 14–43.

highlights the ideas of Edmund Burke and Emmanuel – Joseph Sieyès about free mandate of representatives as a basic characteristic of the political representation and points out the model of deliberative democracy. The notion of deliberative democracy with its focus on the need for political decisions to be the product of fair and reasonable discussion and debate among citizens, suggests that members of deliberative assemblies will reach their decisions at the end of a process of consultation and debate, which is at odds with the notion of imperative mandate.<sup>10</sup>

The origins of the institution can be traced back to the Roman Republic, where tribunes were occasionally recalled. The first debates of the device in modern times are dated in the years following the American Revolution. Later on, after more than a century, there was a proposal to include recall in the Convention of 1787, but it was defeated. Federalist Alexander Hamilton led the opposition saying that recall „will render the senator a slave to all the capricious humours among the people“. <sup>11</sup> The recall became a powerful component of the argument of the Anti-Federalists, who were the opponents to the adoption of the Constitution. The Constitution required that either legislatures or special conventions vote in favour of the document before it would go into force. The lack of the recall as a reason to reject the document cited for example a well-known anti-federalist Luther Martin. <sup>12</sup>

The argument in favour of popular recall referendum is rather straightforward: if voters have the right to elect officials, then they should also have the right to recall them. Such referendum gives the voters an opportunity to continually make independent democratic decisions about who and how they are governed by. Representative democracy offers only one opportunity in three, four or five years, depending on the prescribed length of the election period. The representatives elected in this manner then take over the control and decision-making in the system, and citizens who do not have the right to recall them remain without a particular opportunity to decide against their elected representatives if they do not exercise the power in the manner in which they promised to perform it. According to supporters of the popular recall, this mechanism leaves room for voter control over the work of elected officials throughout the entire mandate.

<sup>10</sup> Report of the European Commission for Democracy through Law on the Recall of Mayors and Local Elected Representatives (Venice, 20 June 2019, no. CDL-AD(2019)011rev, pp. 5–6.

<sup>11</sup> WELP, Y. Recall referendum around the world. Origins, institutional designs and current debates. In: MOREL, L., QVORTRUP, M. (eds). *The Routledge Handbook to referendums and direct democracy*. New York: Routledge, 2018, p. 451 and 452, and there mentioned authors.

<sup>12</sup> SPIVAK, J.: Recall Elections in the US: Its Long Past and Uncertain Future. In: WELP, Y., WHITEHEAD, L. (eds). *The Politics of Recall Elections*. Oxford: Palgrave Macmillan, 2020, p. 78 and there mentioned authors.

The ability to hold early elections when it is most needed due to the mistakes made by the ruling majority is cited as one of the key advantages.<sup>13</sup>

Arguments against the recall referendum are based mainly on the need for government stability and efficiency. As pointed out by Anne Twomey, there is a great risk that such instrument will cause governments to act in a populist manner and not take the often hard but unpopular decisions that are in the long-term interests of the state. One of the reasons behind fixed election terms is to allow governments some space to govern responsibly in the public interest without having to be constantly seeking popularity. The risk with citizens' initiated elections would be that governments would be perpetually on an election-footing, undermining their effectiveness and the long-term interests of the state. Another argument is the use of election petitions as political weapons. Petitions may be initiated even if there is no hope of success, in order to damage the reputation of a government, distract or deter it from pursuing difficult policy issues.<sup>14</sup>

It is interesting that despite the importance of Switzerland in the history of direct democracy,<sup>15</sup> this state cannot be automatically added to Liechtenstein and Latvia, and the Venice Commission shares the same opinion. There is no popular recall referendum in relation to the Swiss Federal Assembly. However, there is the indirect option of launching an initiative for a total revision of the Constitution, which would, in the case of success, trigger new elections.<sup>16</sup> Jozef Prusák highlights a failed attempt to revise the Swiss Constitution in 1934, organized by fascist party.<sup>17</sup>

While the Swiss example is, in theory, at least an indirect way of enforcing new elections, it is not possible to consider in the same manner a constitutional regulation according to which a certain fact results in the dissolution of parliament, but the formation of this fact is not in the power of citizens. According to § 105 of the Estonian Constitution, the Parliament has the right to submit a Bill or other issue of national importance to a referendum. If such Bill fails to receive a majority of the votes cast, the President calls an extraordinary parliamentary

<sup>13</sup> KARAKAMISHEVA JOVANOVSKA, T. Why fear of recall for elected officials? In: *Iustinianus Primus Law Review*, vol. 10, no. 1, 2019, pp. 12 – 13.

<sup>14</sup> TWOMEY, A. The Recall of Members of Parliament and Citizens' Initiated Elections. In: *The University of New South Wales Law Journal*, vol. 34, no. 1, 2011, pp. 67 – 68. See also GIBA, M.: Referendum o predčasných voľbách: niekoľko úvah. In: *The Milestones of Law in Central Europe 2008*. Bratislava: Právnická fakulta Univerzity Komenského, 2008, pp. 576 – 577.

<sup>15</sup> ALTMAN, D. *Citizenship and Contemporary Direct Democracy*. New York: Cambridge University Press, 2019, p. 33.

<sup>16</sup> SERDÜLT, U. Referendums in Switzerland. In: QVORTRUP, M. (ed). *Referendums Around the World. The Continued Growth of Direct Democracy*. London: Palgrave Macmillan, 2014, p. 88.

<sup>17</sup> PRUSÁK, J. *Teória práva*. Druhé vydanie. Bratislava: VO PraFUK, 2001, p. 78.

election. The citizens cannot force the Parliament to submit a Bill to referendum and therefore they alone cannot enforce new elections. The so-called anti-blocking mechanisms leading to new parliamentary elections fall within the same category. The Greek Constitution for example enshrines in art. 32 (4) that should the third ballot of presidential election fail to produce prescribed majority, Parliament shall be dissolved within ten days of the ballot, and elections for a new Parliament shall be called. A similar consequence occurs according to art. 87 (5) of the Albanian Constitution after the fifth parliamentary vote. Again, however, such early elections are a result of a fact (non-election of the head of state by parliament) that citizens cannot enforce with legal instruments.

In the 1990s, there was a discussion about a constitutional fixation of the referendum on the dismissal of the national Parliament in Ukraine. According to proposed art. 110, the mandate of the Supreme Council of Ukraine could be terminated early upon decision on non-confidence taken by a national referendum, with subsequent mandatory self-dissolution.<sup>18</sup> This proposal was heavily criticized by the Venice Commission and was not approved. Afterwards, the Venice Commission commented on another similar consideration that the possibility of a vote of no confidence by the people in Parliament is alien to the Western concept of representative democracy and can in no way be presumed in the absence of an express constitutional authorisation.<sup>19</sup>

One of the oldest democracies which also has extensive experience with the institute of a referendum, is France. The issue of shortening the parliamentary term by referendum has never been addressed there, but the issue of a popular referendum initiative is still worth mentioning. Although the constitution of the current 5th Republic of 1958 reintroduced referendum in the French constitutional system, it does not presuppose the existence of citizen-initiated referendum.<sup>20</sup> Its introduction was considered in 2008, before the most extensive amendment to the constitution so far. The adoption of amendment was preceded by several months of work by an expert group led by the former Prime Minister É. Balladur. The Balladur commission did not recommend to adopt a citizen-initiated referendum, only a referendum initiated by one-fifth members of Parliament, supported by one-tenth of voters. The Commission argued for the need to „reconcile the

<sup>18</sup> Available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(1995\)028-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(1995)028-e). [cit. 20. 03. 2021]

<sup>19</sup> Parts 30 – 32 from the Opinion of European Commission for Democracy through Law on Constitutional referendum in Ukraine (31 March 2000). The authors thank Šimon Drugda for information about this material. Available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2000\)014rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2000)014rev-e). [cit. 28. 03. 2021]

<sup>20</sup> On the constitutional definition of the national referendum in France, see GIBA, M. *Súdna kontrola ústavnosti vo Francúzsku*. Bratislava: Wolters Kluwer, 2017, pp. 112–123.

*right of citizens' initiative with the necessary safeguards of this right in order to mitigate the risks that may arise from the choice of certain societal issues*“.<sup>21</sup>

Another European state with a long democratic tradition is the United Kingdom, which introduced the Recall of MPs Act in 2015. The act allows for the removal of an MP by the public in the particular constituency, if the MP has received a prison sentence (custodial or suspended), or if the MP is convicted of providing false or misleading information for allowance claims under the Parliamentary Standards Act 2009, or if the MP is barred from the House of Commons for ten sitting days, or fourteen calendar days. A certain legal fact therefore activates the possibility of recall. In order to trigger a by-election, the petition needs to be signed by a minimum of 10 % of the MP's constituents.<sup>22</sup> The possibility of recalling a particular member instead of shortening the term of the entire lower house and the existence of certain legal fact instead of discretion of eligible voters means that the United Kingdom cannot be added to Liechtenstein and Latvia.

Therefore, apart from these two states, no other Council of Europe member states allow the dismissal of the national Parliament by popular vote and at the initiative of the people themselves, without the existence of a specific legal fact. In addition, we have identified a state whose constitutional court has ruled in the past on the unconstitutionality of such a referendum on early elections. In January 1993, the Constitutional Court of Hungary issued a judgement 2/1993 (I. 22.). The court ruled on unconstitutionality because of several reasons, and one of them was the prohibition of the imperative mandate: *„On the contrary, the essence of a free mandate lies in the fact that the legal dependence between the representative and the voters ends with an electoral act. Therefore, the representative cannot receive instructions, nor is he obliged to request voter opinions on the issues under discussion. (...) As a voting representative, he or she cannot be held responsible for his or her activities and voting during the term of office, so the duration of their term of office is for the entire term of office, which cannot be shortened by voters. The relationship between representatives and voters is of a political nature, and therefore responsibility can only emerge during elections. (...) The possibility of recall would be followed by a series of almost constant efforts with recall initiatives, as non-parliamentary or rival political parties could constantly scrutinize the support of an elected member or party majority, or voters themselves could seek recall because of the vote for an unpopular*

<sup>21</sup> Comité de réflexion et de proposition sur la modernisation et le rééquilibrage des institutions de la Ve République. Final report published in Journal officiel de la République française, 30 octobre 2007, p. 17699.

<sup>22</sup> See TONGE, J. The Recall of MPs Act 2015: Petitions, Polls and Problems. In: *The Political Quarterly*, vol. 90, no. 4, 2019, pp. 713–718.



measure. (...) No responsibility can be deduced on the part of the voter towards a specific member of Parliament during the exercise of the mandate, a group of deputies or Parliament as a whole, based on the constitutionally enshrined principle of a free mandate. The referendum on the dissolution of the National Assembly, the outcome of which is binding on the National Assembly, leads to the termination of parliamentary seats, and its purpose is to hold members of parliament and the Parliament itself accountable to the electorate. The referendum would, in fact, mean a dismissal of parliament by voters. The referendum on the dissolution of the National Assembly also contains the risk of becoming a sanction for parliamentary approval of such proposals in parliament which themselves cannot be the subject of a referendum.<sup>23</sup> Although new Constitution of Hungary (2011) states in „Closing and miscellaneous provisions“ that „the decisions of the Constitutional Court taken prior to the entry into force of the Fundamental Law are repealed“, it also contains art. 8 (3, f). according to which no national referendum may be held on the dissolution of the National Assembly. Therefore, the legal situation in Hungary remains the same even after adopting new constitution.

There are also two decisions of the Constitutional Court of Lithuania in relation to the possibility of dismissing an individual member of Parliament by popular vote. The court declared in 1993 that *“the essence of an unrestricted mandate of a Seimas<sup>24</sup> member lies in the freedom of a representative of the nation to implement the rights and duties vested in him without restricting his freedom by any mandates of the voters, political requirements of parties and organisations that nominated them, and without recognising the right to recall a Seimas member”*.<sup>25</sup> The court followed this opinion in 2003: *„A pre-term recall of a member of the Seimas would constitute one of the elements of an imperative mandate. The Constitution prohibits an imperative mandate. Democratic states do not recognise the imperative mandate of a Parliament member; thus, the possibility of a pre-term recall of a Parliament member from his office does not exist, either.”*<sup>26</sup>

<sup>23</sup> Decision of the Constitutional Court of Hungary no. 2/1993 on representation as the primary form of the exercise of sovereignty, 22 January 1993. Available at <http://public.mkab.hu/dev/dontesek.nsf/0/75E5E98AB4A78405C1257ADA0052B3B9?OpenDocument>. [cit. 15. 04. 2021]

<sup>24</sup> Unicameral Parliament of Lithuania.

<sup>25</sup> Decision of the Constitutional Court of the Republic of Lithuania of 26 November 1993. Available at <https://www.lrkt.lt/en/court-acts/search/170/ta945/summary>. [cit. 15. 04. 2021]

<sup>26</sup> Decision of the Constitutional Court of the Republic of Lithuania of 30 May 2003, No. 21/2003. Available at <https://www.lrkt.lt/en/court-acts/search/170/ta1244/content>. [cit. 15. 04. 2021]



## 2.2. Shortening the parliamentary term by referendum in Latvia

The Constitution of the Republic of Latvia is the oldest Eastern or Central European constitution still in force and the sixth oldest still-functioning republican basic law in the world, having been adopted by the Constitutional Assembly of Latvia on 15 February 1922.<sup>27</sup> Later, its actual application was prevented by the activities of external forces from 1940 to 1990. On 4 May 1990, the Supreme Soviet of the Latvian Soviet Socialist Republic restored de facto the existence of the Republic of Latvia, and on 6 July 1993, the Constitution entered into force in full scope.<sup>28</sup> Although it is not expressis verbis stated in the constitution, Latvia is a parliamentary republic.<sup>29</sup> There were several tools that allowed to take a specific decision directly by the people already in the original version of the Constitution.<sup>30</sup>

In the modern era, the Latvian people have been given the opportunity to initiate a vote on the dismissal of the parliament in 2009 after an explicit constitutional amendment. However, this amendment was preceded by the process connected with art. 48 and a special power of the President. A. Kārklīņa states that in the end of 2007, close to the Houses of Parliament a peaceful gathering took place, in which a large section of the public expressed its disappointment with the parliamentary and government work and requested the President to dissolve the Parliament. The President at that time considered that it would not be the best option and the proposal for the dissolution did not follow. Public discontent with the parliamentary work continued in 2008, when this discontent materialised into an initiative delivered to the Parliament, requesting a constitutional amendment

<sup>27</sup> JARINOVSKA, K.: Popular Initiatives as Means of Altering the Core of the Republic of Latvia. In: *Juridica International*, no. 20, 2013, p. 152.

<sup>28</sup> LAZDIŅŠ, J.: Continuity of the Judicial Power in the Republic of Latvia. Preconditions and Necessity. In: *Juridiskā zinātne / Law*, no. 9, 2016, pp. 70–71.

<sup>29</sup> BADOVSKIS, M. a kol. Public Law. In: KERIKMĀE, T., JOAMETS, K., PLEPS, J., RODIŅA, A., BERKMANAS, T., GRUODYTE, E. (eds.). *The Law of the Baltic States*. Cham: Springer International Publishing AG, 2017, p. 192.

<sup>30</sup> Art. 78 of the constitution stated: „Not less than one tenth of the voters have the right to submit to the President a fully developed draft amendment to the Constitution or a draft law, which the President submits to the parliament. If the parliament does not accept it without amendments in terms of content, then it shall be submitted to a referendum.“ Another instrument of direct democracy was enshrined in art. 48. The President had the right to propose the dismissal of the parliament. If in such referendum more than half of the voters voted for its dismissal, then the parliament was considered to be dismissed. Failure to dismiss parliament constituted a dismissal of the President, with a new presidential election in parliament for the remaining term of office of the dismissed president. Available at <https://likumi.lv/ta/id/57980-latvijas-republikas-satversme>. [cit. 15. 04. 2021].

on the basis of art. 78 of the Constitution. The draft constitutional amendment contained the possibility of initiating a vote on the dismissal of Parliament directly by the people. The submission of the draft was initiated and coordinated by the non-governmental organization – the Latvian Free Trade Union. After the rejection in Parliament, the draft was submitted to national referendum pursuant to art. 78 of the Constitution. The turnout in the referendum was insufficient and therefore, the draft was not adopted. The referendum was attended by 42% of voters, from which an overwhelming 96% of the voters had voted in favour of the amendment. Afterwards, then President Zatlers took into account that a significant portion of the society had expressed the wish that the people have the right to initiate the dissolution of the Parliament, and addressed the Parliament in this matter. President Zatlers stated that otherwise he would initiate the dissolution of the Parliament, in accordance with art. 48 of the Constitution. The Parliament complied and approved the necessary constitutional amendment in April 2009.<sup>31</sup>

The amended art. 14 of the Constitution grants to not less than one-tenth of electors the right to initiate a national referendum regarding recalling of the Parliament, which is the same quantity as in art. 78. If the majority of voters and at least 2/3 of the number of the voters who participated in the last elections of the Parliament vote, then the Parliament shall be deemed recalled.<sup>32</sup> The right to initiate a national referendum cannot be exercised momentarily, since art. 14 contains some sort of a stabilization or protection clauses. It is excluded one year after the convening of the Parliament and one year before the end of the term of his office, during the last six months of the term of office of the President, as well as earlier than six months after the previous recall referendum. It is worth noting that the original wording of art. 14 of the Constitution contained a ban on recall referendum towards individual members, which is a part of art. 14 even after the constitutional amendment. There was no *argumentum e contrario* in relation to the original wording (i.e. if there is only a prohibition on recall referendum of an individual member, then the recall of the Parliament as a whole is permissible) and an explicit constitutional amendment was necessary.

The stabilization or protection clauses in art. 14 of the Constitution attract attention due to absence of comparable clauses in art. 48. In other words, the head of state in Latvia can initiate vote on parliamentary dissolution even during the last six months of the term of his office, and similarly also immediately after the convening of the Parliament and in the last months of parliamentary term. There

<sup>31</sup> KĀRKLIŅA, A. Dissolution of parliament in Latvia: legal regulation and practice In: *Jurisprudence*. 2013, roč. 20, no. 3, p. 1223.

<sup>32</sup> Ratto Trabucco considers such threshold to be disproportionately high. See Ratto Trabucco, F. The Latvian direct democracy tools in a comparative European context. In: *Oñati Socio-Legal Series*, vol. 10, no. 4, 2020, p. 769.

is a notable case from Latvian constitutional history when the President actually used art. 48 in the last months of his term. On 28th May, 2011 president V. Zatlers issued the decree No. 2 “*On the proposal on dissolution of the parliament*”. On the grounds of this decree the Central Election Committee declared a referendum on dissolution of the Parliament which was held on 23 July, whereas President Zatlers’ term of office ended on 7 July 2011. Therefore, had the people in the referendum refused to dissolve the Parliament, there could be no removal of President according to art. 50 of the Constitution and the election of a new President for the remaining term. On 23 July 2011 the referendum took place in which the participation rate of electors was 44.73%, while 94.3% of all the votes were cast for dissolution of the Parliament. The referendum was valid because in this case, a particular quorum is not constitutionally prescribed.<sup>33</sup>

Since the constitutional amendment of art. 14 in 2009, there were three attempts to initiate a referendum on the dissolution of Parliament (May 2013, November 2015, November 2016). None of these attempts gained the number of supporters required by the Constitution.<sup>34</sup> Thus, the people of Latvia haven’t fully used this new direct democracy instrument so far.

### 2.3. Shortening the parliamentary term by referendum in Liechtenstein

The Principality of Liechtenstein is a constitutional monarchy in terms of the form of government, but its monarch has much wider powers than the heads of state in other European constitutional monarchies. Some authors categorize Liechtenstein as a semi-constitutional monarchy which is comparable to Jordan, Morocco and Thailand.<sup>35</sup>

Liechtenstein established a unicameral Parliament (Landtag) which can be recalled by citizen-initiated referendum on the basis of 1921 Constitution. Initially, the Constitution stated in art. 48 (3) that the referendum could be triggered in two ways: either at the initiative of 600 citizens eligible to vote or at the initiative of four municipalities. Amendment no. 55 of 1947 increased the required number of eligible citizens to 900,<sup>36</sup> and an increase to 1 500 eligible citizens occurred

<sup>33</sup> BALODIS, R., KĀRKLIŅA, A., DANOVSĶIS, E. The Development of Constitutional and Administrative Law in Latvia after the Restoration of Independence. In: *Juridiskā zinātne / Law*, no. 5, 2013, pp. 74–75.

<sup>34</sup> RATTO TRABUCCO, F. The Latvian direct democracy tools in a comparative European context. In: *Oñati Socio-Legal Series*, vol. 10, no. 4, 2020, p. 768.

<sup>35</sup> CORBETT, J., VEENENDAAL, W., UGYEL, L. Why monarchy persists in small states: the cases of Tonga, Bhutan and Liechtenstein. In: *Democratization*, 2017, vol. 24, no. 4, pp. 699–700.

<sup>36</sup> Available at <https://www.gesetze.li/chrono/1947055000>. [cit. 15. 04. 2021]

after the entry into force of amendment no. 27 in 1984.<sup>37</sup> The latter amendment must be seen not only in the context of the generally growing population of Liechtenstein, but also in view of the introduction of women's suffrage in national elections following the successful 1984 referendum which increased the number of eligible citizens.<sup>38</sup> Nowadays, 1,500 eligible citizens represent approximately 7.36 % of the total number of eligible citizens.<sup>39</sup>

In the parliamentary elections, Liechtenstein has enacted a system of proportional representation on the basis of art. 46 (1). Overall 25 members of parliament are elected in two constituencies, Oberland and Unterland. According to art. 47 (1) of the constitution, there is a four-year term of office. Act no. 50 of 1973 (Volksrechtgesetz) and its art. 86 in particular contains details on the exercise of the right enshrined in art. 48 (3) of the Constitution.<sup>40</sup> The right of recall can only be asserted against the Landtag as such, but not against the individual members. The act also contains a precise formulation of the question asked in the recall: *"Do you want to have the state parliament dissolved?"* If the absolute majority decides to dissolve the state Parliament, the government declares the Landtag to be dissolved and immediately orders new elections. Successful recall does not result in an election of new Parliament for the remainder of the previous parliamentary term, but for a new four-year term.<sup>41</sup> W. Marxer highlights that the possibility of citizen-initiated recall of Parliament was not put into practice so far.<sup>42</sup>

## 2.4. Interim conclusions

Based on a comparative analysis of the issue of shortening the parliamentary term in Europe, we can draw several general conclusions on this important constitutional issue.

First, there is no constitutional regulation or constitutional practice in relation to shortening the term of the national Parliament through a referendum in

<sup>37</sup> Available at <https://www.gesetze.li/chrono/1984027000>. [cit. 15. 04. 2021]

<sup>38</sup> The successful 1984 referendum on women's suffrage was preceded by three unsuccessful referendums in 1968, 1971 and 1973. The 1968 referendum was consultative. The 1971 referendum was decided by a margin of 81 votes, and two years later, by a margin of 451 votes. KOZBIAŁ, K., STANKOWSKI, W.: *Konstytucja Księstwa Liechtensteinu. Naród – państwo – polityka*. Kraków: Wydawnictwo Uniwersytetu Jagiellońskiego, 2009, p. 38.

<sup>39</sup> 20,384 eligible citizens were registered for the 2021 general election. Available at <https://www.landtagswahlen.li/resultat/12>. [cit. 15. 04. 2021]

<sup>40</sup> Available at <https://www.gesetze.li/chrono/1973050000>. [cit. 15. 04. 2021]

<sup>41</sup> BUSSJÄGER, P.: *Kommentar zur liechtensteinischen Verfassung*. Online-Kommentar, Benden: Liechtenstein-Institut (Hrsg.), 2016, part 57. Available at [https://verfassung.li/Art.\\_48](https://verfassung.li/Art._48). [cit. 15. 04. 2021]

<sup>42</sup> MARXER, W.: Direct Democracy in Liechtenstein. In: *International Conference Direct Democracy in Latin America 14–15 March 2007*, Buenos Aires, Argentina, p. 12.

the states that are part of Western Europe (in the sense of the former “Western bloc”), whose democratic traditions are generally longer and richer. There are no attempts to introduce citizen-initiated recall referendum in their constitutional development. Such instrument is established only in Liechtenstein. Without attempting to underestimate its importance, however, the fact is that Liechtenstein is a state whose size and population roughly corresponds to the size of one smaller town. Moreover, it is a monarchy, which is an exception in nowadays Europe, and it cannot be considered purely constitutional. For these reasons, Liechtenstein is destined to be a curiosity rather than a reference to the democratic world in the field of constitutionalism.

In some contrast to the above stand the states of Central and Eastern Europe, which were part of the Eastern bloc during the Cold War. Even here, it cannot be argued that shortening the parliamentary term by referendum is an accepted constitutional mechanism. The only state in this category whose constitution explicitly includes such an institute is Latvia. The context and reasons for the introduction of this mechanism into the Latvian Constitution (together with the fact that it has not been used yet) show that it was a momentary political coincidence rather than a real need, objectively raised by constitutional practice. There is also a notable example of Hungary, whose Constitutional Court dealt with the issue of shortening the parliamentary term by referendum with a very categorical rejection quite shortly after the advent of democracy after 1989. The new Constitution, which has since been adopted in Hungary, has upheld this decision by reflecting its main conclusion directly in its text. At the turn of the millennium, constitutional developments in Central and Eastern Europe prompted the Venice Commission to issue an opinion in which it stated that the shortening of the parliamentary term by referendum was alien to Western democracy and that, if it were to be permissible in a particular state, this mechanism needed to be explicitly enshrined in the Constitution.

The third interim conclusion is directed at the occurrence of such referendum not at the national level, but at the level of the member units of the federation.<sup>43</sup> Such a mechanism exists in some cantons of Switzerland and in some Länder of Germany, but these cantons and Länder represent only a minority of the federation units. In Switzerland, last successful referendum of this kind occurred in the mid-19th century. A number of cantons that initially introduced this mechanism have since abolished it.<sup>44</sup> It was used widely in the period of Weimar Germany,

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<sup>43</sup> For capacity reasons, we have not included the detailed research we have done in this area in this article, but we present at least the essential conclusions that emerged from it.

<sup>44</sup> For details, see WELP, Y.: Recall referendum around the world. Origins, institutional designs and current debates. In: MOREL, L., QVORTRUP, M. (eds). *The Routledge Handbook to referendums and direct democracy*. New York: Routledge, 2018, pp. 451–463; SERDÜLT, U. The

and among its initiators were quite frequently those political parties (fascists, communists) that tried to undermine the democratic parliamentary system.<sup>45</sup>

The most important general conclusion which can be drawn from the above is that a referendum on shortening the parliamentary term, whether at the national level or at the level of a member state of the federation, is something that is highly atypical in the European context. Those rare cases where it exists appear to be the exceptions that prove the rule, and at the same time two facts apply as well: 1. in terms of constitutional definition, this mechanism is always based on an explicit provision in the relevant constitutional text; 2. In terms of constitutional practice, this mechanism is practically unused.

On the basis of this analysis, it can be concluded that a referendum on early parliamentary elections is something alien in the European context. At best it can be considered an exception to a clear rule, at worst an exotic unworthy of an advanced democracy...

### 3. Referendum on early elections and the Constitution of Slovakia

A referendum on shortening the term of the Parliament in Slovakia first took place on 11 November 2000. Only 20.03% of eligible voters took part in the vote, therefore it was invalid. The constitutionality of such a referendum at that time could not have been assessed by the Constitutional Court, as the Constitution had not included this type of review yet. The President of the Republic, Rudolf Schuster, called this referendum, but his doubts led him to put pressure on the introduction of a preventive constitutional review of the subject of referendum. The Parliament answered this request of the President. The amendment to the Constitution, adopted in 2001 as Constitutional Act 90/2001 Coll., created a procedure enabling the Constitutional Court to examine the conformity of a referendum with the Constitution before it is called.<sup>46</sup>

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history of a dormant institution: Legal norms and the practice of recall in Switzerland. In: *Representation*, vol. 51, no. 2, 2015, pp. 65–121.

<sup>45</sup> For details, see GREENE, L. S. Direct Legislation in the German Länder, 1919-32. In: *The American Political Science Review*, vol. 27, no. 3, 1933, pp. 445–454; KOLB, E. *The Weimar Republic*. Second Edition. New York: Routledge, 2005, p. 120; FEUCHTWANGER, E. J. *From Weimar to Hitler: Germany, 1918-33*. New York: Palgrave Macmillan, 1993, p. 84.

<sup>46</sup> This mechanism is fixed by Art. 95 par. 2 and Art. 125b of the Constitution. Only the President can ask for this review before calling the referendum. The Constitutional Court shall decide within 60 days and if it declares the subject of referendum unconstitutional, the referendum cannot be called.

Slovakia experienced the second referendum on early elections on 3 April 2004. It is not without interest that although the preventive constitutional review of the subject of referendum was already available, the President Schuster not only did not use it, but called the referendum on the same day as the first round of the presidential election in which he ran for re-election. Even the concurrence with the presidential election did not help this referendum to become valid, as it was attended by 35.86% of eligible voters only. Leaving the Constitutional Court out of the whole process has meant that Slovakia still does not have a binding answer to the question of whether the referendum on shortening the parliamentary term is constitutional. The Constitution does not explicitly mention the possibility of holding a referendum on early elections, nor does it explicitly exclude.<sup>47</sup>

Therefore, in the second part of the paper, we will look for an answer to the fundamental question of whether or not the referendum on shortening the parliamentary term conforms to the Slovak Constitution. In the background of this Slovak constitutional problem, there is the European context, which, as follows from the first part of the paper, *a priori* does not favour the idea of shortening the parliamentary term by referendum. If it is tolerated, then only when such a mechanism is explicitly set in the constitutional text. In an effort to examine the conformity of the referendum on early elections with the Slovak Constitution, we will first look at the question of the purpose of early elections and government accountability (2.1), as well as the interpretation of the principle of people's sovereignty (2.2). We will also focus on the argument based on the right to access elected offices under the same conditions (2.3). Based on the analysis of these partial questions, we come to the conclusion that the referendum on early elections contradicts the Slovak Constitution.

### **3.1. The purpose of early elections and government accountability**

Every constitutional law mechanism has a reason for its existence and a goal for which it is to serve. It is no different with early elections. Both from the legal theory<sup>48</sup> and the valid wording of Art. 102 par. 1 letter e) of the Slovak Constitution,

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<sup>47</sup> The initiators of the referendum rely on Art. 93 par. 2 which admits a referendum on “*crucial issues of public interest*”. Article 93 par. 3 excludes explicitly from the referendum only the issues of “*fundamental rights, freedoms, taxes, duties or state budget*”. However, regarding Art. 95 par. 2 and Art. 125b, it is clear that the enumeration of the issues excluded from referendum is only demonstrative and the Constitutional Court can, by its interpretation, identify other issues that cannot be decided by referendum.

<sup>48</sup> See for example GOHIN, O. *Droit constitutionnel*. 2e édition. Paris: LexisNexis, 2013, p. 542 and following pages.

it follows that early elections are a tool for resolving a political crisis that escalates into a constitutional crisis. A typical example: in the middle of an election period, the governing coalition disintegrates, causing a vote of non-confidence against the government. Or, the coalition loses a majority and thus the ability to push its proposals through the Parliament. The government cannot really fulfil its functions or programme, at utmost it only makes ends meet. There are two possibilities: either to form a new coalition within the same Parliament by joining a part of the old one with a part of the opposition, or to hold early elections. The first option is practically unrealistic – it is hard to imagine that a coalition party would unite with the opposition and govern dispassionately for the rest of the term. In such a case, early elections are the most correct way out of a political and constitutional crisis in which there is no possibility to govern fluently. But such a crisis cannot be invoked in a situation when the government enjoys the confidence of the Parliament and also the formal numbers of MPs in the ranks of the coalition give a majority in the house.

In accordance with the logic of the parliamentary form of government, early elections are always a way out of objective need, but never a tool for revising the results of previous elections.<sup>49</sup> If there is no other option, they must be held, but ideally they should not be. In relation to this, there is the question of the political accountability of government parties to voters. A simplified view of governance in Slovakia fully corresponds to the European scheme of the parliamentary form of government: the people in the elections elect a Parliament where a majority is put together, which subsequently forms a government. The government presents its programme to the Parliament and, since it has a majority in it, it gains its confidence. The parliamentary term is four years, so the new government, logically, sets its programme to work on it for four years, and then presents its results to the voters. In the parliamentary elections, the voters make an account to the government: they will either let it in power or replace it. This is how it works in any parliamentary democracy.

A year or two after the election, more than one government finds itself in a situation where, if the elections were held at that moment, it would lose them badly, but in the regular elections at the end of the term, the government finally defends its position without any problem. It is also common that a government maintains the support it loses at the crucial moment at the end of the parliamentary term. The fate of the elections and government can sometimes be decided by external factors, the occurrence of which is uncontrollable i.e. accidental from the government's point of view (war, economic crisis or pandemic). Such

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<sup>49</sup> GIBA, M. Referendum o predčasných voľbách: niekoľko úvah. In: *The Milestones of Law in Central Europe 2008*. Bratislava: Právnická fakulta Univerzity Komenského, 2008, p. 574.



a coincidence can bring one politician to the pinnacle of power, and can “break the neck” to another one. One is lucky, another one unlucky, which he can perceive as an “injustice.” *C’est la vie* – not everything is predictable.

However, what can be predicted is the length of the election periods. This is the basic point for any government to know how to plan its programme and set the stages for its implementation. If the government itself does not spoil its position by losing the confidence of the Parliament or by breaking up the majority and provoking early elections, then it knows that it will present its results to the voters after four years. At the same time, the voters will be able to make the account most accurately. If the programme is planned for four years and the deduction is made after only two years, it is necessarily distorted. But beware, we are not saying that every government or every prime minister is to govern for four years, or that they have “a right to enjoy their posts uninterruptedly”. The government can and should be permanently “disrupted”, controlled and confronted in the performance of its duties, primarily by the Parliament to which it is accountable. Some activity from its own parliamentary majority can be rightly expected if the situation is serious, critical or unsustainable, and the government does not know or does not want to act. The President can also act by the force of his authority, and then there are other more or less effective forms of pressure that can be exerted on the government or its member and can result in his resignation.

However, the instruments of this pressure should not include a referendum on early elections. There is a reason that sometimes disappears in the debate, although it has a very important systemic aspect. The narrative of collecting signatures in a petition for a referendum on shortening the term of the Parliament in Slovakia in 2021 is more or less in the context that it is necessary to end the government of the current coalition as soon as possible. It is possible that the petition was also supported by many of those who voted for this coalition in the 2020 elections. If the voter gradually turns away from the one he has trusted in the election, it is his right, and in a democracy this is not an unusual phenomenon.

But, if the referendum on early elections is to be considered as a sanctioning tool against the current government, be careful not to overlook the forest for a tree. If we accept today that the referendum on early elections is in conformity with the Constitution of Slovakia, it will mean that it can be used at any time in the future. No future government can be sure that, while retaining a parliamentary majority, it will have four years to implement its programme. What will it lead to? As we have generally pointed out in the first part, it is highly probable that any government, with a pragmatic attitude, will behave as if it were in an election campaign from the very beginning and throughout the whole term. For a long

time now, the level of daily populism present in politics has been unbearable. At the same time, experience shows that this rate is rising in direct proportion to how the elections are approaching. What will then happen if the four-year term of the Slovak Parliament is abolished? That is to say, more precisely, when a four-year period becomes *de facto* only a subsidiary rule, which will only apply if a referendum does not decide on early elections?

### 3.2. How does the people's sovereignty work?

The principle of people's sovereignty in Slovakia follows from Art. 2 par. 1 of the Constitution: "*The state power comes from citizens who exercise it through their elected representatives or directly*". For supporters of the referendum on early elections, this is a major trump card: the people can also act directly, not only through the Parliament, the people are more than the Parliament, thus the people can also decide to end the term of the current Parliament and elect a new one. At first glance simple and tempting, in fact very complicated. The Constitution is not just one article without context. It is a system of values and principles expressed in one form or another in all its provisions. Each provision should be seen as one of the components of a complex system that can only work well as a whole. In other words, it is a systematic approach to the Constitution, which implies that all its provisions must be interpreted and applied in relation to each other as a whole, governed by certain common principles and based on certain values.<sup>50</sup>

Even the principle of people's sovereignty cannot be isolated from the rest of the Constitution, absolutized and perceived in such a way that the people can decide on anything at any time in a referendum. It is worth recalling that French constitutional theory and practice have long addressed a similar issue, i.e. whether the referendum is subject to constitutional constraints or whether it cannot be too "bound" by constitutional limits, as it is an exercise of people's sovereignty. Today, hardly anyone in France doubts that the first option applies. One of the most important French constitutionalists of the 20th century, Georges Vedel, aptly remarked that the sovereignty of the people "*cannot enjoy any supremacy over the Constitution*" and is "*only one norm of constitutional power among others.*"

<sup>51</sup> In other words, the inclusion of the people's sovereignty among the basic provisions of the Constitution "*expresses a principle which applies only within the framework determined by the other articles of the Constitution*"<sup>52</sup>. And third, "*sovereign power is not one that is not subject to any rules, but one that cannot*

<sup>50</sup> Compare CIBULKA, E. et al. *Štátoveda*. Bratislava: Wolters Kluwer, 2017, p. 124. See also decision of Slovak Constitutional Court PL. ÚS 12/01 of 7 December, 2007.

<sup>51</sup> VEDEL, G. Souveraineté et supraconstitutionnalité. In *Pouvoirs*, no. 67, 1993, pp. 79–97.

<sup>52</sup> CHANTEBOUT, B. *Droit constitutionnel*. 26e édition, Paris: Dalloz, 2009, p. 462.

*have the rules imposed upon it without its consent.”*<sup>53</sup> There is nothing shocking about these opinions – on the contrary, they are a manifestation of judiciousness and respect for the logic on which modern constitutions stand. The Slovak theory reasons in the same way: “*The referendum represents the exercise of the power of the sovereign, but at the same time the sovereign is limited by the Constitution which he has adopted (cf. the preamble to the Constitution). The exercise of the power of citizens in a referendum is thus not equivalent to the original constituent power, which is a priori unlimited.*”<sup>54</sup>

Article 93 par. 3 of the Constitution explicitly prohibits a referendum on certain matters.<sup>55</sup> Article 95 par. 2 and Art. 125b par. 1 also allow the Constitutional Court to check the compliance of the subject of referendum with the Constitution. With regard to the systematic interpretation of the Constitution, but especially to the wording of Art. 125b par. 1 *in fine*<sup>56</sup>, it should be emphasized that the conformity of the subject of referendum can be examined not only in relation to Art. 93 par. 3, but in relation to any provision of the Constitution or any provision of any constitutional act.

If we admitted that the people’s sovereignty in the referendum is superior to the rest of the Constitution, because it is the action of the sovereign himself, the Constitution would become useless: practically, everything could be decided in the referendum with the argument that the people are sovereign. Not only shortening the parliamentary term, but for example, also extending it. Why not? After all, if the people are so satisfied with their servants that they wish to keep the Parliament in this very composition, why not extend its term immediately? The term of office of the President of the Republic could also be terminated prematurely, on the basis of a referendum on the citizens’ initiative, where the participation of an absolute majority of eligible voters would be sufficient for validity. That is, by completely circumventing the mechanisms of popular voting on the recall of the President, with all the conditions and consequences that are imposed by Art. 106 of the Constitution<sup>57</sup>. The term of office of all judges of the Constitutional Court could also be shortened, arguing that the Parliament and

<sup>53</sup> RIALS, S.: Les incertitudes de la notion de Constitution sous la Ve République. In: *Revue du droit public et de la science politique en France et à l'étranger*, 1984, pp. 587–606.

<sup>54</sup> ĽALÍK, M., ĽALÍK, T. *Zákon o Ústavnom súde Slovenskej republiky. Komentár*. Bratislava: Wolters Kluwer, 2019, p. 340.

<sup>55</sup> „No issues of fundamental rights, freedoms, taxes, duties or state budget may be decided by referendum.“

<sup>56</sup> „The Constitutional Court shall decide on whether the subject of a referendum to be called upon a petition of citizens or a resolution of the National Council of the Slovak Republic according to Art. 95 par. 1 is in conformity with the Constitution or a constitutional act.“

<sup>57</sup> The Constitution of Slovakia, in its Art. 106, admits explicitly a popular vote on the recall of the President from his office. However, this “referendum” differs from the facultative referendum

the President should choose better ones. And if they do not, the question in the next referendum could be the abolition of the Constitutional Court. Absurd? Yes, but this is exactly what the absolutization of one constitutional principle – the people’s sovereignty – would lead to at the expense of the rest of the Constitution. And, on the top of that, it would be cynically claimed that it is “democratic”.

Article 2 par. 1 of the Constitution states that the people exercise their power either through their representatives or directly. It is an either-or situation. These are two factually equivalent but technically different ways of exercising power, each with its own rules. The paradox of the referendum on early elections is that it essentially mixes these two different ways of exercising power into one bizarre whole. This referendum does not take any specific substantive decision with long-term effect. Such would be, for example, a referendum on the questions: Do you want to leave the European Union? Are you in favor of a direct election of the head of state? Are you in favor of establishing a bicameral Parliament? Are you in favor of the Constitutional Court being able to assess the constitutionality of constitutional laws? One can think anything about these issues, but they make sense in that they have some real substantive content on which the citizens may have opposite opinions and the referendum reflects what the majority stands for. And these are all issues on which the state can function with the possibility of yes and the possibility of no, and it must be recognized that asking the citizens, as the source of power, to decide is legitimate and democratic.

However, the referendum on early elections does not resolve any substantial issue permanently. It does not introduce or repeal any rule, change any of the decisions of the current Parliament or prevent it from exercising all its powers until any early elections. It only depicts that instead of one group of representatives who makes decisions on behalf of the people, the people want another group of representatives to take them on their behalf. In any case, the people will not have a direct impact on the decisions made, they will only exchange representatives. An act of direct democracy calls for an act of representative democracy. It is being decided that people want to decide again in the election afterwards. Direct and representative democracy in one.

However, the essence of the referendum is that the people make a particular decision *instead* of their representatives. Either in a matter that is too serious to be decided “only” at the level of representatives (mandatory referendum – in the case of Slovakia, it is entering into a state union with another state), or in a matter that could be decided by the representatives, but in a specific situation and for some reason, the matter is submitted to the people directly in order to

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of Art. 93 as for its initiation, required majority and also its consequences that arise both in the event of the President’s recall and his non recall.

decide (optional referendum). As the theory states: “*A systematic interpretation of the constitution implies that citizens exercise legislative power through a referendum. By referendum, citizens are entitled to make decisions independently from public authorities.*”<sup>58</sup>

The referendum on early elections does not fit into these schemes. In its essence – even if it is not called that way – it is actually a recall of all deputies from office. A recall is, in general, a matter that is possible in a democracy. Although it is practiced against members of Parliament almost nowhere where there is a representative mandate. The removal of a representative is possible if the mandate is conceived as imperative – the representative does not represent all people but only his constituents (his constituency), whose orders he should follow and who can dismiss him if they are not satisfied with his work<sup>59</sup>. Such a thing was made possible (albeit rather only theoretically), for example, by the Constitution of the Czechoslovak Socialist Republic of 1960<sup>60</sup>. The referendum on early elections actually means a mass recall of all deputies, which is contrary to the representative mandate and the whole philosophy of our democracy.

In defense of this referendum in the daily *Postoj*, Tomáš Ľalík compared the relationship between voters and deputies to the relationship between a client and an attorney who represents him in a legal dispute. We agree that it would be absurd if the client could not revoke the mandate of his attorney and select another one, and it would be inconceivable to claim that the attorney has the right to represent the client throughout the whole court proceedings. That is all true. The problem is that the client’s relationship with the attorney, by its nature and functioning, is not similar to the relationship between the people and the deputies in a modern democracy at all. An attorney represents the individual interests of a particular client in a dispute, where on the other side, another individual stands with his lawyer, who, in turn, represents his interests. The same attorney could not represent both because he would be in a conflict of interest. However, it is not the role of a member of Parliament to represent the interests of one citizen against the interests of another. He represents the whole people whose welfare is to be sought as best as he can. The people are made up of all citizens, specific individuals of flesh and bone. But constitutionally, the people are one abstract entity that cannot be met, talked to or touched. The people express themselves either in elections, when they elect their representatives to serve them best as they know for a certain known and limited time

<sup>58</sup> ĽALÍK, M., ĽALÍK, T. *Zákon o Ústavnom súde Slovenskej republiky. Komentár*. Bratislava: Wolters Kluwer, 2019, p. 340.

<sup>59</sup> See also DOMIN, M. *Volebné právo a volebné systémy*. Bratislava: Wolters Kluwer, 2017, pp. 17–18.

<sup>60</sup> See also OROSZ, L. et al. *Volebné právo*. Košice: Právnická fakulta UPJŠ, 2015, pp. 191–195.

or in a referendum when they decide about a particular matter instead of their representatives.

The most important argument for which we consider the referendum on early elections to be unconstitutional is that this referendum devalues the importance of active suffrage, i.e. the right to vote. The rights through which the sovereignty of the people is realized. Every voter, part of the abstract sovereign people, has his own electoral vote, an imaginary “piece” of power to decide what the assembly will look like. However, the power to decide on elections lies not only in the possibility of determining the composition of the assembly, but also in the possibility of doing so with effect for a certain period of time. The weight of the decision is not the same when it is made for four years and when it is made for a year. Alternatively, when it is not known how long it would be valid, because early elections can be called by referendum at any moment. If the voters during the election do not know how long their decision will be valid they may lose interest in the election over time. There can be no doubt that an act that potentially happens at any moment is less significant than an act that only happens once every four to five years.

Jan Filip has previously formulated the opinion that a citizen is not a holder of a subjective right to the length of the parliamentary term set by the Constitution.<sup>61</sup> This opinion was adopted by a chamber of the Slovak Constitutional Court<sup>62</sup> in a slightly different context. The argument as such can be accepted – after all, it is only confirmed by the very existence of a parliamentary dissolution mechanism. However, it is still possible to ask whether the absence of a subjective right of a citizen for a specified length of the parliamentary term *ipso facto* means that its shortening cannot, in certain cases, unacceptably interfere with the citizens’ active right to vote. Those arguments concerning the devaluation of that fundamental right are serious. It would be difficult to defend the argument that a decision taken for four years and a decision taken for one year have the same weight. The matter must be seen systematically and active right to vote must be also seen in conjunction with the basic provisions of the Constitution, in particular the principle of democracy and the sovereignty of people. It is through active suffrage that these principles are implemented and, so to speak, “come to life”.

Accepting the referendum on early elections as a part of the rules of the game would arise permanent uncertainty to the election process and reduce their real significance in the long term perspective. It would devalue representative democracy without, at least, replacing it with a direct one – as has already been

<sup>61</sup> FILIP, J. Zkrácení volebního období. In *Parlamentní zpravodaj*, 1997–1998, no. 12, pp. 132–134.

<sup>62</sup> Decision of the Constitutional Court II. ÚS 153/2013 of 28 February 2013.

said, no substantive decision is taken in the early elections referendum, it is just a decision to re-elect the representatives.

### **3.3. The right to access the elected office under the same conditions?**

The former President of the Constitutional Court of the Czechoslovak Federal Republic Ernest Valko and Katarína Babiaková in 2004 rejected the referendum on early elections as unconstitutional. Their main argument, in short, was that a representative has the right to exercise his term of office for the same length as representatives in other, unabridged terms. The basis for this argument was the wording of Art. 30 par. 4 of the Constitution, according to which the citizens have access to elected and other public offices under the same conditions. According to the authors, it was possible to shorten the election period either only for reasons explicitly regulated by the Constitution (dissolution by the President) or by the Parliament itself, if it decides on early elections.<sup>63</sup>

At the first glance, the argument about the right to access the elected office under the same conditions is being offered. It cannot be overlooked that in today's world there is a strong tendency to seek everything through the courts. This increasingly powerful judicialization, which permeates all spheres of life, in which suing for public office is no longer unusual, naturally brings a stream of thought which tends to view the exercise of a public office more through the prism of the fundamental right of its holder than as a service for the society. Nevertheless, in view of the current reality, it is to be acknowledged that the debate can also be moved to the position of protection of the “fundamental right to access the elected office under the same conditions”. Such an optic is possible today and it is conceivable that it can be adopted by the courts to some extent.

In reality, however, the question is not whether the person holding the public office has the right to exercise the rights associated with it while the function lasts – there is no reason to doubt the positive answer to this question. The question is, whether the public function is associated with the “fundamental right” to exercise it in the full length of the term of office envisaged by the Constitution. There are a large number of public functions. Their nature, content and importance for a democratic rule of law vary. In our opinion, it is not possible to “sew” one flat rule for such a varied scale. Even if we accept that for some public officials a very narrow interpretation of the possibilities of their early dismissal could be considered, the problem in the position of a representative may be that

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<sup>63</sup> VALKO, E., BABIAKOVÁ, K. Fenomén predčasných parlamentných volieb a referendum. In: *Justičná revue*, 2004, vol. 56, no. 3, pp. 291–298.



no professional or personal requirements are prescribed for this position, only an inclusion on the list of candidates of a political party and then only the confidence measured by the number of votes in the election – nothing more.

If the right of citizens to access elected and other public offices under the same conditions also implies the right of a representative to a full (non-shortened) term of office within the meaning of the article by E. Valko and K. Babiaková, it could not be an absolute right. The fact is that early parliamentary elections are generally a natural (and necessary) part of the system of parliamentary form of government, the one where the government depends on the confidence of the Parliament. The Slovak Constitution explicitly regulates four cases in which the President may dissolve the Parliament and one case where he even must do so [Art. 102 par. 1 letter e)]. The result is always the termination of the mandate of all representatives and early elections. Every elected representative must therefore be aware that, regardless of his will and behavior, the constitutionally presumed circumstances may arise which will lead to early elections.

It is worth recalling that even the Constitutional Court of the Czech Republic, in the famous *Melčák* case of 2009, did not issue its decision on the violation of the representative's right to perform the function in the full length. The Constitutional Act and with it also the early elections were repealed on the grounds that the Constitution of the Czech Republic did not recognize the shortening of the term of office of the Chamber of Deputies by a constitutional act. At the same time, it is clear from the Court's opinion that the early termination of the term of office is not a problem itself – it just must take place in a way that respects the constitutionally established material and procedural conditions. According to the Court, this is a matter of “*protection of the legitimate confidence of citizens in the law and of the right to vote freely, i.e. – inter alia, the right to vote with the knowledge of conditions in which the democratic public authorities are elected, including the knowledge of their term of office*”. It is this argument, although from the neighbours, that fundamentally calls into question not only the shortening of the election period by a constitutional act, on which the Slovak Parliament would voluntarily pass, but also the shortening of the election period by referendum. Unless we accept that the right of citizens to vote with knowledge of all conditions and the protection of their confidence in the law can be “erased” by referendum...

## 4. Conclusion

While formulating conclusions which specific provisions of the Slovak Constitution are contradicted by the referendum on early elections, it is necessary to



highlight the most important arguments formulated by the Constitutional Court in relation to the referendum over the decades. Although it has not had the opportunity to comment on the merits of this particular issue, and neither did it *obiter dictum*, it has been dealing with the referendum repeatedly and extensively.<sup>64</sup> We recall the essential conclusion formulated in 2014, according to which “*Art. 93 par. 3 of the Constitution precludes referendums with such issues, the success of which would violate the concept of fundamental rights and freedoms, in the form of lowering their standard resulting from international law as well as from the national legal system, to the extent threatening the rule of law. (...) When lowering the standard of a certain fundamental right or freedom through a referendum, the Constitutional Court is required to be vigilant due to the already stated potential danger of violating the essence and purpose of the fundamental right or freedom, in relation to all its addressees or in relation to a group of addressees defined generically. In such cases, it would be the duty of the Constitutional Court to provide consistent protection of fundamental rights and freedoms, also in terms of the constitutional principles that shape their quality.*”<sup>65</sup> For the exposed at the end of part 2.2 of this article, we state that the referendum on early elections fulfils the signs of lowering the standard of active suffrage (Article 30 para. 1, first sentence of the Constitution) in a way, that corresponds exactly to the way the Court excluded in 2014.

The referendum on early elections significantly contradicts the Constitution of Slovakia. It contradicts, in the first place, the principle of a democratic state and the principle of the rule of law, which is enshrined in Art. 1 par. 1. Secondly, it contradicts Art. 2 par. 1, according to which state power belongs to the citizens and they exercise it in one of the two available options, but not both at the same time. It also contradicts the first sentence of Article 30, par. 1, according to which “*citizens have the right to participate in the administration of public affairs directly or through the free choice of their representatives*”, in conjunction with Art. 1 par. 1 and Art. 2 par. 1. That right, if it is to have real substance and weight, must include not only the possibility for a citizen to cast a vote in an election, but also the possibility of doing so with the effect for a certain period of time. In conjunction with Article 73, par. 1, this period is four years for the Slovak Parliament. As such, a referendum would lower the existing standard of the right to vote, thus it is also contrary to Art. 93, par. 3. Last but not least, it is also contrary to Art. 73, par. 2, because such a referendum is incompatible with the concept of a representative mandate. Finally, it contradicts the overall philosophy of the Slovak Constitution

<sup>64</sup> For a more detailed overview of the most relevant case law of the Constitutional Court on referendum, see for example GIBA, M. et al. *Ústavné právo*. Bratislava: Wolters Kluwer, 2019, pp. 207–226.

<sup>65</sup> Decision of the Constitutional Court PL. ÚS 24/2014 of 28 October 2014.

and Western-type democracy, as follows from the analysis of member states of the Council of Europe. The referendum on early parliamentary elections is contrary to the Slovak Constitution and is therefore inadmissible.

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# **In Supporting Role Cast: The EU Charter of Fundamental Rights.**

## **Reflection of the EU Charter in the Adjudication of Slovak Constitutional Court\***

**Kamil Baraník\*\* Ondrej Hamulák\*\*\***

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**Summary:** The article deals with the Slovak Constitutional Court's approach to the EU Charter of Fundamental Rights as a potential source of constitutional review. It analyses selected SCC decisions in order to evaluate and generalise the SCC attitude. The main focus is on defining the constitutional status of the EU Charter within the Slovak constitutional order. The up-to-date practice of the Constitutional Court is associated with an inevitable confusion when formally the Charter belongs among the sources of constitutional review, but by applying the doctrine of self-restriction, the SCC uses it only in a subsidiary way or in the form of a soft interpretation instrument to support its reasoning.

**Keywords:** Slovak Constitutional Court, EU Charter, application, case-law, supporting role.

## **1. Introduction**

On December 1, 2009, the Treaty of Lisbon formally elevated the Charter of Fundamental Rights of the European Union (hereafter EU Charter or simply Charter) to the “level” of the foundational treaties, i.e., to primary EU law. This Charter's re-qualification enhanced its prominence within the Slovak legal system.<sup>1</sup> Suddenly, the Charter become constitutionally relevant. As a formal

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<sup>1</sup> Before the Treaty of Lisbon became effective, the SCC's search engine ([www.concourt.sk](http://www.concourt.sk)) shows only one case in which the Charter's provisions were invoked. It was an individual constitutional

part of EU law, the Charter has acquired the status of applicable law in national practice and thus also in the practice of Slovak courts. The Charter, as a catalogue of human rights, logically knocks on the gates of the constitutional tribunals. Recently, the EU Charter has been increasingly applied as a direct and indirect instrument of constitutional review in the several Member States<sup>2</sup> including countries from Central Europe.<sup>3</sup> We aim to look at this issue from the perspective of Slovak practice and to reveal the general trends in the approach of the Slovak Constitutional Court (hereafter SCC) to the EU Charter as a binding source of law. The subsequent pages turn to the still-evolving legal position of the EU Charter within the Slovak constitutional system.

So far, the SCC has dealt with the Charter in two types of proceedings. First, after the PL. ÚS 3/09 reasoning, according to which EU primary law is understood as the source of constitutional review in Slovak constitutional practice and with the Charter's promotion to the realm of primary EU law in the Treaty of Lisbon, it became unsurprisingly pertinent in the constitutional review proceedings (article 125 para 1 of Slovak Constitution). Second, the individual applicants started to raise the rights emanating from the Charter, like from any other human rights treaty, in the constitutional complaint proceedings (article 127 of Slovak Constitution). Accordingly, this paper is divided into two subchapters discussing the significant case law concerning the EU Charter.

## 2. Charter within the judicial (constitutional) review procedure

The SCC has dealt with eighteen instances in which the applicants invoked the Charter's provisions when initiating the judicial review proceedings. The further explanations will only focus on those cases in which the SCC added something

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complaint I. ÚS 351/08, decided on October 10, 2008. The Senate dismissed the complaint on national procedural grounds.

<sup>2</sup> See recently published reports in BOBEK, M., ADAMS-PRASSL, J. (eds.) *The EU Charter of Fundamental Rights in the Member States*, Oxford: Hart Publishing, 2020. For

<sup>3</sup> See e. g. HAMULÁK, O., SÚLYOK, M., KISS, L. N. Measuring the 'EU'clidean Distance between EU Law and the Hungarian Constitutional Court – Focusing on the Position of the EU Charter of Fundamental Rights. *Czech Yearbook of Public and Private International Law*, 2019, vol. 2019, no. 1, pp. 130-150; KUSTRA-ROGATKA, A., HAMULÁK, O. Keeping the Safe Distance – Chapters from Randomized (Non) Application of the EU Charter of Fundamental Rights before Polish Constitutional Tribunal. *Baltic Journal of European Studies*, 2019, vol. 9, no. 4, pp. 72–107; or HAMULÁK, O. Penetration of the Charter of Fundamental Rights of the European Union into the Constitutional Order of the Czech Republic – Basic Scenarios. *European Studies - The Review of European law, Economics and Politics*, 2020, vol. 7, pp. 108–124.

new to the applicability or substance of the Charter. In PL. ÚS 3/09, the SCC distinguished between all subjects that could initiate the judicial review proceedings and the general courts that should follow the Simmenthal doctrine<sup>4</sup>. Therefore, the analysed SCC's adjudication starts with the actors other than general courts and concludes with the situation concerning the general courts.

## 2.1. The submissions from actors other than general courts

The first case in which the SCC invoked the Charter was the decision **PL. ÚS 105/2011**. The claimant, the General Prosecutor<sup>5</sup> ("GP"), challenged several statutory provisions requiring online publication of certain prosecutors' decisions and the public disclosures dealing with the selection procedure for the prosecutors. The GP based his claim on several constitutional provisions, international treaties, Articles 7 and 8 of the Charter. The GP defended the Charter's applicability on the ground of Directive 95/46/EC of the European Parliament and the Council on the protection of individuals concerning the processing of personal data and on the free movement of such data. However, the GP did not explain why precisely the Charter was applicable in this case.<sup>6</sup> The SCC avoided its first opportunity to deal with the Charter's applicability under Article 51 (1). It did not consider this provision at all. The SCC assessed the substantive content of the Charter's provisions only in connection to other human rights international treaties dealing with similar issues. It claimed that the same human rights content was arising from the Charter and other international covenants.<sup>7</sup> The SCC denoted this connection as a "presumption of the sameness" of such provisions. This construction, without appropriate justification, was an immensely imprecise generalisation that could not boost the Charter's legal relevance.

The SCC hit the first milestone in Charter's applicability in **PL. ÚS 10/2014**. The case initiated a group of MPs that challenged several provisions of the Act on Electronic Communications, the Code of Criminal Procedure, and the Act on the Police Forces. These provisions had introduced the obligation of providers to store traffic data, location data and data of communicating parties. The MPs questioned these provisions for their alleged incompatibility with the Constitution,

<sup>4</sup> Simmenthal, 106/77, EU:C:1978:49.

<sup>5</sup> The SCC procedurally combined this case with another, very similar subject-matter claim initiated by the President of the Republic (PL. ÚS 108/2011).

<sup>6</sup> Some commentators claimed that the relationship between the challenged national provisions and EU law was more than contentious (MAZÁK, J., JÁNOŠÍKOVÁ, M. Prienik Charty základných práv Európskej únie do vnútroštátneho práva na príklade Slovenskej republiky. In: *Acta Universitatis Carolinae – Iuridica*, 2016, 2, pp. 14).

<sup>7</sup> MAZÁK, J., JÁNOŠÍKOVÁ, M. a kol. *Charta základných práv Európskej únie v konaniach pred orgánmi súdnej ochrany v Slovenskej republike*. UPJŠ: Košice, 2016, pp. 161.

the ECHR, and the Charter. In the decision, finally, the SCC discussed the Charter's applicability based on its Article 51 (1). In the preliminary proceedings, the SCC recognised that the national legislation implemented EU law legislation, i.e., the Data Retention Directive<sup>8</sup>. The SCC discussed the scope of application of EU law quoting the CJ EU's case law while distinguishing three situations in which the Member States act within the scope of EU law. First, when the Member States implement Union law<sup>9</sup>; second, when the Member States' conduct falls under an exception to the application of Union rules permitted by Union law itself (a so-called "ERT exception"<sup>10</sup>); third, when Member States' conduct generally falls within the scope of EU law<sup>11</sup> and a specific link<sup>12</sup> to a substantive EU law rule exists.<sup>13</sup> The SCC declared that the case at hand fitted squarely within the first-mentioned category. Even though the CJ EU's decision in the meantime annulled the disputed Data Retention Directive<sup>14</sup>, the SCC continued with its judicial review because the challenged provisions allegedly represented a derogation from the E-Privacy Directive<sup>15</sup>. Therefore, the SCC acknowledged the Charter's applicability in its proceedings<sup>16</sup> based on its Articles 7, 8 and 52 (1). It further explained that "*Although the Charter was not adopted as an international treaty, with the entry into force of the Lisbon Treaty, the Charter became a legally binding part of primary EU law with the same legal force as the Treaties, on which the Union is founded (Article 6 (1) of the Treaty on European Union, as amended by the Treaty of Lisbon). The position of the treaties on which the Union*

<sup>8</sup> Directive 2006/24/EC of the European Parliament and of the Council of 15 March 2006 on the retention of data generated or processed in connection with the provision of publicly available electronic communications services or of public communications networks and amending Directive 2002/58/EC.

<sup>9</sup> *Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft*, 5/88, EU:C:1989:321.

<sup>10</sup> *ERT v DEP*, C-260/89, EU:C:1991:254.

<sup>11</sup> *Daniele Annibaldi v Sindaco del Comune di Guidonia and Presidente Regione Lazio*, C-309/96, EU:C:1997:631

<sup>12</sup> *Karner*, C-71/02, EU:C:2004:181; *Åklagaren v Hans Åkerberg Fransson*, C-617/10, EU:C:2013:280.

<sup>13</sup> See further HAMULÁK, O., MAZÁK J. The Charter of Fundamental Rights of the European Union vis-à-vis the Member States - Scope of its Application in the View of the CJEU. *Czech Yearbook of Public & Private International Law*, 2017, vol. 8, pp. 161–172.

<sup>14</sup> Judgement of 8. April 2014, *Digital Rights Ireland and Seitlinger and Others*, Joined Cases C-293/12 and C-594/12, EU:C:2014:238. For review see: LYNSKEY, O. The Data Retention Directive is incompatible with the rights to privacy and data protection and is invalid in its entirety: Digital Rights Ireland. *Common Market Law Review*, 2014, vol. 51, no. 6, pp. 1789–1811.

<sup>15</sup> Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications).

<sup>16</sup> The claimants requested the SCC to submit a reference for a preliminary ruling to the CJ EU. The SCC did not accept such demand.



is founded (the Treaty on European Union and the Treaty on the Functioning of the European Union) in the legal order of the Slovak Republic is regulated by Art. 1 par. 2 of the Constitution and Art. 7 par. 5 of the Constitution.” In these lines, the SCC justified the legal status of the Charter according to its previous case law. The SCC qualified the Charter as an international treaty, like all other foundational EU treaties (i.e., the primary EU law), even though the National Council had never ratified the Charter as an international treaty. The Charter had gained its EU law prominence via the ratification of the Treaty of Lisbon. The SCC updated its “national ratification” rationale from PL. ÚS 3/09, so it could also apply to the Charter. This justification connected the constitutional Article 1 (2) and its *pacta sunt servanda* principle with the precedence of international human rights treaties over laws enshrined in Article 7 (5). This methodological amalgam enabled to get the Charter “on board” with other EU foundational treaties. The SCC asserted that the Charter was officially a separate reference criterion usable in the judicial review proceedings. Thus, since this decision, the compatibility of national legislation could be reviewed against the Charter.<sup>17</sup> Despite its prior insistence to review the challenged legislation against the Charter, ultimately, the SCC declared the review of the Charter’s compatibility unnecessary. The SCC justified its additional unwillingness based on another part of PL. ÚS 3/09 rationale. Under this “self-restricted approach” (also recalled as “doctrine of utility”<sup>18</sup>), the SCC starts its judicial review with the Constitution (coupled with other international covenants) and only if it finds the legislation constitutionally compatible it proceeds to the question of EU law compatibility. Since the SCC found the challenged provisions incompatible with the Constitution and the ECHR, it did not proceed to the Charter.<sup>19</sup> Some commentators correctly pointed out that such an approach could compromise the effectiveness of EU law.<sup>20</sup> In the Melloni decision,<sup>21</sup> the CJ EU declared that Article 53 of the Charter does not create a “general authorisation to a Member State to apply the standard of protection of fundamental rights guaranteed by its constitution when

<sup>17</sup> MAZÁK, J., JÁNOŠÍKOVÁ, M. Prienik Charty základných práv Európskej únie do vnútroštátneho práva na príklade Slovenskej republiky. In: *Acta Universitatis Carolinae – Iuridica*, 2016, 2, pp. 11.

<sup>18</sup> See BLISA, A., MOLEK, P., ŠIPULOVÁ, K. Czech Republic and Slovakia: Another International Human Rights Treaty? In BOBEK, M., ADAMS-PRASSL, J. (eds.) *The EU Charter of Fundamental Rights in the Member States*. Oxford: Hart Publishing, 2020, p. 151.

<sup>19</sup> MAZÁK, J. JÁNOŠÍKOVÁ, M. Charta základných práv EÚ v konaní o súlade právnych predpisov: Zatiaľ rutina namiesto doktríny. In *Právny obzor*, 2015, 98, issue 6, pp. 592.

<sup>20</sup> Ibidem. 598.

<sup>21</sup> Judgement of 26 February 2013, *Stefano Melloni v Ministerio Fiscal*, C-399/11, EU:C:2013:107. See comments In SARMIENTO, D. Who's afraid of the Charter? The Court of Justice, national courts and the new framework of fundamental rights protection in Europe. *Common Market Law Review*, 2013, vol. 50, no. 5, pp. 1267–1304.



*that standard is higher than that deriving from the Charter and, where necessary, to give it priority over the application of provisions of EU law.*<sup>22</sup> Such interpretation would subject EU law to conditions intended to avoid an interpretation that restricts or adversely affects fundamental rights recognised by its constitution. Therefore, the national constitutional measures cannot undermine the effect of EU Law. Nevertheless, *“where an EU legal act calls for national implementing measures, national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the court, and the primacy, unity and effectiveness of EU law are not thereby compromised”*.<sup>23</sup> Therefore, the SCC should not prioritise the constitutional compatibility of challenged legislative provisions. It is possible to imagine a scenario in which the SCC would declare the national legislation unconstitutional. However, these unconstitutional national provisions would also be correctly implementing EU law. Under the CJEU’s Melloni doctrine, the national constitutional interpretation could not undermine EU law’s primacy, unity, and effectiveness. Thus, when EU law is relevant, the SCC should start its judicial review of challenged legislation with the EU law question. Waiting for the judicial review in a constitutionally “self-restricted approach” could effectively result in outcomes incompatible with the EU law.

In **PL. ÚS 2/2016**, the GP and the Ombudsman challenged several provisions of the Voting Act as they allegedly restricted the right to vote of prisoners sentenced for committing serious crimes and the right to vote to all legally incapacitated persons regardless of the severity of their incapacitation. The applicants disputed these restrictions in the nationwide elections because of their asserted incompatibility with the Constitution, the ECHR, other international covenants, and Article 39 (1) (2) of the Charter.<sup>24</sup> The claimants struggled to explain the Charter’s applicability. They invoked its relevance in connection to the European Parliament elections. They also raised the PL. ÚS 10/2014 rationale qualifying the Charter as an international treaty according to Article 7 (5) with precedence over laws. In the decision, the SCC briefly discussed the Charter’s importance, even mentioning its Article 51 (1) but not elaborating on the issue further. The SCC reiterated another general statement from PL. ÚS 10/2014 to demonstrate the relevance of the Charter in this proceeding (*“the Member States shall take all measures, whether general or particular, to ensure fulfilment of the obligations arising out of the Treaties or resulting from the acts of the institutions*

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<sup>22</sup> Ibidem, para 56.

<sup>23</sup> Ibidem, para 60.

<sup>24</sup> For more details see LALÍK, T., BARANÍK, K., DRUGDA, Š. Slovakia: The State of Liberal Democracy. In: *2017 Global Review of Constitutional Law*. Boston: Clough Center for the Study of Constitutional Democracy, 2018, pp. 252.

of the Union”). The SCC also mentioned the CJ EU’s case-law that linked the Charter’s applicability under Article 51 (1) with the elections to the European Parliament (*Thierry Delvigne v. Commune de Lesparre Médoc a Préfet de la Gironde*, C-650/13, EU:C:2015:648). In the substantive part of the decision, the SCC did not follow the PL. ÚS 3/09’s “self-restricted approach”. Instead, it treated the Charter as any other duly ratified international treaty. Thereby the SCC fused human rights protection on national, international and EU law levels. Its human rights analysis started with the Constitution and then considered the ECHR and other relevant international covenants. At the last spot, it mentioned the compatibility of challenged legislation with the Charter. However, this time the SCC did not review these documents in an escalating sequence as in PL. ÚS 3/09. The substantive deliberations tied the constitutional, international and EU law human rights aspects. In this decision, the SCC focused on its previous case law and the ECtHR’s doctrines primarily. The SCC declared that the affected rights did not have an absolute meaning and, therefore, they were subject to the constitutional limitations and other restrictions stipulated in the Charter.<sup>25</sup> However, it did not clarify that if a national measure implementing EU law fails to respect the essence of a fundamental right emanating from the Charter, the CJ EU will set aside such measure.<sup>26</sup> Therefore, not the SCC’s proportionality analysis, but the rules distilled from the CJ EU’s case law ultimately decide if a specific measure stands or fails. The SCC’s formulation indicates that it saw itself capable of reviewing such limitations. Such a view, without appropriate clarification, was inadequate at best. Ultimately, the decision held that the pertinent statutory provisions breached the Constitution, ECHR, and the Charter’s Article 39 (2). The SCC announced the breach of the Charter’s right as a pure supplement to its reasoning. That suggests that the SCC started to consider the Charter as another international treaty subjected to national constitutional limitations.

In PL. ÚS 23/2019, the group of MPs requested a judicial review of several provisions of the Civil Procedural Code dealing with the proceedings on the return of a minor from abroad in matters of abduction or detention based on their alleged incompatibility with several provisions of the Constitution, the ECHR, various international covenants, EU regulation and the Charter. The applicants justified the Charter’s relevance via the applicability of the secondary EU legislation<sup>27</sup>. The SCC, invoking its ambiguous reasoning from PL. ÚS 8/2010,

<sup>25</sup> PL. ÚS 2/2016, para 74.

<sup>26</sup> LENAERTS, K. Limits on Limitations: The Essence of Fundamental Rights in the EU. *German Law Journal*, 2019, 20, pp. 779–782.

<sup>27</sup> Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000.

reminded that it did not possess the power to review the national legislation against the secondary EU law. Nevertheless, to secure a consistent interpretation of the contested national provision with the EU law, the SCC still recognised the Charter's relevance based on the indirect effect of EU law.<sup>28</sup> Second, it mentioned a potential “zone of convergence” that connected some provisions of the Hague Convention on the Civil Aspects of International Child Abduction and substantially equivalent parts of the pertinent EU regulation. Thus, the SCC first declared it did not have the power to review the national legislation against EU regulation and then it implied it could still somehow have it by linking the Charter's provisions and the EU secondary regulation with human rights protection emanating from international treaties. This “pall-mall” methodology mixed secondary EU law, the Charter, international law, and national law without distinguishing their respective applicability. Such a connection is confusing and may produce results incompatible with the CJ EU's caselaw or expectations stemming from international law. Despite all mentioned substantial connections, the SCC declared that it would not consider the EU law issue because it dismissed the case on national procedural matters. These shallow formulations in which the SCC frequently twisted the lines of its reasoning and dodged to develop any meaningful concept of the correlation between different human rights protection systems again did not do any good to strengthen the foreseeability of its further decision-making.

## **2.2. The submissions from general courts**

The PL. ÚS 3/09 “EU rationale” excluded the general courts from initiating the judicial review proceedings when the compatibility of national legislation with the EU law was at stake. The SCC instructed judges of all general courts to apply EU law directly or submit a reference for a preliminary ruling to the CJ EU. Therefore, the effective application of the Charter became an implicit duty of all Slovak judges.<sup>29</sup> The SCC, however, quickly abandoned its staunch commitment to the fundamental CJ EU's case law. In 2016, the SCC started to accept the judicial review challenges from the general courts based on the possible Charter's incompatibility of national legislation. So far, the SCC accepted the Charter's challenges only when coupled with the alleged constitutional incompatibility.

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<sup>28</sup> See also HAMULÁK, O., KERIKMÄE, T. Indirect Effect of EU Law under Constitutional Scrutiny – the Overview of Approach of Czech Constitutional Court. *International and Comparative Law Review*, 2016, Vol. 16, No. 1, pp. 69–82.

<sup>29</sup> See also MAŽÁK, J. JANOŠÍKOVÁ, M. Charta základných práv EÚ v konaní o súlade právnych predpisov: Zatiaľ rutina namiesto doktríny. *Právny obzor*, 2015, 98, issue 6, pp. 599.

In **PL. ÚS 8/2016**, for the first time, the SCC overruled its own “Simmental standard” from **PL. ÚS 3/09** when it accepted a preliminary question from the Supreme Court. In this decision, the SCC reviewed the compatibility of a provision of the Act on Asylum and a provision of the Act on Residence of Aliens that restricted legal aliens’ right to become acquainted with classified information vital to their adequate defence in the proceedings that revoked their application for permanent residence in the Slovak Republic. The Supreme Court challenged such statutory limitation on an alleged breach of the fundamental procedural rights arising from the Constitution, the ECHR, and Article 47 of the Charter. It invoked the Charter as another nationally approved international human rights treaty ratified under Article 7 (5). It followed the national judicial review procedure and submitted the case to the SCC. The Supreme Court’s petition represented another imperfect national fusion of EU law with an international human rights treaty. The SCC reviewed the Charter’s applicability under Article 51 (1). Following the **PL. ÚS 10/2014** rationale, the SCC invoked the “implementation of EU law” category. The SCC declared that since a common policy on asylum, including a Common European Asylum System, is a constituent part of the EU objective of establishing an area of freedom, security and justice (a harmonised field), the Charter applied. The substantive reasoning reiterated the **PL. ÚS 2/2016** rationale, in which it merged the content of constitutional, international and EU law human rights protection. It again suggested that it could review a proportional legislative limitation of human rights at stake.<sup>30</sup> Ultimately, the SCC struck down the contested legislation for its incompatibility with all objected documents.

In **PL. ÚS 17/2017** and **PL. ÚS 4/2019**, the Supreme Court invoked *inter alia* the Charter’s provisions (Articles 47, 49 (2), 51) to challenge the statute stipulating the essential preconditions for serving as a judge. The request emanated from the doubt whether a person convicted of committing an intentional criminal offence in another Member State could continue serving as a Slovak judge.<sup>31</sup> The petitioner did not even try to prove the EU law link to make the Charter relevant. Suppose there was a relevant EU law connection under **PL. ÚS 3/09**, the Supreme Court should have either directly applied EU law or referred a question to the CJ EU. Instead, it followed the national constitutional procedure, treated the Charter as another international treaty, and submitted the reference question for the constitutional review. The SCC did not even consider the EU law relevance and rejected the proposal on purely national procedural grounds.

<sup>30</sup> **PL. ÚS 8/2016**, para 102–103.

<sup>31</sup> MAZÁK, J., JANOŠÍKOVÁ, M. a kol. *Charta základných práv Európskej únie v konaniach pred orgánmi súdnej ochrany v Slovenskej republike*. UPJŠ: Košice 2016, pp. 127.

In **PL. ÚS 14/2017** and **PL. ÚS 13/2018**, the Supreme Court requested the review of several provisions of the Code of Criminal Procedure, and the Act on the Police Forces and its implementing regulation against *inter alia* the Charter's provisions arguing that the challenged provisions interfered with some of the central constitutional procedural guarantees (e.g., the right to a lawful judge, the independence of the judiciary). It seems that the Supreme Court supplemented its assertions with the Charter's provisions just to make its requests more sophisticated. However, again it did not justify the Charter's relevance with any meaningful explanation. The SCC did not mention the relevance of the Charter in its considerations and procedurally dismissed both petitions as unfounded.

In **PL. ÚS 19/2019**, which dealt with a nearly identical subject matter as the previous decisions, the SCC resurrected its now almost forgotten PL. ÚS 3/09 reasoning. It emphasised the central distinction between the two types of petitioners. In contrast to all other petitioners of judicial review, it reiterated that the general court should not be capable of initiating the judicial review proceedings before the SCC. This PL. ÚS 3/09 revival was purely hypothetical as this appeal to the Simmenthal doctrine did not cause the rejection of the petition. The SCC dismissed it on other solely national procedural grounds.

### **3. Charter within the constitutional (individual) complaint proceedings**

Another type of procedure before the SCC that has highlighted the importance of the Charter in legal practice has been the constitutional complaint proceedings. In this procedure, the SCC reviews the decisions of other state organs on the violations of fundamental rights. Therefore, its role is auxiliary. However, this power has been of immense importance as the SCC can interpret human rights' scope, altering their practical appeal in everyday usage. The Charter had become a relevant source of this type of proceedings immediately after it became legally binding.

The SCC deals with individual complaints in three-member Senates. So far, the SCC's Senates considered hundreds of individual complaints<sup>32</sup> in which the petitioners invoked the Charter's provisions. Ultimately, the SCC decided only about fifty of those cases on the merits. In none of the researched decisions, the

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<sup>32</sup> The search engine on the official SCC's website showed 945 decisions on 21 June 2021. Undoubtedly, this search engine cannot be considered infallible. Therefore, the overall number of the SCC's decisions in which the petitioners invoked the Charter is somewhat indicative.

petitioners did not plead the Charter as a sole source of their human rights. They have routinely invoked the Charter's provisions as a human rights' supplement, often without further justification of its applicability (e.g., IV. ÚS 117/2021). Similarly, the SCC also treated the Charter as a mere complement to other sources of fundamental rights (especially the Constitution and the ECHR).<sup>33</sup> The Senates' methodological approaches to the Charter's provisions have been far from coherent. The text discusses some of the most visible trends in recent decisions that the Senates decided on merits<sup>34</sup>.

In the first type of decision, the Senates reviewed the Charter's applicability in the light of EU law application (e.g., III. ÚS 139/2021). In other words, the Senates acknowledged the Charter's relevance when the EU law was applicable. In III. ÚS 106/2021, the Senate declared: "*Considering the Charter's provisions and the Explanations to the Charter, the application of the Charter, in this case, is justified. ... The Charter applies to the institutions and bodies of the Union. In the Member States, including the Slovak Republic, it is binding only if the state organs act within the scope of Union law. Since the Union's policy is to ensure a high level of consumer protection (Article 38 of the Charter), the Constitutional Court accepted the applicant's request to the extent it called for a violation of her fundamental rights guaranteed by the Charter.*"<sup>35</sup>

In III. ÚS 465/2020, the Senate also declared that Article 47 of the Charter was applicable because the EU law was relevant. Ultimately, the Senate declared the infringement of Article 47. It did not explain the motives, nor did it support its decision by any relevant CJ EU's case law. It presumably connected the declared infringement of the constitutional and the ECHR's procedural rights with the breach of a pertinent Charter's provision. Even though this first "general" approach to the Charter has not been ideal, it discussed its applicability and reviewed its substantive relevance in general courts' decisions.

In the second category of decision (e.g., I. ÚS 444/2020, III. ÚS 205/2020, IV. 380/2020, I. ÚS 381/2020), the SCC's Senates did not review the Charter's applicability at all. They considered the Charter in connection to other rights emanating from the Constitution or international treaties, mostly the ECHR.<sup>36</sup> However, such an approach of a human rights mixture could diminish the EU

<sup>33</sup> BLISA, A., MOLEK, P., ŠIPULOVÁ, K. Czech Republic and Slovakia: Another International Human Rights Treaty? In: BOBEK, M., ADAMS-PRASSL, J. *The EU Charter of Fundamental Rights in the Member States*. Bloomsbury Publishing, 2020, pp. 149.

<sup>34</sup> The decisions in which the Senate procedurally dismissed the case rarely discussed the Charter.

<sup>35</sup> III. ÚS 106/2021, para 13.

<sup>36</sup> The petitioners often claimed a breach of "the right to a public hearing within a reasonable time". In that regard, the SCC frequently connected Article 48 (2) of the Constitution, Article 38 (2) of the Charter of fundamental rights and freedoms, Article 6 (1) ECHR, and Article 47 of the Charter (see also II. ÚS 159/2021).

law effectiveness. It considers the Charter a mere supplement to constitutional human rights protection. Additionally, it does not discuss the specific nature of human rights protection arising from different sources of law.

Other approaches of the SCC's Senates did not mention the invoked Charter's provisions in their reasoning but somehow automatically declared their violation when they acknowledged infringement of disputed rights emanating from other human rights documents (e.g., III. 446/2020). Many times, the SCC's Senates considered the Charter's applicability as manifestly unfound without any explanations (I. ÚS 366/2020, I. ÚS 355/2020, I. ÚS 356/2020).

## 4. Conclusions

After reviewing the numerous SCC's decisions, it is now possible to conclude with some trends inferred from the Charter's application in the Slovak constitutional order. So far, the SCC has not adequately addressed the constitutional status of EU law. It has accepted the applicability of the primary EU law in its proceedings but excluded the same effect to the secondary EU law. This formal distinction stems principally from the textual imperfection of article 7 para 2 of the Slovak Constitution. This old-fashioned methodological approach prevented considering the Charter's relevance before it entered into force with the Treaty of Lisbon.<sup>37</sup> Since then, the Charter has become a part of primary EU law and officially legally binding. Even though the Slovak Republic never ratified the Charter, the SCC managed to update its hierarchical position and twisted the constitutional text to pronounce it a duly ratified international treaty under Article 7 para 5 of the Slovak Constitution. That was another "fantasy move" in the realm of textual interpretation, where anything is possible if the legal text somehow permits it. Therefore, mechanical jurisprudence has been enormously influential even at the apex of the Slovak legal order.

Since late 2009, when the Treaty of Lisbon became effective, the SCC started to consider the Charter a solid legal foundation for its proceedings. The SCC acknowledged its applicability in the judicial review proceedings and the individual constitutional complaint proceedings. Its approach to the Charter's application

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<sup>37</sup> The Slovak courts have been traditionally overfocused on the bipolar (formalistic) logic of binding and non-binding sources of law (See BOBEK, M., KÜHN, Z. *Europe Yet to Come: The Application of EU Law in Slovakia*. In LAZOVSKI, A. (ed.) *The Application of EU Law in the New Member States – Brave New World*. T.M.C. Asser Press and Cambridge University Press, 2009, pp. 357).



mirrors its attitude to EU law in general.<sup>38</sup> Some critical differences emanate mainly from the Charter's subject matter.

On its surface, the Charter seems like another international human rights treaty. However, it cannot be applied as freely. The CJEU has gradually developed its application rules. The supra-national instructions and not the national interpretation doctrines have been driving the Charter's application. Thus, the Member States must observe the inner logic of these rules and should not fabricate their national analogies. The SCC's decision-making seemed to understand it when it analysed Article 51 and the relevant CJEU's caselaw in several cases. However, in more recent cases, the SCC hardly recognised these requirements, and in some cases, it utterly disregarded them. There were also situations when the SCC linked the Charter's application to other international human rights documents simply because of the substantive similarities of respective provisions. Therefore, the SCC's coherence towards the Charter's applicability was shaky at best.

The SCC initially followed PL ÚS 3/09 rationale in the judicial review proceedings in connection to the Charter (PL ÚS 10/2014 and PL ÚS 2/2016). It ruled that the general courts should follow the Simmenthal doctrine and apply EU law directly. Since 2016, however, the SCC implicitly defied this rationale by accepting the petitions from the general courts. It seems that the distinction between the two categories of petitioners no longer stands. The SCC has placed the Charter within the same review "basket" like other international human rights treaties, especially the ECHR. When invoking the ECHR compatibility, the petitioners usually just add the Charter as another source of their human rights. The SCC, however, should always, immediately in the preliminary proceedings, consider the Charter's applicability.<sup>39</sup> Only the precise and predictable requirements could establish a coherent Charter's applicability doctrine within the Slovak legal order.

After the Charter's applicability is established, its EU law effect should trump any legislation within the national legal order. Therefore, when the Charter is applicable, the SCC should always consider it first or at least it should always contemplate its effects. Otherwise, the SCC could cause, even unintentionally, the breach of EU law. An obligation to constantly consider the Charter would also be beneficial for developing the SCC's attitude towards EU law. For a long time, the SCC has evaded its essential responsibility of clarifying the EU law constitutional status. Applying a "self-restricted approach" caused the EU law

<sup>38</sup> BLISA, A., MOLEK, P., ŠIPULOVÁ, K. Czech Republic and Slovakia: Another International Human Rights Treaty? In: BOBEK, M., ADAMS-PRASSL, J. *The EU Charter of Fundamental Rights in the Member States*. Bloomsbury Publishing, 2020, pp. 149.

<sup>39</sup> MAZÁK, J., JÁNOŠÍKOVÁ, M. a kol. *Charta základných práv Európskej únie v konaniach pred orgánmi súdnej ochrany v Slovenskej republike*. UPJŠ: Košice 2016, pp. 128–129.



question to be rarely critical in judicial review proceedings.<sup>40</sup> Since the SCC does not want to speak out on the EU issues, it significantly impoverished its inter-systemic constitutional doctrine.<sup>41</sup>

The SCC considers the Charter applicable also in the constitutional complaint proceedings. So far, that has been mainly a mere theoretical declaration without practical relevance. The attitudes of the SCC's Senates have been even more incomprehensible than in the judicial review proceedings. It seems that the Senates' inquiry into the Charter's applicability has been the most sophisticated methodology, at least in recent years.

Based on these thoughts, it is possible to declare that the Charter's application in Slovakia has been far from adequate. That does not mean that the other Member States have not struggled with the very same issue.<sup>42</sup> The SCC's attitude could be described as reluctant, trying to avoid the Charter's provisions effectively. The SCC acknowledged the Charter's importance, but so far only as an addendum in the judicial review proceedings and as if it was another international treaty in the individual complaint proceedings.

Slovakia has never been a shining example of a fully compatible EU law Member State. The potential conflict zones between the EU law and the Constitution have not been revealed, not because they have never existed but because the EU law has not yet permeated into the deep layers of the Slovak constitutional system. The Constitution does not refrain from such fusion. Nevertheless, it seems that the state organs responsible for the EU law application have been confused and could not imagine how such legal cohabitation would be possible. Thus, in Slovakia, the crystallisation of a coherent constitutional position of EU law, including the EU Charter, still looks like a long-distance project.

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<sup>40</sup> Likewise, almost 20 years ago, Procházka spoke about "a selective literalism" concerning the SCC's deferential attitude to exercise some of its competencies. (PROCHÁZKA, R. *Mission Accomplished. On founding Constitutional Adjudication in Central Europe*. CEU Press, 2002, pp. 249–253).

<sup>41</sup> Similarly BLISA, A., MOLEK, P., ŠIPULOVÁ, K. *Czech Republic and Slovakia: Another International Human Rights Treaty?* In: BOBEK, M., ADAMS-PRASSL, J. *The EU Charter of Fundamental Rights in the Member States*. Bloomsbury Publishing, 2020, pp. 151.

<sup>42</sup> Unfortunately, the CJ EU's caselaw has been far from crystal clear. See FONTANELLI, F. *The Implementation of European Union Law by Member States Under Article 51(1) of the Charter of Fundamental Rights*. *Columbia Journal of European Law*, 2014, 20, 2, pp. 194–247.

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# EU – Central Asia Partnership for Conducive Business Environment and Decent Work

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**Summary:** EU-Central Asia (CA) relations have developed significantly over recent years. Nowadays, both regions are going through a unique global hybrid crisis with major challenges for business and social environment. An international partnership under the follow up on fundamental principles and trends of a global development framework is of prime importance. The article aims to address some of the issues outlined in the Decent Work Agenda which is a core doctrine of the 2030 Agenda's concept and that are relevant to the CA countries. At first the article looks at a brief conceptual overview of the economic transformation of CA economies and role of sustainable business environment in achieving sustainable development goals. The authors discuss the promotion of EU values in employment relations and social dialogue in CA as a precondition for productive and decent employment. Finally, the article concludes that the theoretical approach to the EU support programmes and instruments followed by their practical implications should be multi-dimensional in nature and benefit from direct in-situ exposure. Furthermore, a comparative assessment approach by experts on benefits of the EU external programmes is badly needed for EU and CA.

**Keywords:** sustainable development, business environment, decent work, productive employment, EU, Central Asia

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## 1. Introduction

In the 21st century societies with different development levels, economic models and cultural identities are forced to closely interact. In the EU Member States, (EU MS) just as in any country in Central Asia, discussion is taking place on what will be the political as well as methodological response to the challenges in the EU external relations and EU policy related-concept towards countries in Central Asia while considering prevailing socio-economic trends? Central Asian's countries are evolving to play a key role as a bridge between the West and Asia. Central Asia's economic potential for sustainable socio-economic progress is substantial and based on its geographical location between Europe and Asia, abundant natural resources and educated young population. Likewise, global trade and land transport corridors, though CA to Europe, mainly China's Belt and Road Initiative (BRI) are becoming increasingly attractive in connecting Europe, Central Asia and Asian continent.

Central Asia economies are going through dynamic developments such as diversification of industrial structures and business, emerging of new entrepreneurial activities and creation of new jobs. These countries are subject to the the United Nations Special Programme for the Economies of Central Asia (SPECA), launched in 1998 and aimed at promoting international recommendation for capacity -building and integration of CA countries in the world economy. Furthermore, all SPECA countries have signed up to Agenda for Sustainable Development 2030 and joined to the worldwide efforts to achieve the Sustainable Development Goals (SDGs) by the year 2030.

A common objective of achieving political stability and economic sustainability through cooperation has made the EU and CA close partners. For the Central Asians relations with the EU are important from two perspectives: firstly, the diversification of diplomatic options being between big powers in Asia such as China and Russia and secondly, a strong engagement with the EU can help to CA countries to balance the regional equation, which is expressed at the Second Asian Consultative Summit<sup>1</sup> and at the 'Green Central Asia' Conference<sup>2</sup>.

The methodology of the EU support to CA represent different types. It includes regional programmes and financing instruments ensuring assistance and

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<sup>1</sup> *Central Asia leaders meet again in sign of increased regional cooperation*. [online] Eurocative. Available at: <<https://www.euractiv.com/section/central-asia/news/central-asia-leaders-meet-again-in-sign-of-increased-regional-cooperation>>

<sup>2</sup> The European External Action Service: *Vice-President Josep Borrell, Berlin, 28 January 2020*. [online] EEAS. Available at: <[https://eeas.europa.eu/headquarters/headquarters-homepage/73553/central-asia-speech-high-representativevice-president-josep-borrell-opening-'green-central\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/73553/central-asia-speech-high-representativevice-president-josep-borrell-opening-'green-central_en)>

partnership in transition to the market economy, sustainable economic and social development as well as the integration of CA countries in the world economy.

The other type of methodology embraces *multilateral and bilateral cooperation* between CA countries, the EU and its MS, the European Bank for Reconstruction and Development (EBRD), the European Investment Bank (EIB) and the European Investment Fund (EIF); mostly financial instruments in the forms of loans, equity and guarantees and are exploited in such sectors as financial and intermediated finance, corporate sectors, infrastructure as well as areas of strategic cooperation. The financial instruments provide risk finance to small and medium-sized enterprises (SMEs) and foster the implementation of EU policies, notably in the fields of entrepreneurship, technology, innovation and regional development.<sup>3</sup>

Nowadays, EU and Central Asia are in a new landscape and confronting a unique and multi-faceted crisis resulting from the Covid-19 global pandemic. The countries of the EU and Central Asia must respond to major challenges for business and social environment. In such unstable global settings is imperative for continuing international cooperation to follow on fundamentals of the 2030<sup>4</sup> as a global sustainable development framework. The existing global frameworks could facilitate identification of pathways to socially, economically and environmentally sustainable economies and societies.

Among other issues, building the sustained economic recovery and steady development in the EU and Central Asia refers to support of private sector and long-term productive employment creation; which, in turn, requires unprecedented efforts of political, economic and social cooperation among governments, business, and individuals.

The article looks at sustainable development trends, social and labour dimensions as preconditions for conducive business environment and productive employment in Central Asia.

## **2. Economic transformation and business diversification in Central Asia**

Countries of Central Asia embarked on rapid economic growth since the beginning of the century making the region one of the fastest growing in the world.

<sup>3</sup> The European Commission: EU Support to Investment, Competitiveness and Trade in Central Asia, 2018, CRIS number: ACA/2018/040-946. Financed under Development Cooperation Instrument. [online] EC. Available at: <[https://ec.europa.eu/international-partnerships/system/files/aap-financing-central-asia-annex1-c-2018-7651\\_en.pdf](https://ec.europa.eu/international-partnerships/system/files/aap-financing-central-asia-annex1-c-2018-7651_en.pdf)>

<sup>4</sup> UN: Transforming our World: the 2030 Agenda for Sustainable Development Sustainable, 2015. [online] UN. Available at: <<https://sdgs.un.org/goals>>

Growth has been driven mainly by exports of minerals and labour. The aggregate gross domestic product (GDP) of Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan grew at an average annual rate of 7% since 2000 and continued until the 2014.<sup>5</sup> This growth experienced by the region was mainly due to economic developments in CA countries producing and exporting oil and gas, such as Kazakhstan, Turkmenistan and to some extent Uzbekistan and benefitted from high revenues from export of these commodities. Location of CA economies between Europe and Asia and, their closeness to China, allowed Kazakhstan, Turkmenistan and Uzbekistan to benefit from rapidly growing demand for hydrocarbons and metals. The export revenues fuelled not only increasing investments in oil and gas sectors but also technical and social infrastructure and contributed to rising consumer spending and imports of consumer goods. Market reforms and positive changes in the business environment overall made CA attractive for international investors. Between 1997 and 2015, the net inflow of foreign direct investments (FDI) increased more than six-fold.<sup>6</sup> Labour productivity growth averaged almost 5% and poverty rates halved<sup>7</sup>. The growth in part could be explained by the effect of the “catch up” potential, supported by the theory of convergence and benefits of market reforms.

Another factor for economic growth in CA is remittances by migrant workers employed in Russia and Kazakhstan, that influenced passively the expansion of consumer demand and housing. Labour migrants generated remittance flows supportive to growth and raised living standards in Kyrgyzstan, Tajikistan and, to a lesser extent, Uzbekistan.<sup>8</sup> Additionally, a strong economic growth in the Russia stimulated boom in the economies through linkages in trade and investment flows, before geopolitical tensions and the sanctions imposed on Russia in 2014. Via geopolitical concessions to the CA economies Russia’s institutionalise of its status, as the main destination for labour migrants in the emergence of the Eurasian Economic Union, out of a variety of previous cooperation projects of the 1990-s and 2000-s.<sup>9</sup> Massive labour migration takes place within the post-Soviet space with Russia and Kazakhstan as in-migration countries increasingly hosting

<sup>5</sup> IMF: Regional Economic Outlook. Caucasus and Central Asia, April 2019, pp. 5-16. [online] IMF. Available at: < <https://www.imf.org/en/Publications/REO/MECA/Issues/2019/04/17/reo-menap-cca-0419>>

<sup>6</sup> World Bank: Central Asia: Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan, Uzbekistan, Regional Program, December 2017., 32p. [online] WB. Available at: <<http://pubdocs.worldbank.org/en/39690151235540551/120117-Central-Asia.pdf>>

<sup>7</sup> OECD: Enhancing Competitiveness in Central Asia, OECD, 2018. [online] OECD. Available at:< <https://www.oecd-ilibrary.org/docserver/9789264288133-en.pdf?expires=1623749905&id=id&accname=guest&checksum=CF053803F199B1292A78C46B1D9F9906>>

<sup>8</sup> ibid

<sup>9</sup> Eurasian Development Bank: Centre for Integration Studies, 2019, 132 p.

huge numbers of migrants from out-migration countries as Kyrgyzstan and Tajikistan – considered to be among the most remittance-dependent economies in the world.<sup>10</sup>

Russia has gradually lost its place as the main destination for Central Asian goods and commodities. The instabilities of the Russian economy affected negatively economies of the CA, resulted among other economic consequences, in reductions of remittance and FDI flows.<sup>11</sup> The weakening of the labour market in Russia promoted many migrant workers to return. A solution to this issue is improvements in the business climate favourable for micro and small companies in the out-migration countries that could help absorbing returning migrants.

The economic downturn followed large external shocks and oil price collapses in 2014-2016 was short-term due to the fast recovery of energy prices and introduced, for example in Kazakhstan, anti-crisis measures. Oil and gas exporting countries returned to steady GDP growth boosted by increase in energy prices, recovery of domestic demand and efforts to strengthen macroeconomic policy frameworks. However, the situation was different in other CA countries like, for example, Tajikistan; the country experienced decline in the key export commodities -aluminium and cotton coupled with the decline of remittances from Russia. As a result, employment growth was slow with limited job creation in the domestic formal sector.<sup>12</sup> Despite its economic downturn, Russia still has influence and continues taking initiatives to engage the region in a closer economic sphere, which integration with the Eurasian Union. In principle, this integration scheme could help developing the region's economic potential and promote its economic integration, but the benefits of integration with the Eurasian Union have so far remained limited. Furthermore, membership in Eurasian Union experience currently only Kazakhstan and Kyrgyzstan.

Economic stabilisation in the CA region began in 2017 demonstrating positive development trend. According to the EBRD experts, economic growth in the region accelerated slightly from 4.7 per cent in 2017 to 4.8 per cent in 2018 based on supportive external conditions, advancement in regional integration and moderated political uncertainty. The economic forecast predicted growth by 4.4 per cent in 2019, which reflects a need for further fiscal consolidation,

<sup>10</sup> Ibid

<sup>11</sup> World Bank: Central Asia: Kazakhstan, Kyrgyz Republic, Tajikistan, Turkmenistan, Uzbekistan, Regional Program. December 2017, 32p. [online] WB. Available at: < <http://pubdocs.worldbank.org/en/396901512355540551/120117-Central-Asia.pdf>>

<sup>12</sup> World Bank: Outlook. The Impact of China on Europe and Central Asia. Europe and Central Asia, Update April 2016. [online] WB. Available at: < <http://documents.worldbank.org/curated/en/136351467990956476/The-impact-of-China-on-Europe-and-Central-Asia>>



slower growth in the extractive sector and higher inflation limiting growth in real incomes and private consumption.<sup>13</sup> The forecast for 2020 and the following years is uncertain due to the economic crises that follows global pandemic situation in 2020. According to the international institutions, growth and living standards in CA countries rate remain low. In 2018 GDP in current international dollars in oil and gas-oriented countries was in Kazakhstan- 509,5\$, Uzbekistan-281,9\$, Turkmenistan- 112,9\$, at the same time this indicator in Tajikistan was 31,3 \$ and in Kyrgyzstan- 24,5\$ respectively. According to the World Bank, gross national income (GNI) per capita calculated in purchasing power parity, was the highest among CA countries in 2018 in Kazakhstan (24.450\$) and in Turkmenistan (18 490\$). In the other countries this indicator was much lower. In Uzbekistan – 8 810\$, in Tajikistan – 4 050\$ and the lowest indicator was in Kyrgyzstan-3 780\$. The World Bank ranks 190 countries in the world according to the GNI per capita. In 2018 Kazakhstan, according to this indicator, was on the 63 place, Turkmenistan – on the 76, but Uzbekistan, Tajikistan and Kyrgyzstan – on the 121, 154 and 156 places.<sup>14 15</sup> Various social and economic circumstances in CA countries lead to different strategies and governments' behaviour in creation of business environment development as a complex of policy, legal, institutional, and regulatory conditions that govern business activities.

The most advanced economy in the region is economy of Kazakhstan and deliberate efforts by the government to carry out structural reforms combined with pro-business policies, aggressive anti-corruption campaigns, and intentional economic diversification strategies, has helped the country in attracting FDI. Significant efforts have been made to build infrastructure, including digital infrastructure and to increase connectivity across the country. The reforms and innovation help to improve business climate and to rank Kazakhstan on the 28<sup>th</sup> place in the World Bank's 2019 *Ease of Doing Business* index, whereas Kyrgyzstan is only on the 70<sup>th</sup> position, a long way behind,<sup>16</sup> In view of international institutions, the Central Asian economies are still far from realising their full potential. They are advised to implement proactive strategies to develop sustainable business environment. Reforms remain limited in all CA

<sup>13</sup> European Bank for Reconstruction and Development: *Transition Report*, 2019, 66-70.

<sup>14</sup> World Bank: World Development Indicators database, 2019. [online] WB. Available at: <<https://blogs.worldbank.org/opendata/new-country-classifications-income-level-2019-2020>>

<sup>15</sup> IMF: Regional Economic Outlook. Caucasus and Central Asia, IMF, April 2019, pp. 5-16. [online] IMF. Available at: <<https://www.imf.org/en/Publications/REO/MECA/Issues/2019/04/17/reo-menap-cca-0419>>

<sup>16</sup> Doing business: Doing Business. Training for reform, 2019, p.5. [online] Doing business. Available at: <[https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report\\_web-version.pdf](https://www.doingbusiness.org/content/dam/doingBusiness/media/Annual-Reports/English/DB2019-report_web-version.pdf)>

countries<sup>17</sup>, in the financial sector, banking, insurance, and capital markets, which are critical areas for investment inflows. Reforms are still needed to improve infrastructure of roads, railways and urban transport. Better connectivity within Central Asia would allow the region to capture an important share of global trade. Major investments are being made to improve transit networks in CA. According to the Asian Development Bank, the countries of Central Asia will have to invest up to \$33 billion in infrastructure development by 2030<sup>18</sup>, which will have a strong impact on growth of domestic and international demands. The same opinion is shared by the EU experts. According to the European Commission assessment, the challenges to private sector development in the region remain manifold: (i) The region is land-locked and suffers from outdated transport, energy and utility infrastructure and low levels of economic integration; (ii) Natural resources are unevenly distributed across the countries. Economies are overly reliant on commodities and/or remittances; (iii) Many jobs are poorly paid, informal, and insecure. Youth unemployment needs to be addressed, especially in rural areas. Inequalities are high and many face risks of falling into poverty and exclusion; Human rights remain a matter of concern. (iv) The heritage of the state led model has not been fully abandoned. The importance of heavily subsidized State- Owned Enterprises (SOEs) distorts incentives and entails an uneven playing field, and it fuels the development of the informal economy.<sup>19</sup>

To foster a business environment conducive to economic growth, a comprehensive and long-term development initiatives are badly needed in CA. Concerns arise from the inefficiencies in the large share of in the SOEs and monopolisation of certain sectors by SOEs in the region. The structural reforms aimed at restructuring of SOEs enterprises, implementation of economic diversification programmes and to strengthen the non-oil and other primary commodity- oriented sectors in national economies are in focus of attention of national governments, which low implementation capacity, however, may hinder the acceleration of the reform process. Strengthening institutions and creating appropriate skills in public administration is essential and, in turn, could help to create stimulating environment for private business activities. Moreover, industrial modernization

<sup>17</sup> European Bank for Reconstruction and Development: *Transition Report*, 2019,66-70.

<sup>18</sup> Asian Development Bank: ADB President Confirms Support for Expanded Agenda of Central Asia Regional Economic Cooperation at 18th Ministerial Conference, 2019. [online] ADB. Available at: <<https://www.adb.org/adb-president-expanded-agenda-carec-18th-ministerial-conference>>

<sup>19</sup> The European Commission: *EU Support to Investment, Competitiveness and Trade in Central Asia, 2018, CRIS number: ACA/2018/040-946. Financed under Development Cooperation Instrument*. [online] EC. Available at: <[https://ec.europa.eu/international-partnerships/system/files/aap-financing-central-asia-annex1-c-2018-7651\\_en.pdf](https://ec.europa.eu/international-partnerships/system/files/aap-financing-central-asia-annex1-c-2018-7651_en.pdf)>

programmes launched in CA countries, infrastructure development and labour productivity could boost long-term potential if complimented by robust and competitive private sector, enhancing economic efficiency and promoting more inclusive growth. So far development of high value-added manufacturing has brought only limited results and the contribution of manufacturing to GDP has remained very low.<sup>20</sup>

The private sector and, MSMEs (Micro, Small and Medium Enterprises), benefited to some extent from a substantial growth during the past two decades. The private sector is a crucial factor positively influencing structural changes of national economies, their reliance on commodities and remittances; further development of private sector could in already medium-term boost productive employment and living standards. To enhance long-term sustainable development and competitiveness, all CA countries need to accelerate reforms of their national economic structures and to support SMEs, create jobs, and improve labour skills as jobs are mainly in low-productivity occupations. Moreover, lack of flexibility in labour market regulations, makes it difficult for companies to hire workers and relocated labour force according to the needs of economic sectors.

### **3. EU strategies for Central Asia: advancing Sustainable Development Goals**

The EU aims to help CA governments' policies to build competitive business environment and to strengthen and improve the context in which the private sector operates by implementing different types of support programmes and instruments. The main objectives of the support are to enhance competitiveness and business environment, services to SMEs and support new job creation. The European Commission estimation shows that Central Asia would need to create around one million new jobs per year for the next ten years to absorb the pressure of a young growing population and returning migrants. Most jobs remain in the public sector as a legacy of centralised planned economies.<sup>21</sup> Moreover, the promotion of private sector development and economic sustainable development

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<sup>20</sup> IMF: Regional Economic Outlook. Caucasus and Central Asia, IMF, April 2019, pp. 5-16. [online] IMF. Available at: < <https://www.imf.org/en/Publications/REO/MECA/Issues/2019/04/17/reo-menap-cca-0419>>

<sup>21</sup> The European Commission: EU Support to Investment, Competitiveness and Trade in Central Asia, 2018, CRIS number: ACA/2018/040-946. Financed under Development Cooperation Instrument. [online] EC. Available at: < [https://ec.europa.eu/international-partnerships/system/files/aap-financing-central-asia-annex1-c-2018-7651\\_en.pdf](https://ec.europa.eu/international-partnerships/system/files/aap-financing-central-asia-annex1-c-2018-7651_en.pdf)>

was highlighted as priorities for the Region by Central Asian Governments and the EU in the 15th EU-Central Asia Ministerial Meeting that was held on 7 July 2019 in Bishkek, Kyrgyzstan.<sup>22</sup>

Sustainable development has always been at the centre of EU policies; the founding treaties addressed economic, social and environmental dimensions. The EU widely supports international efforts to find a consensus in global partnership on the 2030 Agenda for Sustainable Development as a new global sustainable development framework and its 17 SDGs.<sup>23</sup>

The 2030 Agenda can catalyse a joined-up approach that combines the EU's external actions instruments and coherence across EU flagship initiatives, innovative and financing instruments.<sup>24</sup> The Commission is going to align its new 2021-2027 financial framework with the priorities of particularity, the SDG 8 “Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all”<sup>25 26</sup> and the target 8.3 “Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation, and encourage formalization and growth of micro, small- and medium-sized enterprises including through access to financial services”<sup>27</sup>, which calls for a reduction of informal employment with emphasis on encouraging the formalization of MSMEs. The EU has committed to assist partner countries in maintaining their economic development to achieve a number of essential targets (Box1).

<sup>22</sup> Central Asia leaders meet again in sign of increased regional cooperation. [online] Euroactive. Available at: < <https://www.euractiv.com/section/central-asia/news/central-asia-leaders-meet-again-in-sign-of-increased-regional-cooperation>>

<sup>23</sup> UN: *Transforming our World: the 2030 Agenda for Sustainable Development Sustainable*, 2015. [online] UN. Available at:< <https://sustainabledevelopment.un.org/?menu=1300>>

<sup>24</sup> The European Commission: Joint Communication to the European Parliament and the Council, the European Economic and Social Committee and the Committee of the Regions. Next steps for a sustainable European future European action for sustainability, 2016. [online] EC. Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2016%3A739%3AFIN>>

<sup>25</sup> UN: *Transforming our World: the 2030 Agenda for Sustainable Development Sustainable*, 2015. [online] UN. Available at: < <https://sustainabledevelopment.un.org/?menu=1300>>

<sup>26</sup> The European Commission: Reflection Paper. Towards a Sustainable Europe by 2030, 2019. [online] EC. Available at: <<https://ec.europa.eu/transparency/regdoc/rep/1/2019/EN/COM-2019-22-F1-EN-MAIN-PART-1.PDF>>

<sup>27</sup> Sustainable Development Solutions Network: Indicators and a Monitoring Frameworks. [online] UN Available at:< <https://indicators.report/targets/>>

### **Box 1 – Targets for Sustainable Development Goal: Decent Work and Economic Growth**

1. Sustain per capita economic growth in accordance with national circumstances.
2. Achieve higher levels of economic productivity through diversification, technological upgrades and innovation.
3. Promote development-oriented policies that support productive activities, decent job creation, entrepreneurship, creativity and innovation.
4. Progressively improve global resource efficiency in consumption and production and endeavour to decouple economic growth from environmental degradation.
5. Achieve full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and equal pay for work of equal value.
6. Substantially reduce the proportion of youth not in employment, education or training.
7. Take immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour.
8. Protect labour rights and promote safe and secure working environments for all workers.
9. Devise and implement policies to promote sustainable tourism that creates jobs and promotes local culture and products.
10. Strengthen the capacity of domestic financial institutions to encourage and expand access to banking, insurance and financial services for all;
11. Increase Aid for Trade support for developing countries, in particular the least developed countries, including through the Enhanced Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries.
12. Develop and operationalize a global strategy for youth employment and implement the Global Jobs Pact of the International Labour Organization.
13. The above targets have been later agreed in the following documents: A/RES/71/313 including refinements agreed by the Statistical Commission at its 49<sup>th</sup> session in March 2018 (E/CN.3/2018/2, Annex II) and at its 50<sup>th</sup> session in March 2019 (E/CN.3/2019/2, Annex II).

To support sustainable development in CA countries the EU among above mentioned targets and SDGs stressed the importance of the SDG 8 “Decent Work and Economic Growth”. This goal is a central doctrine in the 2030 Agenda and is essential for development of conducive business environment, inclusive and productive labour market in the CA countries. In this respect, the multidimensional and multi-country experience of the EU is recognized by the CA countries being of high value, which leads to the process of ‘Europeanisation’ in terms of EU values (i) domestic reforms, (ii) new momentum in regional cooperation,

(iii) international efforts to promote Euro-Asian connectivity.<sup>28</sup> The principles of applying EU standards, norms and regulations is very slow in Central Asia, as the region has not been subject to neighbourhood policies and accession procedures. However, the EU Parliament emphasised that partner countries must comply with inter-national standards of democracy, governance, rule of law and human rights.<sup>29</sup> Therefore, the perception of Central Asia requiring liberalisation without Europeanisation was already in the forefront of the EU's strategy of 2007. Still, in the last several years, the EU-CA partnership has produced somewhat mixed results and has been a disappointment in some cases. Structural policy weaknesses and different socio-economic realities in the CA countries notwithstanding, the major challenge to the successful implementation of the EU-CA approach comes from the Russian and Chinese external policies and is related to their geopolitical role in the shared neighbourhood with the European Union. Although the main objectives and priority areas of the 2007 EU Strategy for Central Asia remain pertinent until today, there are many opinions, including the European Parliament, stressing, that "the EU's strategic approach adopted to date to shaping relations with Central Asian countries has demonstrated only limited viability and success".<sup>30</sup> Furthermore, experts assumed that Central Asian countries have set up majority-owned state companies in the EU and overseas territories, such as Tajikistan's aluminium company in the British Virgin Islands.<sup>31</sup> In services – legal, financial, real estate, education, the EU plays a major role for Central Asia. Real Estate agents in the EU countries do a great deal of business with Central Asia elites wishing to invest, or launder, their capital in the West, which enable deep and growing interconnections between the EU and CA. In turn, they raise business opportunities and influence development of business environment. Nevertheless, a great deal of attention by the EU and international organisations experts has been devoted to corruption, capital out-flows and money laundering on a global scale.<sup>32</sup>

The above considerations explained the revision of the EU's Strategy for Central Asia in June 2019 based on harmonisation of the EU policy with the new challenges and opportunities in the Central Asian region. The new strategy

<sup>28</sup> The Council of the European Union: New Strategy on Central Asia. Council Conclusions, 2019. [online] EU. Available at: < <https://www.consilium.europa.eu/media/39778/st10221-en19.pdf>>

<sup>29</sup> European Parliament: Resolution of 13 April 2016 on implementation and review of the EU-CA Strategy (2015/2220(INI)).

<sup>30</sup> European Parliament: Resolution of 13 April 2016 on implementation and review of the EU-CA Strategy (2015/2220(INI)).

<sup>31</sup> CIS Arbitration Forum: *The enduring saga of Tajikistan's TALCO dispute*. [online] CIS. Available at: <<http://www.cisarbitration.com/2018/01/15/the-enduring-saga-of-tajikistans-talco-dispute>>

<sup>32</sup> European Bank for Reconstruction and Development: *Transition Report*, 2019, pp.66-70.

aims at promoting welfare prosperity, and regional cooperation in Central Asia. The Strategy underscores the role of economic development, the conclusion and implementation of Enhanced Partnership and Cooperation Agreements. These measures should increase trade and investment flows between the EU and Central Asian countries.<sup>33</sup> The new Strategy similarly stresses the importance of developing services further and of modernising infrastructures.<sup>34</sup>

Finally, in June 2019 after consultations with its Central Asian partners, the European Council adopted the new EU strategy for Central Asia “The EU and Central Asia: New Opportunities for a Stronger Partnership”. The new strategy is built on three priorities, such as partnering for resilience, partnering for prosperity, working better together. Additionally, the Strategy endorsed the extension the mandate of the European Investment Bank to Central Asia and the establishment of the Investment Facility for Central Asia (IFCA). The IFCA was created to blend investment loans from EIB and other European financial institutions in order to support projects in Central Asia. The core of the IFCA objective in providing EU’s funding is to support sustainable development, economic growth and poverty reduction in the region. One of the main prerequisites in this regard is the provision of access to economic opportunity through the creation of decent jobs.<sup>35</sup>

Closer regional cooperation should allow Central Asian states to further unlock their economic growth potential with the support of the EU. It is important to note that the EU is aiming to cooperate with the OECD and International Labour Organisation (ILO). ILO is a key international actor in relation to decent work and its promotion as set out by the Decent Work Agenda, which has four elements: employment, rights, social protection, social dialogue.<sup>36</sup>

The EU is going to use its partnership programmes to share experience in labour market institutionalisation, internationally recognised labour standards and to support a dedicated dialogue to promote sound business environments and advancing decent work for sustainable development.

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<sup>33</sup> Centre for European Policy Studies: *The New Strategy on Central Asia. Collateral Benefit? CEPS in Brief*”, 2019. [online] CEPS. Available at: < <https://www.ceps.eu/the-new-eu-strategy-on-central-asia/> >

<sup>34</sup> The Council of the European Union: *New Strategy on Central Asia. Council Conclusions*, 2019. [online] EU. Available at: < <https://www.consilium.europa.eu/media/39778/st10221-en19.pdf> >

<sup>35</sup> The European Commission: *The Investment Facility for Central Asia. 2017-2018. Operational Report*, 2019. [online] EC. Available at: < [https://ec.europa.eu/europeaid/sites/devco/files/ifca-aif-ifp-2017-18\\_en.pdf](https://ec.europa.eu/europeaid/sites/devco/files/ifca-aif-ifp-2017-18_en.pdf) >

<sup>36</sup> International Labour Organisation: *Decent work (Report of the Director General)*. Geneva, 1999. [online] ILO. Available at: < <https://www.ilo.org/public/english/standards/relm/ilc/ilc87/rep-i.htm> >

## 4. EU practises: what future for decent work in Central Asia

As discussed earlier, the growth in CA countries is mainly driven by industries in the natural resource sectors, which is not sufficient to stimulate productive employment and competitiveness of economies. Low wages and productivity coupled with youth unemployment is a remaining trend in the region. The governments' capacity to increase employment is limited due to a number of factors such as lack of developed public employment services, deficiency in educational institutions are not strong enough to meet demand on job training, re-training and life-long learning in large scales. The EU experience in education could be helpful in implementing new educational frameworks for training of young professional and students, for example, EU Project 3LoE "Three-level centres of professional excellence: Qualification, entrepreneurship and innovation in the Green Economy". The project aims at development and implementation of dual vocational training in education, training and higher education, with an intensive partnership between the places of learning (companies – education centres).<sup>37</sup>

The decent work promotion requires a multi-disciplinary, multi-dimensional approach that applies skills improvement and increase of employability on the supply side and job creation on the demand site in the given national context. A powerful tool for promoting decent work and correcting labour market imbalances is, according to the ILO, a social dialogue; it has a significant role in mitigating employment and social impact of economic difficulties and in promoting productive employment (Box2). Then again, social dialogue has been under strain in many parts of the CA region. To achieve effectiveness of social dialogue, collective bargaining and participation of workers as social partner have to be ensured through legitimate policy-making process to underline fundamental rights and principles that are applicable throughout the labour market. In this regard, international practices are of prime importance, especially those of the EU as a key partner and in the region.

<sup>37</sup> Pilot project selected for funding under ERASMUS+ Support for Policy Reform 2020 Call. [online] <<https://3-loe.eu/>>  
International Labour Organisation: C122 – Employment Policy Convention, 1964 (No.122). [online] ILO. Available at: <[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C122](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C122)>



**Box 2** –Social dialogue as a concept

Social dialogue is a comparatively new and not sufficiently developed world-wide concept. According to ILO: the field of social dialogue is relatively weak with respect to statistics and to statistical standards. Although one-third of ILO member states compile, disseminate or make use of some kind of statistics related to social dialogue, there remains significant conceptual and methodological variation. No international consensus has been achieved so far. In this regard there is a need to develop international statistical guidelines on social dialogue indicators to improve the capacity of national (statistical) authorities and the social partners to make better use of them.

As experts commonly agree- autonomous, independent and strong workers' and employers' organizations are critical for effective social dialogue. The quality of that dialogue is determined by the extent to which social partners are able to negotiate collective agreements that govern terms and conditions of employment and regulate labour relations. The emphasis of this particular inquiry is therefore on primary industrial relations indicators, that is, membership of organizations and the coverage of collective bargaining agreements. Social dialogue institutions can be bipartite, tripartite or "tripartite plus". Tripartism, an important mean of establishing social dialogue, refers to labour relations in which the State, employers and workers are autonomous yet interdependent partners with common interests. Bipartism is a process of determination of a network of rules and regulations concerning terms and conditions of employment, etc., through consultation, negotiation, bargaining or other consensual processes. When bipartite dialogue does not lead to dispute avoidance or settlement, tripartite interventions like conciliation/ mediation and arbitration/adjudication become necessary.

Social dialogue has similarities and differences in its development trends across countries and world regions. It also takes place at different levels and in different ways. The most significant achievements in this area are in the EU as Social dialogue has become an important element in the process of decision-making already in the middle of the 1980s and since then has been strengthened further in the 1990s, through, amendments at the Maastricht and Amsterdam Treaties.<sup>38,39,40</sup> Since then it became essential for EU authorities and for authorities in the Member States to consult with the social partners on legislation issues.

Most governments of CA countries with an exception of Turkmenistan are parties in the ILO Employment Policy Convention C122,<sup>41</sup> However, Turkmenistan is a member of the ILO, and ratified a number of conventions related to international labour standards. (ILO, no date). For the above reasons, employment

<sup>38</sup> Amsterdam Treaty. *Official Journal C 340*, 10 November 1997.

<sup>39</sup> Maastricht Treaty. *Official Journal C 191/1*, 29 February 1992.

<sup>40</sup> Lisbon Treaty. *Official Journal C 306 Volume 50*, 17 December 2007, Articles 137 EC (151 TFEU), 138 EC (153 TFEU).

<sup>41</sup>

promotion, decent work and labour rights are priorities for government and social partners in nowadays. Formalisation of informal employment has been targeted through measures to develop the business environment, promote entrepreneurship and provide vocational training.

The experience of the EU and its MS can contribute to the conceptual debate in CA related to employment policies. The administrative implementation of employment policies is a complex process and requires the active involvement of a number of government departments and agencies. It also requires ensuring a social dialog with the stakeholders, that is strongly recommended by the ILO. Currently, in the time of the economic crisis, the CA policy makers are confronted by conflicting social and economic goals, i.e., high levels of productivity and growth and maximization of social protection and inclusion.

The EU is represented by the numerous – and in some cases very different – systems of employment policies and social protection in the member states and the EU has no powers to harmonise these systems. Furthermore, The European Social Charter articulates a number of fundamental rights in such areas as collective bargaining, protection from unjustified dismissal, workplace health and safety.<sup>42</sup>

Since the Amsterdam Treaty has formalised employment policy of the EU, the EU has adopted employment policy guidelines. Their specification and implementation are left to the national level so that domestic situation can be taken into considerations. (Box 3).

In most of the EU economies, employment policies are based on a combination of elements from B and C models and the efficiency of these models, in terms of structural and long-term unemployment, is closely related to the implemented policies in the countries. Considering given above characteristics of labour markets, one can assume that in CA, for example, there are elements of (A) and (C) regimes with the following elements: low compensation rates, few formal demands on availability, limited employment protection, and passive labour market policies. Currently, in CA many of those excluded from the labour market are not reached by traditional active labour market programmes. Social protection is also critical for those outside of the formal labour market, like rural workers involved in agriculture. Rural workers face significant income insecurities related to limited access to decent employment.<sup>43</sup>

<sup>42</sup> European Social Charter 1961, 1996. [online] EU. Available at <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/163>

<sup>43</sup> UNDГ: *Issue-Based Coalition on Social Protection UNDГ and Central Asia, 2018*, p.29, [online] UNDГ. Available at: <https://www.social-protection.org/gimi/RessourcePDF.action?id=55259>

**Box 3. – Labour market models in the EU**

The labour market models and policies are different in the EU Member States, however, there are four fundamental models of labour market<sup>44 45</sup>, that could serve as examples for the CA countries.

1. The North-European model (A) – Denmark, the Netherlands, Sweden. These countries have generous unemployment benefits and disincentive effects are counterbalanced by strict rules governing availability for jobs, and low to medium employment protection.
2. The Anglo-Saxon and Eastern European model (B) – the UK and Ireland. Low unemployment benefits, and expenditures on active labour market policies, few demands for availability, and a low level of employment protection.
3. The Central-Western European model (C) – Austria, Belgium, Finland, and Germany. Labour market policies in these countries are predominantly passive and employment protection is at average European levels.
4. The South-European model (D) – France, Greece, Italy, Portugal, and Spain. In these countries, employment protection is high, unemployment compensation close to the European average, and labour market policies are passive.

The current economic difficulties in most CA countries highlighted an urgent need to develop new policy responses to help provide labour market development and alleviate economic hardship. However, a combination of the North-European and Anglo-Saxon models in the Central Asia could provide better results as more flexible labour markets would reduce the costs of companies adjusting to rapid changes of the highly integrated international economy and improve competitiveness of the economies in the region. At the same time, increased labour participation and higher income security contributes to higher levels of social inclusion.

A constructive social dialogue and decisive response from all social partners are required to provide synergies between social and economic development, effective employment model and policy. At the company-level, social dialogue was implemented in the EU by the adoption of the European Works Councils Directive.<sup>46</sup> It was a successful result of constructive negotiations on promoting

<sup>44</sup> Räisänen, H., Alatalo, J., Henriksen, K. K., Israelsson, T., Klinger, S. *Labour Market Reforms and Performance in Denmark, Germany, Sweden, and Finland*. Helsinki: Ministry of Employment and the Economy, 2012.

<sup>45</sup> Stacenko, S. *Employment Policies and Industrial Relations: Research Issues and Practical Applications*, pp. 63-79 in Muravska, T. and Prause, G. (eds.) *European Integration and Baltic Sea Region Studies: University- Business Partnership Trough Triple-Helix Approach*. Berlin: Berliner Wissenschafts-Verlag, 2012.

<sup>46</sup> The European Parliament and the Council: *Directive 2009/38/EC of the European Parliaments and the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees*. [online] EP and the Council. [online] Available at: <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32009L0038&from=IT>>

fairer economic development through collaborative efforts to increase productivity and enhance work conditions.

One can observe different situation in CA, where industrial relations and employment policies do not represent a significant role in social dialogue or in the collective bargaining. It could be explained by the following: the evolution of trade unions in CA is rooted in the transformation process from the socialist system to a market economy system and reflects responses to social and political changes their countries. Willingness and ability of social partners to be engaged in social dialogue in setting up a national employment policy depends to a large extent on history and institutional traditions in the country.

## **5. Conclusions**

The study displays the importance of international partnership and stresses that that EU relations with CA countries offer substantial economic and political benefits to both sides. Central Asia's economic potential and geographical location between Europe and Asia, global trade and land transport corridors, are becoming increasingly attractive in connecting Europe and Central Asia. A common objective of achieving economic sustainability and a higher level of welfare through cooperation has made the EU and CA close partners.

The research results show that the partnership of EU and its Member States with CA countries is mainly based on implementation of regional programmes, multilateral and bilateral cooperation and implementation of financing instruments, thus ensuring assistance in transition to the market economy, sustainable economic and social development and supporting integration of CA countries in the world economy.

However, current socio-economic global patterns clearly complicate the overall implementation of partnership programmes. The dramatic current economic situation requires fulfilling a dual task: to maintain the long-term goals of the partnership and to respond to economic and social challenges.

In this respect, the study suggests continuing implementation of EU cooperation programmes in CA. However, it is important keep the framework of the SDGs, which fundamental principles could serve as a roadmap for the reform process.

It is essential to hold on the trend of liberalising of commodity-based economies and to foster a business environment conducive to economic growth. Reforms are recommended in restructuring of SOEs enterprises, implementation of economic diversification programmes and strengthening of the non-oil and other primary commodity- oriented sectors in national economies. Furthermore, improvements in infrastructure of roads, railways and urban transport provide better

connectivity within Central Asia and allow the region to integrate closer in the world economy and, consequently, to capture an important share of global trade.

The assessment of the current development trends in CA indicates that advanced structural reforms must be included in the agenda for modernization of public infrastructure networks, establishment of SMEs and encouragement of entrepreneurship. More specifically, creation of productive employment, improvement of labour skills as jobs that are mainly in low-productivity occupations are badly needed in CA.

This contribution advocates that the EU labour standards could serve as an example of decent work fundamental principles. Subsequently, institutions of CA countries, responsible for entrepreneurship, labour, employment and decent work issues can consider democratic values of the EU, assess the EU experience in employment policy models and applicability of EU practices for national economics in CA. It is important to stress, that the concept of social dialogue promoted by the ILO, is widely and efficiently used by the EU and could be a tool for stakeholders and social partners in CA countries in their cooperative efforts to create a stimulating business environment.

It is concluded that the EU is an encouraging partner to all countries in the CA region. However, the EU support requires some conditionality and the need for an increase of economic efficiency and productive employability in the region as a precondition for development of conducive business environment.

It was found that the new landscape, which faces multi-faceted challenges of a unique global hybrid crisis, some of which can put some of the achievements of European and Central Asia cooperation at risk, or influence effectiveness of the EU support for CA. With no clear end to the current economic situation in Central Asia, there is more need than ever for strategic partnerships and discussions between all partners.

Finally, a comparative assessment approach by experts on benefits of the EU external programmes is badly needed for EU and CA productive relations. Moreover, EU support programmes and instruments followed by their practical implications should be multi-dimensional in nature and benefit from direct in-situ exposure.

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# Pandemic Lessons for Democracies: High Time to Provide Journalism as Essential Service with a Financial Lifeline

Denis Dyomkin\*

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**Summary:** The COVID-19 crisis has revealed a steady demand for professional journalism as an essential public service. However, the disfunction of the conventional advertising-supported business model has affected an overwhelming proportion of the industry workforce. This article contributes to the discussion on thinkable solutions. It argues that the pandemic has created further empirical evidence to support Habermasian ideas of providing a lifeline for the quality press as a vital contributor to the public sphere, a pillar of good governance in Western democracies. Amid the global challenge posed by the emergency, professional news organizations have proven their essentiality as providers of reliable information vital to tackle healthcare system and policymaking tasks. However, the legacy media are progressively less able to perform their social functions, losing the competition for revenue to the Big Tech. Therefore, liberal democracies should fund independent journalism to ensure the latter remains strong in the post-coronavirus world, holding the political systems accountable. The paper concludes that the pandemic has fostered an environment conducive to translating the feasible policy options into concrete political steps, regulation and lawmaking.

**Keywords:** journalism, media, essential services, public good, disinformation, COVID-19 pandemic, Habermas, democracy

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# 1. Introduction

The novel coronavirus has caught humankind by surprise as an emergency of biblical proportions. Faced with an unprecedented threat to human existence in peacetime, governments worldwide have not scanted monetary incentives to support the economy and urgent monetary policy and regulatory measures. Instead, political leaders have introduced urgent policies and have taken advantage of *carte blanche* to restrict certain rights and freedoms, such as freedom of movement under quarantine, giving rise to suspicions about rolling back democratic norms.<sup>1</sup> Diamond asserts that the financial support of Western democracies to independent media is crucial for refuting “both the pandemic and the tendency of rulers to use the pandemic to aggrandize their power and eclipse civil liberties.”<sup>2</sup> An extreme ambiguity on whether effective coronavirus treatment can be found has become fertile soil for sowing plot theories and falsehoods and fuelling public anxiety. Not only did it exacerbate existing bitter societal divisions such as racism and xenophobia, eroding security and confidence in democratic institutions, but it also aggravated risks to public health.<sup>3</sup> Meanwhile, the fluid situation has shown great social interest in reliable information. The booming demand is being served both by the old news outlets as well as the media startups recruiting both AI and human brains for fact-checking in Europe and the rest of the world.

Indeed, the novel coronavirus crisis has produced the most persuasive to date empirical evidence supporting Habermasian ideas of taxpayers’ subsidies for the quality press, highlighting the vitality of the professional mass media ecosystem. Still, the press has been increasingly less able to perform its social functions, losing ad dollar competition to digital platforms. In turn, the latter have mutated into regulators of access to information, affecting public opinion and voter behaviour. In the post-coronavirus world, Western democracies should ensure the functioning of the independent media. The pandemic created abundant evidence for overdue political and regulatory changes to provide an economic for the fourth estate to protect the health of democracy.

<sup>1</sup> U.S. Helsinki Commission (2020). *Chairman Hastings Denounces Unchecked Power Granted to Hungary’s Prime Minister Orban*. [online] CSCE. Available at: <<https://www.csce.gov/international-impact/press-and-media/press-releases/chairman-hastings-denounces-unchecked-power>>

<sup>2</sup> DIAMOND, L. (2020). *America’s COVID-19 Disaster Is a Setback for Democracy*. [online] The Atlantic. Available at: <<http://www.theatlantic.com/ideas/archive/2020/04/americas-covid-19-disaster-setback-democracy/610102>>

<sup>3</sup> UN News. (2020). *During this coronavirus pandemic, ‘fake news’ is putting lives at risk: UNE-SCO*. [online] Available at: <<https://news.un.org/en/story/2020/04/1061592>>

The global journalism industry has been in crisis for decades, seeing the gradual breakup of the historically built business model.<sup>4</sup> The mechanics of journalism systems was dramatically different from what looked perfectly stable before the digital era. The gatekeeping function was a key, allowing mass media to curate and shape public discourse for most of the XX century.<sup>5</sup> In the free world, where citizens routinely change leadership through voting, the independent press always played a central role as a source of credible information. As an integral element of the system of checks and balances between state institutions, public agencies, and branches of government, the mass media are commonly known as the fourth estate. Serving educated readers and audiences, the most reputable news organizations provided first-hand reports and basic fact-checking in the pre-Google era. The higher demand rose for the quality press, the more lucrative the news production became. Concurrently, journalists were growing in importance as a watchdog, becoming accepted increasingly as the eyes and ears of the public. What made this mission possible was the media's dominance over content delivery channels, either in print or on the airwaves. In the 1950s, the audiences "could count the number of television channels on the one hand and rely on Walter Cronkite and a local media monopoly to control the flow of information."<sup>6</sup> Thanks to that privilege, newsrooms exerted their news judgment – mainly for the public good as they grew a reputation for accuracy, essential for voters making informed decisions. The textbook example of the power of the independent journalistic institutions in democratic societies is the Watergate scandal, the defining emblem of the press's vital role in a democracy.<sup>7</sup>

While media have proved its vital role as the cornerstone of democracy, the arrival of the Internet has enabled everyone to get exposed to enormous amounts of information. What is crucial, the material reaches a mass audience rapidly. However, at the same time, the credibility is not proved before publishing in the same manner as had been done by the centuries-old, based on the monopoly over channels of the content delivery system of news judgment and fact-checking, operated by the professional newsrooms – the traditional media gatekeepers.

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<sup>4</sup> PETERS, C. AND BROERSMA, M. (2016). *Rethinking Journalism Again: Societal role and public relevance in a digital age*. [online] [www.taylorfrancis.com](http://www.taylorfrancis.com). Routledge. Available at: <<https://www.taylorfrancis.com/books/e/9781315716244>>

<sup>5</sup> SOROKA, S. N. (2012). The Gatekeeping Function: Distributions of Information in Media and the Real World. *The Journal of Politics*, 74(2), pp.514–528.

<sup>6</sup> THOMPSON, D. (2018). *The Post-Advertising Future of the Media*. [online] The Atlantic. Available at: <<https://www.theatlantic.com/ideas/archive/2018/12/post-advertising-future-media/578917/>>

<sup>7</sup> SCHUDSON, M. (2004). Notes on Scandal and the Watergate Legacy. *American Behavioral Scientist*, 47(9), pp.1231–1238.

The technology became a game-changer in the media industry, depriving the journalism enterprises of the ability to fund its costly newsgathering and investigative reporting through the advertising-based model as the digital platforms seemed to win a competition for the revenues. Thus, it is in Western democracies' own best interest to fund independent public good journalism, holding the political system accountable. It is important to note that the COVID-19 crisis has highlighted this problem while lending itself to the opportunity to translate some feasible policy options into concrete political steps, regulation and lawmaking.

## 2. Descent of the advertising-based revenue model

Things changed drastically, arguably in perpetuum, starting from the late 1990s when the legacy press began to experience the digital revolution's effects. With the arrival of social media, the traditional ones, once indispensable agencies of information, have been less and less prominent, except to provide "grist to the mill" for a public discussion they no longer control.<sup>8</sup> Soon, the traditional press suffered severe financial fallout from the seismic shift as ad money migrated to new competitors. In 2019, spending on digital advertising in the US, traditionally the world's largest advertising market, was poised to surpass print and TV for the first time.<sup>9</sup> Moreover, by 2021, web advertising is predicted to account for 52% of global ad expenditure, exceeding the 50% mark for the first time.<sup>10</sup> As a result, the century-old and increasingly profitable advertising-supported revenue model that allowed the press to thrive without public funding while serving the best interests of free citizens began to fall apart. Struggling to offset lost advertising revenue, news organizations rushed to refocus their revenue plans on paid subscriptions. Predictably, only a few of them, mainly the leading mainstream outlets, have protected the content with paywalls. Even so, for local news outlets, opportunities to fund their operations are limited by the market

<sup>8</sup> DORNAN, C. (2018). *Journalism and Society*. A lecture at School of Journalism and Communication. Carleton University, Ottawa, Canada.

<sup>9</sup> Statista (2018). *Ad spend in the world's largest ad markets 2018* | Statista. [online] Statista. Available at: <<https://www.statista.com/statistics/273736/advertising-expenditure-in-the-worlds-largest-ad-markets/>>; SHABAN, H. (2019). Digital advertising to surpass print and TV for the first time, report says. *The Washington Post*. [online] 20 Feb. Available at: <<https://www.washingtonpost.com/technology/2019/02/20/digital-advertising-surpass-print-tv-first-time-report-says/>>

<sup>10</sup> THOMSON, S. (2019). *Internet advertising to surpass 50% of total ad-spend in two years*. [online] Digital TV Europe. Available at: <<https://www.digitaltveurope.com/2019/07/08/internet-advertising-to-surpass-50-of-total-ad-spend-in-two-years/>>

size and general lack of interest from the rich.<sup>11</sup> As a result, the media patrons focus on a handful of selected, well-known news brands and pay little attention to small-town papers.<sup>12</sup> Moreover, the subscriber-funded model significantly restricts public access to publications created under strict high-quality standards.

That is essentially fraught with more profound polarization between elites and the broader, underinformed and suspicious audience, which is only exacerbated by the limited access to the sources of quality information and professional and scientific opinion. Not surprisingly, many readers resort to the readily available, accessible, and sensationalist content on social media, often being lured by click-bait. This trend is destructive for content quality as media workers strive to get more clicks to make a living.<sup>13</sup> Besides, over the past decade, the industry has seen thousands of well-trained editorial staff laid off or pushed by hardships, such as severe burnout and uncertainty about the future of their profession. In the US, newsrooms have lost half of their employees since 2008, and despite subscription surged for the most prominent national broadsheets, circulation and revenue fell across the industry, according to Pew Research Center.<sup>14</sup> This loss contributed negatively to the overall quality of media coverage, often shaped by the financial strain and, perhaps, in the later electoral success of politicians riding the global populist wave.<sup>15</sup> Eventually, digital platforms have taken over the legacy press's gatekeeping functions and influence, controlling readers' news diet. The impact is the technological limitations on news outlets' ability to deliver professional quality journalistic products to the public. These days, social media giants are setting conditions for news distribution to the public while relying on algorithms rather than human editorial judgment. That often impairs the quality of reporting.

The digitation of information has rejuvenated old malicious methods. Consequently, the end of journalism as we know it, the omnipresence of social media and the explosive growth of populism are threatening the public debate and

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<sup>11</sup> The Economist (2017). *How leading American newspapers got people to pay for news*. [online] The Economist. Available at: <<https://www.economist.com/business/2017/10/26/how-leading-american-newspapers-got-people-to-pay-for-news>>

<sup>12</sup> CUNDY, A. (2019). Newspapers back on a roll. *The Financial Times*. [online] 18 Oct. Available at: <<https://www.ft.com/content/9ec5a23e-d928-11e9-9c26-419d783e10e8>>

<sup>13</sup> DE WITTE, M. (2018). *What this Stanford scholar learned about clickbait will surprise you* [online] Stanford News. Available at: <<https://news.stanford.edu/2018/03/21/this-stanford-scholar-learned-clickbait-will-surprise/>>

<sup>14</sup> GRIECO, E. (2020). *U.S. newspapers have shed half of their newsroom employees since 2008*. [online] Pew Research Center. Available at: <<https://www.pewresearch.org/fact-tank/2020/04/20/u-s-newsroom-employment-has-dropped-by-a-quarter-since-2008/>>

<sup>15</sup> WILLIAMS, A. (2017a). Measuring the Journalism Crisis: Developing New Approaches That Help the Public Connect to the Issue. *International Journal of Communication*, 11, pp.4731–4743.

integrity of democracy. This issue is high on the agenda of policymakers in Western countries because the safety of both democratic institutions and public safety is challenged. To take full advantage of the opportunities offered by digital platforms, many malignant actors, both private and foreign, have invaded the Western media ecosystem in a bid to influence the public debate by intruding into the talk on social media. They are weaponizing information to cultivate radicalization and advance extremist views, thereby provoking political polarization. Russian information warfare can be taken as the most salient example, heavily documented.<sup>16</sup> Manifesting the breaking “the Anglo-Saxon monopoly on the global information streams,” Russian leader Vladimir Putin endorsed establishing the state-funded multimedia conglomerate for information operations abroad. This goal is defined in the very Foreign Policy Concept of the Russian Federation, delineating the critical role of the state-running mass media as a means of influencing audiences abroad.<sup>17</sup> The Kremlin’s channels for overseas audiences include RT television channels and the Sputnik News agency; together, they operate websites and social media, manufacturing newsfeeds in more than 30 languages. They routinely produce much of the controversial and fast-distributing, across digital platforms, materials that have recently come under scrutiny in many Western countries. The dubious content, including inaccurate reporting, conspiracy theories and the white supremacy narrative, is amplified incredibly quickly through social networks: the growing body of knowledge points out that humans, not algorithms, are the main culprits disseminating – deliberately or not – misleading information, especially when it comes to political news.<sup>18</sup>

The recent coronavirus crisis is another vivid example of how it works, as the emergency has given rise to conspiracy theories, both well-known and novel ones.<sup>19</sup> The outbreak of disinformation has revived severe political and social hostilities globally, with Asians finding themselves the target of racists attacks.

<sup>16</sup> EEAS (2018). *Action Plan against Disinformation*. [online] EEAS – European External Action Service – European Commission. Available at: <[https://eeas.europa.eu/headquarters/headquarters-homepage/54866/action-plan-against-disinformation\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/54866/action-plan-against-disinformation_en)>

<sup>17</sup> The Ministry of Foreign Affairs of the Russian Federation (2016). *Foreign Policy Concept of the Russian Federation (approved by President of the Russian Federation Vladimir Putin on November 30, 2016)*. [online] [www.mid.ru](http://www.mid.ru). Available at: <[https://www.mid.ru/en/foreign\\_policy/official\\_documents/-/asset\\_publisher/CptlCkB6BZ29/content/id/2542248](https://www.mid.ru/en/foreign_policy/official_documents/-/asset_publisher/CptlCkB6BZ29/content/id/2542248)>

<sup>18</sup> VOSOUGHI, S., ROY, D. AND ARAL, S. (2018). The spread of true and false news online. *Science*, [online] 359(6380), pp.1146–1151. Available at: <<http://science.sciencemag.org/content/359/6380/1146>>

<sup>19</sup> SEID, S. (2020). *McCaul Urges State Dept to Pursue Multilateral Investigation into CCP’s Coronavirus Coverup & Disinformation Campaign FULL TEXT U.S. House of Representatives Documents*. [online] Available at: <<https://gop-foreignaffairs.house.gov/press-release/mccaul-urges-state-dept-to-pursue-multilateral-investigation-into-ccps-coronavirus-coverup-disinformation-campaign/>>

As demonstrated in the special report of European External Action Service's East StratCom Task Force, falsehoods and myths about the pandemic, in some cases conducted by state or state-sponsored actors, are fraught with "harmful consequences for public security, health and effective crisis communications." The COVID-19 disaster is repeatedly presented as a weakness of democratic systems to deal with the crisis effectively.<sup>20</sup>

Moreover, misinformation and speculations about symptoms, unproven drugs and dubious therapy methods put lives at risk. To tackle the issue, the World Health Organization (WHO), authorized by the United Nations (UN) to coordinate emergency response to the novel coronavirus crisis, has designated a special section on its webpage to debunk myths about the pandemic, framing it as an "infodemic." Nevertheless, health practitioners such as David Heymann, professor of infectious disease epidemiology at the London School of Hygiene & Tropical Medicine, emphasize that, incontestably, "the traditional media has a key role in providing evidence-based information to the general public, which will then hopefully be picked up on social media."<sup>21</sup> Worthy of note, US Secretary of State Mike Pompeo has listed Russia, China and Iran in his litany about foreign actors, promoting false information about the Western response to the COVID-19.<sup>22</sup> The EU, in turn, accused Russian media of unleashing a disinformation campaign and pushing fake news online in English, Spanish, Italian, German and French to aggravate the impact of the coronavirus against the West, generating panic and distrust – allegations, denied by the Kremlin.<sup>23</sup>

An additional aspect of this: external actors instrumentalize the freedom of expression and the press by operating within the Western media ecosystem without being constrained by the same professional and ethical norms that govern responsible news outlets in those countries where the press is free.<sup>24</sup> Relying on generous support funding from state coffers – for example, about 325 million

<sup>20</sup> EU vs Disinformation (2020). *Short Assessment of Narratives and Disinformation around the COVID-19/Coronavirus Pandemic*. [online] EU vs Disinformation. Available at: <<https://euvsdisinfo.eu/eeas-special-report-update-2-22-april/>>

<sup>21</sup> ZAROCOSTAS, J. (2020). How to fight an infodemic. *The Lancet*, [online] 395(10225), p.676. Available at: <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(20\)30461-X/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(20)30461-X/fulltext)>

<sup>22</sup> United States Department of State. (2020). *Secretary Michael R. Pompeo Remarks to the Press*. [online] Available at: <<https://www.state.gov/secretary-michael-r-pompeo-remarks-to-the-press-6/>>

<sup>23</sup> EMMOTT, R. (2020). Russia deploying coronavirus disinformation to sow panic in West, EU document says. *Reuters*. [online] 18 Mar. Available at: <<https://www.reuters.com/article/us-health-coronavirus-disinformation/russia-deploying-coronavirus-disinformation-to-sow-panic-in-west-eu-document-says-idUSKBN21518F>>

<sup>24</sup> Freedom House (2020). *Countries | Freedom House*. [online] freedomhouse.org. Available at: <<https://freedomhouse.org/countries/freedom-world/scores>>



euros for RT and 106 million euros for Sputnik budgeted for 2020.<sup>25</sup> They do not suffer the media's economic hardships, operating in the Western system, within which editorial independence is a predominant normative principle. As can be seen in the metrics, the coronavirus outbreak has led to the explosive growth of traffic to news sites, though it began to fade after the boom.<sup>26</sup> Still, commercials' sales and circulation all slumped following widespread business shutdowns caused by the pandemic.<sup>27</sup> Remarkably, digital giants such as Facebook and Google are expected to lose billions of advertising dollars in 2020 due to the crisis, for the first time in the history of these two tech sector leaders.<sup>28</sup> The news production has been hit by falling earnings far more sharply. The list of coronavirus-induced newsroom layoffs, furloughs and closures, is being updated continuously.<sup>29</sup> In the US, the pandemic, coupled with the previous economic recession, has wreaked havoc on the media industry, becoming "an extinction-level event."<sup>30</sup> In Canada, long before the COVID-19 emergency, even the largest newspapers were in desperate straits, with their equity plummeting after the revenue fell and was hit even harder by the pandemic, with thousands of workers being laid off and dozens of community newspapers closed.<sup>31</sup> The same picture can be seen across all European Union member states. For example, in

<sup>25</sup> EUvsDisinfo (2019). *Figure of the Week: 1.3 Billion*. [online] EU vs disinformation. Available at: <<https://euvsdisinfo.eu/figure-of-the-week-1-3-billion/>>

<sup>26</sup> BENTON, J. (2020). *How much danger does coronavirus pose to the battered U.S. news industry?* [online] Nieman Lab. <Available at: <https://www.niemanlab.org/2020/03/how-much-danger-does-coronavirus-pose-to-the-battered-u-s-news-industry/>>

<sup>27</sup> The Economist (2020). The newspaper industry is taking a battering. *The Economist*. [online] 18 Apr. Available at: <<https://www.economist.com/britain/2020/04/18/the-newspaper-industry-is-taking-a-battering>>

<sup>28</sup> FISCHER, S. (2020). *Tech giants set to lose billions in ad revenue in virus shutdown*. [online] Axios. Available at: <https://www.axios.com/tech-giants-set-to-lose-billions-in-ad-revenue-in-virus-shutdown-f0e74396-6444-4c44-8aa7-974dd3e89883.html>; WAKABAYASHI, D., HSU, T. AND ISAAC, M. (2020). Even Google and Facebook May Face an Ad Slump. *The New York Times*. [online] 14 Apr. Available at: <<https://www.nytimes.com/2020/04/14/technology/coronavirus-google-facebook-advertising.html>>

<sup>29</sup> Poynter. (2020). *Here are the newsroom layoffs, furloughs and closures caused by the coronavirus*. [online] Available at: <<https://www.poynter.org/business-work/2020/here-are-the-newsroom-layoffs-furloughs-and-closures-caused-by-the-coronavirus/>>

<sup>30</sup> DERIENZO, M. (2017). *A recession, then a collapse*. [online] Nieman Lab. Available at: <<https://www.niemanlab.org/2017/12/a-recession-then-a-collapse>>; GABBATT, A. (2020). US newspapers face "extinction-level" crisis as Covid-19 hits hard. *The Guardian*. [online] 9 Apr. Available at: <<https://www.theguardian.com/media/2020/apr/09/coronavirus-us-newspapers-im-pact>>

<sup>31</sup> BERNHARD, D. (2020). *Our media is on the brink of mass failure*. [online] thestar.com. Available at: <<https://www.thestar.com/opinion/contributors/2020/03/27/our-media-is-on-the-brink-of-mass-failure.html>>; GALLANT, J. (2020). *Will Canada's media survive the pandemic? Fifty papers have closed in just the last six weeks*. [online] thestar.com. Available at: <<https://www.th>



Ireland, domestic media outlets were in a precarious financial position when the pandemic arrived. In the UK, newspapers' pre-pandemic straits were deepened by the print copies' sales decline and ad revenues drop during the lockdown, with "no title in Fleet Street unaffected."<sup>32</sup> It has long been an acute problem in Western democracies regarding community journalism, with repeated calls to policymaking action to develop public funding mechanisms ensuring a sustainable future for local news organizations.<sup>33</sup> The pandemic has only worsened the situation, having offered additional examples of the essentiality of journalism as an essential service. Despite extreme financial hardships, many news outlets have manifested themselves as a public asset by partially removing paywalls to give the public access to coronavirus coverage.<sup>34</sup> To sum up: all over the Western world, domestic media outlets had already been in a precarious financial position by the time of the pandemic.

### 3. Public subsidization of journalism: Habermas's recipes and the pandemic-induced practices

By all accounts, it is a perfect storm for the "Fourth Estate," and the media industry is pleading for rescue. Nevertheless, this financial Dunkirk has been a long time coming. At the beginning of the twenty-first century, German philosopher Jürgen Habermas, widely ranked as one of the most influential social and

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estar.com/business/2020/05/06/will-canadas-media-survive-the-pandemic-fifty-papers-have-closed-in-just-the-last-six-weeks.html>

<sup>32</sup> MCMORROW, C. (2020). Covid-19 has caused a crisis in the media industry. *www.rte.ie*. [online] Available at: <<https://www.rte.ie/news/2020/0411/1130008-covid-19-media-landscape/>>; RAJAN, A. (2020). How coronavirus infected publishing. *BBC News*. [online] 16 Apr. <Available at: <https://www.bbc.com/news/entertainment-arts-52299925>>

<sup>33</sup> RASMUS KLEIS, N. (2015). *Local Journalism: The Decline of Newspapers and the Rise of Digital Media*. I.B. Tauris & Co. Ltd; HENDRICKSON, C. (2019). *Local journalism in crisis: Why America must revive its local newsrooms*. [online] Brookings. <Available at: <https://www.brookings.edu/research/local-journalism-in-crisis-why-america-must-revive-its-local-newsrooms/>>; Facebook Inc. (2020). *Facebook Journalism Project and EJC Launch European Journalism COVID-19 Support Fund*. [online] Facebook Journalism Project. Available at: <<https://www.facebook.com/journalismproject/programs/grants/coronavirus-european-news-support-fund>>

<sup>34</sup> SENNOTT, S.W., Charles (2020). *The Coronavirus Is Killing Local News*. [online] The Atlantic. Available at: <<https://www.theatlantic.com/ideas/archive/2020/03/coronavirus-killing-local-news/608695/>>; SALTZ, H. (2020). *Removing paywalls on coronavirus coverage is noble. It also makes no sense*. [online] Poynter. Available at: <<https://www.poynter.org/business-work/2020/removing-paywalls-on-coronavirus-coverage-is-noble-it-also-makes-no-sense/>>; Financial Times (2020). *Coronavirus: free to read*. [online] *www.ft.com*. Available at: <<https://www.ft.com/coronavirusfree>>

political thinkers alive, has long advocated taxpayers' subsidies for the quality independent press to save it as the mainstay of democratic discourse. A part of Habermas's concept of the public sphere, quality journalism has not lost its relevance and credibility. Meanwhile, the gradual erosion of advertising revenue-based funding leaves many public good-serving media agencies facing uncertainty about their future. Habermas accentuates that "no one has yet come up with a business model that would ensure the survival of the important national newspapers on the internet," and that statement has been remaining valid more than a decade after having been made. At the same time, no democratic administration can afford a market fiasco in this sector, "because listeners and viewers are not only consumers, i.e. market participants, but at the same time citizens...The quality press plays the role of "leading media" at least in the field of political communication – i.e. for readers as citizens," he argues (translated from German to English with [www.DeepL.com/Translator](http://www.DeepL.com/Translator)).<sup>35</sup>

Hence, Habermas defends the very notion of subsidizing quality press, although the means of supporting the press in public service can vary in terms of the funding model and may involve one-off subsidies, public participation, tax breaks, to name a few. There have been several models of publicly funded media, from the "Media Welfare State" in the Nordic democracies, the northernmost part of Europe to the BBC licence fee-based to various designs of state financing of national broadcasters in other Western countries.<sup>36</sup> In current circumstances, equal assistance from the government must be entitled to the private media, too, conditional on a particular outlet abiding by the highest ethical and professional standards and best practices governing responsible mass media in countries that enjoy the freedom of the press. Many of them are the startups that respond to the rising demand for specific and additional fact-checking formats amidst the spike in fake news and disinformation.<sup>37</sup>

The Habermasian view gains traction equally among scholars, professional associations and policymakers experimenting with toolkits amounting to, as it happens, the universal basic income (UBI) as a financial rescue for newsrooms. The concept of the UBI has been in the spotlight thanks to the pandemic that has reignited the debate over the welfare state as governments around the globe

<sup>35</sup> JEFFRIES, S. (2010). *A rare interview with Jürgen Habermas*. [online] [www.ft.com](http://www.ft.com). Available at: <<https://www.ft.com/content/eda3bcd8-5327-11df-813e-00144feab49a>>

<sup>36</sup> SYVERTSEN, T., MJØS, O.J., MOE, H. AND ENLI, G. S. (2014). *The Media Welfare State: Nordic Media in the Digital Era*. [online] *Project MUSE*. University of Michigan Press. Available at: <<https://muse.jhu.edu/book/36850>>

<sup>37</sup> SANCHEZ, M. (2020). *10 European startups fighting fake news and disinformation*. [online] EU-Startups. Available at: <<https://www.eu-startups.com/2020/03/10-european-startups-fight-ing-fake-news-and-disinformation/>>

were spending trillions to prevent economic collapse and stimulate recovery.<sup>38</sup> In multiple liberal countries, the industry lobbies have introduced proposals to keep the press afloat. In the UK, The National Union of Journalists has introduced a plan of action to save the industry, “essential” in keeping the governments in check.<sup>39</sup> The Magazine Publishers Association of New Zealand has petitioned the government for the national media industry to be classified as an “essential service.”<sup>40</sup>

The pandemic has moved governments in the West to act. The perception of journalism as a crucial element of critical infrastructure has gained acceptance on the administrative level, with governments of Ireland and the Canadian province of Quebec including news organizations in their lists of the entities providing an “essential service.” Canada’s federal government defines essential services as those daily practices essential to preserving life, health, public safety and basic societal functioning.<sup>41</sup> Australia and New Zealand allocated tens of millions of dollars for the ailing media industry relief, stressing the essential role of news service.<sup>42</sup> In doing so, the politicians accommodate the popular demand coming from an overwhelming part of their constituencies. For instance, members of the European Parliament have urged to rescue the media as a “pillar of democracy”

<sup>38</sup> The International Monetary Fund (2020). *Policy Responses to COVID19*. [online] IMF. Available at: <<https://www.imf.org/en/Topics/imf-and-covid19/Policy-Responses-to-COVID-19>>; WIGNARAJA, K. AND HORVATH, B. (2020). *Universal basic income is the answer to the inequalities exposed by COVID-19*. [online] World Economic Forum. Available at: <<https://www.weforum.org/agenda/2020/04/covid-19-universal-basic-income-social-inequality/>>

<sup>39</sup> NUJ (2020). *NUJ launches News Recovery Plan*. [online] National Union of Journalists. Available at: <<https://www.nuj.org.uk/news/nuj-launches-news-recovery-plan/>>

<sup>40</sup> EDMUNDS, S., ANUJA, A. AND COOKE, H. (2020). *Prime Minister “gutted” Bauer closing its doors, but says company refused wage subsidy*. [online] Stuff. Available at: <<https://www.stuff.co.nz/business/120754944/publisher-of-metro-womans-day-closes-in-nz-amid-coronavirus-woes?rm=m>>

<sup>41</sup> Government of Ireland (2020). *Gov.ie – List of essential service providers under new public health guidelines*. [online] www.gov.ie. Available at: <<https://www.gov.ie/en/publication/dfeb8f-list-of-essential-service-providers-under-new-public-health-guidelin/>>;

Gouvernement du Québec (2020). *List of essential services and commercial activities COVID-19*. [online] www.quebec.ca. Available at: <<https://www.quebec.ca/en/health/health-issues/a-z/2019-coronavirus/essential-services-commercial-activities-covid19/#c48457>>; Public Safety Canada (2021). *Guidance on Essential Services and Functions in Canada During the COVID-19 Pandemic*. [online] www.publicsafety.gc.ca. Available at: <<https://www.publicsafety.gc.ca/cnt/ntnl-scrtr/crtcl-nfrst/rctr/esf-sfe-en.aspx>>; FAAFOI, K. (2020). *Media support package delivers industry request for assistance*. [online] The Beehive. Available at: <<https://www.beehive.govt.nz/release/media-support-package-delivers-industry-request-assistance>>

<sup>42</sup> MEADE, A. (2020). *Dozens of Australian newspapers stop printing as coronavirus crisis hits advertising*. *The Guardian*. [online] 14 Apr. Available at: <<https://www.theguardian.com/media/2020/apr/14/dozens-of-australian-newspapers-stop-printing-as-coronavirus-crisis-hits-advertising>>

and a deterrent to the fake news and the “infodemic.”<sup>43</sup> This is a visible manifestation of the changes in the political atmosphere of the collective West that lends itself well to the implementation of a comprehensive plan to reform the funding model of the journalism system. By way of illustration: in Canada, most citizens support state funding to prevent failing news providers from closing down; nearly three-quarters of Canadians say social media platforms are less accurate than traditional media, according to the recent poll conducted by Nanos, a pollster, for Friends of Canadian Broadcasting, a non-governmental organization, operating in the field of journalism.<sup>44</sup>

It can be seen that the frantic search for a sustainable solution has proved to be largely fruitless so far while stimulating the debate about the mechanism of funding news enterprises. One year into the pandemic, Australia passed a world-first required social media platforms to pay for news content in an attempt to find a workable way to support journalists. Canada promised to follow suit by coordinating efforts with Canberra to get web giants to buy content, with France and other governments joining the push aimed to force Google, Facebook and other tech giants to pay for public interest journalism.<sup>45</sup> As shown above, the long-discussed concept of public subsidies that would protect the livelihood of the free press and thereby the health of democracy has been given additional evidence favouring the unavoidability of making the longs overdue policy decisions.

## 4. Conclusion

The COVID-19 disaster has laid bare some intractable problems, including a paramount need to save journalism as an indispensable community facility in free societies amidst the unreliability of its business models – the course of

<sup>43</sup> A GROUP OF MEPS AND MEDIA POLICY EXPERTS AND LECLERCQ, C. (2020). *Health, trust and journalism: a Coronavirus Plan for the Media*. [online] [www.euractiv.com](https://www.euractiv.com). Available at: <<https://www.euractiv.com/section/digital/opinion/health-trust-and-journalism-a-coronavirus-plan-for-the-media/>>

<sup>44</sup> Nanos Research (2020). *Canadians say professional journalism is essential given the Coronavirus outbreak and should be supported by the Federal Government*. [online] Available at: <<https://friends.ca/workspace/uploads/documents/covid-media-emergency-fcb-nanos-report-2020-04-06.pdf>>

<sup>45</sup> Reuters (2021). *Canada, Australia agree to coordinate efforts to ensure web giants pay for news – statement*. [online] Reuters. Available at: <<https://www.reuters.com/business/media-telecom/canada-australia-agree-coordinate-efforts-ensure-web-giants-pay-news-statement-2021-02-23/>>; AP (2021). *Explainer: What’s up between Google, Facebook and Australia?* [online] AP News. Available at: <<https://apnews.com/article/google-facebook-australia-explained-55ce7a524855c2cdabdf8ca82ad2c8cd>>

action long suggested by many prominent scholars. The overwhelming empirical evidence from the Western governments' practical approaches to addressing the COVID-19 crisis, as well as the pandemic-caused complications that have highlighted the severe hardships the quality media suffering from for decades, all suggest that the journalistic services to the public must be treated on equal terms with other essential service industries – health care, safety, education, military et cetera. While remaining editorially independent, the news organizations must be funded by taxpayers, subject to the same machinery of the “universal basic income” distribution to citizens. Moreover, the privately funded media should also be entitled to the unconditional living stipend to ensure the functioning of the independent press, a fundamental component of a free society. Accountability mechanisms based on universal criteria to maintain the highest ethical and professional standards must be a condition of such a basic income guarantee. It has been shown that the pandemic has emphasized the role of a responsible democratic government in taking the lead in the redistribution of wealth for the public good and paved the way for a review of the funding model of journalism as an indispensable community facility in free societies.

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# Public Services Client-Accordance Through Coproduction and Digitalization

Romans Putans\*, Zane Zeibote\*\*

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**Summary:** The role of the societies and their interaction with public administration is changing toward ever closer co-operation. Since 2009 scientific literature and the public administrations themselves have been increasingly exploring the changing and dynamic role of the recipient of public services, a client or a customer, as that of a partner in the provision of public services. In this article the authors propose a policy client-accordance index (PCAX) methodology to measure the relevance of a) policy planned results and policy-makers' expectations in relation to b) clients' intentions, and explore the co-production in the age of digitalization based on a case study. The idea of the article is to contribute to this necessity of new tools and approaches to facilitate the co-operation and co-production between policy makers and society. The main goal of the research is to analyse the applicability and challenging aspects of the feasibility of PCAX and to test the possible transfer of the developed methodology model for evaluating the relevance of any public administration policy to the intentions of the policy's respective target group, i.e., the client-accordance index of a given public policy. In the first and the second chapters of the article, mostly based on the findings of scientific literature analyses, the authors explore the increasing topicality and the need of changing awareness of a public a service and its provision. Further in-depth analyses are conducted on the possible methodological tool to measure the relevance between the policy makers' decisions (expectations) and society's needs

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and intentions. In the concluding chapter of the article the authors summarize the development dynamics of societal reforms towards co-production, main implementation aspects of the concept and remarks on PCAX backed up by the findings of the approbation of PCAX elements in the actual case study.

**Keywords:** co-production, public governance, social participation, digitalization, public services

## 1. Introduction: the ever-increasing topicality and paradigm shifts

The role of the societies and their interaction with public administration is changing toward ever closer co-operation. Society becomes more and more empowered and more aware that public institutions are reflection of society and its values, i.e., the institutions are also part of the society and that public governance, state governance, societal governance may and possibly should mean the very same thing – a joint, common system of the society, which includes state, businesses, people. The official and the citizen carry the same values in the respective society<sup>1</sup>. Having more opportunities of participation, the democratic societies are having an increasing impact on the public policy planning, design and implementation. In scientific literature one of the newest approaches in the development of public governance is described as the concept of co-production and co-creation of public services. It is foreseen as the next stage of evolution in both, the public administration reforms and in the relationship between public administration and society. Public administration reform in the world's democratic states is a continuous process and its development is, of course, also foreseen in the future<sup>2,3</sup> and more often in the direction of the strengthened societal participation in public policy making thus paving the way towards the

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<sup>1</sup> RAJNEESH, S. Value Creation in Citizen Services: Sakala as India's Most Effective Citizen-first Public Engagement Model. *Journal of Creating Value*, 2015, vol. 1, no. 2, pp. 275–291. <<https://doi.org/10.1177/2394964315604096>>

<sup>2</sup> European Commission. (2015). Proposal for a Regulation of the European Parliament and of the Council on the establishment of the Structural Reform Support Programme for the period 2017 to 2020 and amending Regulations (EU) No 1303/2013 and (EU) No 1305/2013, COM(2015) 701 final, 2015/0263 (COD), Brussels, 26.11.2015.

<sup>3</sup> OECD (2019), *Digital Government Review of Sweden: Towards a Data-driven Public Sector*, OECD Digital Government Studies, OECD Publishing, Paris, <<https://doi.org/10.1787/4daf932b-en>>

approach of co-production<sup>4,5,6</sup>. Within the growing concept of co-production, the society not only changes its roles<sup>7</sup>, but holds an equally important role as the very public administration does<sup>8</sup>. At the same time, of course, the scientists are working on the theory of this relatively new conceptual phenomenon of co-production<sup>9,10,11,12</sup>, analysing the conceptualisation, development, impact, classification and other aspects to fit into the conceptual model of co-production, from which the concept theory is formed.

Co-production of public services has gained recognition not only in scientific literature<sup>13</sup>, but also in national, international and supranational public administration institutions<sup>14</sup> and more importantly also in the society, among the people, and different businesses, e.g., in spatial planning of a city<sup>15</sup>, municipal school

- <sup>4</sup> WILLIAMSON, B. Knowing public services: Cross sector intermediaries and algorithmic governance in public sector reform. *Public Policy & Administration*, 2014, vol. 29, no. 4, pp. 292-312. DOI: <<https://doi.org/10.1177%2F0952076714529139>>
- <sup>5</sup> MCNEIL, J. Enabling social innovation assemblages: Strengthening public sector involvement. Doctoral Thesis at Institute for Culture & Society, Western Sydney University, 2017, p. 306.
- <sup>6</sup> ALFORD, J. Engaging public sector clients: From service-delivery to co-production. *Public lecture at the Copenhagen University, Denmark*. 24.04.2014. Copenhagen, Denmark.
- <sup>7</sup> BRIGGS, L. Citizens, Customers, Clients or Unwilling Clients? Different and effective strategies for citizen-centric delivery. In: Lindquist, E. A., Vincent, S., Wanna, H. (eds) *Putting Citizens First. Engagement in Policy and Service Delivery for the 21st Century*. Canberra: The Australian National University, 2013, pp.83.-94, 220.
- <sup>8</sup> RAJNEESH, S. Value Creation in Citizen Services: Sakala as India's Most Effective Citizen-first Public Engagement Model. *Journal of Creating Value*, 2015. vol. 1, no. 2, pp. 275-291. <<https://doi.org/10.1177/2394964315604096>>
- <sup>9</sup> OSBORNE, S.P., RADNOR, Z., NASI, G. A New Theory for Public Service Management? Toward a (Public) Service-Dominant Approach. *American Review of Public Administration*, 2012, vol. 43, no. 2, pp. 135-158.
- <sup>10</sup> BRANDSEN, T., HONINGH, M. Distinguishing Different Types of Coproduction: A Conceptual Analysis Based on the Classical Definitions. *Public Administration Review*, 2015, vol. 76, no. 3, pp. 427-435. DOI: <<https://doi.org/10.1111/puar.12465>>
- <sup>11</sup> SICILIA, M., GUARINI, E., SANCINO, A., ANDREANI, M., RUFFINI, R. Public services management and co-production in multi-level governance settings. *International Review of Administrative Sciences*, 2016, vol. 82, no. 1, pp.827.
- <sup>12</sup> ALFORD, J. Co-production, interdependence and publicness: Extending public service-dominant logic. *Public Management Review*, 2015, vol. 18, no. 5, pp. 673-691.
- <sup>13</sup> JUKIĆ, T., PEVCIN, P., BENČINA, J., DECMAN, M., VRBEK, S. Collaborative Innovation in Public Administration: Theoretical Background and Research Trends of Co-Production and Co-Creation. *Administrative Sciences*, 2019, vol. 9, no. 4, p. 90. DOI: <<https://doi.org/10.3390/admsci9040090>>
- <sup>14</sup> OECD (2011), Together for Better Public Services: Partnering with Citizens and Civil Society, OECD Public Governance Reviews, OECD Publishing, Paris, <<https://doi.org/10.1787/9789264118843-en>>
- <sup>15</sup> BARTENBERGER, M., SZCESCILO, D. The Benefits And Risks Of Experimental Co-Production: The Case Of Urban Redesign In Vienna. *Public Administration*. 2015, vol. 94, no. 2, pp. 509-525. DOI: 10.1111/padm.12233

meal services<sup>16</sup>, tourism services<sup>17</sup>, even electricity services<sup>18</sup> and many other. Furthermore, the concept of co-production is being analysed not only from the perspective of its impact on societal organisation and governing processes, but also vice-versa, i.e., the developments in societal organization and governing processes, e.g. information technologies, are being analysed from the perspective of their impact on the co-production<sup>19</sup>, which additionally indicates that the new concept has rooted in many aspects of our lives and is likely to stay. Information technologies foster the co-production concept through enabling the social participation in new aspects of economy, the sharing economy, in which members of society can sometimes even self-organize in such areas that used to be solely state or business managed and governed, of which most common examples are transportation and accommodation, but also other areas in resource sharing, waste management to certain extent and other. This derivation from sharing economy and co-production using information and communication technologies marks even greater shift than public governance reforms and is called platform society<sup>20,21</sup>, which in the last chapter of this article links to the authors' proposal of mediation between policy makers and society in co-production approach in public services.

The 'older' concepts of the client as the focus of public administration from the New Public Management is generally not as much losing its 'fashion' as it is starting to gain some vibes of even negative or politically incorrect connotation, implying that the label of a client is diminishing the actual role of a civic society member in public governance which is more important than that of a client

<sup>16</sup> GALLI, F., BRUNORI, G., DI IACOVO, F., INNOCENTI, S. Co-Producing Sustainability: Involving Parents and Civil Society in the Governance of School Meal Services. A Case Study from Pisa, Italy. *Sustainability*, 2014, vol. 6, no. 4, pp. 1643-1666. DOI: 10.3390/su6041643

<sup>17</sup> TROCCIOLA, G., PALUMBO, R. Co-producing services to enhance cultural heritage. The role of co-production in improving the quality of tourism services. *Sinergie – Italian Journal of Management*, 2015. DOI: <<https://doi.org/10.7433/SRECP.2015.05>>

<sup>18</sup> PILO, F. Co-producing affordability' to the electricity service: a market-oriented response to addressing inequality of access in Rio de Janeiro's favelas. *Urban Research & Practice*, 2016, vol. 10, no. 1, pp. 86–101. DOI: 10.1080/17535069.2016.1154101

<sup>19</sup> LEMBER, V., BRANDSEN, T., TÖNURIST, P. The potential impacts of digital technologies on co-production and co-creation. *Public Management Review*, 2019, vol. 21, no. 11, pp. 1665-1686, DOI: <<https://doi.org/10.1080/14719037.2019.1619807>>

<sup>20</sup> BERNARDI, M., DIAMANTINI, D. Shaping the sharing city: An exploratory study on Seoul and Milan. *Journal of Cleaner Production*, 2018, no. 203, pp. 30–42. DOI: <<https://doi.org/10.1016/j.jclepro.2018.08.132>>

<sup>21</sup> SCOGNAMIGLIO, F. The New Public Governance in the platform society: Co-productive networks for a new public administration. Ph.D. research proposal at UK Open University, 2019, p. 8.

or customer; instead the partner is more correct terminology<sup>22,23,24</sup>. At the same time, some of the most often cited authors in scientific literature in field of public administration reforms, e.g. Stephen P. Osborne with his team, argues<sup>25</sup> that *the new public management has been a flawed paradigm for public services delivery that has produced very internally efficient but externally ineffective public service organizations and developed the SERVICE framework for sustainable public services and public service organizations, emphasizing the need for a focus on external value creation rather than internal efficiency alone*.

In many countries, co-production is increasingly perceived as a new public administration paradigm as it involves a whole new thinking about public service delivery and policy development. Co-produced public governance clashes with the classical view that the public sector is the sole provider of public goods.<sup>26</sup> The concept of co-production, as introduced by John Alford, professor of Public Sector Management at the Australian and New Zealand School of Government, emphasises the co-operation between producers (state and public institutions) and receivers or beneficiaries of public services where the latter is taking an increasing role participating in the creation of the public good.<sup>27</sup> Service- and client-oriented approach in public administration is one of the milestones of good public governance, because it focuses on governing efficiency, transparency and responsibility to the clients. Service-oriented development of public administration is one of the main principles reflected in development planning documents of the UN, WB, IMF, OECD and other international organisations as well as the EU. The significance of the client, the recipient of public services, and efficient provision and delivery of public services as well as the client service itself is

<sup>22</sup> FOTAKI, M. Towards developing new partnerships in public services: Users as consumers, citizens and/or co-producers in health and social care in England and Sweden. *Public Administration*, 2011, vol. 89, no. 3, pp. 933–955. DOI: <<https://doi.org/10.1111/j.1467-9299.2010.01879.x>>

<sup>23</sup> THOMAS, J.C. Citizen, Customer, Partner: Rethinking the Place of the Public in Public Management. *Public Administration Review*, 2013, vol. 73, no. 6, pp. 786–796. DOI: <<https://doi.org/10.1111/puar.12109>>

<sup>24</sup> MONRAD, M. Self-Reflexivity as a form of Client Participation: Clients as Citizens, Consumers, Partners or Self-Entrepreneurs. *Journal of Social Policy*, 2019, pp. 1–18. DOI: <<https://doi.org/10.1017/S0047279419000655>>

<sup>25</sup> OSBORNE, S. P., RADNOR, Z., KINDER, T., VIDAL, I. The SERVICE Framework: A Public-service-dominant Approach to Sustainable Public Services. *British Journal of Management*, 2015, vol. 26, no. 3, pp. 424–438. DOI: <<https://doi.org/10.1111/1467-8551.12094>>

<sup>26</sup> TORFING, J., SØRENSEN, E., RØISELAND, A. Transforming the Public Sector Into an Arena for Co-Creation: Barriers, Drivers, Benefits, and Ways Forward. *Administration & Society*, 2016, vol. 51, no. 5, pp. 795–825. <<https://doi.org/10.1177/0095399716680057>>

<sup>27</sup> ALFORD, J. *Engaging public sector clients: From service-delivery to co-production*. Basingstoke, UK: Palgrave, 2009, p. 28, 272.

defined in various development planning documents including their aims and tasks, which emphasise the intentions of widening the accessibility of public services and the simplification of bureaucratic procedures in the delivery of public services. To ensure the systematic improvement of the provision of public services through client satisfaction surveys, it is equally essential to understand not only the failures in public service provision, but also the reasons of clients being satisfied with the service and its delivery; this will allow applying the good practices for other services and clients' target groups.<sup>28</sup> As a result, the overall clients' satisfaction and a state's image in society will improve. Performance of the public institutions is heavily affected by the number of economic, political, technological, social and other factors, which may increase the amount and variety of the public administration's functions and tasks. In fulfilling only the instructed bureaucratic functions, and not planning and implementing the changes, high risks may occur to fall behind the developments in rapidly progressing and changing private business and NGO sectors.

## **2. The need of change in the awareness of a public service**

Provision of public services derives from the realisation of the public administration functions – it is one of the forms, set in the legislation, of realisation of public administration functions in interactions with the recipients of public services, the clients. Public services are characterised by complete or partial public funding, however its implementation can be delegated or outsourced to a third party, mostly the private sector, or less often the NGO sector, e.g. such public services are social care, public transportation, public road maintenance and others are often outsourced to private companies or NGOs.

The definition of public service proposed in, e.g. Latvian legislative acts and drafts, emphasises the public service being a *benefit to the client*. This is an arguable contradiction to other definitions and descriptions of administrative public service<sup>29</sup>, also those proposed in the same legal acts, as it encompasses the execution of the client's obligations towards a public person – “... *these services are nudged upon its specific recipient while the actual beneficiary is the society*”.

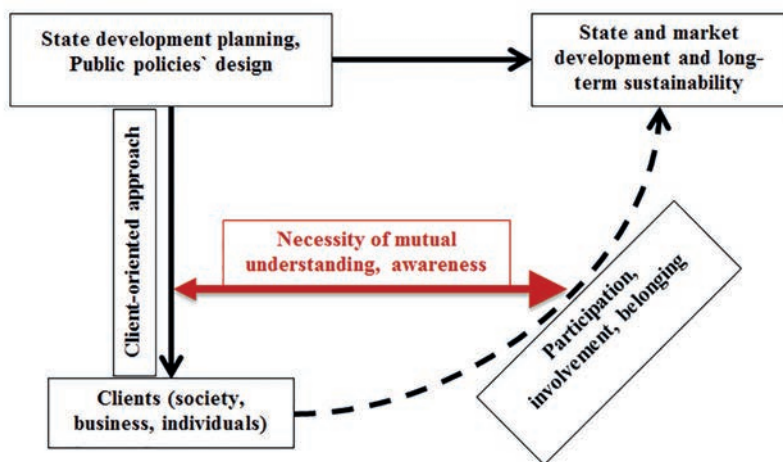
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<sup>28</sup> HERTOGE, Den P., AA, Van Der W., JONG, De M. W. Capabilities for managing service innovation: towards a conceptual framework. *Journal of Service Management*, 2010, vol. 12, no. 4, pp. 490–514.

<sup>29</sup> WILLIAMSON, B. Knowing public services: Cross sector intermediaries and algorithmic governance in public sector reform. *Public Policy & Administration*, 2014, vol. 29, no. 4, pp. 292–312. DOI: <<https://doi.org/10.1177%2F0952076714529139>>

The emphasis on the public service as a *benefit to the client* also contradicts widely reviewed cases in scientific literature about nudged public services, i.e., such services which according to the respective client do not provide individual or private benefit to him or her, for instance, imprisonment for prison's "client", various fines and penalties or payment of taxes.

Based on the research and analysis of the scientific literature and legal acts, the authors proposes to improve the definition of public service as follows: *Public service is, in pursuing public administration's functions, ensured or delivered material or non-material, direct or indirect benefit to the client or to the society as a whole.* The authors also suggests adding to the definition of a public administration client the aspect of society being the beneficiary as a whole of the public services: *the client of the public administration is any person or entity that has the rights to receive any public service, and society as a whole* (see Figure 2).



The collaborative planning of public policy as an integral part of national strategic development planning; the formation of public administration attitudes towards society; the changing role of the public administration clients to partners, the strive for maximal but balanced satisfaction of public policies, as well as the awareness and respect for clients' intentions – all of these aspects frame an important basis for smart and modern development of the state, its public administration and the society. The meaning of the society is increasingly broadening its scope to cover all groups involved – the administration, and the society, the latter including separately people and businesses. As a result, also the understanding



of public service is under change as society is not only receiving a service but is also taking part in the planning of it.

### 3. Improving public services through digitalization and co-production

The trend of digitalisation is transforming both manufacturing and services. As a result, societies and citizens in the EU face significant opportunities and challenges. According to Eurostat, Europe's high-tech industry and knowledge-intensive services are increasing with record levels of investment in 2016.<sup>30</sup> Many parts of the EU led the world in e-government, demonstrating high levels of electronic engagement with their citizens and in using digital technology to update public services.<sup>31</sup> However, there are high regulatory impediments that do not allow EU Member States to reach the levels of many world economies.<sup>32</sup> More broadly, the EU should emphasise the role of openness and collaboration by providing open access to the results of publicly funded research, promoting open science, engaging more transparently with citizens and endorsing open innovation models to tackle societal challenges and long-term goals.<sup>33</sup> Although the EC promised to create a SDM as one of the Commission's priorities, estimating that it could boost the EU's economy by 415 billion euros annually<sup>34</sup> there is a little optimism among stockholders about achieving this goal. However, the critics see the digitalisation and DSM measures favouring traditional corporatist old industries despite the fact that high quality public services constitute the backbone of citizens' social welfare as well as a region's competitiveness and entrepreneurship, which currently faces significant challenges. This is acknowledged in the European Digital Progress Report: Review of Member States' Progress Towards Digital Priorities.<sup>35</sup>

Another significant factors that influences social development and wellbeing in the digital era and new business environment in the DSM is the social investment and innovation as well as co-production concepts, which is the subject of

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<sup>30</sup> Eurostat 2017, *Digital Economy and Society Statistics- Households and Individuals*, Eurostat.

<sup>31</sup> European Commission 2017, *Europe's Digital Progress Report 2017*, European Commission.

<sup>32</sup> European Commission 2018, *Science, Research and Innovation Performance of the EU. Strengthening the foundations for Europe's future*, European Commission, pp.431–433.

<sup>33</sup> European Parliamentary Research Services (EPRS) 2014, *Briefing*, 25 March, 2014, pp. 2–4.

<sup>34</sup> European Commission 2015, *A Digital Single Market Strategy for Europe*, COM/2015/0192 final.

<sup>35</sup> European Commission 2017, *Europe's Digital Progress Report 2017*, European Commission.

current discussions at the EU level. Recent studies<sup>36,37</sup> have indicated the potential for social investment and social innovation as well as highlighted differences in outcomes across EU Member States that have implemented different welfare state models. The main comparative theoretical approaches employed regarding the emerging of the social investments paradigm are Neo Keynesianism and Neo Liberalism.<sup>38</sup> Social investment should contribute to the development of innovative approaches related to the social innovation and competitive business environment of the digital market in the EU. It also should contribute to regional cohesion. An in-depth analysis of the scientific literature, legal and policy documents of international institutions elucidating the various versions and meanings of social investments, such as the paradigm of New Institutional Economics, the World Bank's Social Capital Initiative and others. The mainstream scholars view social investment as a strategy highlighting the shifting internal equilibrium between: public expenditure, private expenditure and banking tools that are identified as "social investments". The above approach to social investment is fundamental for the EU social innovation and regional cohesion policies. The most important instruments in reducing regional disparities are the European Commission's funds such as the European Fund for Strategic Investments and the Employment and Social Innovation Programme<sup>39</sup>. However, the contribution of these funds to reduce regional disparities in the current context of digitalisation and high unemployment in EU economies and associated social risks requires new actions by governments and social partners.

Today governments are looking for new sources of growth to boost the productivity and competitiveness of their economies and industries, to generate jobs and to promote the wellbeing of their citizens. As highlighted in the OECD Ministerial Council Statement<sup>40</sup>, governments have to respond to the rising inequality as it could endanger social cohesion and hamper the economic resilience and inclusive societies. Furthermore, governments will need to anticipate and address the need for regulatory structures development to minimize disruptive effects

<sup>36</sup> GROOTAERT, CH., Van BASTELAER, T. Understanding and Measuring Social Capital: A Synthesis and Findings from the Social Capital Initiative, 2001, *Working Paper 24*, Washington DC, World Bank

<sup>37</sup> HUNG, SY, CHANG, CM and KUO, SR. User acceptance of mobile e-government services: An empirical study, *Government Information Quarterly*, 2013, vol. 30, no. 1, pp. 33–44.

<sup>38</sup> HEMERIJCK, A., VANDENBROUCKE, F. Social Investment and the Euro Crisis: The Necessity of a Unifying Social Policy Concept". *Intereconomics*, 2012, vol. 47, no. 4, pp. 200–206.

<sup>39</sup> European Commission 2015, "European Fund for Strategic Investments". *Official Journal of the European Union*, L 169/1 Regulation (EU) No 2015/1017 of the European Parliament and the Council of 25 June 2015.

<sup>40</sup> OECD 2016, "Digital Government Strategies for Transforming Public Services in the Welfare Areas," OECD Publishing, Paris.

of challenges in the digital environment such as privacy, new jobs, intellectual property rights, competition and taxation.

The relationship between information technologies (IT) and economic development of peripheral territories and industrial areas has been of interest for scholars. In this respect, more attention should be given to a digital regional divide existing in many economies. The term “digital divide” refers to the gap between individuals, households, businesses and geographic areas at different socio-economic levels with regard to both their opportunities to access information and communication technologies and to their use of the Internet for a wide variety of activities.<sup>41</sup> The digital assessment of regional development has been subject of scholarly articles<sup>42</sup> with the main conclusion that the lack of digitalisation is not necessarily the cause of social and economic under-development phenomena of regions, but is a consequence of low social and economic status in terms of regional geography and wellbeing. The lack of information technologies and digital infrastructure as well as digital literacy such as digital knowledge, skills and practices are likely to reinforce initial social inequalities.

The notion of co-production emerged in the private sector by motivation to increase high quality service associated with corporate profits. However, the concept is relevant to the public sector. As was noted by scholars<sup>43</sup> the public sector is dominated by the production of services that due to their discretionary and intangible character, the simultaneous process of production and consumption and the service recipient’s central role in the process provide excellent conditions for co-production.<sup>44</sup> Providers and consumers of public services bring together different resources and capabilities in the joint creation of the value of the service in question and both parties have an interest in maximizing public value creation.<sup>45</sup> It is important to stress that the role of a citizen as a client and a partner in the provision of public is known as a concept of co-production and/or a concept of co-production of public services and is foreseen as the next stage

<sup>41</sup> OECD 2001, “Understanding the Digital Divide”, OECD, Paris.

<sup>42</sup> BRIGGS, L. Citizens, Customers, Clients or Unwilling Clients? Different and effective strategies for citizen-centric delivery. In: Lindquist, E. A., Vincent, S., Wanna, H. (eds). *Putting Citizens First. Engagement in Policy and Service Delivery for the 21st Century*. Canberra: The Australian National University, 2013, pp.83–94, 220.

<sup>43</sup> OSBORNE, SP., RADNOR, Z. AND STROKOSCH, K. Co-Production and the Co-Creation of Value in Public Services: A suitable case for treatment? *Public Management Review*, 2016, vol. 18, no. 5, pp. 639–653.

<sup>44</sup> Ibid.

<sup>45</sup> TORFING, J., SØRENSEN, E., RØISELAND, A. Transforming the Public Sector Into an Arena for Co-Creation: Barriers, Drivers, Benefits, and Ways Forward, *Administration and Society*, 2016, vol. 51, no. 5, pp. 795–825. <<https://doi.org/10.1177/0095399716680057>>

of evolution<sup>46</sup> in the relationship between public administration and society.<sup>47</sup> Both concepts involve active participation of citizens in public service delivery by creating sustainable partnerships with citizens. However, the literature makes a distinction between three types of involvement: 1) citizens as co-implementer of public policy, 2) citizens as co-designer and 3) citizens as co-initiator.<sup>48</sup> According to the scholars, the first type is the most frequently represented.

The post-industrial civil society paradigm is increasingly strengthening in modern democratic public administration system; among other principles, is also characterized by societal equality and participation opportunities; as a result state power is focusing more on the needs of society, is in turn, is reacted in broad public administration reforms<sup>49</sup> carried out to improve the efficiency of the state power implementation according to the needs of society.

To ensure the systematic improvement of the provision of public services it is essential to understand why citizens as clients are satisfied or not satisfied by public services and its delivery, which allows applying the good practices for other services and clients' target groups. The main critique of the concept related to the definition of a citizen as a client of public administration services relay on the diminished role of the citizens' civic participation and thus positioning the individuals of the society as passive services recipients.<sup>50</sup> This situation can be often crucial for better-informed decision-making. Besides, the often-uncertain variability of the public administration's client's roles has a negative impact on the work motivation of civil servants<sup>51</sup> within the implementation of public functions and delivery of public services.

<sup>46</sup> PETRESCU, M., POPESCU, D., BARBU, I., DINESCU, R. Public Management: between the Traditional and New Model" *Review of International Comparative Management*, 2010, vol. 11, no. 3, pp. 408–415.

<sup>47</sup> VERSCHUERE, B., BRANDSEN, T., PESTOFF, V. Co-production as a maturing concept". In: PESTOFF, V., BRANDSEN, T., VERSCHUERE, B. (eds) *New Public Governance, the Third Sector and Co-Production*. New York, Routledge, 2012, pp. 1–12, 424, 66.

<sup>48</sup> VOORBERG, WH, BEKKERS, VJMM and TUMMERS, LG. A Systematic Review of Co-Creation and Co-Production: Embarking on the social innovation journey. *Public Management Review*, 2015, vol. 17, no. 9, pp. 1333–1357.

<sup>49</sup> DAGLIO, M., GERSON, D., KITCHEN, H. *Building Organisational Capacity for Public Sector Innovation*. Background Paper, OECD Conference „Innovating the Public Sector: from Ideas to Impact”, Paris, 12–13 November 2015, p. 40.

<sup>50</sup> BRIGGS, L. Citizens, Customers, Clients or Unwilling Clients? Different and effective strategies for citizen-centric delivery. In: LINDQUIST, E. A., VINCENT, S., WANNA, H. (eds) *Putting Citizens First. Engagement in Policy and Service Delivery for the 21st Century*. Canberra: The Australian National University, 2013, pp. 83–94, 220.

<sup>51</sup> ANDREWS, C. Integrating Public Services Motivation and Self-Determination Theory: A Framework. *International Journal of Public Sector Management*, 2016. vol. 29, no. 3, p. 12, 1–34.

Public administration reforms are continuously taking place in many countries implementing new ideas, changing and improving policies, processes, structures and other management mechanisms and instruments, boosting efficiency and solving problems and challenges.<sup>52</sup> The concept of co-production is strongly connected to the concept of co-production and these two concepts complement each other well. The close interaction between these two concepts to a large extent changes the roles of contemporary public service provision system's participants – politicians, officials of the governmental institutions and the recipients of public services. However, most studies focus on the identification of influential factors with little attention given to the results of the two concepts interaction, which needed to be in the centre of future research. Furthermore, quantitative studies are badly needed relying on that more qualitative and case studies approach is prevailed.<sup>53</sup>

These changing roles are defined by both the characterizing principles and values of the respective public administration model as well as by the mechanisms of cooperation among the participants of the process of the “producing” and receiving of public services.<sup>54</sup>

National and local governments increasingly aim to involve citizens actively in proving public welfare services and in solving social and political problems and challenges. National governments forge networks of public and private actors that produce and monitor regulatory policies and standards and the European Union supports regional partnerships aiming to stimulate growth and employment in rural areas.<sup>55</sup> In addition, the new public governance is based on innovation and the digitalization of public services' provision that ensures wider and easier accessibility of public services as well as saves clients' resources.

## 4. Public policy client-accordance index

The essence of authors' proposed PCAX – the policy-client-accordance (PCA) index – is first to identify the policy makers' expectations contained in policy planning documents and second – identify (survey, observe, collect, extract – the

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<sup>52</sup> DAGLIO, M., GERSON, D., KITCHEN, H. *Building Organisational Capacity for Public Sector Innovation*. Background Paper, OECD Conference „Innovating the Public Sector: from Ideas to Impact”, Paris, 12–13 November 2015, p. 40.

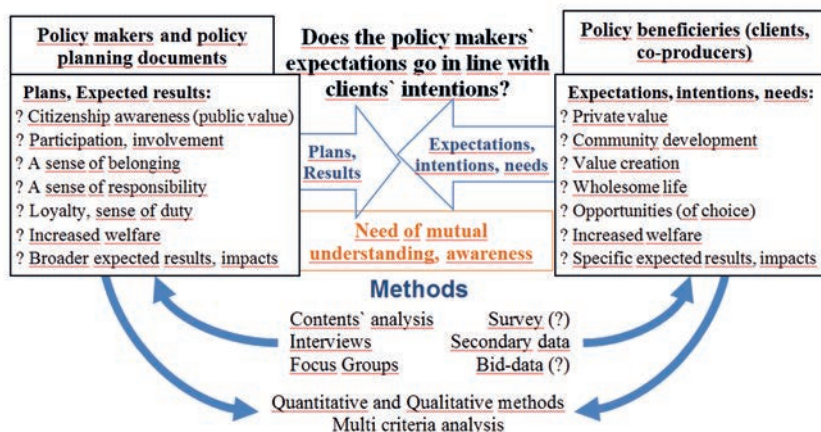
<sup>53</sup> MURAVSKA, T., STACENKO, S., ZEIBOTE, Z. Digitalization in the Regional Context: The Case of E-Government Services in Latvia. *Studies in European Affairs*, 2018, no. 4., pp. 251–267.

<sup>54</sup> *ibid.*

<sup>55</sup> FOTAKI, M. Towards developing new partnerships in public services. *Public Administration*, 2010, no. 89, pp. 933–955.

method still under research) the very policy's target audience's (beneficiaries, clients, co-producers) intentions in respect to policy makers' expectations (see Figure 3). The PCAX research design essentially consists of 1) selection of public policy areas, 2) identification of main policy intentions and expectations, including the review of methodologies to do so, 3) categorising the segments of the respective policy's clients' target groups. To conduct the research on these stages, the contents analysis of respective legislative acts and expert interviews are to be conducted. The fourth stage of research design shall be 4) setting of the methodologies to collect the respective policy's clients' target group intentions and evaluations regarding the co-production process in the public governance in the respective policy area. Large focus of the research is to be put on the usage of existing data or collection of data for clients'/co-producer's profiling – their interests, intentions, needs. The uncertain concept of the big data, the risks of the surveillance state as well as the certain concerns of data privacy issues in relation to state information registers shall be reviewed.

**Figure 3.** Principal Policy Client-Accordance seeking scheme



*Source: Authors' construction based on conceptual research analysis*

For instance, in terms of active participation and involvement in state development which was one of the main policy makers' expectations in authors' case-based Latvian youth policy, the result of research led to conclude that Latvian youth policy PCA index is 40% meaning that there is a space for improvement. The later conducted feasibility study – to identify the applicable and challenging

aspects of the application of youth policy case-based methodology model for evaluating the relevance of any public administrations' policy to the intentions of the policy's clients' group – showed that the model is feasible in wider public administration area however it requires specific adjustments.<sup>56</sup> The major findings led the authors to conclude that from the perspective of the state the policy makers' expectations towards youth are rather clear and structured while the youth's perspective is still developing through interacting, reasoning, adjusting ambitions to expectations, etc. Given the limitless needs of the society, which is one of the economic development pillars, the same pattern of structured policy versus undefined needs of its clients can be applied also in other fields of public policies. Another consequent conclusion was that the state and its governing institutions, as well as the society, places and treats the youth as a separate group of state clients and society members. The attitudes alter from socially marginalised *citizens-in-waiting* to the youth as a crucial asset of state development. Youth as a separate state client's group can be identified in various policy areas e.g., in education system, justice system, socio-economic area. This pattern, in its turn, cannot be placed upon policy in its client's relationships in most of other public policies due to the uniqueness of youth as sociodemographic group and generality of other sociodemographic groups. The summarizing conclusion of the feasibility study showed that the youth policy based PCA evaluation model is feasible in wider public administration area, however, it requires specific adjustments. The methodological approach is directly applicable to other policy areas, i.e., it is possible to identify the client's groups for each of public policy areas once they are defined. Thus, it is possible to identify the respective policy's client orientation aspects and expectations towards its client's group. Accordingly, it is possible to research the intentions and perceptions of the policy's clients subsequently providing the PCA index. However, the challenging aspects of the feasibility of the case based PCA evaluation model in wider public administration area relate to different features of the public policies and their clients' groups. It means that the factors used for PCA index in different policy areas shall differ considerably and thus the PCA indexes shall not be compared among different policies. Nevertheless, the compilation of all PCA indexes can be used for the overall public administration system itself.

To quantify the evaluation of policy-client accordance which would provide a comprehensive assessment and would allow policy makers, industry and society leaders to overview the state of affairs regarding the relevance of the public

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<sup>56</sup> PUTANS, R. Modern Interactions between the Society and the State: In: Search of Clients within Public Administration. *Voices from the Sylff Community*, 2015. [online] Available at: <[https://www.sylff.org/wp-content/uploads/2015/09/06\\_SRA\\_Putans\\_Article-web.pdf](https://www.sylff.org/wp-content/uploads/2015/09/06_SRA_Putans_Article-web.pdf)>



strategy or policy to their target group, the authors propose the PCAX indicator to be calculated in the following way (see Formula 1 and 2).

**(Formula 1)**

$$\overline{F_i} = \frac{\sum_{i=1}^m \frac{\bar{x}_i * \frac{\bar{w}_i}{10}}{\max \bar{x}_i}}{m} (\%);$$

$$\bar{x}_i = \frac{\sum_{i=1}^n x_i}{n}; \bar{w}_i = \frac{\sum_{i=1}^n w_i}{n}; F_i = \frac{\bar{x}_i * \frac{\bar{w}_i}{10}}{\max \bar{x}_i} (\%); \bar{F} = \frac{\sum F_i}{m} (\%);$$

**(Formula 2)**

$$\bar{F} = \frac{\sum_{i=1}^m \frac{\frac{\sum_{i=1}^n x_i}{n} * \frac{\frac{\sum_{i=1}^n w_i}{n}}{10}}{\max \frac{\sum_{i=1}^n x_i}{n}}}{m} (\%);$$

, where

$\bar{F}$  – the overall PCA index

$i$  – defined policy expectation statement (factor)

$F_i$  – mean of the factor  $i$  expressed in % of  $i_{\max}$  value

$x_i$  – individual client assessment of the factor  $i$

$\bar{x}_i$  – mean of the factor  $i$

$w_i$  – significance assessment of the factor  $i$ . To some factors the weighted average is not applied because it is assumed that their significance or importance in the overall assessment is undisputed, for example, factors such as bad experience with PA do not require a significance assessment

$\bar{w}_i$  – mean of the significance assessment of the factor  $i$

$\max x_i$  – maximum possible value of the factor  $i$

$n$  – number of respondents (for a survey)

$m$  – number of factors used in the respective PCAX calculation

Overall, this methodology and PCA index would improve the mutual understanding between policy makers and their clients, which is crucial for sustainable and all-sides' supported development of the state, its society and its communities, including the awareness of the growing importance of the client/co-producer in public administration, better customer service as well as inclusive co-produced and client-oriented public policy design positioning these as important strategic development elements in public administration. The very essence of the public administration is the efficient management of joint resources and the co-operation



between the society and elected or selected public servants, where the latter are mediators and coordinators for ensuring efficient use of state recourses according to public (which they are part of) needs.

## **5. Case study of improving public electronic services by applying the co-production concept in the framework of the Citadel project**

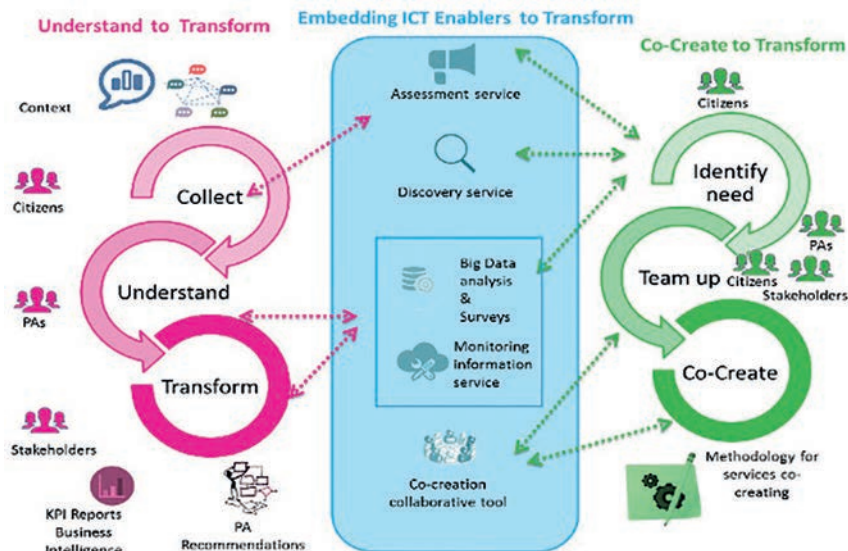
The use of co-production concept has been demonstrated by the CITADEL project<sup>57</sup> targeting the improvement of e-government services. *The CITADEL project and its objectives*

The CITADEL project was started late 2016 under the EU Research and Innovation programme Horizon-2020 under the leadership of the TECNALIA Research & Innovation, which is the first privately funded Applied Research Centre in Spain and one of the leading such centres in Europe. The project consortium involved 12 partners from five different countries, representing Northern, Southern and Eastern Europe including University of Cantabria (Spain), KU Leuven (Belgium), FINCONS Spa (Italy), IMEC (Belgium), Regione Puglia (Italy), InnovaPuglia Spa (Italy), Stad Antwerpen (Belgium), TIME LEX CVBA (Belgium), Ministry of Environmental Protection and Regional Development of Latvia (VARAM), University of Latvia, Stichting ICTU (the Netherlands). The CITADEL project was aiming at exploring, monitoring and analysing the drivers, enablers, impact, risks and barriers of open, innovative and collaborative government across a diverse terrain of PAs through an open and scalable platform based on innovative ICTs in order to understand, transform and improve by proposing recommendations to enhance the PAs policies and processes with a view to deliver effective, inclusive and high quality public services across Europe. Among CITADEL's mains objectives were to incentivize the co-production of digital public services by empowering citizens and public administrations, and to increase the participation of Citizens in the Public Administration system by improving their experience when using digital public services.

According to the description of the CITADEL project and its presentation on the project's website (see Figure 5) at least one third of the project was devoted for co-production with a purpose to transform public services.

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<sup>57</sup> CITADEL project has been implemented under the "Horizon-2020" programme, Grant Agreement No 726755.

**Figure 5.** The CITADEL ecosystem.

Source: <<https://www.citadel-h2020.eu/>>

*CITADEL co-production definition and offered results*

The CITADEL offered to provide the **CITADEL tool-supported methodology for services co-production with the expectation** that this methodology will guide and support public administrations in the co-production process. Also, the CITADEL created the **co-production collaborative tool** that should allow public administrations, private sector and citizens to co-create new public services also at a conceptual level. In addition, the CITADEL Co-creation Handbook has been provided. In relation to the usage of terminology – co-production and co-creation – the concept of co-production is strongly connected to the concept of co-production and these two concepts complement each other well.<sup>58</sup> Having this into account as well as given the specifics of CITADEL project planned outcomes, particularly new public services at a conceptual level, – authors found it strongly justified in this case study to use terminology of co-creation to emphasise the focus on innovation.

<sup>58</sup> MURAVSKA, T., STACENKO, S., ZEIBOTE, Z. Digitalization in the Regional Context: The Case of E-Government Services in Latvia. *Studies in European Affairs*, 2018, no. 4., pp. 251–267.

The CITADEL project supported the principles of collaboration, transparency and participation of the Open Government concept. In the project framework the co-production has been understood as a collective process in which government, organizations and citizens actively share ideas to reap a major benefit of that interaction. Based on the principles of collaboration and innovation systems, the Open Innovation 2.0 paradigm provides relevant insights into the capabilities to create innovation by sharing knowledge. One of the main advantages of this paradigm is the capability to create valuable ideas both inside and outside the company<sup>59</sup> by placing ideas from non-market institutions and individuals and introducing them into the market. This paradigm is based on the Quadruple Helix Model. This encompasses different stakeholders working together to co-create: government, industry, academia and citizens. This perspective is focused on co-creating shared value that is consisting of that a specific service does not have any intrinsic value for the user, but this depends on the total value co-created as aggregation during the co-production of the service<sup>60</sup>; for instance, the experiences acquired by the user during the service provision.

The project proposed a CITADEL definition of co-production based on this Open Innovation 2.0 approach: Co-production is defined as an integrated mix of activities through which different stakeholders – government, industry, academia and groups of individual citizens – work actively and directly together towards the provision of public services. Co-production with citizens may include co-design and co-implementation of core and/or complementary services. It may take advantage of innovation ecosystems and emerging technologies but is not limited to digital tools.

1. The definition of co-production adopted here is based on the paradigm Open Innovation 2.0 that is compatible with the CITADEL approach (Public Administration + Private sector + Academia + Citizens) using cultivated innovation ecosystems.
2. This definition reflects the idea of co-production as a mix of activities<sup>61, 62</sup> in which inputs are supplied by participants as an integrated process comprising both the design and the implementation of public services.

<sup>59</sup> CHESBROUGH, HW. *Open Innovation, the New Imperative for Creating and Profiting from Technology*. Boston (USA): Harvard Business School Publishing, 2003.

<sup>60</sup> OSBORNE, SP., RADNOR, Z. AND STROKOSCH, K. Co-Production and the Co-Creation of Value in Public Services: A suitable case for treatment? *Public Management Review*, 2016. vol. 18, no. 5, pp. 639–653.

<sup>61</sup> OSTROM, E., PARKS, RB., WHITAKER, GP. AND PERCY, SL. The Public Service Production Process: A Framework for Analyzing Police Services”. *Policy Studies Journal*, 1978, vol. 7, pp. 381–381.

<sup>62</sup> PARKS RB., BAKER, PC., KISER, R., OAKERSON, R., OSTROM, E., OSTROM, V., PERCY, SL., VANDIVORT, MB., WHITAKER, GP., WILSON, R. Consumers as Coproducers of

3. This is a broader definition that considers the context of CITADEL use cases and their differences and specificities to address different requirements.
4. Regarding the debate on voluntariness<sup>63, 64, 65, 66</sup>, there are several examples in the case studies investigated showing that co-production is not exactly voluntary. Thus, the voluntariness term has not been introduced in this definition and its preferred to refer to it as an active involvement.

### **5.1. Experimental application of the co-production concept by the Latvian public administration**

During the implementation of the CITADEL project the importance of co-creation has been proven by the research work performed by the University of Latvia (LU) in cooperation with the Ministry for Environmental Protection and Regional Development responsible for providing e-government services. It should be noted that this was the first time in Latvia, when the co-creation approach was used by the public administration to involve citizens' in the decision making and improvement of public services.

According to the LU designed methodology 6 coproduction sessions were conducted involving 5 focus groups: NGOs; people with special needs (problems of sight); students of LU computing faculty; inhabitants – users of the latvia.lv portal; and employees of the CSC's. The main objective of coproduction sessions was to identify problems of the usability of the portal from a user point of view and to receive practical suggestions and possible solutions.

The 4 priority topics chosen for analysis during the coproduction sessions were the following: 1) life situations; 2) e-services; 3) catalogue of public services; 4) client workplace.

The main criteria for defining the usability of the portal in the context of client satisfaction:

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Public Services: Some Economic and Institutional Considerations. *Rick Policy Studies Journal*, 1981, pp. 1001–1011.

<sup>63</sup> ALFORD, J. Towards a new Public Management Model: Beyond 'Managerialism' and its critics. *Australian Journal of Public Administration*, 1993, vol. 52, no. 2, pp. 135–148. <<https://doi.org/10.1111/j.1467-8500.1993.tb00263.x>>

<sup>64</sup> BOVAIRD, T., STOKER, G., JONES, T., LOEFFLER, E. AND PINILLA, R. Activating collective co-production of public services: influencing citizens to participate in complex governance mechanisms in the UK. *International Review of Administrative Sciences*, 2016, vol. 82, no. 1, pp. 47–68.

<sup>65</sup> BRUDNEY, J.L. AND ENGLAND, R.E. Toward a definition of the co-production concept. *Public Administration Review*, 1983, no. 43, pp. 59–65.

<sup>66</sup> OSBORNE, S.P., RADNOR, Z. AND STROKOSCH, K. Co-Production and the Co-Creation of Value in Public Services: A suitable case for treatment? *Public Management Review*, 2016, vol. 18, no. 5, pp. 639–653..

- Convenience of portal's design visual perception – *How visually attractive is the portal's home page? How to improve it?*
- Structure of information, transparency of placement and convenience for use (navigation) – *How easy it is to understand and what and where is located in the portal? How to improve it?*
- Speed – *How fast it is possible to make necessary actions in a current information structure? How to improve it?*
- Clearness of the description of services – *How clear is descriptions of accessible services? Is it possible to understand if there is information that one is looking for? How to improve it?*
- Convenience of use of the search function – *How convenient is the search function? Is it working precisely? How to improve it?*

The main goal of these sessions was to get insights from the end-users of the national public service portal [www.latvija.lv](http://www.latvija.lv). During these sessions, the CITADEL project proved itself to be a perfect environment for collaboration between academia and different levels of public administration to gain the most from the co-creation activities.

The chosen methods used for coproduction sessions with focus groups included the “*Check-in check-out*” methods to ensure precise suggestions and to be able to identify them; the “*Idea Dashboard*” method and the “*Brainstorm*” method. The greatest challenge was to choose the right method for a particular focus group, which required a combination of abovementioned methods during the session, and a flexibility for shifting from one method to another to be able to capture the ideas and suggestions in fast and easy manner. Moreover, the size of focus groups varied from five to more than 20 participants, which must be considered to make sessions efficient. Larger focus groups (students, employees of the United State and Municipal Client Service Centres) were divided into smaller working groups.

Each focus group in a coproduction session was moderated and monitored by external observers to carefully follow the processes during the sessions. The sessions were implemented in an informal working atmosphere and in a dynamic manner by exchanging view, discussing, completing special tasks in computers and on the paper. In difference from other sessions, during the session with students the mobile phones were used with a thought that young people mainly use electronic services on phone. In every session the CITADEL project was shortly presented, and ideas of the project have been addressed.

The participants' surveys with evaluation and comments about each of the tasks they had to fulfil has been collected; these evaluations and comments constituted a basis for drafting the results of the focus group co-creation sessions. Surveys of observers with comments on each of participant's involvement in common activities related to work in groups and sub-groups, as well as in

common discussions have been included in the assessment of the focus group co-creation sessions. In addition, all sessions were recorded; fixed comments and observations were added to the overall evaluation. The evaluation was performed in a structured way according to the five criteria for defining the usability of the portal for the four priority areas (life situations; e-services; catalogue of public services; client workplace). Based on a set of the structured conclusions, detailed proposals and recommendations were provided

During the co-creation sessions appeared that a lot of focus was on the search engine. Results have shown that many users rely on built-in search function in the portal and its functionality was deemed unsatisfactory because usually, when searching by keywords, search provides too many results for users to comprehend. Also, one of the identified problems was too complicated language and disparities between the language and keywords chosen by end-user when searching for a service, and the choice of words / complexity of service descriptions provided by institutions. Unfortunately, this is a very complex issue, which needs time and effort to be solved. In addition, providing services and making them simple for people, one needs to find a balance between legally correct and comprehensive descriptions, and simple way of expression. The sessions also substantiated the need for mobile-friendly version, proactive and personalized service delivery, intuitive design.

Another worth-mentioning example of a large-scale co-production and co-creation project involving also digitalization is the “3LoE – *Three-level centres of professional excellence: Qualification, entrepreneurship and innovation in the Green Economy*”.<sup>67</sup> The project aims at development and implementation of dual vocational training in education, training and higher education, with an intensive partnership between the places of learning (companies – education centres). Such dual education is comparatively new concept in many European countries. It is expected that in addition to the development of competitive higher education program, which shall be novel in its contents and equally importantly in its format, a major spill-over effect of the project in the wider context of societal governance will also be the evident co-production concept put in practice – the program is being developed and will be implemented together by the service provider (universities, incl., state universities) and the service recipient (labour market, companies) thus both parties equally content-wise, format-wise and institutionally are involved, motivated and responsible for the provision of higher education according to labour market and societal needs.

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<sup>67</sup> EU Project 3LoE “Three-level centres of professional excellence: Qualification, entrepreneurship and innovation in the Green Economy”. Pilot project selected for funding under ERASMUS+ Support for Policy Reform 2020 Call. [online] <<https://3-loe.eu/>>

## 6. Conclusions

1. The transition of the client concept from the private sector to the level of government was influenced by the development of post-industrial civil societies as well as changes in private sector management development techniques that emphasized the need to focus on the client. That created a growing public pressure for more efficient public administration and contributed to the beginning of the public administration reforms in the 1980s and 1990s, including the development of the client-oriented approach.
2. The development of public administration models – classical (bureaucratic) public administration model, the New Public Management model and the New Public governance model – and the differences they imply on public administration relationships with society reflect the socio-economic situation in a specific development stage of societies. Although these organisational models of public administration have been, and are evolving gradually one after another, they however co-exist, and in different modern public administration systems, elements from each model can be found.
3. Taking into account that the essence of the client concept in public administration is characterised by efficient execution of public administration functions according to the needs of society, the national and supranational development planning documents in the framework public administration reforms, emphasises the need for the client-oriented and further co-produced approach along with the realization of public administration functions, particularly where they interconnect with society.
4. Within the typology of the relationships between public administration institutions and their clients, two separate major roles of the clients are being distinguished depending on which of the clients' needs the relationships are targeting – public administration clients as recipients of public services when the relationship satisfies their private needs for their private value or public administration clients as citizens when, in addition to the private value, the public value is also being served.
5. At the same time, scientific literature does not offer any conventional definition for the public administration client and to a very little extent it studies the public services on a meta-level. Therefore, it also does not offer any conventional definition of the public service. This is recognised as one of the main challenges in the development of public services provision systems in many countries.
6. The concept of the co-production of public services emphasises the co-operation between the service providers and recipients, i.e., the clients' involvement



- in public policies' decision-making in provision of public services mainly through the organized civil society.
7. The importance of social and civic participation is also supported by the prospect of negative consequences of the alternatives, i.e., the non-participation or critically low social and civic participation of people threatens the democratic public governance system. Therefore, maximizing the active social and civic participation is also a politically, socially and economically driven necessity. In this respect, the social and civic participation is not driven by society's rights or motivations, but includes number controlling and nudging elements to enhance public participation.
  8. The important role of the client-oriented approach in the development of public administration can be justified by its positive impact on the empowerment of participation opportunities and social coproduction as well as on the strengthening of active civil society. Such a way of co-operation between public administration and society contributes to awareness-based relationship between public administration and its clients that, in its turn, ensures more tailor-made provision of public services, equal distribution of responsibility about the service quality, as well as increases the legitimacy of public administration actions, including its development implementation.
  9. The authors' proposed policy client-accordance index methodology allows an identification of the strong and weak points of the public administration's client-oriented approach based on a detailed quantitative comparison of results between different factors thus allowing for planning and taking appropriate policy-making adjustments.
  10. The feasibility study shows that the authors' proposed youth policy based PCA evaluation model is feasible in the wider public administration area, however it requires specific adjustments that are related to the identification of clients' target groups for the respective public policies as well as policy's expectations towards these target groups. For comprehensive and standardised PCA index applicability, further research is necessary.
  11. The experience of applying the co-production concept in case of Latvia concludes that efficient decision making for improving economic development, as well as social welfare at regional, national and local levels needs implementation of digitalized services in a process of co-creation as they inevitably become more important due to the increased digital competitiveness of countries.



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# Analysis of Push and Pull Factors for Starting a Business in Latvia

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**Summary:** Entrepreneurship related research has developed rapidly during the recent decades. It is of interest for every country in the European Union to foster increase of newly created enterprises and thus employment and economic dynamism. The main goal of this paper is centred on motivational factors that contribute to people's involvement in business in Latvia. At first, the article looks at the development of factors that influence entrepreneurial motivation in context of *push* and *pull* theoretical framework. Subsequently, the analysis of an empirical study is carried out. The study analyzes factors that promote or hinder starting a business in context of *push* and *pull* framework. The results offer important conclusions regarding the main motivators for starting a business. Majority of the existing and potential entrepreneurs are motivated by the *pull* factors (i.e., appropriate character, skills and knowledge, willingness to support their family members or earn more). The motivation can be further triggered by the *push* factors, such as tax benefits or favourable business legislation. Nevertheless, the *push* factors alone cannot boost creation of new enterprises as operate in tandem with the *pull* factors.

**Keywords:** entrepreneurial motivation, Latvia, push factors, pull factors, starting a business.

## 1. Introduction and theoretical Framework

Entrepreneurship plays a vital role in national economy not only by creating employments, but also by developing new technologies and innovations, stimulating

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competition and competitiveness and promoting export. It is an important cause of economic growth that helps increasing a standard of living and balancing regional development. The research proves a positive link between establishing smaller ventures and the various leadership and entrepreneurial skills as being crucial to lead economic growth.<sup>1</sup> Research, furthermore, proves that entrepreneurship contributes to economic growth by serving as a means for increasing competition and thus the variety of businesses.<sup>2</sup>

However, such entrepreneurial intention depends on the overall evaluation of and outcomes of an entrepreneurial drive on certain opportunities. Entrepreneurial intention can be described as self-acknowledged conviction to set up a new business.<sup>3</sup> To specify extent to which individuals are interested to get involved in entrepreneurship it is significant to identify the factors affecting individuals' entrepreneurial or business intention.

Factors of entrepreneurial intentions can be examined from the perspective of push and pull theory. Negative factors that drive entrepreneurs to start a venture are considered "push" factors. That would be a situation when an individual is forced into entrepreneurship by adverse circumstances.<sup>4</sup> Among others, those factors could be: dissatisfaction with existing income, dissatisfaction with human resource management at existing workplace, inflexible working hours at existing workplace or lack of growth potential at existing workplace. Pull factors on the other hand are positive factors that motivate individuals to start a venture. In general, among others those factors could be: personal traits of individual, appropriate education and experience, savings, willingness to give employment to relatives and conducive business environment that include favourable tax policy, state guarantees for obtaining loans, availability of credit in banks and availability of business information. Factors that motivate and pull individuals into business

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EDOHO, F. M. Entrepreneurship and socioeconomic development: Catalysing African transformation in the 21st century. *African Journal of Economic and Management Studies*, 2015, vol. 6, no.2, pp. 127–147

<sup>2</sup> ACS, Z. J., Audretsch, D. B., Braunerhielm, P. & Carlsson, B. *Growth and Entrepreneurship: An Empirical Assessment*. London: Centre for Economic Policy Research, 2005.

<sup>3</sup> Thompson, E. R. Individual Entrepreneurial Intent: Construct Clarification and Development of an Internationally Reliable Metric. *Entrepreneurship, Theory and Practice*, 2009, vol. 33, no.3, pp. 66–694.

<sup>4</sup> Mikubukeli, Z. & Cronje, J. C. Pull and Push Elements of Entrepreneurship in South Africa: A Small-Scale Mining Perspective. *Journal of Entrepreneurship & Organization Management*, 2018, vol.7, no.3, pp. 1–7.

differ among individuals.<sup>5</sup> That is a reason why there is no universal division of factors used in the theory to describe entrepreneurial intention.

There are a significant amount of literature defining the factors in general affecting an intention to start up a business, but there is no universal theory established. For example, a research showed that individuals with entrepreneurial intention were constrained to start a new business, because of individual characteristics and the surrounding environment.<sup>6</sup> Mostly we can agree that factors influencing entrepreneurial intention can be divided in two categories. Psychological factors that include behaviour of the individuals, could be defined as internal factors and environmental factors that affect business intention, could be defined as external factors.<sup>7</sup> Those factors further may be divided according to Push and Pull theory. The interconnection between internal and external categories is proven by Boudreaux, Nikolaev and Klein who state that entrepreneurial mindset can only be cultivated in individuals, if the environment surrounding them or external factors promotes such behaviour.<sup>8</sup> Similar conclusions were made also earlier by Gnyawali and Fogel who provided that there exists an interdependency between the entrepreneurial activity and the environmental conditions.<sup>9</sup> That provides the importance in analyses of both environmental and psychological factors in the context of intention of entrepreneurship.

Entrepreneurial activity is restricted by the entrepreneurship environment. External factors include entrepreneurial environment that affects entrepreneurship – politics, economy and culture, commercial and legal infrastructure.<sup>10</sup> The impact of environmental condition varies among different countries. Governmental support has a significant role in external factors and determines the extent to which entrepreneurial ventures can succeed.<sup>11</sup> Commercial and legal infrastructure includes all the assessment services that potential entrepreneurs should appoint in order to initiate and manage the entrepreneurial procedure. Government policies, such as taxation and labour markets legislation are foundation of

<sup>5</sup> Islam, S. Pull and push factors towards small entrepreneurship development in Bangladesh. *Journal of Research in International Business Management*, 2012, vol.2, no.3, pp. 65–72.

<sup>6</sup> Liu, X. Y. & Lin, S. Social context, occupational status and entrepreneurial intentions for social individuals. *Manager Review*, 2015, vol. 10, pp. 138–149.

<sup>7</sup> Chorew, S. & Alistair, R. A. Success in Israel High-tech Start-up: Critical Factors and Process. *Technovation*, 2006, vol. 26, no. 10, pp. 162–174.

<sup>8</sup> Boudreaux, C. J., Nikolaev, B. N. & Klein, P. Sociocognitive traits and entrepreneurship: The moderating role of economic institutions. *Journal of Business Venturing*, 2019, vol. 34, no.1, pp. 178–196.

<sup>9</sup> Gnyawali, D. R. & Fogel, D. S. Environments for Entrepreneurship Development: Key Dimensions and Research Implications. *ET&P*, 1994, vol. 18, no.4, pp. 43–62.

<sup>10</sup> Li, C., Qiguo, C. & Lin, S. A Framework for the Study of Entrepreneurship Environment. *Jilin University Journal Social Sciences Edition*, 2007, Issue 1, pp. 50–56.

<sup>11</sup> Kiradoo, G. Identifying and evaluating the factors necessary for promoting entrepreneurship in a country. *Journal of Critical Reviews*, 2020, vol. 7, no. 13, pp. 995–998.



action to start a business as they influence the planning process of entrepreneurial ventures<sup>12</sup> and they can prove helpful for the improvement of entrepreneurship along with financial support.<sup>13</sup> That means that the government is responsible to implement regulations that positively motivates, or according to Push and Pull theory, pulls entrepreneurs to perform. It is concluded that high corporate tax rates may affect the selection of starting a business.<sup>14</sup> Later in the research of European countries it was found that higher taxation reduces the level of profit opportunities (incentive effect), thus reducing the entrepreneurship.<sup>15</sup> That includes intention to start a business.

Not only external factors affect entrepreneurial intention but also internal which concern psychology of individual. There is a research that proves that entrepreneurial motivation or intention is influenced by individual psychological characteristics, social characteristics and cognitive characteristics.<sup>16</sup>

According to the study, entrepreneurs with high psychological capital are more predisposed to seek solutions to overcome obstacles and they can take failure as an opportunity to learn and further develop to achieve their entrepreneurial goals.<sup>17</sup> For example, fear of failure weakened the relationship between entrepreneurial intention and action.<sup>18</sup> That means that individuals with greater fear of failure are most likely have weaker intention to start a business.

Recent research indicates a positive correlation between emotional intelligence and entrepreneurial intention.<sup>19</sup> It is also confirmed that individuals with higher emotional intelligence are more creative thus having more enterprising attitudes and having more significant role in starting up a business.<sup>20</sup> It is also

<sup>12</sup> Acs, Z. J., Scerb, L. & Lloyd, A. *Global Entrepreneurship and Development Index 2017. First edition*. Washington, DC: Springer International Publishing, 2017.

<sup>13</sup> Glaeser, E. L., Kerr, S. P. & Kerr, W. R. Entrepreneurship and urban growth: An empirical assessment with historical mines. *Review of Economics and Statistics*, 2015, vol. 97, no. 2, pp. 498–520.

<sup>14</sup> de Mooij, R. A. & Gaetan, N. *Corporate Tax Policy and Incorporation in the EU*. Bruxelles: Universite Libre de Bruxelles, 2007.

<sup>15</sup> Balamoune-Lutz, M. & Garelo, P. Tax Structure and Entrepreneurship. *Small Business Economics*, 2011, vol. 42, no. 1, pp. 165–190.

<sup>16</sup> Shook, C. L., Priem, R. L. & McGee, J. Venture Creation and the Enterprising Individuals: A Review and Synthesis. *Journal of Management*, 2003, vol. 29, no. 3, pp. 379–399.

<sup>17</sup> Zhuang, C. R. *Research on the Influence of Entrepreneurial Failure on Entrepreneurial Failure Learning*. Guangdong: Guangdong University of Technology, 2018.

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applicable to high risks takers who also have a greater entrepreneurial intent.<sup>21</sup> Some research refer to entrepreneurial attitude as the most important and direct factor in entrepreneurial intention.<sup>22</sup>

## 2. Methodology

**Goal** – to identify possible differences between the *pro-business* and *contra-business* groups and explore the *push* and *pull* factors that influence a person's choice to start a business.

**Methods** of mathematical statistics that were used for statistical analysis of the obtained data: descriptive statistics, correlation analysis, regression analysis, [comparison of group meanings with the Student's T-criterion for independent samples].

**The sample:** The sample was 1014 residents of Latvia aged 18 to 75. Sampling method was stratified random sample, and stratification feature – administratively territorial. The sample is representative of the population of Latvia in the respective age group. The survey method was direct interviews at respondents' places of residence. Respondents were selected by random route method, first birthday principle.

The survey form consisted of 41 multiple choice and Likert scale type questions in six socio-economic dimension blocks (entrepreneurship, politics and economics, personal experience, experience during crisis, current economic sentiment, activity). It was carried out in November 2019.

For data processing SPSS and Microsoft Excel software were used.

## 3. Findings

In our sample, 4.0% respondents already have an enterprise and 8.7% plan to launch a business, 77.8% do not have and do not plan to be involved in entrepreneurship. 9.5% of the group cannot answer unequivocally. Further on, we will analyse the respondents having or willing to start a business. But at first we would like to find out whether there is any particular difference between the

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<sup>21</sup> Ozaralli, N. & Rivenburg, N. K. Entrepreneurial intention: antecedents to entrepreneurial behavior in the U.S.A. and Turkey. *Journal of Global Entrepreneurship Research*, 2016, vol. 6, no. 3, pp. 1–32.

<sup>22</sup> Feder, E. S. & Nitu-Antonie, R. D. Connecting Gender Identity, Entrepreneurial Training, Role Models and Intentions. *International Journal of Gender and Entrepreneurship*, 2017, vol. 9, no.1, pp. 87–108.

*pro-business* (having or willing to have a business) and *contra-business* respondent groups (not having and not willing to have a business).

Table 1 shows the distribution of reasons for and against private business for both groups. The reasons are thematically paired in each row and grouped in two groups – whether it is a *pull* of a *push* factor. For the pro-group, the TOP-5 factors are all *pull* factors. 81.5% of respondents having or willing to have a business are motivated by personal traits, dissatisfaction with the current situation or willing to support their family.

Another study about factors influencing starting up a business in Latvia found that interference of the state (*push* factor) was very essential and the education does not play a significant role in business.<sup>23</sup> Nevertheless, it must be mentioned that the author does secondary analysis of several surveys done in years 2012 and 2013. Also, we have to take into account that it was the period after severe damage to the business environment due to the global financial crisis and government support was crucial for entrepreneurs.

The *contra-group* named factors that are discouraging them to begin entrepreneurship, and the responses are almost evenly split by *pull* and *push* factors – namely, 52.3% and 47.7%. Most often, the reason was also personality-related (*pull*), but business environment factors were also important here.

**Table 1.** Comparison of *pro-business* (N=297) and *contra-business* groups (N=1991) by reasons of starting or avoiding their own business, % of respondents (multiple responses were allowed, therefore sum of N exceeds the sample size)

Reason	Pro-group, %	Reason	Contra-group, %
<i>Pull factors</i>			
Has experience, knowledge, skills	<u>14.5</u>	Lack of experience, knowledge, skills	<u>14.6</u>
Has appropriate character traits	<u>18.2</u>	Lack of appropriate character traits	<u>14.8</u>
Accumulated equity to form a company	<u>7.1</u>	No savings accumulated for business establishment	<u>15.0</u>
Dissatisfied with the current income level	<u>15.8</u>	Satisfied with the current income level	3.7
Lack of professional growth opportunities	3.7	Has opportunities of professional growth	0.6

<sup>23</sup> Spruksts, E. Factors Influencing Starting Up a Business in Latvia. *Economic Science for Rural Development*, 2014, vol. 36, pp. 147–154.

Inefficient HR management	2.7	Efficient current HR management	0.7
Inflexible current working hours	6.7	Flexible current working hours	1.2
Desire to provide work for family members	<u>12.8</u>	Plan to leave Latvia	1.7
<i>Push factors</i>			
Availability of credit in banks	2.4	Unavailability of business loans in banks	2.2
Existence of state lending programs	1.0	Lack of a national lending program	2.5
State guarantees for obtaining loans	1.7	No / insufficient state guarantees for obtaining loans	2.8
Availability of business information	3.4	Business information is missing	2.8
		Overwhelming business control and bureaucracy	7.9
Promoting business environment in Latvia	2.3	Business-unfriendly environment in Latvia	<u>10.6</u>
Favourable tax policy	3.0	Unfavourable tax policy	<u>11.0</u>
Other reason	4.7	Other reason (4.6% consider themselves too old for business)	7.9

The results of other studies in Eastern European countries reveal that pull factors are dominant there as well. For example, Yurchynska and Serdiuk found that in Ukraine internal (*pull*) factors completely dominate and having a private business is viewed as a status position associated with freedom and independence.<sup>24</sup> A survey analysing entrepreneurial engagement factors in the USA and Europe concluded that in post-communist countries (including Latvia) necessity-driven factors are dominant. These factors also have a *pull* origin.<sup>25</sup>

Carbunaru<sup>26</sup> found that the most important business starting factors for female entrepreneurs in Romania are from the *pull* list as well – obtaining flexibility, greater satisfaction and superior financial situation.

<sup>24</sup> Yurchynska H., Serdiuk O. Psychological Factors of Starting Entrepreneurs' Business Success. *Social Welfare: Interdisciplinary Approach*, 2017, vol. 2, no. 7, pp. 86–94.

<sup>25</sup> Verheul I., Thurik R., Hessels J., van der Zwan P. Factors Influencing the Entrepreneurial Engagement of Opportunity and Necessity Entrepreneurs. *Eurasian Economic Review*, 2010, vol. 6, pp. 1–26

<sup>26</sup> Carbunaru A. F. Influence of push and pull factors on female entrepreneurship in Romania. *Junior Scientific Researcher*, 2019, vol. 5, no. 1, pp. 55–69.

Differences of the two groups are further analysed by descriptive statistics measures with most significant differences revealed in Table 2. Descriptive statistics. Social and demographic profile of both groups.

**Table 2.** Descriptive statistics of *pro-business* (N=129) and *contra-business* groups (N=789)

Statistic Std. Err.			Pro-business group		Counter-business group	
			Statistic	Std. Err.		
Age group	Mean		2.87	0.139	3.90	0.059
1 – 18-24 2 – 25-36 3 – 35-44 4 – 45-54 5 – 55-63 6 – 64-75	95% Confidence Interval for Mean	Lower Bound	2.59		3.78	
		Upper Bound	3.14		4.01	
	Median		3.00		4.00	
	Variance		1.721		2.323	
	Std. Deviation		1.312		1.524	
	Skewness		0.421	0.256	-0.144	0.095
	Kurtosis		-0.644	0.506	-1.097	0.189
Personal monthly income, EUR	Mean		661.32	37.458	555.73	12.272
	95% Confidence Interval for Mean	Lower Bound	587.20		531.64	
		Upper Bound	735.44		579.82	
	Median		700.00		505.99	
	Variance		180663.908		118846.747	
	Std. Deviation		425.046		344.742	
	Skewness		2.010	0.213	2.223	0.087
	Kurtosis		9.229	0.424	15.660	0.174
To what extent do you agree that Latvia is currently experiencing economic growth? 1 – totally agree 2 – partially agree 3 – partially disagree 4 – totally disagree	Mean		2.71	0.073	3.02	0.024
	95% Confidence Interval for Mean	Lower Bound	2.57		2.97	
		Upper Bound	2.86		3.07	
	Median		3.00		3.00	
	Variance		0.689		0.469	
	Std. Deviation		0.830		0.685	
	Skewness		-0.083	0.213	-0.165	0.087
	Kurtosis		-0.543	0.424	-0.284	0.174

Evaluate your living standard and rate it on a 10-point scale, where, '1' means 'completely dissatisfied' and '10' means 'completely satisfied'!	Mean		6.80	0.161	5.96	0.075
	95% Confidence Interval for Mean	Lower Bound	6.49		5.82	
		Upper Bound	7.12		6.11	
	Median		7.00		6.00	
	Variance		3.335		4.474	
	Std. Deviation		1.826		2.115	
	Skewness		-0.367	0.213	-0.421	0.087
	Kurtosis		0.001	0.424	-0.304	0.174

The *pro-business* group is approximately a decade younger and has on average by 105.6 EUR higher monthly income. Comparison regarding education level, having young children and marital status did not show a significant difference between the groups. The *pro-business* has somewhat more positive economic sentiment and has a higher standard of living, compared to the other group.

Table 3 (next page) presents Pearson correlation coefficients for the independent variables in our analysis and other variables, such as age group, education, having children under 18 years of age, employment, monthly income, economic sentiment and living standard satisfaction.

Most coefficients show rather weak linkage of the selected variables. The highest absolute value coefficients – two pairs – were fairly close to a significance barrier of 0.3, namely, age and having young children ( $r = 0.299, p < 0.01$ ), and employment and monthly income ( $r = 0.286, p < 0.01$ ). These trends are quite understandable and logical. Inflexible working hour factor is positively correlated with the dissatisfaction with current HR policy factor ( $r = 0.243, p < 0.01$ ). The correlation coefficient for “willingness to give employment to relatives” was negatively associated with “appropriate character, experience, knowledge and skills” ( $r = 0.234, p < 0.01$ ), indicating that these are two groups having separate motivation for launching a business. Correlation analysis reveals positive coefficients for respondent groups motivated by some of the *push factors* – conducive business environment and favourable tax policy ( $r = 0.225, p < 0.05$ ); and state guarantees for loans and the tax policy factor ( $r = 0.262, p < 0.01$ ). Lack of growth potential factor is positively associated with the income variable ( $r = 0.223, p < 0.05$ ) which may indicate that wealthier people seek for more challenging and, obviously, higher paid positions.

**Table 3.** Pearson correlation coefficients of *pro-business* group (N=129)

	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q	R	S
Age group (A)	1																		
Education (B)	0.144	1																	
Children <18Y (C)	<b>.299**</b>	<b>.255**</b>	1																
Employment (D)	<b>.232**</b>	0.110	0.012	1															
Monthly income (E)	0.005	<b>.218*</b>	0.021	<b>.286**</b>	1														
char_skills (F)	-0.034	0.103	0.008	0.111	0.109	1													
capital (G)	-0.026	0.030	-0.113	0.099	-0.095	0.107	1												
unsat_income (H)	-0.091	-0.131	0.077	0.060	-0.085	-0.004	-0.113	1											
fam_empl (I)	0.038	0.104	0.048	0.050	-0.012	<b>-.234*</b>	-0.052	<b>-.190*</b>	1										
unsat_HR (J)	0.110	-0.110	0.076	-0.056	-0.014	-0.155	-0.026	0.139	-0.091	1									
unsat_schedule (K)	-0.158	0.017	-0.149	-0.008	0.084	-0.162	-0.128	0.103	-0.038	<b>.243**</b>	1								
lack_of_growth (L)	-0.016	0.090	-0.060	0.041	<b>.223*</b>	-0.038	-0.133	0.045	0.029	-0.078	0.095	1							
bus_envt (M)	-0.080	0.103	-0.017	-0.056	-0.002	0.008	-0.107	<b>-.188*</b>	0.144	-0.063	0.111	-0.075	1						
tax_policy (N)	-0.042	0.104	0.058	-0.005	0.123	-0.114	<b>.213*</b>	-0.148	0.148	-0.071	0.044	-0.084	<b>.225*</b>	1					
state_guar (O)	-0.014	-0.027	-0.109	-0.069	0.023	-0.053	0.135	0.011	-0.040	0.112	0.133	0.077	-0.049	<b>.262**</b>	1				
loan_avail (P)	0.145	0.077	<b>.221*</b>	0.051	-0.060	0.047	-0.031	-0.053	-0.103	0.061	-0.112	0.056	0.064	-0.072	0.109	1			
info_avail (Q)	-0.012	<b>.201*</b>	0.141	-0.041	-0.024	0.024	-0.049	-0.042	0.011	-0.076	-0.128	-0.091	0.042	0.034	-0.059	0.031	1		
Other reason (R)	0.106	0.072	0.028	0.003	0.049	<b>-.182*</b>	-0.020	<b>-.218*</b>	-0.104	-0.089	-0.085	-0.106	0.042	0.019	-0.070	-0.091	-0.104	1	
Economic sentiment: positive (S)	<b>.179*</b>	-0.028	-0.005	-0.003	-0.162	0.051	0.032	0.048	-0.138	0.005	-0.107	-0.091	0.048	-0.105	-0.049	-0.099	-0.014	0.062	1
Living standard satisfaction	-0.109	-0.076	-0.080	-0.106	-0.071	0.133	-0.017	-0.095	-0.046	-0.068	-0.069	-0.024	0.014	-0.023	-0.041	-0.007	0.030	-0.023	<b>0.141</b>

**\*\***. Correlation is significant at the 0.01 level (2-tailed).

**\***. Correlation is significant at the 0.05 level (2-tailed).

## 4. Discussion and conclusions

During the last decade, business demography in the European Union has a positive trend – on average, 1% annual growth. The new enterprise growth pace in Latvia, since the financial crisis, has been even higher – 4.1% per annum. Nevertheless, after 2017 it has stopped. It can partly be explained with the changes in the legislation and tax benefits for new business entities. This factor may indicate that willingness to create an enterprise in Latvia is derived from *push* factors that are partly a responsibility of the government authorities. In this paper, we test this hypothesis.

The main goal of this paper was centred on motivational factors that contribute to people's involvement in business in Latvia. For our study, we grouped the factors according to the *push* and *pull* factor theory. There are various studies regarding starting a business and what factors mostly influence the decision to do it. Some of them separate the motivation factors in *push* and *pull* groups – Carunaru, 2019; Ahmad et. al., 2018; Ojiaku et. al., 2018; Dawson and Henley, 2012; Eijdenberg and Masurel, 2013; Kirkwood, 2009; Islam, 2012 and others. Nevertheless, the collection of the individual factors in each group may vary among studies. Other studies do not distinguish the factor groups.

Our study reveals that the majority of the existing and potential entrepreneurs are motivated by such factors as – appropriate character, skills and knowledge, willingness to support their family members or earn more – which are all *pull* factors. This is somewhat contrary to the statistics of business demography in Latvia. Our explanation of this antinomy is that the main motivation comes from *pull* factors, and it can be further triggered by the *push* factors, such as tax benefits or favourable business legislation. It means that the *push* factors alone cannot boost creation of new enterprises. They work in tandem with the *pull* factors.

Also, we conclude that businesspeople are more self-centred, and mostly focused on intrinsic issues. Also, they are wealthier and have more positive future economic vision.

On the contrary – if a person is not interested in business, he/she partly switches this responsibility to the external factors – economy, government support, banking policies, and other *push* type issues. We may think that there may be a tendency to blame others for one's reluctance to be proactive. However, about a half of the respondents also admitted having lack of appropriate character traits, education and skills as well as missing financial capital to start entrepreneurship.

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# Economic and Legal Issues of Climate Change in the EU

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**Summary:** Climate change has begun to make itself felt also in Europe. The article seeks to identify responses to the challenges from the law through the protection of fundamental rights to life, health, occupation and property, as well as ‘environmental rights’, and private law rights. It establishes that, in spite of a general consensus that these rights are guaranteed and protected by the law, it is practically very difficult to substantively show and prove a violation of such a right. Following this, the enforcement of these rights by individuals and environmental protection organisations is explored, in particular looking at the Peoples’ Climate Case recently dismissed by the European Court of Justice. In doing so, the article will suggest solutions *de lege ferenda*, including some sketches as to how to develop individual and associations’ rights further in order to increase pressure on political processes to mitigate and adapt to climate change, and to compensate for climate-change-induced losses. The article concludes by identifying a gap in traditional legal protection of human rights, first, regarding the rules on showing and proving that a specific activity or failure to act has resulted in a specific damage. Secondly, an extension of standing for individual applicants regarding legislative acts, and a relaxation of the definition of individual concern, as well as an extension of standing to climate change organisations are suggested as options to bring mitigation and adaptation to climate change forward. Overall, the law may have to choose between adapting legal instruments in order to maintain classical human rights protection in the face of new challenges or accepting a gap in the protective system for short-term gains of current business and our daily convenience.

**Keywords:** causation, climate change, compensation, environmental protection rights, human and fundamental rights, individual rights, Peoples’ Climate Case – standing before court

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# 1. Introduction

Climate change has begun to make itself felt also in Europe. Thus many scientists believe that it lies behind the more extreme weather conditions experienced in recent years. These changes do not only affect the environment, but our lives and societies, and livelihoods, too – resulting in loss of lives and health, jobs and economic loss extending as far as insolvencies. The article will seek to identify responses from the law, if any, already in place regarding individual consequences, in particular existing possibilities to prevent or demand state or private action, or to compensate people and business entities whose basic rights to life, health, work or property are affected by climate change. In doing so, it will look at existing rights under EU constitutional law<sup>1</sup> – classical Human Rights and more recent ‘environmental rights’, and private law rights, as legal bases for this (2). Following this, the enforcement of these rights by individuals (3) and environmental protection organisations (4) before court will be explored. In doing so, the article will suggest solutions *de lege ferenda*, including some sketches as to how to develop individual and associations’ rights further in order to increase pressure on political processes to mitigate and adapt to climate change, and to compensate for climate-change-induced losses.

## 2. Rights as Legal bases

### 2.1. Individual Rights

#### 2.1.1. Problems of Definition and Allocation

The primary legal bases to consider for preventing or demanding action, or compensation, are individual rights. Individual rights are allocated by law to individual persons, with corresponding obligations on the EU, states, or private entities, to respect and protect these rights. However, it is difficult to allocate a right against climate change to an individual person, as it is a phenomenon that concerns all. In addition, it is a highly complex issue with multiple sources contributing to it, and multiple effects as well as multiple other interests to be considered in mitigating or adapting to it. Accordingly, demanding that a state or private stakeholder who (putatively) contributes to climate change refrain from some activity, as well as demanding state or private action for mitigating climate change, will be a matter of scientific and political discourse to ensure a full and proper balancing of all interests involved. However, political decision-making

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<sup>1</sup> Leaving aside Member State constitutional law for reasons of space.

possibly takes longer than humanity has left in order to avoid uncontrollable rises in global temperature. In addition, political decision-making, or indeed the failure to take any or sufficient decisions and actions, must respect individual rights. Some of these cannot be disposed of even by a majority, thus protecting minorities from being encroached upon excessively, or singled out to bear the burden of the general public. In our context of climate change, these rights may provide a starting point for a given natural or legal person to prevent or demand environmental action, insofar as the relevant rights protect specific interests or goods otherwise at risk. Similarly, after the event, a given claimant may in principle seek damages from the state or from private entities contributing to climate change by showing that his or her rights have been violated, resulting in damage.

### 2.1.2. *Classical Human Rights*

#### A. General Issues

Individual rights are, first and foremost, the classical human rights. The Convention on Human Rights<sup>2</sup> and the Social Charter<sup>3</sup> of the Council of Europe<sup>4</sup>, as well as the European Union's Fundamental Rights Charter (CFR)<sup>5</sup> and the constitutions of the EU Member States, as well as many other states, protect relevant rights to life and health, inviolability of property, and freedom of occupation and business. The EU Fundamental Rights Charter, looked at here, is representative for the other Human Rights documents, as it encompasses the guarantees under the Convention and the Charter as well as the essence of Human Rights protection in the EU Member States<sup>6</sup>.

The preamble of the Charter states for the EU that '*it seeks to promote balanced and sustainable development*'. More specifically, the preamble posits relevant limits for any charter rights in so far as '*Enjoyment of these rights entails responsibilities and duties with regard to other persons, to the human community and to future generations*'. Seen in the light of climate change, sustainable development must include mitigating and adapting to it, and responsibility to

<sup>2</sup> The European Convention on Human Rights [online]. Available at: <[https://www.echr.coe.int/Documents/Convention\\_ENG.pdf](https://www.echr.coe.int/Documents/Convention_ENG.pdf)>

<sup>3</sup> The Social Charter [online]. Available at: <<https://www.coe.int/en/web/european-social-charter>>

<sup>4</sup> The Council of Europe [online]. Available at: <<https://www.coe.int>>

<sup>5</sup> EU Charter on Fundamental rights [online]. Available at: <[https://europa.eu/european-union/law/treaties\\_en](https://europa.eu/european-union/law/treaties_en)>

<sup>6</sup> The latter had also fed into the EU's Court of Justice's case law establishing human rights protection as 'general principles common to the laws of the Member States' over the years, cf. CJEU website: [online]. Available at: <[https://curia.europa.eu/common/recdoc/repertoire\\_jurisp/bull\\_1/tab\\_index\\_1\\_04.htm](https://curia.europa.eu/common/recdoc/repertoire_jurisp/bull_1/tab_index_1_04.htm)>

future generations arguably implies that any holder of these rights is required to exercise them in a way that preserves the climate in a state that allows future generations the exercise of the same rights. For the present, the exercise of any fundamental rights under the Charter is limited by the rights of others and the interests of the human community. Such rights are, to start with, negative rights of defence against the state and the EU, meaning that they entail the right to not have one's sphere protected under the right encroached upon; in addition, they may also impose positive obligations on the states or the EU to act in order to protect these rights. Both will be looked at in turn.

## **B. Fundamental Rights as Defensive Rights**

### ***Scope of Protection, Encroachment and Causal Link***

Proceeding with the specific rights under the Charter relevant for preventing the EU, or Member States, from further contributing to climate change, first, Article 2 CFR recognises that '*Everyone has the right to life*', under Article 3 '*the right to respect for his or her physical and mental integrity*'. Article 15 CFR generally guarantees that '*Everyone has the right to engage in work and to pursue a freely chosen or accepted occupation*' and, under Article 16 CFR, '*The freedom to conduct a business in accordance with Union law and national laws and practices is recognised*'. Another relevant fundamental right is guaranteed by Article 17 (1), under which '*Everyone has the right to own, use, dispose of and bequeath his or her lawfully acquired possessions*'. In the Solidarity chapter the Charter sets out rights beyond these classical rights, which will be examined below (II.).

Each of these rights is legally binding on the EU and its Member States under Art. 51 CFR. Taken as negative rights, they allow their holders to defend their individual interests protected thereunder, i.e. their lives, health, freedom of occupation or business activity, and their property, against the EU and the Member States wherever an encroachment on any of them by the latter can be shown. More specifically, it must be shown that there is a right, a holder of the right and an encroachment on it by an EU or state activity.<sup>7</sup> Finally, there must be a causal link between the activity and the encroachment upon the right in order for the right to form the basis of an action for preventing the relevant activity. Examples of state activity violating fundamental rights in the context of climate change may be the running of state industries emitting greenhouse gases, the granting of permits by the state to start or to continue emitting greenhouse

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<sup>7</sup> See above A), in more detail e.g. SCHWERTDFEGGER, A., Article 51. In: MEYER, J./HÖLSCHIEDT, S. (eds), *Charta der Grundrechte der Europäischen Union*. 5th ed. Baden-Baden: Nomos Verlag, 2019, no 67.

gases for industries or energy providers, permits for producing and using cars and lorries or ships, to name just a few.

However, whilst the right of being left alone to enjoy one's life, health, occupation, business or property may be uncontested in principle, and while the encroachment on these, e.g., by extreme weather conditions will also be clear, it is the showing and proof of the causal link between a specific activity by a specific entity, such as the granting or the use of a permit, and the specific encroachment on such a right which pose the greatest problems in the context of climate change. Given the all-encompassing nature of global warming and climate change, and the fact that the composition of the atmosphere, with the prevalence of various gases, has changed considerably due to human greenhouse gas emissions from the beginning of industrialisation, it is not possible, for instance, to nail down one individual source as the cause and originator, say, of a specific draught or flooding event encroaching on a right of one individual or enterprise. There are always likely to be alternative causes. An approach that could help here would be to adopt an aggregated causal view, in which a claimant need only to show that the defendant state's or EU's activity contributed to climate change at large, and that a specific loss of rights is caused by climate change. Accordingly, any emitting activity of the EU and the Member States, or decision permitting such emissions, would be, in principle, illegal: such as the running of fossil-powered plants, starting a combustion-engine-powered car, etc. – many everyday activities regarding which political consensus to restrict or prohibit them is hard to achieve. Can, and should, courts fill this gap in the protection of fundamental rights?

### ***Justification of an Encroachment in the Context of Climate Change***

Assuming the law were in principle prepared to interpret rights to defend oneself against actions furthering climate change in the suggested way, it would still need to be assessed whether the EU or state could justify the encroachment as a permissible restriction of the right. Such a restriction must comply with Article 52 (1) CFR, under which '*Any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms. Subject to the principle of proportionality, limitations may be made only if they are necessary and genuinely meet objectives of general interest recognised by the Union or the need to protect the rights and freedoms of others*'. It follows that, even if an encroachment on a right and the causal link to a specific action can be proven, the relevant EU or state action may be justified in the public interest if occurring on a legal basis and still within the limits of proportionality. Here the public interest in energy supply, products and services, transport, etc, as well as fundamental rights and legitimate expectations

of others would have to be balanced against the fundamental rights encompassing defending oneself against climate change. It will remain to be seen how far courts would consider themselves equipped to overrule political decisions undertaking exactly this balancing of rights and interests involved.

### **C. Fundamental Rights as Rights to Demand Action: Mitigation and Adaptation**

In addition to the defensive side of rights, Article 51 CFR provides for the rights to also be bases for demanding protective action: under para 1 the institutions, bodies, offices and agencies of the Union and the Member States shall not only ‘*respect the rights*’, but also ‘*promote the application thereof in accordance with their respective powers and respecting the limits of the powers of the Union as conferred on it in the Treaties*’. This may encompass the right to measures of mitigation and adaptation to climate change. However, fundamental rights are often not specific enough to pinpoint one specific action that the state must take in order to defend them. For this purpose, the holders of the rights mostly have to rely on legislation to specify the relevant required actions or decisions.<sup>8</sup> This applies particularly in the context of climate change: with its multiple sources and global chains of causation it is difficult to see what a fundamental rights court judgment imposing a specific duty on the EU, or a specific state, might be. Only where the causal links are clear, and the specific action can be identified which might at least ease the encroachment on the fundamental right, can this be crystalised into a judgment leading to a concrete and identifiable obligation. Otherwise, the EU, or Member State, could plausibly argue that there are many other ways to achieve the result, and that it should be decided in the political process which route to take. Overall this does not leave much scope for an interpretation of the fundamental rights in line with the preamble’s demand for ‘*promoting balanced and sustainable development*’ directly. Accordingly, some Member State courts<sup>9</sup> have now at least stated that the slow and insufficient response of the state is illegal, and demanded action from them.

However, even if it is difficult to see how individual persons should have an individual right to specific action derived from the fundamental rights as such, there are systems in place, or may have to be put in place, to respond to

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<sup>8</sup> SCHWERTFEGGER, A., Article 51. In: MEYER, J./HÖLSCHIEDT, S. (eds), *Charta der Grundrechte der Europäischen Union. 5th ed.* Baden-Baden: Nomos Verlag, 2019, no 68.

<sup>9</sup> Netherlands: Urgenda case, De Hoge Raad, no 19/00135, 20 December 2019, ECLI:NL:HR:2019:2006 (Dutch), ECLI:NL:HR:2019:2007 (English); Germany, Federal Constitutional Court, nos. 1 BvR 2656/18, 1 BvR 96/20, 1 BvR 78/20, 1 BvR 288/20, 1 BvR 96/20, 1 BvR 78/20, 24. März 2021, <<https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html>>

the ultimate consequences of encroachments on the rights. One example here are the health systems of the Member States, which look after persons affected by infections, whether these have existed for a long time, or are new infections e.g. carried by species migrating due to climate change. Similarly, legal systems will have to adapt their rules to new climate-induced threats regarding health and safety of buildings, work places, etc.

### ***2.1.3. Individual Rights under Private law***

In addition to demanding climate change mitigation and adaptation measures against the state, individuals may also invoke rights in private law to bring claims against private individuals or entities. The legal basis for such claims may be found in tort law, the part of private law of each state dealing with legal relationships coming into existence due to an illegal violation of an individual right by a private person or entity. The rights protected against these mostly mirror the individual rights protected under the Fundamental Rights Charter and the member state constitutions. Similarly, the same problem occurs of showing and proving the causal link between an action of a private entity, a potential violation of the right and resulting damage. However, if this impediment can be cleared, the claimant may assert the relevant right against any further interference from the private party. In addition, in some cases there are specific legal bases for this: a person may prevent interferences with their landed property by neighbours by obtaining a court injunction. The extent of such private law protection will depend, though, on the definition of private individual rights, i.e. on whether, in excess of life, health and property, further rights are protected.

### ***2.1.4. Compensation and Damages***

Where a defence of a right in kind fails, or where protective action would be too late, e.g. because a field or an industrial plant has already been flooded, or a property been damaged, defence of the right against interference, or the demanding of action in its protection, is not possible any more. Other compensation, restoration in kind or the payment of damages may become an issue, be it under public or private law liability. Accordingly, in principle the farmer or the business person who are out of business due to climate change will have a right to compensation for their losses. Liability may fall on private entities, on the state or on the EU. However, in order to claim damages, it must – once again – be shown that the violation of the right and the loss or damage occurred and were caused by a specific action or omission of the EU, state or private party (as the case may be). In addition, typically



the amount of damages available will be subject to significant limiting principles, such as remoteness of damage or the requirement that the claimant reasonably mitigates the loss (e.g. by adapting its business to the changed circumstances).

In this case, considering the preamble and Art. 51 CFR<sup>10</sup>, according to which the EU ‘*seeks to promote balanced and sustainable development*’, and the Union and the Member States shall ‘*promote the application*’ of fundamental rights, an approach to achieve more protection may be to depart from the normal need for claimants to show a causal link between the defendant’s specific activity and their injury, in order to at least give a right to restoration, or award damages for the losses suffered. What also remains to develop is how to fairly distribute the cost under a joint liability between the entities controlling the multiple sources of greenhouse gas emissions. The fundamental right to property under Article 17 (1) CFR already points in this direction, by requiring that ‘*No one may be deprived of his or her possessions, except in the public interest and in the cases and under the conditions provided for by law, subject to fair compensation being paid in good time for their loss*’. Here the legal bases for compensation need to be established in order to comply with the fundamental right. An approach might be to base this on the relative share in causing the problem: where particular industries bear a disproportionate responsibility for causing climate change, their profits might be put to use for protection or mitigation. This may be easier to specify regarding adaptation measures: for instance, one might argue that the EU or a state, having failed to effectively mitigate climate change, might still be under an obligation to take adaptation measures, such as building a dam to protect a specific property against floods, or a specific irrigation system against draughts (or to provide the financing for these).

### **2.1.5. Conclusion on Individual Rights**

The top level of the hierarchy of norms thus does not appear to provide many answers, nor concrete legal limits for activities, or inactivity, of the EU, states or private entities for not mitigating climate change, nor adapting to it. In a few instances, defence, prevention or compensation may be available. Otherwise it is necessary to rely on the political processes to produce legislation which protects specific individual rights. These could range from refraining from activities leading to emissions, measures allowing for wider participation in decision-making, e.g. in land use planning decisions, to prohibitions of emissions or other activities increasing climate change.<sup>11</sup>

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<sup>10</sup> See above 2.1.2 A.

<sup>11</sup> This cannot be explored in any detail here and will be left to another paper.

## 2.2. Solidarity Rights: A Right to a quality environment encompassing climate change?

### 2.2.1. General

As shown it is difficult to derive a right against the EU, state or private entities to specific protection against climate change from classical human and fundamental rights protections, and to show the relevant chains of causation. What is even more difficult to carve out is a right to a healthy environment, or a quality environment. A right to a quality environment may be the basis for protecting the classical rights to life, health, occupation and property, and the recognition of such a right would make it easier to demand protective action by removing the need to explain and prove individually and specifically how one's own such right has been affected.<sup>12</sup> However, the difficulty starts with the definition of what is a quality environment. The latter already points into the direction of asking which quality – high, medium, low or minimum quality – is to be guaranteed. There are numerous definitions of the concept of a right to a quality environment at global, regional and national level, starting with the UN Stockholm Declaration on the Human Environment<sup>13</sup>, which requires 'an environment of a quality that permits a life of dignity and well-being'<sup>14</sup>.

### 2.2.2. The EU Fundamental Rights Charter

The EU Fundamental Rights Charter includes a step towards granting a right to a quality environment. In the Solidarity chapter (IV), the Charter sets out rights beyond the classical freedoms, encompassing Article 37 CFR, entitled 'Environmental protection'. This article provides that *'A high level of environmental protection and the improvement of the quality of the environment must be integrated into the policies of the Union and ensured in accordance with the principle of sustainable development.'* However, although the Court of Justice of the EU (CJEU) regards Art. 37 CFR as a right within the meaning of Art. 52 (2) CFR, it shall be exercised under the conditions and within the limits defined by those Treaties.<sup>15</sup> Given that the relevant provisions in the Treaty on the Functioning

<sup>12</sup> Above 2.1.1.

<sup>13</sup> UN Stockholm Declaration, 16 June 1972, A/CONF.48/14 and Corr. I. [online]. Available at: <<http://web.archive.loc.gov/all/20150314024203/http%3A/www.unep.org/Documents.Multilingual/Default.asp?documentid%3D97%26articleid%3D1503>>

<sup>14</sup> Cf. with numerous examples BOER, B. Environmental principles and the right to a quality environment, in: KRÄMER, L./ORLANDO, E., *Principles of Environmental Law*, Cheltenham (UK)/Northampton, MA (USA), Elgar Publishing, 2018, pp. 55 et seq.

<sup>15</sup> CJEU, judgment of 21 December 2016, C-444/15 – Associazione Italia Nostra Onlus.

of the EU, similar to Art. 37 CFR, appear rather vague it is difficult to see how an individual could prevent or claim a specific action of the EU or its Member States. In this regard, he or she will rather need to await the enactment of specific rights under implementing secondary legislation of the EU and its Member States, to which enactment he or she may have an individual right.

### **3. Standing before Court for Private Individuals and Associations**

#### **3.1. Definition**

Insofar as the existence of rights encompassing measures for mitigating and adapting to climate change were accepted in principle, a further requirement is of workable mechanisms for enforcing such rights. As mentioned near the beginning, rights have, as their counterpart, corresponding obligations to respect and protect them. Generally, the likelihood that the addressees of obligations will actually comply with the latter increases considerably if there are holders of rights connected with the obligations who may step forward to enforce them, pointing to practical consequences if the obligation is disregarded. Under the rule of law these consequences will be determined by the judgment of an independent court. The key to enforcement is thus access to court, i.e. the procedural right to bring an action, known as ‘standing’. It thus needs to be shown under which conditions holders of rights pertaining to climate change may have standing, and, examining ECJ case law, it will become apparent that there is a gap in the system.

#### **3.2. The Conditions**

Article 47 CFR demands that the EU and, within the realm of EU law, the Member States, respect the citizens’ right to an effective remedy and to a fair trial, stating that *‘Everyone whose rights and freedoms guaranteed by the law of the Union are violated has the right to an effective remedy before a tribunal in compliance with the conditions laid down in this Article. Everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal previously established by law. [...]’* The three possibilities of standing against an EU act are laid down in Article 263(4) TFEU, which reads: *‘Any natural or legal person may, under the conditions laid down in the first and second paragraphs, institute proceedings against an act addressed to that person, or which is of direct and individual concern to them, and against*

*a regulatory act which is of direct concern to them and does not entail any implementing measures.'*

The constellation of these relevant to climate change is the standing for a person who is directly and individually concerned, which would appear to cover, *prima facie*, having an individual right violated; Article 47 CFR appears to be complied with here, with the difficulties mentioned above (A). The relevant concept of 'individual concern' has, however, been extremely narrowly defined by the ECJ since its leading judgment from the 1960s in the *Plaumann* case: individual concern is only recognised where individuals are affected, '*by reason of certain attributes which are peculiar to them or by reason of circumstances in which they are differentiated from all other persons and by virtue of these factors' distinguished individually just as in the case of the person addressed*'<sup>16</sup>. The requirement of 'individual concern' thus defined has only been seen by the ECJ in a very limited number of cases for EU legislation<sup>17</sup>, whilst decisions, even if addressed to another person, could be made subject of an action somewhat more easily. Admittedly, the current wording opens more space for the admissibility of an action.<sup>18</sup> However, so far no such action has been successful in the context of climate change. Here the court, even when accepting that the fundamental rights mentioned above (A) might be violated, has denied standing to the applicants.

The other relevant constellation is bringing an action against a regulatory act: here the requirement of 'individual concern' has been omitted, whilst applicants still need to show direct concern; this allows for individual applicants to also bring an action without being individualised like the addressee of a decision, against EU acts mostly made by the Commission, in order to implement EU legislation. On the face of it, this appears helpful to applicants, notably in situations where they would find it difficult to show the causal link between the EU act and the encroachment on their right. In the context of a regulatory act permitting climate change activity this may make it easier to assert the right. Similarly, where the holder of a right is affected in the same way as many other holders of the same right, meaning that the burden is a general one affecting the whole public, a given individual could nevertheless still be able to assert it before court.

<sup>16</sup> Case 25/62 *Plaumann* [1963] ECR 95 para 31.

<sup>17</sup> Such as CJEU Case T-135/96 *UEAPME* [1998] ECR II-2335; Joined Cases 87/77, 130/77, 22/83 and 9-10/84 *Salerno* [1985] ECR 2523.

<sup>18</sup> PEERS, S./ COSTA, M. Court of Justice of the European Union (General Chamber) Judicial Review of EU Acts after the Treaty of Lisbon; Order of 6 September 2011, Case T-18/10 *Inuit Tapiriit Kanatami and Others v. Commission* & Judgment of 25 October 2011, Case T-262/10 *Microban v. Commission*. *European Constitutional Law Review*, 2012, vol. 8, no. 1, pp. 82–104.

Even so, as regards climate change mitigation, the problem often lies in no or insufficient activity, rather than in an activity violating rights. Regarding a violation of a right by a failure to act, standing is made conditional on a direct legal relationship between the institution or entity expected to act, and the applicant: in order to have standing against such failure to act, in infringement of the Treaties, under Article 265 (3) TFEU ‘*Any natural or legal person may ... complain to the Court that an institution, body, office or agency of the Union has failed to address to that person any act other than a recommendation or an opinion.*’ Accordingly, a failure to act can only be made subject of an action regarding an interest in the act that the applicant individually is deemed to have, not generally regarding a failure to act for protection of a fundamental right. Still, it remains possible that this could change, as will be shown regarding the following Peoples’ Climate Case.

### 3.3. The Peoples’ Climate Case

The admissibility of an action against certain directives and regulations (‘legislative package’) implementing the Paris Agreement and the UN Framework Convention on Climate Change<sup>19</sup>, and for not taking more ambitious measures, has recently been tested in the ‘*Peoples’ Climate Case*’<sup>20</sup> supported by the Climate Action Network.<sup>21</sup> At first instance, the General Court rejected the application as inadmissible due to lack of standing, and the Court of Justice upheld this on appeal. The applicants in the ‘*Peoples’ Climate Case*’ operate in the agricultural or tourism sectors; they are 36 individuals from various countries in the EU and the rest of the world, and an association governed by Swedish law, which represents young indigenous Sami, a people in northern Scandinavia living traditionally

<sup>19</sup> Directive (EU) 2018/410 amending Directive 2003/87/EC to enhance cost-effective emission reductions and low-carbon investments; Decision (EU) 2015/1814 (OJ 2018 L 76, p. 3); Regulation (EU) 2018/841 on the inclusion of greenhouse gas emissions and removals from land use, land use change and forestry in the 2030 climate and energy framework, and amending Regulation (EU) No 525/2013 and Decision No 529/2013/EU (OJ 2018 L 156, p. 1); Regulation (EU) 2018/842 on binding annual greenhouse gas emission reductions by Member States from 2021 to 2030 contributing to climate action to meet commitments under the Paris Agreement (OJ 2018 L 156, p. 26). These are acts of the EU whereby the European Union seeks to comply with its commitments under the Paris Agreement, namely to reduce emissions by 40 % over 1990 levels by 2030.

<sup>20</sup> Order of the General Court (Second Chamber) of 8 May 2019, Case T-330/18 Carvalho and Others, Appeal C-565/19 P – Carvalho and Others, judgment of 25/03/2021.

<sup>21</sup> CLIMATE ACTION NETWORK (CAN), Press Releases, People’s Climate Case: Court acknowledges climate change is affecting everyone but dismisses the case. [online]. Available at: <<http://www.caneurope.org/publications/press-releases/1776-people-s-climate-case-court-acknowledges-climate-change-is-affecting-everyone-but-dismisses-the-case>>

on reindeer herding. The applicants sought the annulment in part of the said ‘legislative package’ for implementing the EU’s commitments, and an injunction obliging the EU Commission, Council and Parliament, to adopt measures ‘requiring a reduction in greenhouse gas emissions by 2030 by at least 50% to 60% compared to their 1990 levels, or by such higher level of reduction as the Court shall deem appropriate’.<sup>22</sup> The applicants based this on the submission that the EU’s level of ambition is not sufficiently high with regard to reducing greenhouse gas emissions, and infringes binding higher-ranking rules of law.<sup>23</sup> In terms of the EU’s failure to act, it appears clear that the applicants do not expect the EU to address any act to them, which would be the condition for standing in the case of failure to act under Article 265 (3) TFEU. Instead, the action was brought forward as an action for damages: the applicants argued that the non-contractual liability of the EU had been triggered by failing to comply with higher-ranking rules of law, namely their fundamental rights, causing them damage for which they request compensation in kind in the form of an injunction.<sup>24</sup>

The General Court examined the conditions of standing under Article 263 in turn. First, it stated that the applicants were not addressees of any of the contested acts.<sup>25</sup> Secondly, it held that the directive and regulations were legislative rather than regulatory acts, as they had been made under the Ordinary Legislative Procedure under Articles 289 and 294 TFEU, and that the applicants thus needed to also show their *individual* concern in the matter.<sup>26</sup> Third, the Court, as well as the ECJ, confirmed the long-standing case law after *Plaumann* that the applicants did not have any particular attributes that might differentiate them from all other persons, and distinguish them individually just as in the case of the person addressed.<sup>27</sup> Thus, whilst the institutions of the EU are required to respect fundamental rights under Art. 47 CFR, the claim that an act infringes those rights was, according to the Court and the ECJ, not sufficient in itself to establish that the action brought by an individual was admissible, as long as that alleged infringement did not distinguish the applicant individually. In short, it appears (paradoxically) that if the rights of many or all people are encroached upon, none

<sup>22</sup> Order of the General Court, Case T-330/18 Carvalho, para 22.

<sup>23</sup> Order of the General Court, Case T-330/18 Carvalho, para 22 et seq.

<sup>24</sup> Order of the General Court, Case T-330/18 Carvalho, para 24.

<sup>25</sup> Order of the General Court, Case T-330/18 Carvalho, para 35.

<sup>26</sup> Order of the General Court, Case T-330/18 Carvalho, paras 37 et seq., relying on previous case law, namely judgment of 3 October 2013, Inuit Tapiriit Kanatami, C-583/11 P, para 60/61; order of 6 September 2011, Inuit Tapiriit Kanatami, T-18/10, para 56; and judgment of 25 October 2011, Microban International and Microban (Europe), T-262/10, para 21. Confirmed by ECJ C-565/19 P – Carvalho and Others, judgment of 25/03/2021, paras 35 et seq.

<sup>27</sup> Order of the General Court, Case T-330/18 Carvalho, paras 43 et seq., ECJ C-565/19 P – Carvalho and Others, judgment of 25/03/2021, paras 35 et seq.

of them will have standing, leaving the rights to the political process. In so far as the action was based on damages, the General Court held that an applicant may not, by means of an action for damages, attempt to obtain a result similar to the result of annulling the act, where an action for annulment concerning that act would be inadmissible.<sup>28</sup>

If this Order in the Peoples' Climate Case is upheld by the Court, the result will be that there is no appropriate answer from the procedural framework of access to justice to deal with putative violations of fundamental rights. It does appear unsatisfactory to dismiss the actions as inadmissible, as this clashes with the effectiveness of the fundamental rights. In effect, the approach of guaranteeing fundamental rights even against the will of a majority, regarding them as inalienable, is made ineffective if the guarantee is, after all, given into the hands of the EU's and Member States' legislature. Given the complexity of the issue of climate change it may appear understandable that the courts cannot take on the task of the legislature in solving the issues, but on the other hand elementary rights are left without legal protection. An alternative might be to at least admit such actions and deal with them on the merits – winning the action, as shown above, would still be difficult to achieve for any applicant, but at least the competing policy concerns at issue could be debated in the open.

## 4. Standing for Associations and Alternatives

In order to afford some protection to interests which are not allocated to individual persons in the *Plaumann* way an alternative is to allow standing to associations which have, as their purpose, the promoting of a specific public or private interest. This might avoid opening a popular action for anybody feeling entitled to act, whilst still affording some protection to the relevant interest. So far, under EU law associations only have access to the CJEU under specific conditions. In the Peoples' Climate Case the Court pointed out that the applicant association (Sáminuorra) had not shown that it was individually concerned. It referred to settled case-law that actions for annulment brought by associations are admissible only in three types of situation: firstly, where a legal provision expressly grants a series of procedural powers to trade associations; secondly, where the association represents the interests of its members, who would themselves be entitled to bring proceedings; and, thirdly, where the association is

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<sup>28</sup> Order of the General Court, Case T-330/18 Carvalho, paras 65 et seq. and ECJ Appeal C-565/19 P – Carvalho and Others, judgment of 25/03/2021 paras 96 et seq. Also judgment of 15 December 1966, Schreckenberg v Commission, 59/65.

distinguished individually because its own interests as an association, such as its negotiating position, are affected by the act in respect of which annulment is sought.<sup>29</sup> Considering the above, upholding the rights of a number of people who are not regarded as singled out sufficiently to be individually concerned might make a valid fourth situation to allow for standing of representative associations *de lege ferenda*.

## 5. Conclusions

As shown the current system leaves a gap in the protection of human rights, first, regarding the rules on showing and proving that a specific activity or failure to act has resulted in a specific damage. Defining a legal solution bridging the causality gap could, first, include the courts giving applicants the benefit of various proof modifications including even reversing the burden of proof on causation, or introducing a legal presumption of responsibility. Secondly, one may also regard it as sufficient in terms of causation to show a contribution to the general problem of climate change without having to prove a direct causal link to the loss or damage suffered. Third, another potentially promising approach might be to consider conferring rights on environmental goods and entities themselves (thereby in principle allowing these to bring suits in their own right). This approach may, at first sight, appear rather radical, but there are already some examples of this happening in jurisdictions like New Zealand (where e.g. a river has been invested with such legal personality).<sup>30</sup>

Fourth, appropriate associations might be recognised as entitled to represent current and future generations.<sup>31</sup> An extension of standing for individual applicants regarding legislative acts, and a relaxation of the definition of individual concern, as well as an extension of standing to climate change organisations might be options to bring mitigation and adaptation to climate change forward. These are all matters that deserve further research and considered academic deliberation.

<sup>29</sup> Order of the General Court, Case T-330/18 Carvalho, para 51, referring to order of 23 November 1999, *Unión de Pequeños Agricultores v Council*, T-173/98, para 47.

<sup>30</sup> Cf. WARNE K., SVOLD, M. A Voice for Nature, National Geographic, 2019, vol 4, <<https://www.nationalgeographic.com/culture/2019/04/maori-river-in-new-zealand-is-a-legal-person>>

<sup>31</sup> Cf. the Netherlands' Urgenda case, De Hoge Raad Netherlands Supreme Court, case no 19/00135, 20/12/2019. [online]. Available at: <<https://uitspraken.rechtspraak.nl/inziendocument?id=ECLI:NL:HR:2019:2006>>



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# Greening of European Cities: Social Benefits of Urban Nature for Urban Air Quality

Marija Bočkarjova\*, Alexandra Kačalová\*\*

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**Summary:** While current climate and environmental efforts are mostly focused on the necessary and urgent CO<sub>2</sub> emissions cuts, energy transition and climate adaptation, other not least pressing issues such as *air quality* start reaching the political agenda (European Commission, 2019). In this paper, we address air pollution from the *social welfare perspective* and bring together two strings of literature on the productivity of green urban infrastructure for ambient air quality and the monetisation of air quality improvements. Based on the *EU air quality data* by country and city, we identify those regions, which would benefit most from improved urban green infrastructure to improve air quality performance in Europe. We review a set of academic literature on the impact of urban green combating urban air pollution, and provide a synthesis review of social externality costs connected to urban air pollution. We extrapolate, in a stylized manner, the effect of increasing urban vegetation throughout the EU and in a selection of EU cities. Our estimates show that additional 1m<sup>2</sup> of green cover throughout the EU cities would lead to 65,9 mln EUR of benefit per year, split about equally between the benefits of improved air quality and carbon sequestration, equivalent to 976 euros per ha per year for air pollutants and 1024 euros per ha per year for carbon abatement.

**Keywords:** air pollutants, green infrastructure, social cost of carbon, benefits of urban green; alue estimation

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## 1. Introduction

Nowadays, most of the points on political agendas regarding climate change concern the reduction of carbon dioxide (CO<sub>2</sub>) emissions. This is absolutely necessary, as increasing CO<sub>2</sub> emissions have irreversible effects on the planet. Some of those include shortages of food and water, unpredictable weather conditions, droughts, loss of biodiversity resulting in deaths of millions of people and deepening inequality<sup>1</sup>. Additionally, carbon dioxide also poses a number of health risks on people, depending on the level of concentration of CO<sub>2</sub> they are exposed to. Therefore, meeting CO<sub>2</sub> emissions targets is crucial, however, not sufficient. Other pollutants, such as nitrogen oxides, sulphur dioxide and particulate matter have even stronger impact on the global greenhouse-effect, as well as add major adverse health effects on humans. Air quality issue, though well-recognised, does not often receive due attention.

The adverse health effects resulting from increased air pollution are widely recognized by most of the world's population. Every year, approximately 3.7 million people die prematurely due to air pollution worldwide<sup>2</sup>. Moreover, exposure to air pollution increases a person's risk of catching a disease such as stroke, heart disease, lung cancer and chronic bronchitis, with heart disease and stroke being the most common reasons for premature death<sup>3</sup>. This incidence on health creates a major impact on economy. Perhaps the most obvious one is that the increase in the number of sick people caused by air pollution increases the medical costs<sup>4</sup>. Furthermore, air pollution also reduces incomes in the countries, by causing a loss of productive labor. Air pollution can also halt productivity in other ways, e.g. by stunting plant growth and reducing the productivity of agriculture<sup>5</sup>.

Reducing pollutant emissions at the source is arguably the most direct way to improve air quality<sup>6</sup>, however, authorities around the world have struggled

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<sup>1</sup> STERN, N. We must reduce greenhouse gas emissions to net zero or face more floods. *The Guardian*. 2018.

<sup>2</sup> World Health Organisation. Ambient (outdoor) air quality and health. fact sheet no 313. *EU Commission, Mobility and Transport*. 2014. [online] <<http://www.who.int/mediacentre/factsheets/fs313/en/>>, accessed on January 14, 2020.

<sup>3</sup> World Bank. The cost of air pollution: strengthening the economic case for action. *Washington: World Bank Group*, The World Bank and Institute for Health Metrics and Evaluation University of Washington, Seattle. 2016, Report nr. 108141.

<sup>4</sup> RODRÍGUEZ, M.C., DUPONT-COURTADE, L., OUESLATI, W. Air pollution and urban structure linkages: Evidence from European cities. *Renewable and Sustainable Energy Reviews*, 2016, vol. 53, pp. 1–9.

<sup>5</sup> WORLD BANK, 2016.

<sup>6</sup> KUMAR, P., DRUCKMAN, A., GALLAGHER, J., GATERSLEBEN, B., ALLISON, S., EISENMAN, T.S., HOANG, U., HAMA, S., TIWARI, A., SHARMA, A. The nexus between

to meet the air quality standards through emission control strategies alone. A possible urban planning solution for this problem could be expanded green infrastructure in the built environment which has the potential to improve air quality along with enhancing the sustainability of cities for growing urban populations and climate resilience<sup>7</sup>. Such nature-based solutions may include vegetation barriers, street parks, green walls, green roofs and street trees. These tools of urban green infrastructure can also provide benefits such as potential reduction in energy consumption<sup>8</sup>, noise pollution<sup>9</sup>, mental and physical health benefits<sup>10</sup> and climate change mitigation<sup>11</sup>.

While benefits of green infrastructure belong to non-market goods and services that are not directly priced, they still hold value to society and therefore need to be made explicit. While disputable, failure to monetise such benefits of environmental goods leads to suboptimal decisions such as underprovision of urban infrastructure and its multiple positive effects<sup>12</sup>. To date, multiple methods are available and applied in environmental economics to estimate value of untraded environmental goods and services. Similarly, there has been a lot of research done regarding the absorption abilities of air pollutants by various types of green infrastructure. However, there is very limited information available on how can the reduction in air pollutants' concentrations caused by urban green space be translated into the monetary value of increased social welfare due to better air quality. Thus, in this paper, these two strings of literature are uniquely

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air pollution, green infrastructure and human health. *Environment international*, 2019, vol. 133, pp. 105–181.

<sup>7</sup> IRGA, P., BURCHETT, M., TORPY, F. Does urban forestry have a quantitative effect on ambient air quality in an urban environment? *Atmospheric Environment*, 2015, vol. 120, pp. 173–181.

<sup>8</sup> BERARDI, U., GHAFARIANHOSEINI, A., GHAFARIANHOSEINI, A. State-of-the-art analysis of the environmental benefits of green roofs. *Applied Energy*, 2014, vol. 115, pp. 411–428. PÉREZ, G., COMA, J., MARTORELL, I., CABEZA, L.F. Vertical Greenery Systems (VGS) for energy saving in buildings: A review. *Renewable and Sustainable Energy Reviews*, 2014, vol. 39, pp. 139–165.

<sup>9</sup> BERARDI, U., GHAFARIANHOSEINI, A., GHAFARIANHOSEINI, A. State-of-the-art analysis of the environmental benefits of green roofs. *Applied Energy*, 2014, vol. 115, pp. 411–428.

COHEN, P., POTCHTER, O., SCHNELL, I. The impact of an urban park on air pollution and noise levels in the Mediterranean city of Tel-Aviv, Israel. *Environmental Pollution*, 2014, vol. 195, pp. 73–83.

<sup>10</sup> LOVELL, R., DEPLEDGE, M., MAXWELL, S. Health and the natural environment: A review of evidence, policy, practice and opportunities for the future, 2018.

<sup>11</sup> MATTHEWS, T., LO, A.Y., BYRNE, J.A. Reconceptualizing green infrastructure for climate change adaptation: Barriers to adoption and drivers for uptake by spatial planners. *Landscape and Urban Planning*, 2015, vol. 138, pp. 155–163.

<sup>12</sup> BOCKARJOVA, M., BOTZEN, W.J.W., KOETSE, M.J. Economic valuation of green and blue nature in cities: A meta-analysis. *Ecological Economics*, 2020, vol. 169, pp. 106–480.

brought together. In particular, the review of economic literature on the value of social externality costs connected to urban air pollution and literature from the ecological domain addressing urban green cover and its potential to abate urban air pollution. This literature is discussed in the light of European geography of air pollution and green cover. Building on these findings, I contribute to the existing literature by extrapolating on a stylized scenario of an increase of urban green infrastructure of 1 m<sup>2</sup> per head of EU urban population and obtaining expected value of social benefit resulting from air pollution abatement and carbon sequestration. It is important to note, however, that the resulting numbers reflect only a part of total social benefit of urban green infrastructure, as it brings a whole array of other (co-)benefits such as aesthetics, noise attenuation and water management.

The paper is structured as follows. First, we take stock of the extent and geography of air pollution and green urban cover in the EU (Section 2). Next, we present an umbrella review of studies on the impact of green infrastructure on the urban air quality. The focus lies on the ability to reduce air pollutant levels of different vegetation forms in different urban morphologies (Section 3). We follow with a review of studies concerning the social externality costs of air pollutants (Section 4). In Section 5, we take a stylized case of uniform increase in vegetation by 1 m<sup>2</sup> per urban inhabitant in order to estimate the benefits resulting from the avoided costs of air pollution and carbon sequestration. We finalise with discussion, limitations and conclusions in Section 6.

## **2. EU Air Quality and Green Coverage**

For the overview of the air quality and green coverage in the EU we have used the data from European Environment Agency (EEA)<sup>13</sup>.

### **2.1. EU air quality**

In this section, data from EEA regarding specific levels of various air pollutants in different European countries will be reviewed. It is important to point out that countries differ in the number of reporting stations, which calls for a caution in interpretation of results. Air pollution affects everyone; however, certain regions are more susceptible to its effects. For instance, in southern and central eastern Europe, energy poverty is the reason for combustion of low-quality solid fuels,

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<sup>13</sup> EEA 2019, „Air Quality in Europe-2019 Report“, *European Environment Agency (EEA)*, doi:10.2800/822355.

such as coal and wood, in low efficiency ovens for domestic heating<sup>14</sup>. This results in high exposure of the low-income population to PM, both indoors and outdoors.

Data on the percentage of urban population exposed to concentrations above EU standards for selected air pollutants and countries (Table 1, respective air pollutant EEA norms are provided in Table 2) generally corresponds to the data on particulate matter (PM), ground ozone (O3) and nitrogen dioxide (NO2) levels (see Figure 1), which contribute to poor air quality in many European areas, despite many achieved reductions in emissions (EEA, 2019), in particular:

1. Exposure to levels of NO2 above the EU reference values is the highest in countries such as Belgium, Germany, Italy, and United Kingdom;
2. Ozone concentrations pose the biggest problem for populations in Mediterranean basin (Croatia, France, Greece and Spain), and Austria
3. Exposure of urban population to particulate matter is the highest in Central and Eastern European countries, such as Czech Republic, Hungary, Latvia, Romania and Slovakia

Based on these data, we observe that regions within the EU that witness the highest levels of air pollution are the countries around the Mediterranean Sea basin and the Central European countries.

## 2.2. EU green coverage

This section focuses on studies addressing the green coverage in European countries and in a selection of cities. Reported results vary substantially in terms of units and indicators used across the various studies. The Dutch “Green City Guidelines” project suggests that every resident household should be within 500-m from some type of green network<sup>15</sup>. Comparatively, Berlin, Germany aims to provide at least 6 m<sup>2</sup> of urban green space per person<sup>16</sup>. Finally, European Environment Agency suggests that people should be able to have access to green space within a 15-minute walking distance (approximately 900-1000 m)<sup>17</sup>.

The majority of the population living in Scandinavia or in Western European countries has access to green space within 500-m distance<sup>18</sup>. Some cities in

<sup>14</sup> Ibid.

<sup>15</sup> ROO, M.D., KUYPERS, V., LENZHOLZER, S. *The green city guidelines: techniques for a healthy liveable city*. The Green City, 2011.

<sup>16</sup> KABISCH, N., STROHBACH, M., HAASE, D., KRONENBERG, J. Urban green space availability in European cities. *Ecological Indicators*, 2016, vol. 70, pp. 586–596.

<sup>17</sup> STANNERS, D. and BOURDEAU, P. *Europe's environment: the Dobbris assessment*. European Environment Agency Copenhagen, 1995.

<sup>18</sup> KABISCH, N., STROHBACH, M., HAASE, D., KRONENBERG, J. Urban green space availability in European cities. *Ecological Indicators*, 2016, vol. 70, pp. 586–596.

Eastern European countries show high values as well. On the other hand, cities in Southern European countries exhibit relatively low values of green accessibility. Besides, there is a spatial heterogeneity in the distribution of green space in EU countries, with lowest provision of per capita green space in the South and East of Europe, increasing to the North and West<sup>19</sup>. This is presented in Figure 2.

Figure 3 shows the percentage of urban green coverage as a percentage of total urban area, with most of the cities possessing 30% or less of green coverage. Combined with Figure 5, these data reveal that Southern European countries suffer from a lack of urban green space, especially in Bulgaria, Greece, Italy and Spain. Northern and Western European countries are doing significantly better, although the EU most densely populated Netherlands and Belgium seem to be struggling as well, with both countries reporting a cluster of relatively low percentage of urban green space.

Based on the studies reviewed in this section, we observe that regions within the EU that witness the highest levels of air pollution are also the regions which are relatively poor in urban green coverage and the availability of green infrastructure to urban residents. In particular, these are the countries around the Mediterranean Sea basin and the Central European countries. We can thus identify these regions and their urban areas as the ones which would benefit most from improved urban green infrastructure to improve air quality performance in Europe.

### **3. Review of Studies on the Impact of Green Infrastructure on Urban Air Pollution**

In order to establish whether and how green coverage contributes to the improvement of urban air quality we have conducted an umbrella review<sup>20</sup> of studies that summarised existing primary studies on the impact of green infrastructure on urban air pollution. For the search process, we used databases such as Google Scholar and ScienceDirect. The following search terms were used: “green infrastructure”, “absorption level”, “street canyons”, “local pollution”, “background pollution”, “green walls” and “green roofs”. We focused on most

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<sup>19</sup> FULLER, R.A., GASTON, K.J. The scaling of green space coverage in European cities. *Biology letters*, 2009, vol. 5(3), pp. 352–355.

<sup>20</sup> AROMATARIS, E., FERNANDEZ, R., GODFREY, C.M., HOLLY, C., KHALIL, H., TUNG-PUNKOM, P. Summarizing systematic reviews: methodological development, conduct and reporting of an umbrella review approach. *International journal of evidence-based healthcare*, 2015, vol. 13(3), pp. 132–140.

recent review papers, mainly papers published in the last 5 years. The selected publications complied with the following criteria:

1. Papers written in English
2. Peer-reviewed articles, i.e. articles published in academic journals
3. Official reports of established national and international institutions

There are two sources of pollutants in urban areas, namely local pollution and background pollution. Whereas background pollution is the one transported from other areas of origin where pollutants may travel even over long distances, local emissions are the ones that originate in cities themselves<sup>21</sup>. In recent years, intensive research has been done to understand the effects of green infrastructure abating air pollution. These studies have a wide scope. One of the directions within this string of literature is the study on air pollution abatement performance of different kinds of green infrastructure. For instance, Nowak et al. (2006)<sup>22</sup> reports median value for air pollutant absorption by urban trees and shrubs of 10,8g/m<sup>2</sup>/year. Yang et al. (2008)<sup>23</sup> provides a similar number equivalent of 8,5g/m<sup>2</sup>/year for urban green roofs based on the dry deposition model. Shfique et al. (2020)<sup>24</sup> report values for carbon sequestration by various types of green roof vegetation, ranging between 0,33 and 1,89 kg/m<sup>2</sup>/year, with 4 out of 7 values above 1,70 kg/m<sup>2</sup>/year. Another important finding made in this string of literature is the role of green infrastructure in relation to city morphology, and in particular the distinction between street canyons and open roads. Street canyons are a very common urban feature and usually consist of buildings along both sides of the road<sup>25</sup>. The typical green infrastructure in these street canyons can be classified as trees and hedges<sup>26</sup>. Open roads, on the other hand, can be described as an urban built environment

<sup>21</sup> KUMAR, P., DRUCKMAN, A., GALLAGHER, J., GATERSLEBEN, B., ALLISON, S., EISENMAN, T. S., HOANG, U., HAMA, S., TIWARI, A., SHARMA, A. The nexus between air pollution, green infrastructure and human health. *Environment international*, 2019, vol. 133, pp. 105181.

<sup>22</sup> NOWAK, D.J., CRANE, D.E., STEVENS, J.C. Air pollution removal by urban trees and shrubs in the United States. *Urban forestry & urban greening*, 2006, vol. 4(3-4), pp. 115–123.

<sup>23</sup> YANG, J., YU, Q., GONG, P. Quantifying air pollution removal by green roofs in Chicago. *Atmospheric Environment*, 2008, vol. 42(31), pp. 7266–7273.

<sup>24</sup> SHAFIQUE, M., AZAM, A., RAFIQ, M., ATEEQ, M., LUO, X. An overview of life cycle assessment of green roofs. *Journal of Cleaner Production*, 2020, vol. 250, pp. 119471.

<sup>25</sup> KUMAR, P., KETZEL, M., VARDOULAKIS, S., PIJOLA, L., BRITTER, R. Dynamics and dispersion modelling of nanoparticles from road traffic in the urban atmospheric environment – a review. *Journal of Aerosol Science*, 2011, vol. 42(9), pp. 580–603.

VARDOULAKIS, S., FISHER, B.E., PERICLEOUS, K., GONZALEZ-FLESCA, N. Modelling air quality in street canyons: a review. *Atmospheric Environment*, 2003, vol. 37(2), pp. 155–182.

<sup>26</sup> ABHIJITH, K., KUMAR, P., GALLAGHER, J., MCNABOLA, A., BALDAUF, R., PILLA, F., BRODERICK, B., DI SABATINO, S., PULVIRENTI, B. Air pollution abatement performances of green infrastructure in open road and built-up street canyon environments – A review. *Atmospheric Environment*, 2017, vol. 162, pp. 71–86.



feature, in which both sides of the traffic corridor are open with detached or single buildings<sup>27</sup>. In these conditions, trees as well as hedges, shrubs and bushes occur along the sides of the corridors and can be referred to as vegetation barriers or green belts<sup>28</sup>. With detailed quantification of local scale aerodynamic effects and reduction potentials of various types of urban vegetation in street canyons as well as open-road configurations, research found that in a street canyon, trees as a form of high-level green infrastructure have, in general, a negative impact on air quality<sup>29</sup>, whereas hedges as a form of low-level dense vegetation, show a positive impact. These findings therefore confirm that changes in air quality in a street canyon depend on a combination of various factors, such as aspect ratio (i.e. ‘canyon’ depth), wind direction and vegetation density.

The literature concerning the effect of trees and bushes on air quality in open roads are mixed<sup>30</sup> with both positive and negative effects reported. Many studies reported reductions in concentrations between 15% and 60% for various pollutants with vegetation barriers along open roads<sup>31</sup>. Similarly, they show that vegetation barriers that are thick, dense and tall have a positive impact on air quality in open road conditions. In particular, vegetation not prone to seasonal effects (such as some evergreen species) are most suitable vegetation barriers in these open road environments. On top of that, vegetation barriers that are closer to the pollutant source result in a considerable pollutant removal. Similar to findings on street canyon studies, climate and regional conditions, as well as differences between cooler and warmer climatic regions play a role in the impact of vegetation on air quality and need further<sup>32</sup>.

One of the substantial benefits, beyond air quality regulation, that green infrastructure brings to urban inhabitants is its local climate regulation and in particular, the local cooling effects. This is an important argument in favour of ‘stacking’ the benefits of urban green infrastructure for its preservation and expansion. For instance, review studies of Hunter et al. (2014)<sup>33</sup> and Pérez et al.

<sup>27</sup> Idem.

<sup>28</sup> BRANTLEY, H.L., HAGLER, G.S., DESHMUKH, P.J., BALDAUF, R.W. Field assessment of the effects of roadside vegetation on near-road black carbon and particulate matter. *Science of the Total Environment*, 2014, vol. 468, pp. 120–129.

<sup>29</sup> ABHIJITH et al., 2017, with the exception of AMORIM, J., RODRIGUES, V., TAVARES, R., VALENTE, J., BORREGO, C. CFD modelling of the aerodynamic effect of trees on urban air pollution dispersion. *Science of the Total Environment*, 2013, vol. 461, pp. 541–551.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Ibid.

<sup>33</sup> HUNTER, A. M., WILLIAMS, N. S., RAYNER, J. P., AYE, L., HES, D., LIVESLEY, S. J. Quantifying the thermal performance of green façades: A critical review. *Ecological Engineering*, 2014, vol. 63, pp. 102–113.

(2014)<sup>34</sup> report on the ability of vertical greenery to improve thermal comfort and energy savings in buildings. In general, the results of these studies suggest that the application of green walls or facades can lead to a reduction in surface temperatures of building facades between 1° and 15° in warm temperature climates. Other studies consistently report on the positive effect of green roofs on mitigating urban heat island effect<sup>35</sup>. Advantages featuring urban greening through green roofs and facades are the low pressure on often scarce urban space.

Our umbrella review shows that the role of urban vegetation in relation to air purification is a many-faceted issue and does not lend itself to be simplified to a rule of thumb type of heuristics. The amount of air pollutant absorption, as well as overall effect (positive, neutral or even negative) on the ambient pollution level depends on a combination of multiple factors, all of which act simultaneously. These factors are the origin of air pollution (local or background), urban morphology (street canyon vs open street), type and source of air pollution, weather conditions (wind strength and direction, availability of rain), seasonality and climate, type of green nature and green species in the vegetation.

## 4. Review of Air Pollution Valuation Studies

This part of the paper provides a second umbrella review of studies estimating social externality costs connected to urban air pollution. For the search process, we used the same procedure and criteria as described in section 3. The search terms were now divided into two strings: the first one related to the physical aspect of air quality and “*air pollution*”, “*pollutants*”, “*sulphur dioxide*”, “*nitrogen oxides*”, “*ozone*”, “*air quality*”, and the second one related to the monetization aspect and included “*social costs*”, “*welfare loss*” and “*environmental valuation*”. We focused on recent papers, published after 2005.

Economic valuation intends to infer values of non-market goods and services that are comparable to other traded goods and services. However, in order to place an economic value on a non-market good, various components that comprise the total economic value need to be identified<sup>36</sup>. This total economic value of environmental goods comprises the direct and indirect use values, and a non-use value. The valuation approaches are divided into valuation approaches according

<sup>34</sup> PERÉZ et al., 2014.

<sup>35</sup> ESTRADA, F., BOTZEN, W.W., TOL, R.S. A global economic assessment of city policies to reduce climate change impacts. *Nature Climate Change*, 2017, vol. 7(6), pp. 403–406.

<sup>36</sup> ABDULLAH, S., MARKANDYA, A., NUNES, P. Introduction to economic valuation methods. *Research tools in natural resource and environmental economics*, 2011, pp. 143–187.

to market data and non-market methods of stated and revealed preference<sup>37</sup>. However, while based on actual transactions data, a common disadvantage of the revealed preference approach is that available studies such as hedonic pricing account only for the use value of environmental amenities thus neglecting the non-use value, and often provide WTP estimates for a specific group of population such as homeowners.

Another set of literature focuses primarily on the revealed preference valuation methods that cover both use and non-use value of environmental amenities, and are based on the survey data from broader populations with stated willingness to pay for air quality. Our review has shown that the publications using stated preference method vary greatly in a number of factors. Some studies focus on valuation of fatality risk due to air pollution in general, while others concentrate on the monetisation of value for a specific pollutant, such as particulate matter, nitrogen oxides, ozone or sulphur dioxide. For example, studies estimating the value of decreasing a risk of a disease related to air pollution in various locations in China or decreasing the risk of fatality related to air pollution in France<sup>38</sup>. Other studies using such approaches as contingent valuation or choice experiments from the stated preference arsenal elicited the value of NO<sub>x</sub> in Sweden<sup>39</sup>.

In addition to academic publications, established national and international organisations publish reports and studies with relevant outcomes. CE Delft<sup>40</sup> reports on environmental prices for the loss of economic welfare for an additional kilogram of a specific air pollutant. These values are based on the willingness-to-pay estimates of social cost of air pollutants and are recommended for use in social cost-benefit analyses. The central values for a selection of pollutants from this study are found in Table 2.

Table 3 summarises the monetary values from our review for the most frequently studied air pollutants, O<sub>3</sub>, NO<sub>x</sub>, SO<sub>2</sub>, PM<sub>10</sub> and PM<sub>2,5</sub>. This table also provides respective standardised values in constant euros per kg pollutant. We observe that WTP-based estimates of pollutant marginal costs greatly agree across various studies, contexts and methods applied, with the only exception of PM<sub>2,5</sub>

<sup>37</sup> Ibid.

<sup>38</sup> HAMMITT, J.K., ZHOU, Y. The economic value of air-pollution-related health risks in China: a contingent valuation study. *Environmental and Resource Economics*, 2006, vol. 33(3), pp. 399–423.

CHANEL, O., LUCHINI, S. Monetary values for air pollution risk of death: a contingent valuation survey, 2008.

<sup>39</sup> CARLSSON, F., JOHANSSON-STENMAN, O. Willingness to pay for improved air quality in Sweden. *Applied Economics*, 2000, vol. 32(6), pp. 661–669.

<sup>40</sup> DE BRUYN, S., AHDOUR, S., BIJLEVELD, M., DE GRAAFF, L., SCHEP, E., SCHROTEN, A., VERGEER, R. Environmental prices handbook 2017-methods and numbers for valuation of environmental impacts. *Delft: CE Delft*, 2018, pp. 05-2018.

value, which is stands out in the DEFRA guidelines<sup>41</sup>. This provides us with a first evidence of the prevailing level of environmental pricing of air pollutants.

## 5. Illustration: Estimated Social Benefit from Expanding Green Infrastructure in the EU

On average 40% of the EU cities are covered with green, and there is on average about 18m<sup>2</sup> of green urban cover available per urban inhabitant<sup>42</sup>. While an absolute minimum of green cover is set at 9 m<sup>2</sup> per person and an estimated ideal amount of green coverage per person is 50 m<sup>2</sup><sup>43</sup>, EU cities resemble a high heterogeneity in terms of green coverage ranging between just a few m<sup>2</sup> per person to a couple of hundreds m<sup>2</sup> per person (Figure 5). This means that a substantial number of cities do not manage to provide the suggested minimum level of urban green infrastructure for public use to its inhabitants. In particular, in the cities around the Mediterranean basin of the EU, lack of appropriate green coverage even further aggravates the consequences of poor air quality. Besides, in most cases, urban cores depict a lower degree of green elements, leaving a substantial part of the urban population deprived of public green facilities in their daily lives. We shall start with a stylised application for a uniform EU-wide increase in urban coverage in order to establish an idea about the marginal improvement in EU urban green and its effect on urban air pollution. As a next step, we shall zoom in a selection of EU cities from the Mediterranean and Central Europe areas.

In this section, we choose for a uniform, EU-wide scenario because specific focus on the Mediterranean and Central European countries would require a much more complex exercise with a broad range of indicators necessary to derive feasible location-specific estimates, which is outside the scope of this paper. We shall thus explore a blueprint scenario of 1 m<sup>2</sup> increase of urban green space

<sup>41</sup> DE BRUYN, S., AHDOUR, S., BIJLEVELD, M., DE GRAAFF, L., SCHEP, E., SCHROTEN, A. and VERGEER, R. Environmental prices handbook 2017-methods and numbers for valuation of environmental impacts. *Delft: CE Delft*, 2018, pp. 05-2018.

HOLLAND, M., WAGNER, A., DAVIES, T., SPADARO, J., ADAMS, M. *Revealing the costs of air pollution from industrial facilities in Europe*, 2011.

BIRCHBY, D., STEDMAN, J., WHITING, S., VEDRENNE, M. Air Quality damage cost update 2019, DEFRA, UK. 2019.

<sup>42</sup> VANDECASTEELE, I., BARANZELLI, C., SIRAGUSA, A., AURAMBOUT, J., ALBERTI, V., ALONSO RAPOSO, M., ATTARDO, C., AUTERI, D., BARRANCO, R., BATISTA E SILVA, F. *The Future of Cities—Opportunities, Challenges and the Way Forward. Luxembourg: Publications Office*, 2019.

<sup>43</sup> RUSSO, A., CIRELLA, G. T. Modern compact cities: how much greenery do we need? *International journal of environmental research and public health*, 2018, vol. 15(10), pp. 2180.

throughout the EU cities and focus on the air pollution and carbon sequestration benefits. With the total EU population of 445 million, urban EU population makes up 74% and about 330 million people. A uniform increase in urban green space of 1 m<sup>2</sup> per urban inhabitant would imply additional 3.300 hectares of urban green space. The implications for the types of such green space are discussed further in this paper. To estimate the amount of avoided pollution we have used the weighted average of air pollutant absorption rates for green cover of 10,8gr per m<sup>2</sup> per year and 8,5g/m<sup>2</sup>/year<sup>44</sup>. Therefore, using the absorption rate of 9,65g/m<sup>2</sup>/year resulted in a total of 3.177.745kg of avoided air pollutants per year. This overall absorption included various air pollutants, that were assumed to account for various relative weights, such as 52% by O<sub>3</sub>, 27% by NO<sub>2</sub>, 14% by PM<sub>10</sub> and 7% by SO<sub>2</sub><sup>45</sup> and allowed us to calculate the amount of each pollutant absorbed. As a final step, we used the central values of externality costs for air pollutants<sup>46</sup>, which provide the complete list of recent estimates of marginal social costs of air pollutants, and are in line with previous estimates as reported above and in Table 3. Overall monetary value of avoided social costs related to air pollution is thus estimated at 28.637.130 euro per year, or about 873 euros per year per hectare of additional urban green space (social benefit values per pollutant at the EU level are also found underneath Table 3). The benefit of carbon sequestration was estimated in a similar way, with vegetation productivity of 1,7kg per m<sup>2</sup> per year<sup>47</sup> and 0,06 euros per kg of CO<sub>2</sub><sup>48</sup>, arriving at the total amount of 33.731.184 euro per year. This is equivalent to 1.024 euros per year per hectare of additional urban green space. Therefore, the overall social benefit of air pollution and carbon absorption is estimated at 62.368.314 euros per year. It is important to note that this is not a one-time benefit, as the green infrastructure continues to absorb air pollutants for many years. Thus, we calculated the present value of the EU-wide benefit for a period of 10 years, using a selection of discount rates. The expected benefit ranges from 590 mln euro with the discount rate of 1%, 545

<sup>44</sup> NOWAK, D. J., CRANE, D.E., STEVENS, J. C. Air pollution removal by urban trees and shrubs in the United States. *Urban forestry & urban greening*, 2006, vol. 4(3-4), pp. 115–123. and YANG, J., YU, Q., GONG, P. Quantifying air pollution removal by green roofs in Chicago. *Atmospheric Environment*, 2008, vol. 42(31), pp. 7266–7273, respectively.

<sup>45</sup> Ibid.

<sup>46</sup> DE BRUYN, S., AHDOUR, S., BIJLEVELD, M., DE GRAAFF, L., SCHEP, E., SCHROTEN, A., VERGEER, R. Environmental prices handbook 2017-methods and numbers for valuation of environmental impacts. *Delft: CE Delft*, 2018, pp. 05-2018.

<sup>47</sup> YANG, J., YU, Q., GONG, P. Quantifying air pollution removal by green roofs in Chicago. *Atmospheric Environment*, 2008, vol. 42(31), pp. 7266–7273.

<sup>48</sup> DE BRUYN, S., AHDOUR, S., BIJLEVELD, M., DE GRAAFF, L., SCHEP, E., SCHROTEN, A., VERGEER, R. Environmental prices handbook 2017-methods and numbers for valuation of environmental impacts. *Delft: CE Delft*, 2018, pp. 05-2018.

mln euro with the discount rate of 2,5%, to 383 mln euro with the discount rate of 10%. Choosing an array of discount rates allows for more realistic scenario, as the choice of an appropriate discount rate is a matter of theoretical and practical choice, and remains a source of discussion among (environmental) economists as well as among practitioners.

We note here that the value of social benefit related to decreased air pollution and carbon abatement are of the same order, and both are comparable to the average total value of urban green space in Europe, ranging between 3.166 euros for an urban forest, 7.308 euro for a small urban green and green connected to grey infrastructure, and 34.979 euro for an urban park, all values per ha per year in 2020 euros<sup>49</sup>. We note that other important benefits of urban green infrastructure reflected in its total economic value, alongside air pollution and carbon sequestration include, but are not limited to, health benefits, cooling effects, reduction in noise pollution, water retention, biodiversity and aesthetics. Thus the total expected benefit of additional 1m<sup>2</sup> green cover per inhabitant throughout EU cities could then amount between 104,25 mln euros and 1,15 bn euros per year, and would reflect total social benefit to the EU urban inhabitants.

The estimated benefits as above are based on average values at the EU level. The expected monetary benefits for a particular city may vary, and may depend on the income level and the prevailing pollution level. We have selected a number of cities with low amount of green cover and high air pollution concentrations, to illustrate that. Thus, the benefits for removing PM<sub>10</sub> from the air can be expected to be higher e.g. in Milan (Italy), and those from removing NO<sub>x</sub> and SO<sub>x</sub> – higher e.g. in Lodz (Poland), see Table 4 with country-specific ranges of social costs for each pollutant. Also, the value of total social benefit may vary per city and type of urban nature chosen, mounting to several orders of magnitude compared to the mean value, as illustrated in previous research<sup>50</sup>.

## 6. Conclusions: results, limitations and policy implications

### 6.1. Results

In this paper, we aimed at pooling together two strings of literature and show the added value of green infrastructure in European cities regarding improved

<sup>49</sup> BOCKARJOVA, M., BOTZEN, W. J. W., KOETSE, M. J. Economic valuation of green and blue nature in cities: A meta-analysis. *Ecological Economics*, 2020, vol. 169, pp. 106480.

<sup>50</sup> Ibid.

outdoor air quality. Taking stock of the air quality in Europe, we found a substantial difference between the broadly defined regions of Southern Europe and Northern Europe. In particular, countries such as Italy, Spain, Greece and Bulgaria are suffering from high levels of O<sub>3</sub> and PM, relative to countries in Northern Europe. Additionally, we found that PM concentrations are an issue also in Eastern and Central European countries. While most of the (urban) population in Scandinavian, as well as in Western European countries has a fair share of green urban space, urban areas in Southern European countries exhibit relatively low values for green coverage and green urban space per capita.

The studies concerning the impact of green infrastructure on air pollution revealed multifaceted findings. Most studies agree that trees have a negative impact on air pollutant levels in street canyons, where hedges and green facades show a positive impact and are thus more preferred. In the open road environment, most studies reported reductions in concentrations of air pollutants with vegetation barriers along open roads addressing local and background pollution. Moreover, green roofs and green walls showed to be effective, in particular for addressing background pollution level based on the reviewed studies. In addition, there are multiple other benefits of green infrastructure, such as local cooling effect, building insulation, reduction in noise nuisance, water retention, biodiversity and aesthetics.

Estimated unit values of social costs of air pollution originate from a variety of domains and use a variety of methods, including both stated preference and revealed preference approaches. Values of air pollutants that were found expressed per weight unit (g, kg or t) of pollutant are similar in magnitude and so point at general agreement in these estimates across the methods, countries and contexts.

Our stylised exercise of assessing the value of additional green infrastructure across all EU cities of 1m<sup>2</sup> per person provided valuable insights into the obtained values of benefit due to improved air quality and carbon sequestration. Both values are about 1.000 euros per hectare on a yearly basis and signify the importance of air quality costs for socially optimal decision-making. Overall social benefit is estimated at 62,3 mln euros per year for air pollution and carbon absorption. The present value for a period of 10 years of this benefit ranges from 590 mln euro to 383 mln euro, depending on the discount rate. The total social benefit of additional 1m<sup>2</sup> of urban green per inhabitant for the EU urban residents – between 104,25 mln euros and 1,15 bn euros per year. These total values would reflect all benefits of urban nature, including, but not limited to mental health benefits, local cooling effects, reduction in noise pollution, water retention, biodiversity, aesthetics and so on. Our findings point at generalised results that can be used by practitioners.

## 6.2. Limitations

It is important to note the limitations of our study. First, the externality costs of air pollutants should be seen as conservative as estimation methodologies are often not able to perform all-round analyses or capture all values. This implies that estimates of avoided costs of air pollution or social benefits associated with the improved air quality should also be seen as conservative. To reflect on the broader benefits of urban green coverage, we have provided a global estimate of the EU-wide total benefits for our scenario based on the central unit values from a recent meta-analysis<sup>51</sup>.

Second, although there is a variety of green solutions that can be used, such as trees, hedges, green roofs and green walls, each with their own individual properties and ability to reduce air pollutant concentrations, in our estimates we do not distinguish the type and configuration of green which was not feasible at the scale of this exercise. Applications that take into account prevailing local conditions will prove to be more relevant to the local context and yield the highest benefit.

Third, the scope of this paper did not allow us to explore a more specific scenario of extending the green urban coverage in a particular region and address region-specific features like prevailing weather and climate conditions, prevailing urban morphology and native green species. As a result, the obtained estimate of benefit due to additional green infrastructure may be plausible at the aggregate, but may fall short of benefits provided by a specific type of green, at a specific location or time of the year.

We stress that resulting estimates of air pollutant removal by green infrastructure presented in this paper may be conservative in size, representing the social costs of air quality and carbon sequestration alone. Total economic benefits of urban green infrastructure are higher<sup>52</sup>, though also these estimates provide the lower bound due to methodological and data limitations. As argued<sup>53</sup>, often WTP-based estimates fail to reflect the full extent of health benefits of green infrastructure through climate regulation, carbon sequestration, prevention of extreme weather, which in turn leads to underselling the importance of green infrastructure.

<sup>51</sup> BOCKARJOVA, M., BOTZEN, W. J. W., KOETSE, M. J. Economic valuation of green and blue nature in cities: A meta-analysis. *Ecological Economics*, 2020, vol. 169, pp. 106480.

<sup>52</sup> *ibid*

<sup>53</sup> COUTTS, C., HAHN, M. Green infrastructure, ecosystem services, and human health. *International journal of environmental research and public health*, 2015, vol. 12(8), pp. 9768–9798.



### 6.3. Policy implications

Green infrastructure and nature-based solutions offer an excellent response to the numerous challenges posed by the changing climate and a potent solution to realise sustainable and healthy cities<sup>54</sup>. Although many European cities need to increase their per capita green cover, creating additional green spaces may prove highly challenging in many urban settings. Our findings point at diverse possibilities and types of urban green that can be implemented, with low spatial pressures. Such solutions may include green roofs, walls and facades, as well as hedges which can be adapted to local weather and climate conditions in terms of native species choice, but all hold high potential to improve ambient air quality and thus the overall welfare of urban population. These types of urban green are also particularly effective in urban street canyons, where street trees seem to be counter-effective by obstructing street ventilation. In order to combat winter peaks of air pollution, evergreen species should be preferred above other types of vegetation. Further research should focus on specific conditions and opportunities of each country and its cities, urban morphology, changing climate conditions and native vegetation in order to provide tailor-made advice and city-specific estimates of the effects and impacts of urban green on air quality, society and economy.

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## APPENDIX: TABLES AND FIGURES

**Table 1.** Percentage of urban population exposed to selected air pollutants above the EU norm

Country	NO2	O3	PM2.5	PM10
	<i>annual mean</i>	<i>percentile 93.15</i>	<i>annual mean</i>	<i>percentile 90.41</i>
Austria	2.2	18.8	0.0	2.6
Belgium	3.5	0.0	0.0	0.0
Bulgaria	0.5	0.0	0.0	75.7
Croatia	3.3	99.5	17.7	99.1
Czechia	1.4	0.0	12.5	31.3
France	2.0	6.9	0.0	0.4
Germany	4.5	0.7	0.0	0.1
Greece	2.7	96.8	0.0	26.8
Hungary	2.0	51.8	0.0	58.9
Italy	23.8	62.9	75.0	44.2
Latvia	0.0	0.0	0.0	3.8
Luxembourg	4.6	0.0	0.0	0.0
Netherlands	2.0	0.0	0.0	0.0
Norway	0.3	0.0	0.0	0.0
Portugal	2.0	0.0	0.0	0.9
Romania	1.1	35.2	35.5	21.4
Slovakia	0.0	31.8	17.4	40.2
Spain	11.7	22.2	0.0	2.6
Sweden	0.0	0.0	0.0	0.2
Switzerland	3.0	4.6	0.0	0.0
United Kingdom	6.5	0.0	0.0	0.0

**Table 2.** EEA and WHO air pollution norms

Air Quality Directive				WHO guidelines	
Pollutant	Averaging period	Objective and legal nature and concentration	Comments	Concentration	Comments
PM <sub>2.5</sub>	One day			25 µg/m <sup>3</sup> (*)	99 <sup>th</sup> percentile (3 days/year)
PM <sub>2.5</sub>	Calendar year	Target value, 25 µg/m <sup>3</sup>	The target value has become a limit value since 1 January 2015	10 µg/m <sup>3</sup>	
PM <sub>10</sub>	One day	Limit value, 50 µg/m <sup>3</sup>	Not to be exceeded on more than 35 days per year.	50 µg/m <sup>3</sup> (*)	99 <sup>th</sup> percentile (3 days/year)
PM <sub>10</sub>	Calendar year	Limit value, 40 µg/m <sup>3</sup> (*)		20 µg/m <sup>3</sup>	
O <sub>3</sub>	Maximum daily 8-hour mean	Target value, 120 µg/m <sup>3</sup>	Not to be exceeded on more than 25 days per year, averaged over three years	100 µg/m <sup>3</sup>	
NO <sub>2</sub>	One hour	Limit value, 200 µg/m <sup>3</sup> (*)	Not to be exceeded more than 18 times a calendar year	200 µg/m <sup>3</sup> (*)	
NO <sub>2</sub>	Calendar year	Limit value, 40 µg/m <sup>3</sup>		40 µg/m <sup>3</sup>	

Source: *EU Air Quality Directive (2008/50/EC)*, WHO, 2006, *Air quality guidelines: Global update 2005*. [online] <https://www.eea.europa.eu/themes/air/air-quality-concentrations/air-quality-standards>

**Table 3.** Values of air pollutants found in primary studies.

Studies	Air pollutant	Value (original units)	Standardised values in 2020 €/kg	Comment
Bayer et al. (2006)	Particulate matter PM10	149 to 189 in 1986 USD		for a 1 µg/m <sup>3</sup> reduction in PM10
Luechinger et al. (2009)	Sulphur dioxide SO <sub>2</sub>	\$218 to \$318		for the decrease in 1µg/m <sup>3</sup> concentration in SO2
Hammit and Zhou (2005)		\$3 – \$6 \$4 000 – \$17 000		Willingness to pay to prevent an episode of cold Willingness to pay to prevent a statistical case of chronic bronchitis
Chanel and Luchini (2008)		€2.15mil		Mean Value for Preventing a Statistical Fatality
Carlsson and Johansson-Stenman (2000)		2000 SEK/year		Willingness to pay for a 50% reduction of harmful substances
Murray et al. (1994)	Particulate matter PM10 Nitrogen dioxide NO <sub>2</sub> Sulphur dioxide SO <sub>2</sub> Ozone O <sub>3</sub>	6614 \$2007/t 9906 \$2007/t 2425 \$2007/t 9906 \$2007/t	<b>7.612 €/kg</b> <b>11.41 €/kg</b> <b>2.78 €/kg</b> <b>11.41 €/kg</b>	Externality value of a specific air pollutant
Holland et al. (2011)	Particulate matter PM10 Nitrogen oxides NO <sub>x</sub> Sulphur dioxide SO <sub>2</sub>	12 560 €/t 7 241 €/t 8 120 €/t	<b>12.56 €/kg</b> <b>7.241 €/kg</b> <b>8.12 €/kg</b>	European average damage cost to health and environment per tonne of emission from industrial facilities
World Bank (2016)	Particulate matter PM2.5	4.8% of GDP		Welfare loss due to ambient particulate matter
De Bruyn et al. (2018)	CO2 Particulate matter PM10 PM2.5 Nitrogen oxides NOx Sulphur dioxide SO2	0.057 €2015/kg 26.6 €2015/kg 38.7 €2015/kg 14.8 €2015/kg 11.5 €2015/kg	<b>0,060 €/kg</b> <b>28,12 €/kg</b> <b>40,91€/kg</b> <b>15,65 €/kg</b> <b>12,16 €/kg</b>	Loss of economic welfare due to one additional kilogram of a specific pollutant, social marginal value of preventing emissions (central values).
DEFRA (2019)	Particulate matter PM2.5 Nitrogen oxides NOx Sulphur dioxide SO2	105 836 £/t 6 199 £/t 6 273 £/t	<b>120.656 €/kg</b> <b>7.06 €/kg</b> <b>7.15 €/kg</b>	Average damage cost per tonne of emission



**Table 4.** Estimated benefits of air pollution due to additional green coverage in selected EU cities and EU overall.

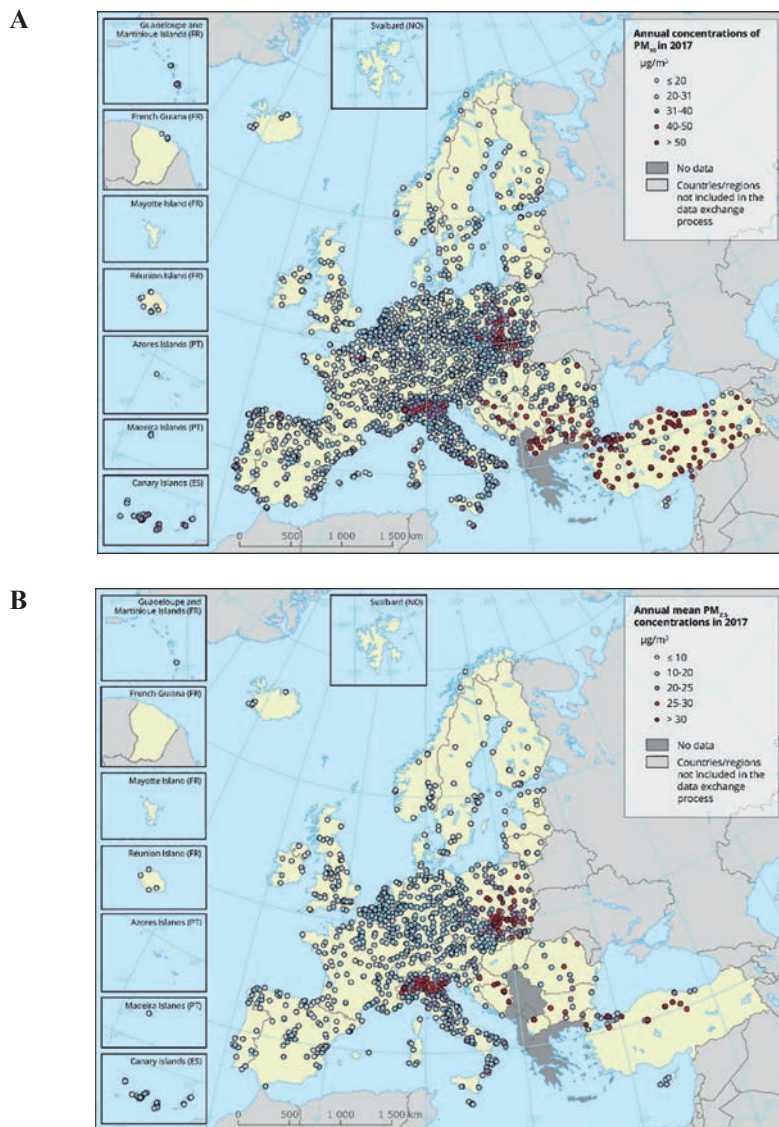
Country	City	Urban population	Current GUS (m2/inh.)*	Additional GUS (ha)	Pollutant**	Unit value of benefit – LB (2020 EUR/kg)	Unit value of benefit – UB (2020 EUR/kg)	Benefit of avoided air pollution – LB (2020 EUR/kg/year)	Benefit of avoided air pollution – UB (2020 EUR/kg/year)
IT	Milan	1,35 mln	9-20 m <sup>2</sup>	135	NOx	10,55	28,22	37,122	270,514
						10,46	28,86	9,542	26,314
						28,39	79,46	51,777	144,929
BG	Plovdiv	669,334	9-20 m <sup>2</sup>	67	NOx	7,36	19,22	59,149	160,341
						5,54	15,13	25,896	67,605
						15,46	43,28	28,202	78,938
ES	Barcelona	5,575 mln	< 4.5 m <sup>2</sup>	558	NOx	3,21	7,63	47,824	128,769
						7,04	19,40	11,306	26,831
						16,50	46,19	30,100	84,251
EL	Thessaloniki	1,105 mln	< 4.5 m <sup>2</sup>	111	NOx	2,25	5,11	42,673	114,905
						4,50	12,18	7,902	17,963
						16,81	47,06	4,103	11,103
PL	Lodz	728,892	9-20 m <sup>2</sup>	73	PM10			30,667	85,839
								85,370	234,946
						11,91	32,26	41,882	113,489
EU		329,300 mln	18,1 m <sup>2</sup>	32,930	SOx	11,25	31,19	10,258	28,443
						18,22	51,00	33,230	93,014
								28,637,130	
					NOx	15,65		13,423,340	
						12,16		2,704,151	
						28,12		12,509,639	

\* GUS: green urban space

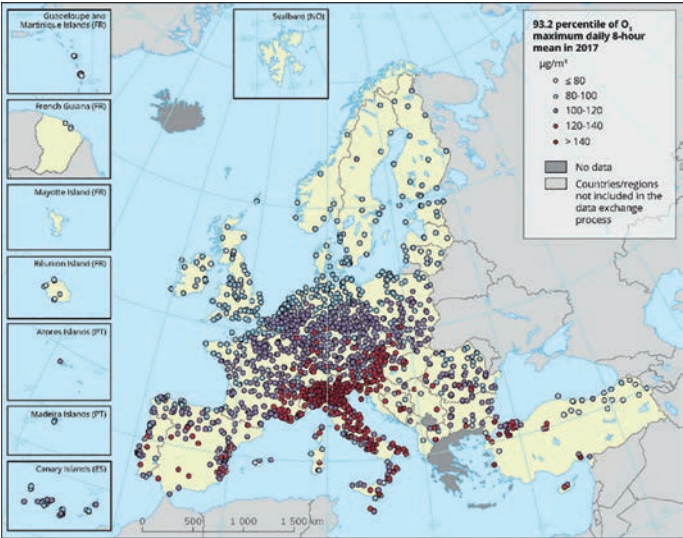
\*\* Unit value ranges per country are adopted from from EEA (2011); central values for EU-28 are adopted from de Bruyn et al. (2018)

Source: own calculation.

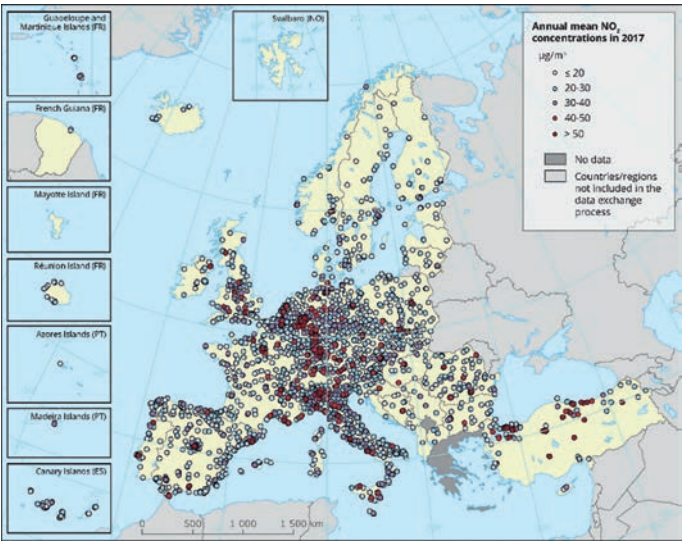
**Figure 1.** Yearly concentrations of air pollutants in the EU  
(A – PM<sub>10</sub>, B – PM<sub>2.5</sub>, C – O<sub>3</sub>, D – NO<sub>2</sub>)



C

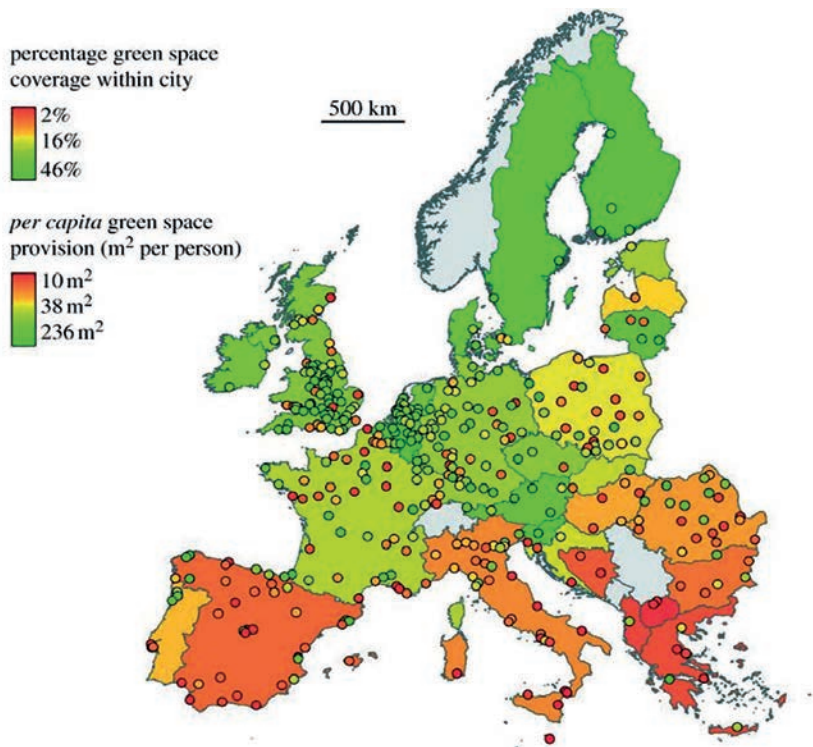


D



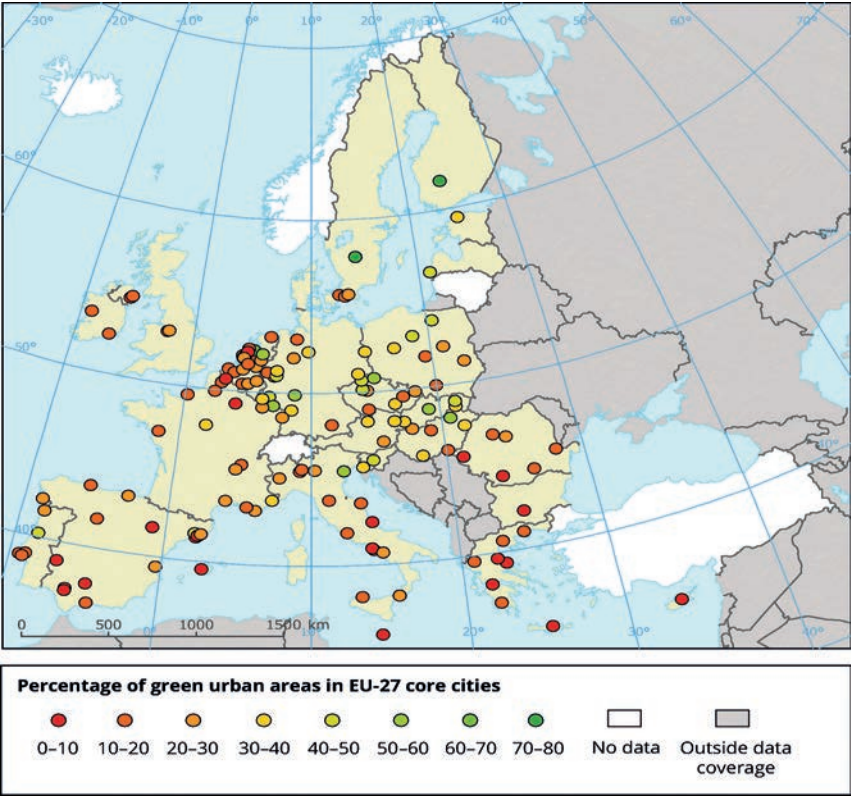
Source: Fuller and Gaston (2009)

**Figure 2.** Green space coverage (country level) and per capita green space (city level)



Source: EEA <<https://www.eea.europa.eu/data-and-maps/figures/percentage-of-green-urban-areas-1>>

**Figure 3.** Percentage of green urban cover (city level)



# Collaborative Governance for Smart and Sustainable Cities of the 21st Century.

## Case Study: The City of Oradea

Edina Lilla Mészáros\*

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**Summary:** Due to today's great societal challenges, such as climate change, demographic boom, resource scarcity, urban settlements find themselves trained in a tense race of reforming their urban development strategies. Turning cities into smart settlements, by improving their waste management and energy consumption seems like the only viable solution for a prosperous and sustainable future. Moreover, statistics show that smart cities create an auspicious environment for the establishment of start-up, as they provide incentives for citizens with creative and entrepreneurial skills. Accordingly, the objective of the current study is twofold: in the first instance, we would like to prove the existence of a causal link between the level of smart orientation in a city and the spread of start-ups, namely, the smarter the city, the bigger the number of start-ups, and vice versa by choosing as our case study, a city from the North-Western development region of Romania, Oradea; secondly, we stress, that the promotion of a collaborative governance model by the city leadership, involving all the stakeholders in the decision-making process enables smart orientation within a city.

**Keywords:** collaborative governance, e-governance, Oradea, smart city, start-up

## 1. Introduction

Amsterdam, Barcelona, Stockholm, Hong Kong, Delhi, New York, Seoul, Vienna, Toronto, Berlin, Copenhagen are only a few of the megacities that have been consciously pursuing a smart city strategy for years. Lately, also several urban centres from the former post-Soviet space have adopted similar strategies and various cities from Romania have begun this process as well, whether declarative

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or factual: Oradea is one of these cities. On the other hand, following the EU trends, Romania has also acknowledged the importance of creating incentives for the development of Small and Medium Enterprises (hereinafter referred to as: SMEs), by subsidizing projects encouraging citizens to become entrepreneurs. Consequently, in recent years, the number of start-ups in Romania has grown considerably, the North-West development region, in which Oradea is situated being second in the number of established start-ups, following the central region, București-Ilfov. Thus, on the one hand, in the current research, we wish to analyse whether Oradea meets the necessary requirements in order to be called a smart city, and if it has the ability to create propitious background for the development of start-ups? On the other hand, we argue that there is a direct link between the effectiveness of governance and the achievement of a smartness-orientation in a city, emphasizing the role of collaborative i.e. participative governance. As the main hypotheses of the study:

H1. We identify start-ups as smart economy tools, which not only foster sustainable development within a city/region, but are also indicators showing the level of smartness within an urban settlement.

H2. Favouring collaborative governance by including the civil society and other stakeholders in the decision-making process within a conurbation makes it easier to develop and implement public policies meant to transform a traditional urban settlement into an intelligent city.

## **2. How does the specialty literature define smart cities and which are the indicators measuring the level of smartness in a city?**

The notion of the ‘smart city’ was introduced in the academic literature in the 1990s<sup>1</sup>, however, later scholars decided to represent or even to replace it with diverse concepts, varying from networked cities, techno cities, cyber cities, creative cities, digital cities, e-communities, intelligent city, telecity, wired city etc. Nevertheless, even though the specialty literature abounds in a plethora of interpretations, there’s no universal standardized definition that might encompass all the dimensions of a smart city.<sup>1</sup> The European Commission describes the smart city as a site which prioritizes the wellbeing of its inhabitants and businesses, making

<sup>1</sup> KUMAR, K. A. et al. Understanding Smart Cities: Inputs for Research and Practice, In: KUMAR, Kar A. et al. (eds.). *Advances in Smart Cities. Smarter People, Governance and Solutions*. Boca Raton: CRC Press Taylor & Francis, 2017, p. 2. PUȘCAȘU, B. *Mic Ghid pentru Orașele care vor să Devină și Mai Inteligente* [Small Guide for those Cities who want to Become More

traditional networks and services more efficient by exploiting the possibilities given by the digital and telecommunication technologies. The definition given by the Commission puts forward a holistic approach, as it tries to identify all the components of a smart city, which targets the better management of resources and the reduction of the carbon footprint. A smart city surpasses the traditional use of ICT, as it focuses on more efficient urban transport networks, upgraded water supply and waste disposal facilities. Furthermore, a capable and responsive city administration is an indispensable element of the smart city puzzle.<sup>2</sup> A similar interpretation could be seen in urban planner, Boyd Cohen's description of smart city, emphasizing the role of technology and innovation in the efficient use of resources and the reduction of carbon dioxide emissions. Nonetheless, he underlines that technology represents only one aspect of a smart city, namely cities won't become smart only because of technology, they will become smart due to the human agent, i.e., the people. He also expressed his doubts concerning the long-term endurance of the concept under scrutiny, forecasting the disappearance of the term 'smart city', being replaced by new concepts, such as *future city* or *innovative city*, however the essence will remain the same.<sup>3</sup>

One of the most renowned specialists in the field of regional sciences, Professor Rudolf Giffinger conditions the transformation of a normal urban settlement into a smart city, to excelling in six key features, which are "built on the 'smart' combination of endowments and activities of self-decisive, independent and aware citizens".<sup>4</sup> Economy, people, governance, mobility, environment and living were listed among the six traits that are indispensable to the establishment of a city with smart orientation. Inspired by Giffinger's ranking approach, climate strategist and smart city expert, Boyd Cohen developed the so called 'Smart Cities Wheel' remodelling Professor Giffinger's characteristics, singling out six indicators, such as smart people, smart economy, smart environment, smart government, smart living and smart mobility.<sup>5</sup>

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*Intelligent*]. 2016, p. 1. [online]. Available at: <<http://www.aapro.ro/doc/articole/2016-10-28/ghid-smart-cities-ro.pdf>>

<sup>2</sup> European Commission. *Smart Cities*. [online]. Available at: <[https://ec.europa.eu/info/eu-regional-and-urban-development/topics/cities-and-urban-development/city-initiatives/smart-cities\\_en](https://ec.europa.eu/info/eu-regional-and-urban-development/topics/cities-and-urban-development/city-initiatives/smart-cities_en)>

<sup>3</sup> The City of Vienna. *And he Saw that it was "Smart" – Interview with Climate Strategist Boyd Cohen*. [online]. Available at: <<https://www.wien.gv.at/english/transportation-urbanplanning/interview-boyd-cohen.html>>

<sup>4</sup> GIFFINGER, R.; HAINDLMAIER, G. Smart Cities Ranking: An Effective Instrument for the Positioning of the Cities. *Journal of the Centre of Land Policy and Valuations*, 2010, vol. 4, no. 12, p. 13.

<sup>5</sup> Bee Smart City. Building the Smart City: Advancing in Six Fields of Action. [online]. Available at: <<https://hub.beesmart.city/smart-city-indicators/>> The City of Vienna. *And he Saw that it was "Smart"*.



Including ‘smart people’ among the six key indicators shows that the strategy envisaging a smart type of conurbation is people oriented, as it focuses on aspects related to their everyday life, like education, learning or participation in public life. Furthermore, it intends to harness human potential and creativity, thus contributing to the creation of smart urban settlements. Accordingly, the continuous improvement of people’s living conditions, quality of life, education and personality are quintessential for having smart residents in urban areas. Scoring high at the Human Development Index could be considered as one of the most important criterion in assessing the level of smartness. Additionally, a conurbation inhabited by smart citizens is knowledge driven, it is characterized by open-mindedness, flexibility and an insatiable thirst for continuous learning, and it cherishes a participative type of governance.<sup>6</sup>

Undoubtedly, high level of GDP per capita does not suffice for labelling a settlement a smart city. Other indicators, such as public expenses on education, research grants, research and development, average annual household income, unemployment rate, amount of projects funded by the civil society etc. are also imperative for a genuine assessment. A ‘smart economy’ is innovation driven, does not lack entrepreneurial spirit, and creates proper incentives for increasing productivity and for establishing a flexible labour market, and finally, it targets the securing of investments, jobs, businesses and talents.<sup>7</sup> In Cohen’s conception, a smart city represents a proper milieu for the establishment and functioning of start-ups, and it also acts as a pull factor to investors, businesses and highly qualified talents and skilled workers.<sup>8</sup>

The third indicator, ‘smart mobility’ refers to the infrastructural facilities within an urban settlement which should be designed in such a way to facilitate the lives of residents.<sup>9</sup> Efficiency in the management of human mobility within a conurbation is of a pivotal importance, as it influences not only the internal, regional or international accessibility, but both public and private transportation to and from workplace, and implicitly also productivity. An intelligent transportation model is customer-centric and inclusive, and is committed to achieving

<sup>6</sup> KUMAR, T. M. Smart City E-Governance: Issues and Future. In KUMAR, T. M. (ed.) *E-Governance for Smart Cities*. Springer, 2015, p. 357. KUMAR, K. A. et al. Understanding Smart Cities: Inputs for Research and Practice. In: KUMAR, Kar A. et al. (eds.). *Advances in Smart Cities. Smarter People, Governance and Solutions*. Boca Raton: CRC Press Taylor & Francis, 2017, p. 3. GUPTA, S., MUSTAFA, Z. S., KUMAR, H. Smart People for Smart Cities: A Behavioral Framework for Personality and Roles. In: KUMAR, Kar A. et al. (eds.). *Advances in Smart Cities. Smarter People, Governance, and Solutions*. Boca Raton: CRC Press Taylor & Francis, 2017, p. 5.

<sup>7</sup> KUMAR, K. A. et al. Understanding Smart Cities, 2017, p. 3.

<sup>8</sup> Bee Smart City. Building the Smart City; The City of Vienna. *And he Saw that it was “Smart”*.

<sup>9</sup> KUMAR, K. A. et al. Understanding Smart Cities, 2017, pp. 3–4.

a faster, cheaper and eco-friendly mobility for everyone, promoting the use of electric and hydrogen-powered vehicles, autonomous vehicles and the practice of bike/car sharing.<sup>10</sup>

Establishing a ‘smart environment’ is the key to a sustainable and liveable future, thus propelling decision-makers to adopt smart energy management schemes with low carbon logistics. The considerable reduction of the carbon-footprint and the achievement of a high energy-efficiency are the ultimate goals. This could be accomplished through: the reduction of greenhouse gas emissions, conservation of electricity, treatment and conservation of water resources, the management of green spaces, the use of renewable sources and efficient waste reduction and recycling practices etc.<sup>11</sup> The ‘smart living’ indicator prioritizes the well-being and commodity of residents, by focusing on areas of leisure for all age groups, starting with cinemas, public libraries, parks, green spaces etc. High quality healthcare, safety, housing conditions and intelligent buildings are also necessary for increasing liveability within a human settlement.<sup>12</sup>

‘Smart government/governance’ is vital, as smart orientation in a city cannot be fulfilled without a qualified, visionary and open-minded leadership. According to Vinod Kumar, smart governance has four building blocks, such as: participative decision-making (collaborative governance), transparency, best public and social services and adequate political strategies and perspectives.<sup>13</sup> Moreover, e-governance could also enhance the participation of citizens in public policy and urban governance, facilitating the dialogue between them and the decision-makers. In Albino, Berardi and Dangelico’s point of view, the ICT-mediated governance, namely e-governance is essential for bringing the citizens closer to the decision-making process and for transparency.<sup>14</sup>

<sup>10</sup> Bee Smart City. Building the Smart City.

<sup>11</sup> MUSTAFA, S. Z., KUMAR, K. A. Management of Multidimensional Risk for Digital Services in Smart Cities. In KUMAR, Kar, A. et al. (eds.) *Advances in Smart Cities. Smarter People, Governance and Solutions*. Boca Raton: CRC Press Taylor & Francis, 2017, p. 152. KUMAR, K. A. et al. *Understanding Smart Cities*, 2017, p. 5.

<sup>12</sup> Bee Smart City. Building the Smart City.

<sup>13</sup> VINOD KUMAR, T. M. E-Governance for Smart Cities. In VINOD KUMAR, T. M. (ed.) *E-Governance for Smart Cities*. Springer, 2015, p. 22; ANTHOPOULOS, L. G. *Understanding Smart Cities: A Tool for Smart Government or an Industrial Trick*, Springer, 2017, p. 267.

<sup>14</sup> ALBINO, V., BERARDI, U., DANGELICO, R. M. Smart Cities: Definitions, Dimensions, Performance, and Initiatives. *Journal of Urban Technology*, vol. 22, no. 1, 2015, p. 12. IGI Global. *What is E-Governance?* [online]. Available at: <<https://www.igi-global.com/dictionary/cyber-capability-framework/8702>>

### **3. Is there a causal nexus between the level of smartness in a city and the presence of start-ups? Case study: The city of Oradea**

When discussing the particularities of the smart economy indicator, we have ascertained that a smart city represents a proper environment for start-ups, as it has the ability to attract investors, companies and high skilled professionals. Within the current study, we would like to prove the existence of a causal link between the level of smart orientation in a city and the spread of start-ups. Namely, the smarter the city, the bigger the number of start-ups, and vice versa. According to this rationale, start-ups could be considered as smart city indicators, showing the level of development and smart orientation within an urban settlement.

The great potential of SMEs in boosting economy was recognised by the European Union on a very early stage. The Small Business Act from 2008 elaborated under the Commission presidency of Jose Manuel Barroso put forward a comprehensive policy framework for small and medium enterprises, acknowledging that the adoption of SME friendly regulations and environment will lead to a steady economic development. Furthermore, SMEs were labelled as the backbone of the European society, and EU member states were advised to simplify and ease the administrative burden on these businesses and to change the national legislation in matter.<sup>15</sup> As the start-up time and costs of setting up new enterprises was varying in every EU country, in May 2011, the Competitiveness Council requested the reduction of the average start-up time for new businesses to 3 days and of the capping of costs to 100 Euros by 2012. The Commission plays an important role in monitoring the progress from the member states concerning the development of start-ups and it is also charged with the elaboration of Progress reports on start-up procedures. The financial support provided by the EU for start-ups is also considerable, these enterprises being supported through the COSME (Competitiveness of Enterprises and Small and Medium-sized Enterprises) programme, Horizon 2002, the EEN (Enterprise Europe Network), the Digital agenda for Europe – startup Europe and even through assistance from the European Investment Bank Fund. These small and medium enterprises have also benefitted of structural funds, more than 70 billion Euros being spent on SMEs by the end of 2013. With this money more than 78.000 start-ups were funded and this led to the creation of over 268.000 steady jobs in EU member states.<sup>16</sup> The new Commissioner for Internal

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<sup>15</sup> European Commission, *Putting Small Businesses First. Europe is Good for SMEs, SMEs are Good for Europe*, 2008, p. 1.

<sup>16</sup> European Union Official Site, *Starting a Business*. [online]. Available at: <[https://europa.eu/youreurope/business/running-business/start-ups/starting-business/index\\_en.htm](https://europa.eu/youreurope/business/running-business/start-ups/starting-business/index_en.htm)>

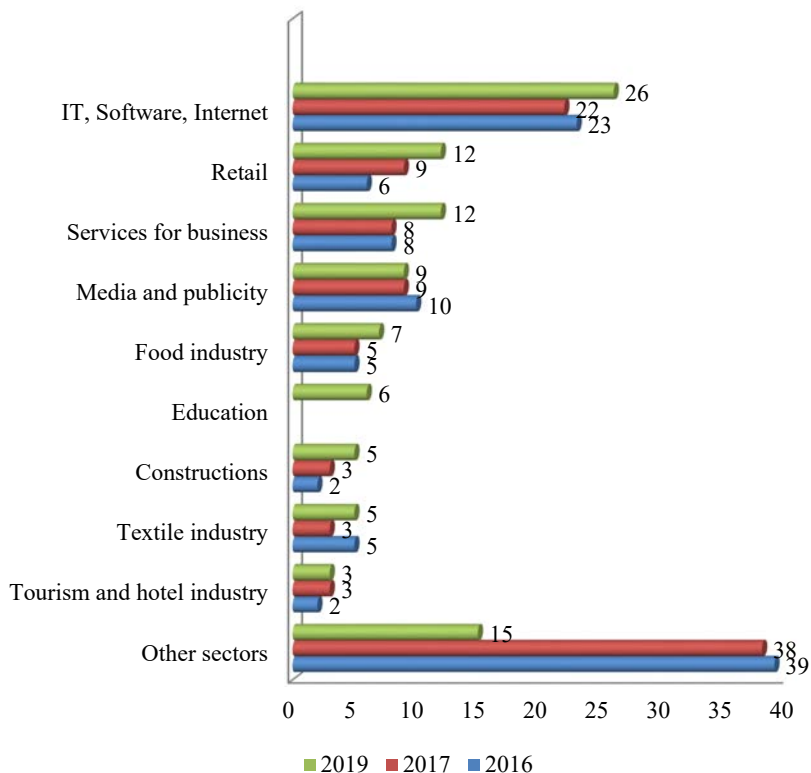
Market, Thierry Breton, in March 2020 launched An SME Strategy for a Sustainable Digital Europe reiterating the salience of “Europe’s 25 million small and medium enterprises”, highlighting that these are indispensable for the economic development of the Community, as they are deeply woven in Europe’s economic and social fabric. Attention is paid to the further reduction of regulatory burden and the improvement of market access and to more financing opportunities.<sup>17</sup>

According to the *Start-up Business Barometer in Romania* for 2019, in the past years, could be detected a growing interest especially among young Romanians for the field of entrepreneurship. Of the 374 entrepreneurs who answered the questions of the Barometer, 82% run businesses with less than three years of experience and 92% confirmed that they are founders/shareholders in these companies. As similarly to the concept of the ‘smart city’, also coming with a universally accepted definition for start-ups is challenging, in this study we understand by start-ups, small and medium sized companies with less than three years of experience, the owners being founders /co-founders/ shareholders of the start-up.<sup>18</sup> The 2019 edition of the *Start-up Business Barometer in Romania* showed that at country level 1 out of 2 start-ups has been on the market for less than a year, this trend being maintained throughout the 3 editions of the study, since 2016. Unfortunately, about a third of start-ups fail to reach the second year of activity. Concerning their location, in Romania 87% of start-ups are set up in urban areas. However, 2019 saw an increase also in the rural areas (13% compared to 8% in 2016). On the other hand, compared to the previous years, in the capital city, Bucharest could be detected a sharp decrease in the number of new start-ups. If in 2016, 60% of the total numbers of start-ups from the country operated in Bucharest by 2019 it decreased to only 41 %. Concerning their field of activity, the number of start-ups increased slightly for IT, trade and B2B (business-to-business) services.<sup>19</sup>

<sup>17</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. An SME Strategy for a Sustainable and Digital Europe, COM(2020) 103 final

<sup>18</sup> EY Romania. *Barometrul afacerilor de tip startup din România [Start-up Business Barometer in Romania]*. 2019, pp. 2-4. [Online]. Available at: <<https://www.eyromania.ro/studii-and-articole/barometrul-afacerilor-de-tip-startup-din-romania-2019/>> Financial Market, *Start-Up Romania 2018, E-book pentru Antreprenori sau viitori Antreprenori [Start-Up Romania 2018, E-book for Entrepreneurs or future Entrepreneurs]*, 2018, p. 7. [online]. Available at: <<https://www.financialmarket.ro/wp-content/uploads/2018/02/Start-up-Nation-2018.pdf>>

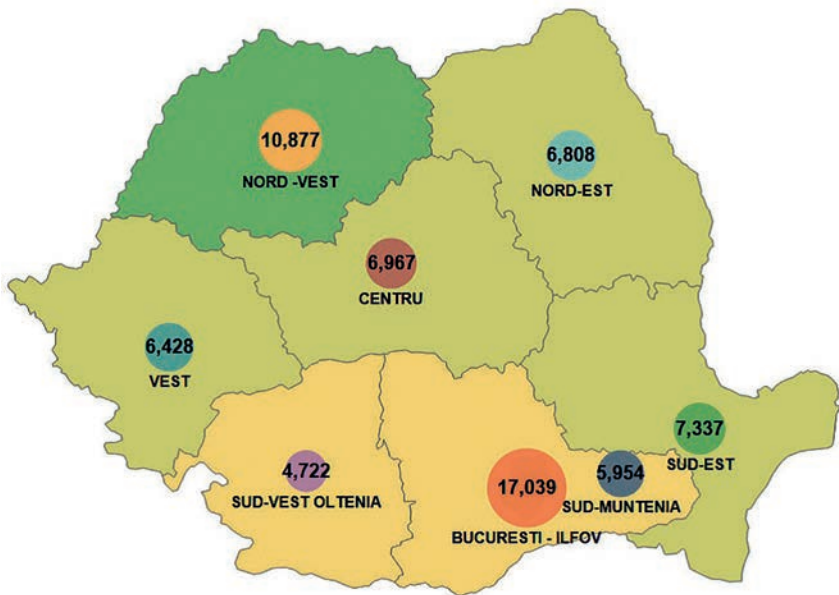
<sup>19</sup> EY Romania, 2019, p. 7.

**Chart 1.** Field of activity of start-ups in Romania in % 2016-2019

Own elaboration based on the data found in Start-up Business Barometer in Romania

As shown in Map no. 1, after the Bucuresti-Ilfov NUTS 2 level development region (with 17.039), the North-Western development region (where also Oradea is situated) has the highest number of start-ups, numbering 10.877 companies. This could be considered also as an efficient indicator in assessing the level of development within a specific region.

**Map 1.** Distribution by development regions of the number of newly established start-ups in Romania (Financial Market, 2019, p. 5)



Looking at the range of services and products, 36% of start-ups in Romania offer their services and products exclusively for the local market, and 34% for the national market. Only 10% target regional/European markets and consumers and 20% have a global outreach, however, 50% of the interviewees in 2019 were planning to enter new geographic markets, mainly in Europe and the USA. Assessing the level of financing, personal funds remain the main source of funding for more than three quarters of start-ups (79%). At the same time, there is a significant increase in the share of state funding, financial assistance received from family and friends, but also from business angels. In 2019, 11% of the financial assistance for the setup of start-ups originated from EU Funds, while 16% was non-reimbursable financing from the Romanian state or other institutions.<sup>20</sup>

The Romanian government has also acknowledged the great potential of start-ups and in the past years it has been actively engaged in developing various financial schemes and programmes facilitating the establishment of such companies. One of the most prominent governmental programmes is the *Start-Up Nation*. Start-Up Nation Romania is a funding program that aims to support the

<sup>20</sup> *ibid.*, pp. 8–10, 24–25.

creation of new small and medium-sized enterprises, with non-reimbursable funds from the state budget. Under this programme, entrepreneurs can benefit from a financial assistance, maximum 100% of the value of the non-reimbursable financial allowance but not more than 200,000 Romanian Lei, including VAT for non-paying companies. Vans, equipment, machinery, computers, furniture, website, software licenses, courses, consulting, purchasing work spaces are only a few of the eligible expenses under this financial scheme.<sup>21</sup>

With regard to our case study, the city of Oradea, after a thorough analysis of its situational picture in terms of start-ups, we came to the conclusion that Oradea hasn't reached its full capacity yet. Within the current research we aim at briefly presenting 9 start-ups, the vast majority of them operating in the IT, software and e-commerce sector. FieldVibe is a start-up from Oradea, specialized in assisting small home service companies to schedule their daily jobs, manage their field employees, boost productivity, and increase customer satisfaction with the help of automated text reminders. Relevon is an e-commerce and customer retention platform created for digital agencies. Prime Dash is developing financial software for automated financial decision-making. Another start-up, Octavic is aimed at providing flexible Industry 4.0 solutions for manufacturing challenges. Even though the number of start-ups in Oradea is not so considerable, the services they provide are upbeat and versatile, and definitively keep pace with the high tech demands of the regional/global market. A very good example of this constitutes TypingDNA, which uses artificial intelligence to identify and authenticate people based on typing biometrics (the way people type on their keyboard). In 2019, TypingDNA was selected in the top 50 of the most innovative start-ups from Europe.<sup>22</sup> With the help of a process engine, a young enterprise called Finboard, enables the transformation of accounting data into strategic and financial management information.<sup>23</sup> Paymo is targeting Small-Medium Businesses/Enterprises specialized in web design & development, advertising/PR, architectural services, education and non-profits, offering them a cloud project management application that piles up different duties from task management, time tracking to invoicing. Axosuits is a robotic company, designed to develop high-powered multi-purpose exoskeletons. One of the first start-ups from Oradea,

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<sup>21</sup> Start-Up Nation Romania, [online]. Available at: <[https://start-upnation.ro/?gclid=EAIaIQobChMI5s223vLC6QIVg53VCh1E\\_wbxEAAYAAEgKI9fD\\_BwE](https://start-upnation.ro/?gclid=EAIaIQobChMI5s223vLC6QIVg53VCh1E_wbxEAAYAAEgKI9fD_BwE)>

<sup>22</sup> FLORIAN, S. *10 Romanian Startups to Look out for in 2019 and Beyond, EU-Startups*. 2019. [online]. Available at: <<https://www.eu-startups.com/2019/05/10-romanian-startups-to-look-out-for-in-2019-and-beyond/>> Bursa Construcțiilor, *Municipiul Oradea face pași către "smart city"* [The Municipality of Oradea makes steps towards a smart city]. 2018. [online]. Available at: <<https://www.construcitibursa.ro/municipiul-oradea-face-pasi-catre-smart-city--8522829>>

<sup>23</sup> RomanianStartups. [online]. Available at: <<https://www.romanianstartups.com/search/?ls=oradea>>

receiving funding from the Startup Nation Romania programme has lived up to the expectations of its founders, and became a profitable business. Watch Straps by Uglai (Atelierul Uglai) is specialized in producing personalized watch straps, designed and handmade from natural leather.<sup>24</sup>

#### 4. Smart city orientation in Oradea and the importance of collaborative governance

When assessing the building blocks of a smart city, we have highlighted the importance of collaborative governance. The *Encyclopaedia of Governance* describes *collaborative governance* as a form of decision-making where the government includes “its citizens, social organizations, enterprises, and other stakeholders in the early stages of the policy-making process.”<sup>25</sup> Namely, in contrast with the traditional public policy procedures, where citizens and other stakeholders are not involved in the decision-making process, receiving only the final proposal, a collaborative type of governance promoted within a smart city favours participative governance. In this form of policy-making the input of the citizens and stakeholders is valuable, the elaborated policies being the outcome of a broad consensus between the central leadership, the citizens and various stakeholders. As highlighted in the academic literature, a smart government is required to create collaborative environments and to foster cooperation among all parties involved in policy-making. ICT is an efficient tool in increasing public participation (e-participation) in decision-making, which facilitates public involvement, enhances the abilities of citizens, the level of democracy and the rate of acceptability of administrative decisions.<sup>26</sup>

When analyzing the governance model implemented in the city of Oradea, we could ascertain that the central leadership favours a collaborative type of governance, involving more and more the citizens and various stakeholders in the important policy decisions meant to transform Oradea into a smart urban settlement. The 2018 edition of the Smart City Radiography in Romania ranked

<sup>24</sup> NITU, F. Afaceri de la zero. Familia Uglai produce curele de ceas din piele naturală, hand-made, într-un atelier din Oradea, pe care le vinde în România și în străinătate [Business from scratch. The Uglai family produces hand-made natural leather watch straps in a workshop in Oradea, which they sell in Romania and abroad], In *Ziarul Financiar*. 2019. [online]. Available at: <<https://www.zf.ro/afaceri-de-la-zero/afaceri-de-la-zero-familia-uglai-produce-curele-de-ceas-din-piele-naturala-hand-made-intr-un-atelier-din-oradea-pe-care-le-vinde-in-romania-si-in-strainatate-18228637>>

<sup>25</sup> BEVIR, M. (ed.). *Encyclopaedia of Governance*. London: Sage Publications, 2007, p. 104.

<sup>26</sup> VIALE PEREIRA, G., PARYCEK, P., FALCO, E., KLEINHANS, R. Smart Governance in the Context of Smart Cities: A Literature Review. *Information Polity*, vol. 23, no. 2, 2018, p. 155.



Oradea as the city with the highest administrative efficiency out of the 320 cities and towns from Romania. Oradea has also the best performance in terms of capital expenditures, with investments of 1225 Euro per capita in the last 8 years and with an attraction of European funds of 716 Euro per capita. Moreover, with 20 developed projects, Oradea has successfully entered the smart city race, alongside bigger urban centres, such as Bucharest, Cluj-Napoca, Timișoara, Constanța and Iași.<sup>27</sup> Accordingly, Oradea is a leader in smart governance and also in smart mobility, in 2019 developing 6 smart mobility projects. Oradea also has intelligent parking places, free wi-fi in public places and e-governance etc.<sup>28</sup>

In July 2015 was launched at the City Hall an ambitious project called “Computerization strategy of the Municipality of Oradea 2016-2025”, targeting the elaboration of the integrated computerization strategy of the Municipality of Oradea, by describing the stages and procedures necessary to transform Oradea into a genuine “Smart City”<sup>29</sup> In December 2015 the Municipality of Oradea defined its development priorities for the 2014-2020 period within the Local Development Strategy, also sharing its vision for 2020. The municipality prioritizes the computerization process in the city, focusing on:

- Supporting the development of the IT sector at local level – Oradea IT Hub (ex. Oradea Tech Hub initiative);
  - Turning into one of the best providers of quality public services in Romania (relationship with citizens, business, tourists and potential investors, especially in the areas of health, public transport and public utilities);
  - Becoming an attractive tourist city by creating a strong brand and by creating intuitive and related products and services in the field of computerization (Oradea City Card and correlation with e-ticketing for metropolitan public transport);
  - Maintaining the pace of attracting European investment funds;<sup>30</sup>
- The Municipality acknowledged that in order to reach the desired outcome, namely turning the city into a smart and sustainable settlement, the Computerization

<sup>27</sup> Vegacomp Consulting. *Radiografia Smart City Oradea. Raport Pilot [Smart City Radiography in Romania. Pilot Report]*. 2018, pp. 3-5. [online]. Available at: <[https://vegacomp.ro/wpr/wp-content/uploads/2018/03/radiografia-smart-city\\_2018.03.14.pdf](https://vegacomp.ro/wpr/wp-content/uploads/2018/03/radiografia-smart-city_2018.03.14.pdf)>

<sup>28</sup> Vegacomp Consulting. *Radiografia Smart City Oradea. De la Smart City 0.1, la Smart City 1.0 [Smart City Radiography in Romania. From Smart City 0.1 to Smart City 1.0]*. 2019, p. 7. [online]. Available at: <<https://vegacomp.ro/wpr/wp-content/uploads/2019/03/radiografie-smart-city-romania-martie-2019-final.pdf>>

<sup>29</sup> Primăria Oradea. *Synthesis of the Press Conference: Launch of the project: Computerization Strategy of Oradea Municipality 2016-2025*, 2015. [online]. Available at: <<http://www.oradea.ro/stiri-oradea/primaria-oradea-inten-539-ioneaza-sa-elaboreze-o-strategie-integrata-de-informatizare-a-municipiului>>

<sup>30</sup> Primăria Oradea. *Specifications for the Integrated Computerization Strategy of the Municipality of Oradea 2015–2025*, 2015, p. 1. [online]. Available at: <<http://www.oradea.ro/stiri-oradea/primaria-oradea-inten-539-ioneaza-sa-elaboreze-o-strategie-integrata-de-informatizare-a-municipiului>>

Strategy of Oradea must adopt a holistic approach, covering all the necessary elements of a smart conurbation, from the technological and human to the institutional ones. The viewpoints enumerated in the strategy prove the validity of our hypotheses, which claim the existence of a citizen-centred, participative governance model in the city. First of all, the city management is aimed at providing the inhabitants high quality public services, “in which all projects undertaken by the administration will have a single focal point – the CITIZEN – resulting in higher living and operational standards for citizens and businesses, new employment opportunities through a more innovative entrepreneurial ecosystem, of increased ecological sustainability”<sup>31</sup> Secondly, within the document is highlighted, that the ‘metamorphosis’ of Oradea into an intelligent urban centre is possible only through a permanent dialogue with the civil society and their active involvement in the decision-making and implementation process.

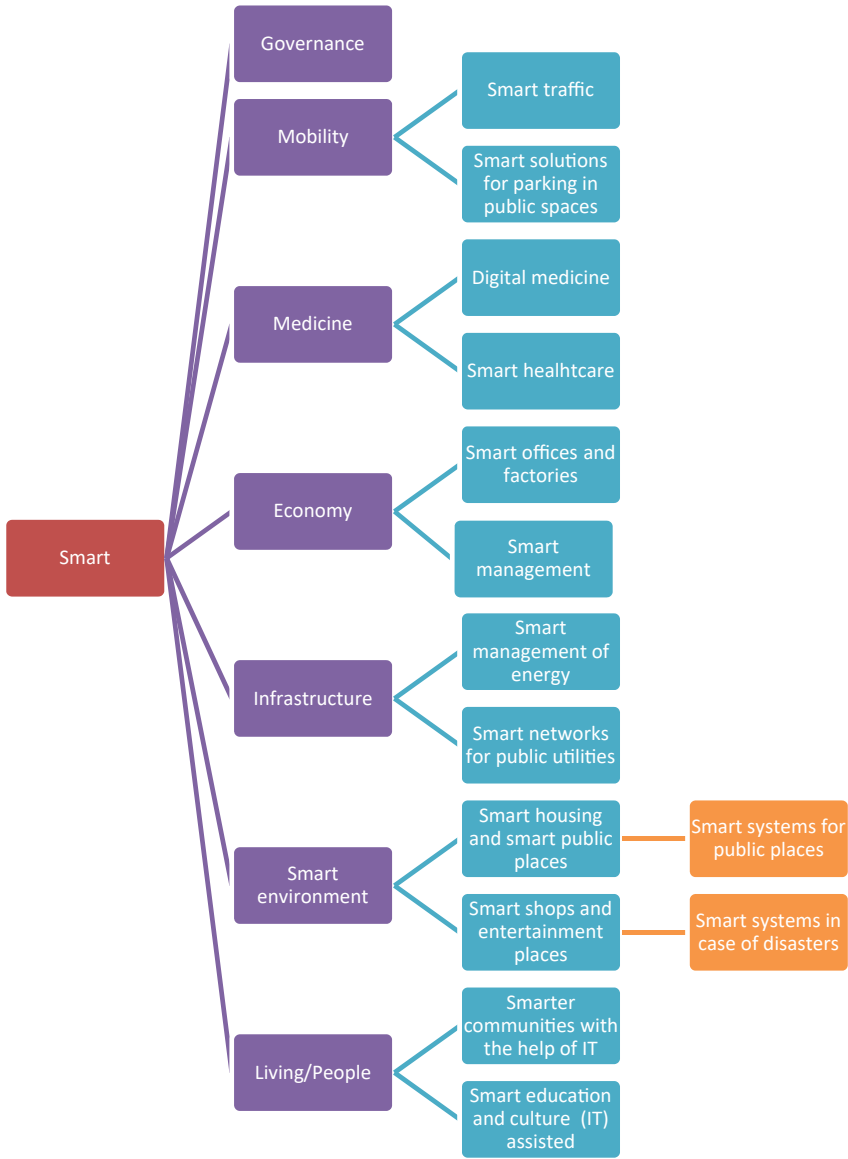
Among the smart projects launched in Oradea we find:<sup>32</sup>

- Underground sewage- municipality property
- Video surveillance system and fiber optic network of the Municipality
- Water Company – partial telecitation system
- Heating Company Oradea – Integrated computer system for reading and managing meters in the city Oradea and the neighbouring Sânmartin locality
- Oradea Local Transport – vehicles with GPS, citizen information panels, e-ticketing
- The development on the city hall portal of a platform for the online purchase of parking subscriptions, including the notification of the holders of subscriptions by SMS and e-mail before the expiration of the subscription validity;
- The development of apps such as- Mobile Pay, Amparcat.ro, TelPark, Oradea City Report and Oradea City App
- Online payments of taxes and fees, payment of parking and local transport tickets via SMS (also sending SMS to citizens who have to pick up or complete the submitted documentation); electronic system for issuing serial numbers in the management of citizen flows within the Counters Hall)
- Oradea City Report – application for mobile devices to take citizens’ complaints
- Tourist information system through applications for mobile devices
- Replacement of classic luminaries with LED ones, to reduce energy consumption

<sup>31</sup> Ibid., p. 4.

<sup>32</sup> Bursa Construcțiilor. *Municipiul Oradea face pași către “smart city”* [The Municipality of Oradea makes steps towards a smart city]. 2018. [online]. Available at: <<https://www.construciiibursa.ro/municipiul-oradea-face-pasi-catre-smart-city--8522829>> Oradea Smart City Brochure. [online]. Available at: <[http://www.oradea.ro/fisiere/module\\_fisiere/24628/PREZENTARE%20-%20bro\\_sura.pdf](http://www.oradea.ro/fisiere/module_fisiere/24628/PREZENTARE%20-%20bro_sura.pdf)>

**Figure 2.** Smart strategy of the Municipality of Oradea (Own elaboration based on Oradea Smart City Brochure)



## 5. Closing remarks

As it was mentioned before, the current study put forward a dual objective, endeavouring to demonstrate the existence of a causal link between the level of smart orientation in a city and the spread of start-ups, choosing our home town, Oradea as the case study. Secondly, it argued that embracing of a participative governance model by the city leadership, enables smart orientation within a city. Assessing the situational picture of the city in terms of start-ups revealed to us that although the number of start-ups in Oradea is not that considerable compared to other cities, like Bucharest or Cluj-Napoca, lately it has registered a growing trend. Furthermore, the services provided by these start-ups are versatile and they have proven that they can keep up even with the high demands of the international market. One example in this case constitutes TypingDNA. As the services offered by the company have proven their worth in the field of cybersecurity, in 2020 the company received a funding of 7 million dollars from foreign funding programmes. Typing DNA was also selected in the TOP50 of the European Start-ups.<sup>33</sup> On the other hand, when analyzing the governance model favoured by the municipality, we have asserted the existence of a constant desire to engage citizens and other stakeholders in the process of elaborating and implementing public policies. This type of collaborative governance coupled with a qualified and visionary leadership contribute to the transformation of Oradea, from an average urban settlement into a city with smart orientation. The multitude of implemented projects, together with the new initiatives is the living proof of a genuine commitment from both the management and the civil society towards a smart path, which, as in case of other megacities won't be a commodity choice in the future, but the only option for survival.

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<sup>33</sup> Bursa.ro. *Startup-ul Typing DNA o obținut o finanțare de șapte milioane de dolari de la mai multe fonduri* [The startup Typing DNA obtained a funding of seven million dollars from several funds]. 2020. [online]. Available at: <<https://www.bursa.ro/startup-ul-typing-dna-o-obtinut-o-finanțare-de-șapte-milioane-de-dolari-de-la-mai-multe-fonduri-85517839>>

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