

# THE FOREWORD OF THE EDITORS



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## 1. Introduction

On the occasion of the 30<sup>th</sup> anniversary of the entry into force of the Maastricht Treaty, it is worth taking a glance at the political discourses that defined the era and examine which goals set in that exceptional historical period came into reality. This is also necessary in order to understand the current public mood and the political discourses that will shape the next thirty years of the European Union.

Two factors justify calling this era exceptional: on the one hand, European integration, under the guidance of *Jacques Delors* – probably the greatest ever President of the European Commission – and through the combined efforts of the then Heads of State and Government, has emerged from its state of so-called *Eurosclerosis* and has begun to deepen at an unprecedented pace: what had not been achieved in previous decades has now been achieved only in five years.<sup>1</sup> On the other hand, the dissolution of the Soviet Union and the disintegration of the Eastern bloc made it

1 The period between the entry into force of the Single European Act in 1987 and the signing of the Maastricht Treaty in 1992.

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possible for the so-called *Finlandised*<sup>2</sup> countries – Finland, Sweden, and Austria<sup>3</sup> – to accede to the integration and then to start the accession procedure with the countries of the former Eastern bloc. At the same time, the Maastricht Treaty created the *Common Foreign and Security Policy* (CFSP), which formed the second pillar – based on intergovernmental cooperation – of the then three-pillar of the EU.<sup>4</sup>

In the “heightened atmosphere” – resulting from the reasons mentioned in the above paragraph –, two objectives have become the fundamental guiding principles at EU level: the continued internal deepening of integration – in other words an “ever closer union”<sup>5</sup> including the establishment of the Economic and Monetary Union, which became possible after the construction of the single internal market and the continued geographical enlargement.

At the international conference “Maastricht 30” organised by the Central European Academy and the Ferenc Mádl Institute of Comparative Law on 29–30 June 2023 in Budapest, these two points were broken down into five sub-points – also related to the political discourse of the time –, namely: (1) constitutional identity versus “ever closer union”; (2) institutional reforms in connection with the Future of Europe conference, (3) the future of the EMU, (4) the dilemmas of geographical expansion – that is where are the final geopolitical boundaries of EU enlargement – and last, but not least (5) the evaluation of the Union’s energy policy. Although the latter was regulated outside the framework of the Founding Treaties at the time of the Maastricht Treaty, energy policy and security of energy supply were also a major focus of attention during this period.

In the following, the editors will provide a glance on these topics in four points, introducing the first and the second points together. The other points are introduced separately.

- 2 The model is named after the Finns who, after the Second World War, in a 1948 treaty with the Soviet Union (the *Friendship, Cooperation and Assistance Treaty*), laid down a foreign policy guideline – also known as the *Paasikivi-Kekkonen Doctrine*, named after the two Finnish presidents – under which the Soviet Union renounced its claim to Finland in exchange for Finnish foreign policy neutrality. The latter required not only military neutrality, but also a renunciation of European integration. Available at: <https://www.britannica.com/place/Finland/The-postwar-period> (Accessed: 15 September 2024).
- 3 Austria has followed a similar path to Finland. See: Ruggenthaler, 2015, p. 442.
- 4 Although the South Slavic war soon made it clear that, in the words of Jacques Delors, ‘the CFSP is a Ferrari racing car with only the engine of a lawnmower.’ – See: Molnár, 2018, p. 155, p. 287.
- 5 It is worth mentioning that the term “ever closer union” already appeared in the preamble of the 1957 Treaty of Rome.

## 2. Elaborating on the topics

### 2.1. *The issue of the constitutional identity vs. “ever closer union” and the need for institutional reform with a view to democratic deficit*

The election of Jacques Delors as head of the European Commission marked the beginning of a successful new era in the history of European integration. With the *Single European Act*, which entered into force in 1987, successfully emerged from the “paralysis” of the previous 20 years of the so called Eurosclerosis: by 1992 – that is only in five years –, the goal originally set out in the 1957 *European Economic Community* (EEC) Treaty, namely the creation of a common market, had been finally achieved. Albeit “re-labelled”, now under the name of the Single Internal Market. This euphoria culminated in the 2004 Constitutional Treaty, which in the words of *Jacques Chirac* – the then President of France –, was “only” an international treaty in legal terms, but in political terms it was a constitution for the EU.

At the same time, these rapid successes have been facilitated by the distancing of the public from decision-making. As *Vivien A. Schmidt* wrote,<sup>6</sup> *technocratic governance* – in other words “policy without politics” – has always been embedded in European integration. As *Andrzej Bryk* argues in his contribution to the book,<sup>7</sup> the integration was created with the inherent aim of avoiding a scenario, where “fanatic mass” makes decisions facilitating radical political movements’ rise to power. The tragic historical events in Europe between the two world wars were a lesson that the Founding Fathers learnt. The vast majority of them were devout Catholics and some of them experienced the versatility of the modern nation states’ borders,<sup>8</sup> therefore according to some opinions they were pursuing the creation of a united Europe<sup>9</sup> based on anti-communism, democracy and Catholic social principles<sup>10</sup> with

6 Schmidt, 2006, p. 317.

7 Contribution by Andrzej Bryk ‘EU – 30 years after Maastricht – the Polish Perspective – from Hope to Disillusionment’.

8 Robert Schuman and Alcide de Gasperi both found their national identities changed by border shifts after the First World War, which suddenly made Schuman French and De Gasperi Italian. – Jenkins, 2014.

9 As some argue the Catholic Church always preferred periods when the political order was closer to an imperial model as the Holy Roman Empires than to nation states and that the long-time ‘natural political order’ of Europe is not the rather young system of nation states, but empires. – Driessen, 2020; see also: The Evolution of the European Union and the Responsibility of Catholics Commission of the Bishops’ Conferences of the European Community, May 2005 [Online]. Available at: <https://www.comece.eu/wp-content/uploads/sites/2/2022/04/20050509-The-evolution-of-the-EU-and-the-Responsability-of-Catholics.pdf> (Accessed: 15 September 2024); See also: Szabó, 2015, pp. 155–164.; see also Paris, 1950.

10 Jenkins, 2014.

the Vatican's explicit support.<sup>11</sup> It is not surprising that the integration – in its initial form – seemed like an elitist and Catholic club for the outsiders.<sup>12</sup> The price of the Founding Fathers' choice is, however, that the functioning of the institutions that govern the EU barely meet the standards of democracy expected from Member States, insofar as the focus of the analysis is on the extent to which citizens participate in decision-making. This is nothing other than the notion of a *democratic deficit* in the functioning of the EU institutions, a criticism that is often raised against Brussels. The German Constitutional Court (*Bundesverfassungsgericht*, BVerfG), the “*primus inter partes*” among the European constitutional courts, has addressed the issue on several occasions. In its so-called *Maastricht decision*,<sup>13</sup> it stated that the *Federal Republic of Germany* may only participate in an international organisation on a *supranational* basis if it does not undermine the influence of the people on the decision-making and the *legitimacy* of government derived from the people.<sup>14</sup> In *Dani Rodrik's* view – as a “political trilemma of the world economy” – a tightly globalised economy, a system of nation states and a democratic political establishment cannot be upheld simultaneously, and one of these factors must necessarily fall out.<sup>15</sup> This is rebutted by *Jan Philipp Schaefer* who argues in his contribution to the present book<sup>16</sup> that: ‘the occasional assertion that the expansion of the market economy is automatically accompanied by the death of the state is simply wrong.’ In his view economic supranationality does not require the abandonment of the state. On the contrary, its regulatory potential is needed to guarantee the individual rights that are essential for the functioning of capitalism and to absorb the social costs and external effects of competition.

Still, democratic deficit is present and needed to be remedied. The hardship of this endeavour is well illustrated by the failure of the so-called *Spitzenkandidate system*.<sup>17</sup> *Tibor Navracsics* sees the reason for the failure of the system in the fact that during the 2019 EP elections the heads of state and government – led by French President *Emmanuel Macron* and the governments of the Visegrad Four – made it clear that they are not willing to make further concessions to the EP in this area, that is they will not give up their right, guaranteed by the founding treaties, to appoint the

11 Pope Pius XII welcomed the signing of the Treaty of Rome as ‘the most important and significant event in the modern history of the Eternal City’ – See: Maillard, 2015; See also: Delegation of the European Union to the Holy See (2017) ‘The Popes and Sixty Years of European Integration’, *L’Osservatore Romano*. Project supervised by: Tombiński and Maria, 2017.

12 Guth and Nelsen, 2014, pp. 1–2.

13 BVerfG, Judgment of the Second Senate of 12 October 1993 based on the oral proceedings of 1 and 2 July 1993 – 2 BvR 2134, 2159/92.

14 BVerfG, judgment of 30 July 2019, 2 BvR 1685/14, 2 BvR 2631/14; see also: Horváth et al., 2021, pp. 116–137.

15 Rodrik, 2002, p. 27.

16 Contribution by Jan Philipp Schaefer. ‘Ultra vires without end? The German perspective on the Future of Europe Conference’.

17 The European Parliament: electoral procedures (Facts about the European Union). [Online]. Available at: [https://www.europarl.europa.eu/ftu/pdf/hu/FTU\\_1.3.4.pdf](https://www.europarl.europa.eu/ftu/pdf/hu/FTU_1.3.4.pdf) (Accessed: 15 September 2024).

president of the EU's top executive body. Even if the Heads of State and Government had been willing to cede this right to the EP, the initiative would not have achieved its main objective: based on the polling data voter activity in EP elections did not increase.<sup>18</sup> A further example of the inadequacy of attempts to reduce this democratic deficit is the poor implementation of the recent *Conference on the Future of Europe* initiative, which, according to the final report for 2022,<sup>19</sup> involved a minuscule number of EU citizens compared to the total population of almost 447 million.<sup>20</sup> Jan Philipp Schaefer provides a valuable contribution to this topic by elaborating on the German perspective, involving legal theory arguments on the issue of how the democratic deficit should be addressed at the next reform of the Founding Treaties. Until then, Schmidt's words from 2006 remain valid:

EU institutions may be effective in governing for and with the people, as they deliver desired policy outcomes and engage societal interests in the policy-making process. However, EU institutions fall short in governing of and by the people, since they are lacking in terms of political representation and citizen participation, for both of which the national level remains the main locus.<sup>21</sup>

It is worth noting, however, that as *Andrew Moravcsik* argue, the democratic legitimacy of the Union is ensured by a number of institutions and control mechanisms, including the fact that the EU's main policy-making institution, the European Council, is composed of Heads of State and Government who have won their mandate through universal, free and democratic elections. To summarise Moravcsik's argument, overemphasising the democratic deficit leads to a misjudgement, as it measures the European Union against an ideal of democracy, synthesised from the constitutional traditions of the Member States which themselves are far from being an ideal democracy. Instead they are democracies with their distinctive excellences and shortcomings.<sup>22</sup>

18 Navracsics, 2020, pp. 7–28.

19 Conference on the Future of Europe – Report on the Final Outcome (May 2022) [Online]. Available at: <https://www.europarl.europa.eu/resources/library/media/20220509RES29121/20220509RES29121.pdf> (Accessed: 15 September 2024).

20 Eurostat, population of the EU (last updated 05/09/2024) [Online]. Available at: <https://ec.europa.eu/eurostat/databrowser/view/tps00001/default/table?lang=en> (Accessed: 15 September 2024); See also: Bickerton, 2021, p. 10.

21 Contribution by Jan Philipp Schaefer 'Ultra vires without end? The German perspective on the Future of Europe Conference'.

22 Moravcsik, 2002, pp. 603–624.

The emergence of *integration by stealth*<sup>23</sup> – or, in other words, legislation “under the shadow of the treaties”<sup>24</sup> – is also an issue that need to be dealt with. This method has also been actively undertaken by the Court of Justice of the European Union (CJEU), which has become particularly evident in the context of the CJEU’s examination of the ECB’s crisis management programmes, which have been in place since 2010 and are necessary due to the Eurozone’s initial shortcomings.<sup>25</sup> As Zoltán Angyal has written<sup>26</sup> in the context of the *ESMA-case*<sup>27</sup>, the Court has always taken an ‘amicable attitude’ in this area. Obviously, it took into account the realities that sticking to the ‘no bail-out’ policy could easily lead to a serious and irreparable collapse of the Eurozone. While the BVerfG initially shared this attitude with certain restrictions after a warning in 2019<sup>28</sup> “pulled the handbrake” on an element of the ECB’s crisis management strategy declaring it ultra vires by its decision of 5 May 2020. The decision was frowned upon both in the political sphere and partly among academics. In its 2021 decision the BVerfG rejected the application for an enforcement order under the domestic law on the constitutional court. While in its reasoning the BVerfG claimed that in the meanwhile the German state bodies had the possibility to execute the proportionality test which the Court missed earlier and also claimed to procedural errors,<sup>29</sup> it is quite clear that political pressure from the German government and the European Commission, as well as considerations related to the future of the Eurozone clearly played a role in its decision not to make the government enforce the 2020 decision. That is the BVerfG considered that the Eurozone reeling from the COVID-19 pandemic would have faced a serious crisis if the *Bundesbank* had been forced to withdraw from the financial rescue programme.<sup>30</sup>

The expansion of the EU’s powers can also be observed in several other areas. In certain areas – like handling the negative effects of the COVID-19 pandemic<sup>31</sup> –, the benefits of common rules can be seen and justified. At the same time, the extension of EU competences to other areas of exclusive competence of Member States under the Founding Treaties raises the question of the infringement of the national identities of Member States, which are protected by Article 4(2) of the *Treaty on*

23 Bickerton, 2021, p. 10; In the Hungarian literature – without claiming completeness – see: Trócsányi and Sulyok, 2020, pp. 226–235.; In this respect, the so-called Political Commission of Juncker has been at the forefront. see: Alfred Sant warns against Juncker’s ‘under the radar’ EU integration calls, *Times of Malta*, 15 September 2017. [Online]. Available at: [timesofmalta.com/articles/view/alfred-sant-warns-against-junckers-under-the-radar-eu-integration.658065](https://timesofmalta.com/articles/view/alfred-sant-warns-against-junckers-under-the-radar-eu-integration.658065) (Accessed: 15 September 2024).

24 Götz, Nowak and Orłowski, 2018, p. 204.

25 Marinkás, 2018, pp. 437–471; See also: Schmidt, 2016, pp. 1–21.

26 Angyal, 2015, pp. 129–143.

27 CJEU, C-270/12, *United Kingdom v Parliament and Council*, Judgment of the Grand Chamber, 22 January 2014.

28 BVerfG, 2 BvR 1685/14, 2 BvR 2631/14. Judgment of July 2019 (Banking Union).

29 BVerfG, 2 BvR 1651/15 Order of the Second Senate of 29 April 2021.

30 See in this context Marinkás, 2021b, pp. 328–339.

31 Marinkás, 2021a, pp. 138–166.

*European Union*. In the *Coman*-<sup>32</sup> and *Pancharevo*<sup>33</sup> judgments and in the “reasoned order” in the *Rzecznik Praw Obywatelskich* case,<sup>34</sup> the CJEU, applying the principle of *portability of personal status*<sup>35</sup> on *Directive 2004/38/EC*,<sup>36</sup> adopted the so-called functional recognition. Under this notion, a Member State is obliged to recognise family relationships not recognised by its own constitutional or statutory rules solely in order to ensure the right to free movement of persons. The state is not obliged to change its constitutional rules that is in the CJEU’s view it can fulfil its obligations under EU law without curtailing its own national identity.<sup>37</sup> In the editors’ view the most important question is if a Member State is ultimately forced to give way to the unconditional primacy of EU law in a multitude of sub-areas<sup>38</sup> in a functional sense, will it have any room for manoeuvre, even though its constitution remains otherwise unchanged?

As is clear from the above, the European Union has increasingly gained powers at the expense of the Member States. At the same time, the “federal Europe” vs. the “Europe of Member States” is also an actual political issue.<sup>39</sup> Member States of the European Union therefore have to decide in which framework to continue cooperation, that is whether to west further competences on the EU and move towards federalism by amending the founding treaty, or to stop the federalisation and remain a Europe of Member States. Several contributors to this book, namely *Piotr Bajda*<sup>40</sup>, *Andrzej Bryk*<sup>41</sup>, *Grzegorz Pastuszko*<sup>42</sup>, *László Trócsányi*<sup>43</sup>, *Norbert Tribl*<sup>44</sup>,

32 CJEU, Case C-673/16 *Coman*, judgment of 5 June 2018.

33 CJEU, case C-490/20 *V.M.A. v Stolichna obshtina, rayon ‘Pancharevo’*, judgment of 14 December 2021.

34 CJEU, Case C-2/21, *Rzecznik Praw Obywatelskich*, order of 24 June 2022.

35 Marinkás, 2023, pp. 177–201.

36 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 (OJ L 158, 30.4.2004, pp. 77–123).

37 The proposal for a European Parenthood Certificate is currently before the EP. Recognition of parenthood: MEPs want children to have equal rights (Press Release, 14 December 2023). [Online]. Available at: <https://www.europarl.europa.eu/news/en/press-room/20231208IPR15786/recognition-of-parenthood-meps-want-children-to-have-equal-rights> (Accessed: 15 September 2024).

38 For example, when the child from the *Pancharevo* case reaches school age and the parents – who are not married under Bulgarian law, because Bulgarian law does not allow them to marry – realise that they are not eligible for any of the childcare benefits available only to spouses may launch a new lawsuit and claim that Bulgarian laws are hindering them in enjoying their rights under EU law.

39 Martonyi, 2018, pp. 3–19.

40 Contribution by Piotr Bajda ‘Institutional Reforms in the Context of the Future of Europe from the Polish Political Science Perspective’.

41 Contribution by Andrzej Bryk ‘EU – 30 years after Maastricht – the Polish Perspective – from Hope to Disillusionment’.

42 Contribution by Grzegorz Pastuszko ‘Constitutional Identity versus “Ever Closer Union” from the Perspective of a Central – Eastern European Country: Poland’.

43 Contribution by László Trócsányi ‘The Maastricht Treaty in a Thirty-Year Perspective’.

44 Contribution by Norbert Tribl ‘Constitutional Identity Versus ‘Ever Closer Union’ from the Perspective of a Central-Eastern European Country: Hungary’.

Lénárd Sándor<sup>45</sup> argue in favour of the latter. Summarising their line of thoughts it is the only way to “save the integration from itself” and keep it together. In his keynote writing, László Trócsányi raises a philosophical and underlying questions, namely: what is the ultimate purpose of the European integration? How can the European cooperation justify its own existence and *raison d'être*? Is it destined to replace or supersede the Member States by forming a larger entity? Or is it created as its motto says: “to unite in diversity”?<sup>46</sup> In Sándor’s view these issues are important since the more adequate question today is how the European integration can justify herself in the eyes of the Member States since the European integration is not an end in itself nor is it self-evident anymore. As Bajda argues, a “European demos” is needed first if one wishes to create a new state.<sup>47</sup> In his view, there is a fear that building a deeply integrated European Union will end with its collapse: if weaker countries are forced to accept decisions unfavourable to them, an increase in nationalist sentiment can be expected. Pastuszko argues similarly. In his view, pro-federal agenda bears the risk of “crossing the Rubicon” and, as a result, triggering disintegrating tendencies. Bryk identifies several deficiencies in the functioning and the policies of the EU. The probably most serious problem in his view is the *ultra vires* activities of the Union’s undemocratic institutions, which may lead to the federalization of the Union. Pastuszko argues that Poland has so far adopted a very assertive position, emphasising throughout its membership in the European Union a strong attachment to its constitutional identity and thus showing its readiness to defend its domestic constitutional order against external interference. Tribl also believe that constitutional identity can be understood as a natural limitation of the *ever closer union clause*, which is inherent in the nature of Europe. To support his findings, he carried out a thorough analysis on the related practice of the Hungarian Constitutional Court. Petar Bacic<sup>48</sup> who examines the institutional question through the lenses of legal theory argues for a clearer division of powers. In his view, the traditional *trias politica* provides the most convincing answers to the problem of avoiding the concentration of power, which is also the purpose of the EU Treaties. Sándor argues that if any treaty changes to come in the near future the main proposals from a Hungarian academic’s view would be to enhance the ties and responsibility between the representative and the electorate by providing the national parliaments with a stronger role in the European legislative and oversight process thus offering better protection to national and constitutional identities as well as to the principles of subsidiarity. Zoltán Csehi in his keynote writing<sup>49</sup> provides a valuable contribution by elaborating on certain recent CJEU judgments on EU citizenship and on Common Foreign and

45 Contribution by Lénárd Sándor ‘Institutional Reforms in the Context of the Future of Europe Conference from the Perspective of a Central-Eastern European Country: Hungary’.

46 Contribution by László Trócsányi ‘The Maastricht Treaty in a Thirty-Year Perspective’.

47 Haller and Ressler, 2006, 817–850.

48 Contribution by Petar Bacic ‘Institutional Dynamics of the EU after Maastricht (1993–2023): Separation of Powers as an Old Principle of Constitutionalism in New Circumstances’.

49 Contribution by Zoltán Csehi ‘The Maastricht Treaty and the ECJ in the light of its recent case-law’.



Security Policy to illustrate how the treaty changes, which introduced these in 1992 effected the current state of the *acquis*. Verena Vinzenz also provides an analysis on the CJEU case-law:<sup>50</sup> in her contribution she elaborates on the recognition of previous professional experience and loyalty to the employer as an important issue to provide the proper functioning of the single market. Nóra Jakab<sup>51</sup> provides an insight for the EU's social dimension. In her contribution, she argues that decent working conditions and social protection is crucial for the economic and social security of the workforce and for well-functioning labour markets that create jobs and sustainable growth. She considers the development of the social dimension of the European Union by pursuing employment security for workers as a major achievement.

## ***2.2. The doctrine of continuous geographical expansion***

The geographical expansion of integration and the possible candidate states has been an important political issue from the outset. This is illustrated by *Charles de Gaulle's* opposition to British membership due to his twofold fear that, on the one hand, accession of the British would have meant letting the Americans in at the backdoor, and, on the other hand, that the British would challenge the hegemony of the *Franco-German* tandem.<sup>52</sup> De Gaulle's resignation in 1969 meant the end of the French veto in this issue: in 1973, the first time ever in the history of the integration new countries were accessed: the United Kingdom, Denmark, and Ireland. The integration of the latter two was a real success story: the then "poor relatives" are now among the richest EU countries. In the next decade the inclusion of the Mediterranean countries – Greece, Portugal, and Spain – posed a new challenge for the Community: they were not only poor in terms of "Western" standards, but they also had little historical experience of democracy to say the least. The democratisation of these countries – due to different historical events –, has opened up the possibility of including them in the integration process. However, the example of Greece has clearly shown that the premature admission of a country into European Community without taking into account economic realities – but based on essentially political and strategic considerations<sup>53</sup> – can be a source of problems that last for decades.

As for the principle of continued expansion – which culminated in the 2004 enlargement<sup>54</sup> – certain factors are calling a halt for it.<sup>55</sup> One may identify as such

50 Contribution by Verena Vinzenz 'Grounds for Restricting the Free Movement of Workers – Recognition of Previous Professional Experience and Loyalty to the Employer'.

51 Contribution by Nóra Jakab 'Moving Towards Secure Flexibility – Development of the Social Dimension of the European Union'.

52 Lundestad, 2003, pp. 111–141.

53 Angelos, 2015; Somogyi, 1999, pp. 48–69; Karamouzi, 2021; see also Kalaitzidis and Zahariadis, 2015, pp. 71–84.

54 For a detailed analysis of the Hungarian legislation's efforts to protect the Hungarian arable land from buying-up under the applicable EU framework please see: Szilágyi and Szinec Csütörtöki, 2023, pp. 318–321; Szilágyi, 2022, pp. 185–188.

55 Devrim and Schulz, 2009, p. 26.

factors the burdened historical background of the Western-Balkan and these countries' lagging behind in realising a market that would be eligible to be integrated into the single market. The actuality of historical tensions is illustrated by the clashes at the Kosovo-Serbia border in 2022.<sup>56</sup> The contributions of *Tanja Karakamisheva Jovanovska*,<sup>57</sup> *Branko M. Rakić*,<sup>58</sup> and *Aleksandar Spasenovski*<sup>59</sup> provides an insight to these issues as all the above-mentioned professors are citizens of candidate states. The low willingness to meet admission requirements and the historic reasons are interdependent.<sup>60</sup> The reasons are multi-fold: as *Rakić* argues, there is a laconic feeling in the Serbian population due to past and present conflicts with the West – including the unsolved issue of Kosovo – and also there is a certain disappointment due to the slow progress of the accession. While he is of the view that Serbia – as a European country, completely territorially surrounded by EU member states and candidate states and sharing common culture and values – must seek its place in the EU, if there is no will for that in the EU or only under conditions that Serbia, as a sovereign country, cannot accept, Serbia has to seek for alternative solution, e.g., a close co-operation. The laconic feelings of the population are emphasised by *Spasenovski* as well, who points out that the Republic of Macedonia has been a candidate state for membership in the European Union since 2005, and in 2022 the decision to start membership negotiations was made. This 17 years in vain has led, among other things, to excessive growth of Euroscepticism in the country. As the chapter of *Tanja Karakamisheva Jovanovska* highlights,<sup>61</sup> in the case of Macedonia – that is to say North-Macedonia as it is called officially since 2019 – the political pressure exerted by the Greek and Bulgarian governments causes bitterness in the population: while the former pushed forward the change of the country's name, the latter continuously emphasised the Bulgarian roots and identity of the population and demanded that the Bulgarian minority should be mentioned in the constitution. The amendment is in progress.<sup>62</sup>

The main reason for this underdevelopment is that the economies of these countries are still not fully in line with the requirements of the single internal market.

56 'Pattanásig feszült a helyzet a szerb–koszovói határnál'. *Magyar Nemzet*, 31 July 2022 [Online]. Available at: <https://magyarnemzet.hu/kulfold/2022/07/pattanasi-g-feszult-a-helyzet-a-szerb-koszovoi-hatarnal> (Accessed: 15 September 2024).

57 Contribution by Tanja Karakamisheva Jovanovska 'Macedonian Constitutional Identity Versus 'ever Closer Union' Concept – Challenges, Dilemmas and Perspectives'.

58 Contribution by Branko M. Rakić 'The Dilemmas of Geographical Enlargement from the Perspective of an EU Candidate Country – the Republic of Serbia'.

59 Contribution by Aleksandar Spasenovski 'Institutional Reforms in the European Union from the Perspective of a Candidate Country for Membership (Selected Macedonian Experiences and Effects)'.

60 Bickerton, 2021, p. 10.

61 Contribution by Tanja Karakamisheva Jovanovska 'Macedonian Constitutional Identity Versus 'ever Closer Union' Concept – Challenges, Dilemmas and Perspectives'.

62 European Commission, Key findings of the 2023 Report on North Macedonia, Brussels, 8 November 2023 [Online]. Available at: [https://ec.europa.eu/commission/presscorner/detail/en/QANDA\\_23\\_5627](https://ec.europa.eu/commission/presscorner/detail/en/QANDA_23_5627) (Accessed: 15 September 2024).

For example, the private sector still occupies a small segment of the market, while loss-making public enterprises continue to benefit from extensive state subsidies. Some of these shortcomings maybe remedied by the Western-Balkan countries by accepting sources from other power centres – China, Russia, and Turkey – instead of executing the reforms demanded by the EU as a precondition for accession. As an example, Serbia has attracted significant Chinese investment in recent years.<sup>63</sup> There is no such thing as a free lunch, however: with the money comes the influence of the above-mentioned states, which are clearly interested in the region and ready to extend their influence, as former European Commission President *Jean-Claude Juncker* has pointed out.<sup>64</sup>

However, every coin has two sides. There is a clear aversion to the integration of the Western Balkan countries among Western European citizens and politicians.<sup>65</sup> Some of the above-mentioned contributors also refer to this, namely that the population of the candidate countries, too, perceive this negative attitude after long years of waiting for membership inducing Euroscepticism even before accession. In this respect, Hungary – and the other former Eastern bloc countries – may be a useful ally for the Western Balkan countries, as the governments of the countries in the region believe that EU Member States should not lecture these countries, but offer them a helping hand – especially in view of the above-mentioned fact that the EU is not the only one to show interest towards these countries. In other words, we should facilitate their accession before they access to another alliance.

The other geopolitical factor holding back further enlargement is Russia's awakening from the “nightmare” of the inglorious period following the dissolution of the Soviet Union. Earlier too, Russia expressed its opposition to the idea of being a neighbour to NATO countries, and in 2008 the country made clear where its acceptable geopolitical borders lie with the Russo-Georgian War.<sup>66</sup> At the end of February 2022 Russia made it clear again, against the rules of international law, raising serious questions about Ukraine's possible future membership of the NATO and the EU. In the case of Ukraine, it should be recalled that the revival and application of the doctrine of “Finlandization” – once forgotten at the time of the signing of the Maastricht Treaty – was already suggested in 2014.<sup>67</sup> However, based on the Finnish

63 See also: ECFR, Mapping China's Rise in the Western Balkans: Serbia. [Online]. Available at: <https://ecfr.eu/special/china-balkans/serbia/> (Accessed: 15 September 2024).

64 Luca, 2018.

65 One manifestation of this was when Emmanuel Macron vetoed the opening of accession negotiations with Albania and Northern Macedonia in 2019. – See: Nielsen, 2019; Tcherneva and Varma, 2019.

66 Rácz, 2008, pp. 52–57; Euronews (2018) ‘Európa búne, avagy az orosz-grúz háborúról őszintén’, 08 August 2018 [Online]. Available at: <https://hu.euronews.com/2018/08/08/europa-bune-avagy-az-orosz-gruz-haborurol-oszinten> (Accessed: 15 September 2024).

67 Henry Kissinger, the former US Secretary of State, proposed applying ‘Finlandisation’ to Ukraine as early as 2014, with the difference that, unlike the original Finnish model, he did not rule out close economic and political cooperation with the European Union. – Kissinger, 2014; see also de Borja Lasheras, 2014.

experience<sup>68</sup>, Ukrainian decision-makers rejected its application. *Sibilla Buletsa* provides an insight from the Ukrainian perspective<sup>69</sup> into what the Ukrainian people and their decision-makers hope from the accession – e.g., the opportunity for accelerated economic and social development –, the hardships faced by the Ukrainian party in meeting the requirements of accession in a state of war, and the progress that has been made.

It is also clear from the above paragraph that *Mark Leonard's* vision<sup>70</sup> of the European Union as the main guarantor of peace on the continent has not been realised. Leonard's ideas in 2005 were clearly inspired by the spirit of the times: for a moment, Europe seemed to be the moral compass against the United States, which in lack of any control in a then still unipolar world was playing the gendarme of the Globe and invaded Iraq in defiance of the rules of international law based on a spurious pretext, which later proved to be without any basis.<sup>71</sup> However, as we can see, the EU's "mission" to pacify the world through leading by example has not been a success story:<sup>72</sup> historical experience shows that exporting the European integration model achieved by economic means and consolidated by the principle of the "rule of law" to other countries not only failed in case of countries on another continents, it proved to be problematic even in case of countries at the periphery of Europe.<sup>73</sup> The very same is emphasised by *Snježana Vasiljević* in her contribution to the book:<sup>74</sup> while the link between diverse European national cultures and the bridge between old and new Member States can be seen in the concept of European integration in practice, what are considered fundamental values in the EU, they are not perceived in the same way outside it.

68 Even though the policy of Presidents Paasikivi and Kekkonen had no realistic alternative under the circumstances, the assessment of posterity is not positive. The Finnish-Soviet relationship remained asymmetrical throughout, and the sensitivities of Moscow had to be taken into account in shaping Finnish domestic and foreign policy. In view of the latter, even the press was censored. – See: CIA (1972) 'Finlandization in action: Helsinki's experience with Moscow (August 1972 RSS. No. 0059/72), Principal Observations, pp. i–xiv. [Online]. Available at: <https://www.cia.gov/readingroom/docs/esau-55.pdf> (Accessed: 15 September 2024)

69 Contribution by Sibilla Buletsa 'The Legal Implications of European Union Enlargement: a Ukrainian Perspective'.

70 Leonard, 2005a, p. 170; Leonard, 2005b.

71 Jervis, 2011, p. 248.

72 It is not surprising that in the light of the above lessons and the threat posed by the Russo-Ukrainian War the countries of Europe have once again resorted to the traditional means of increasing their foreign policy weight: the news is of more and more military expansions and arms modernisation programmes. – Németh and Palkovics, 2022; Huszák, 2022.

73 Bickerton, 2021, p. 10; Manners, 2002, pp. 235–258.

74 Contribution by Snježana Vasiljević 'The dilemma of geographical enlargement from the perspective of a Central Eastern European country: Croatia'.

### 2.3. *The promised advantages of the single currency and the reality*

While the single market of the European Union, which became fully functional by 1992 based on the provisions of the *Single European Act*,<sup>75</sup> is the highest level of economic integration that we can find in the world – as *Herbert Küpper* emphasises in his contribution to the book<sup>76</sup> –, the then EU-level decision-makers decided to make further steps: it was also at this same time that the foundations for *Economic and Monetary Union* (EMU) began to be laid in practice, a goal that had already been set out at the 1969 summit in The Hague. The so-called *Werner Plan*, presented the following year, set out in detail the timetable for its implementation,<sup>77</sup> but economic realities<sup>78</sup> prevented the execution of the plan. It was not until the successful implementation of the *Single European Act* that all the possibilities were there again to enshrine the institutional framework and rules for the functioning of EMU in a Founding Treaty. However, due to the lack of political consent, drafters of *Maas-tricht Treaty* had to dispense with certain provisions. As a result, at the outbreak of the euro area crisis in 2010, the EMU was – in the words of *Fred Bergsten*<sup>79</sup> – still a “half-built house”: *first*, it was far – and to say the least still far – from fulfilling the basic requirements to become an optimal currency area (OCA)<sup>80</sup> as elaborated on by *Robert A. Mundell*<sup>81</sup> and *Béla Balassa*.<sup>82</sup> As *Wolfgang Münchau* has written, this was due to a lack of [political] will<sup>83</sup> despite the fact that the 1969 Hague Summit stated that the implementation of the EMU would require the coordination of economic policies.<sup>84</sup> EMU was therefore asymmetrical from the outset – and remains so to this day – that is in fact it would be more correct to call it a “monetary union”, since a common monetary policy is accompanied by – with a slight exaggeration – 19 different economic policies.<sup>85</sup> These economic policies, despite the coordinating role of the Council<sup>86</sup>, differ considerably: it is suffice to refer to the differences in

75 *Single European Act* (OJ L 169, 29.6.1987, p. 1–28).

76 Contribution by Herbert Küpper ‘Beyond Europe: Integrated Markets in Other Parts of the World’.

77 Fact Sheets on the European Union (European Parliament): History of Economic and Monetary Union. [Online]. Available at: [https://www.europarl.europa.eu/ftu/pdf/en/FTU\\_2.6.1.pdf](https://www.europarl.europa.eu/ftu/pdf/en/FTU_2.6.1.pdf) (Accessed: 15 September 2024).

78 The collapse of the Bretton Woods system in 1971 and the first oil crisis in 1973.

79 Bergsten, 2012, pp. 16–22.

80 For example, the EU budget is only 1% of the combined GDP of the EU-27, while most modern federal states have at least 15% of national GDP.

81 Mundell, 1960, pp. 657–665.

82 Balassa, 1961. p. 324.

83 Münchau, 2013, p. 539.

84 *Final communiqué of the Hague Summit* (2 December 1969), para. 8. [Online]. Available at: [https://www.cvce.eu/en/obj/final\\_communique\\_of\\_the\\_hague\\_summit\\_2\\_december\\_1969-en-33078789-8030-49c8-b4e0-15d053834507.html](https://www.cvce.eu/en/obj/final_communique_of_the_hague_summit_2_december_1969-en-33078789-8030-49c8-b4e0-15d053834507.html) (Accessed: 15 September 2024).

85 While some countries – led by Germany – have adopted disciplined economic policies, others have introduced 13<sup>th</sup> and 14<sup>th</sup> month salaries and pensions for civil servants and pensioners. – See: Rezessy, 2012, pp. 24–27.

86 Legal basis: Articles 120–121 of the TFEU.

budgetary policies resulting from the different temperaments of the German and the Greek people. However, the picture is much more complex: contrary to what had been expected on the basis of historical examples,<sup>87</sup> the common currency has not reduced the differences: on the contrary, instead of convergence, it has caused divergence among member states<sup>88</sup> and at the same time, hidden these difference for those viewing the Eurozone from the outside. The reason for the increase in divergence was that the poorly performing economies of the Mediterranean countries protected the well performing German economy – and those of the Northern states – from a natural economic process, the appreciation of the currency and the resulting fall in exports. As a result, Germany – the main beneficiary of the Eurozone – has been able to boost its export performance unhindered.<sup>89</sup> The “curtain” exerted its hiding effect mainly in debt rating: the single currency meant that the debt ratings of the German and Greek governments were the same for the credit rating agencies. The Greek government was thus able to borrow in Euros at a low interest rate of 3%, compared with the previous 18% in the Drachma era.<sup>90</sup> This has encouraged Greece – and other countries in similar shoes – to carry out excessive borrowing.<sup>91</sup>

The other insufficiency was that at the time it was established, the founding states did not set up an effective system of institutions for market surveillance and crisis management. The lack of proper supervision led to a situation where seriously unsound financial institutions were able to further contaminate the financial system, threatening to bankrupt the whole area in the first half of the 2010s. Lessons have been learnt and the institutional weaknesses have been largely filled by the Member States.<sup>92</sup> In 2011, the EU established the *European System of Financial Supervision* (ESFS).<sup>93</sup> A year later, the *European Stability Mechanism* (ESM) was established outside the EU institutions by international treaty.<sup>94</sup> The reason for moving outside the institutional framework was that, under the rules governing the Eurozone, it would have been possible to take measures only under monetary policy and under the “no-bailout” clause in Article 125 TFEU, which states that:

87 See the successful catching-up of Ireland and Denmark, two former ‘poor cousins’.

88 Halmai, 2020, p. 311.

89 Artner and Róna, 2012, pp. 98–99; Sanjay, 2015, p. 115; Forgács, 2015, pp. 42–44.

90 Forgács 2015, p. 42.

91 The Giovannini Group – an advisory committee to the European Commission on financial integration – proposed as early as 2000 that public debt issuance in the Eurozone should have been subjected to Community-level co-ordination – Giovannini Group, ‘Co-ordinated Public Debt Issuance in the Euro Area’, *Report of the Giovannini Group*, 8 November 2000, p. 10. [Online]. Available at: [https://ec.europa.eu/economy\\_finance/publications/pages/publication6372\\_en.pdf](https://ec.europa.eu/economy_finance/publications/pages/publication6372_en.pdf) (Accessed: 15 September 2024).

92 Marinkás, 2020, p. 140.

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

94 Treaty Establishing the ESM, signed on 2 February 2012.

The Union [and] a Member State shall not be liable for or assume the commitments of central governments, regional, local or other public authorities, other bodies governed by public law, or public undertakings of another Member State, without prejudice to mutual financial guarantees for the joint execution of a specific project. [...].

In order to enable EU institutions to interact with the ESM, for example to participate in the development of its programmes, an amendment to Article 136 TFEU was made via simplified procedure<sup>95</sup> by a European Council Decision<sup>96</sup> adopted in 2012.<sup>97</sup> In its *Pringle-judgment*,<sup>98</sup> the CJEU – being amicable to the Eurozone as always – took the view that neither the TFEU amendment nor the ESM Treaty constituted a transfer of powers to the EU institutions. Furthermore, the Founding Treaties allow Member States to conclude an international treaty such as the ESM, provided that it does not infringe EU law. Although the original plan was to integrate the ESM into the EU institutions later, when the conditions are more appropriate, the Commission’s 2017 initiative to transform the ESM into the *European Monetary Fund* (EMF), which would have become part of the EU institutions, failed due to opposition from Member States.

Although the EMF did not come into being, the institutional shortcomings of EMU have since been filled by the establishment of the Banking Union. Its two pillars are the *Single Supervisory Mechanism* (SSM)<sup>99</sup> and the *Single Resolution Mechanism* (SRM).<sup>100</sup> Both mechanisms work at two levels: the ECB is responsible for the supervision of “significant” institutions according to the criteria set out in Article 6(4) of the SSM Regulation, while national competent authorities (NCAs) are responsible for the supervision of “less significant” institutions. According to Article 25(2) of the SSM Regulation, the ECB shall carry out its supervisory tasks without prejudice to its monetary policy tasks. The purpose of the SRM is to ensure a well-regulated and disciplined winding-up procedure of failing financial institutions in order to minimise the burden on taxpayers and economic operators. The scope of the financial institutions covered by the SRM Regulation is the same as that of the financial institutions covered by the SSM Regulation. While the operation of the SSM has been

95 Under Article 86(4) of the TEU.

96 2011/199/EU: Decision of the European Council of 25 March 2011 amending Article 136 of the Treaty on the Functioning of the European Union with regard to a stability mechanism for Member States whose currency is the euro (OJ L 91, 6.4.2011, p. 1–2).

97 Scheinert, 2019, p. 4.

98 Case C-370/12, Thomas Pringle v Government of Ireland and others. Judgment of the Court, 27 November 2012.

99 Council Regulation (EU) No 1024/2013 of 15 October 2013 entrusting the European Central Bank with specific tasks concerning policies relating to the prudential supervision of credit institutions (OJ L 287, 29.10.2013, pp. 63–89).

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

overwhelmingly criticised positively<sup>101</sup> since its inception,<sup>102</sup> the initial operation of the SRM was considered unsatisfactory, in particular by the *Court of Auditors* in its 2018 Special Report.<sup>103</sup> Novel CJEU judgments<sup>104</sup> and other sources show the same picture related to these institutions.<sup>105</sup>

In his contribution *Lubomír Čunderlík* examines the legislative and jurisprudential influences on the status and powers of the national central banks in the Eurozone in general and in Slovakia in particular.<sup>106</sup> He also provides an analysis on the current legal status of central bank liability in the Slovak Republic and its conformity with EU law and concludes that based on the analysis of the related CJEU case-law, one may consider the Slovak concept of strict liability incompatible with the CJEU's interpretation of Article 123 and 130 of the TFEU that is the Slovak concept of liability is contrary to the prohibition of monetary financing of the public sector and is a threat to the financial independence of the Central Bank of Slovakia.

Another interesting issue is that several EU member states with good economic indicators – the Czech Republic, Denmark, Hungary, Poland,<sup>107</sup> and Sweden – have deliberately chosen to stay out of the Eurozone. While Denmark has exercised its opt-out<sup>108</sup> from the very outset in this respect, Sweden committed itself to enter in the first round, however, stepped back in the last minute. The Czech Republic, Hungary and

101 Exceptions to this are the Court of Auditors and Bruegel. See: ECA, Single Supervisory Mechanism – Good start but further improvements needed. *Special Report No. 29* (2016); Schoenmaker and Véron, 2016.

102 European Commission, Report from the Commission to the European Parliament and the Council on the Single Supervisory Mechanism established pursuant to Regulation, COM(2017) 591 final, Brussels, 11.10.2017, pp. 18–19; German Federal Ministry of Finance, The Single Supervisory Mechanism: Lessons Learned after the First Three Years. January 2018, pp. 4–5. [Online]. Available at: <https://www.bundesfinanzministerium.de/Monatsberichte/2018/01/Inhalte/Kapitel-3-Analysen/3-1-Single-Supervisory-Mechanism.html> (Accessed: 15 September 2024).

103 ECA, Special report No. 23/2017: Single Resolution Board: work on a challenging Banking Union task started, but still a long way to go, paras. 34, 55–56, 60, 63, 64–68, 103, 114, 125, 141. [Online]. Available at: <https://op.europa.eu/webpub/eca/special-reports/srb-23-2017/en/> (Accessed: 15 September 2024.); see also: Véron, 2018.

104 T-510/17, Antonio Del Valle Ruiz v. European Commission Single Resolution Board, Judgment of the GC, 1 June 2022 and T-481/17, Fundación Tatiana Pérez de Guzmán el Bueno and Stiftung für Forschung und Lehre (SFL) v. SRB, Judgement of the GC, 1 June 2022; CJEU, C-551/22 P, Judgment of the Court, 18 June 2024 in appeal against the General Courts judgment in T-481/17 Fundación Tatiana Pérez de Guzmán el Bueno and SFL v SRB case.

105 European Commission, Report from the Commission to the European Parliament and the Council on the Single Supervisory Mechanism Established Pursuant to Regulation (EU) No. 1024/2013. Strasbourg, 18.4.2023 COM (2023) 212 final; Culpepper and Tesche, 2020, pp. 134–150; Smoleňská, 2022, pp. 42–53.

106 Contribution by Lubomír Čunderlík ‘The Limits of the Powers of the Central Bank in Slovakia (Liability for Damage Caused by National Central Bank in EU)’.

107 Poland is the ‘new player in the field’ – see Bukowski and Paczos, 2021; see also: Fredriksson, 2019.

108 Maastricht Treaty, Additional Protocol on certain provisions relating to Denmark; see also Abildgren, Kim (2010) Monetary History of Denmark 1990–2005 (PDF), Copenhagen: Danmarks Nationalbank. p. 216.



Poland, are bound by the Founding Treaties<sup>109</sup> to join the Eurozone. As newcomers, these countries did not have a choice when they signed their accession treaties. All this stems from the holistic view – articulated by Juncker – that the euro area and its prosperity are a *sine qua non* for the further development of the single internal market.<sup>110</sup> In the words of *Angela Merkel*: ‘The failure of the euro would be the failure of Europe.’<sup>111</sup> *György Matolcsy*, the governor of the Hungarian Central Bank (*Magyar Nemzeti Bank*), earlier did not share Juncker’s and Merkel’s views: in his opinion, the introduction of the single currency is the result of the “false dogma” that its introduction is “necessary” or at least a “natural next step” on the road to a united Europe.<sup>112</sup> His 2023 statements hit a more amicable tone in this regard even emphasising the Euro’s positive effects.<sup>113</sup> *György Marinkás* endeavours to introduce how the official Hungarian position on the euro changed through the past three decades and also to analyse the pros and cons for accession from the Hungarian perspective and Hungary’s readiness for accession based on convergence criteria. The contribution of *Michal Petr* also provides a thorough overview on the issues of the Czech euro.<sup>114</sup> As he highlights, the mild support for the euro turned into the strongest opposition among the non-Eurozone member states.<sup>115</sup> While he dismisses the most common arguments – e.g., the loss of monetary sovereignty – against the euro as unconvincing, he deems that the ultimate argument against the adoption of the euro is the unpredictable future of the EMU itself, which in a long-term heading towards a fiscal union, characterised by mutualisation of debt and extensive financial transfers. As he points out, it will be a political choice whether the Czech Republic is willing to participate in such a project. The Hungarian perspective, which throughout the last decades has been very cautious regarding the common currency, is introduced by *György Marinkás*.<sup>116</sup> The Polish perspective is introduced by *Natalia Kohtamäki*,<sup>117</sup> who provides a thorough analysis on the single financial market. Similarly to Petr, she emphasises the versatile nature of the EMU’s future, claiming that the single financial market is still *in statu nascendi*. The perspective of Bosnia and Herzegovina – a candidate country – is introduced by *Kanita Imamović-Čizmić*,<sup>118</sup> who elaborates on the semi-official euroisation of the coun-

109 Maastricht Treaty, Additional Protocol on the transition to the third stage of Economic and Monetary Union.

110 Götz, Nowak and Orłowski, 2018, p. 206.

111 As *Angela Merkel* stated: ‘If the euro falls, Europe falls’ – See: Spiegel, 2014.

112 Matolcsy, 2019.

113 Heinrich, 2023.

114 Contribution by Michal Petr ‘The Future of the Economic and Monetary Union from the Perspective of Czech Republic’.

115 See: Eurobarometer 465 18 May 2018. [Online]. Available at: <https://europa.eu/eurobarometer/surveys/detail/2187> (Accessed: 15 September 2024).

116 Contribution by György Marinkás ‘Current Issues of the ‘Hungarian Euro’ with Special Regard to the Self-set ‘Maastricht 2.0’ Criteria’.

117 Contribution by Natalia Kohtamäki ‘The Future of the European Single Market for Financial Services from a Polish Perspective’.

118 Contribution by Kanita Imamović-Čizmić ‘Euroization and monetary Policy in Bosnia and Herzegovina – situation and perspectives’.

try's economy. She argues that the currency board that ties the domestic currency to the euro is paving the way to the fulfilment of the master conditions for entry into the European Monetary Union. Viewed from that point of view and considering the existing economic and political situation in Bosnia and Herzegovina, the introduction of discretionary monetary policy is not an acceptable solution.

## 2.4. Energy policy

The general underlying principle of the conference and the book suggest that in order to understand the internal notions currently forming the European Union and forming the future of the community we have to take a step back in time to the influential period of the Maastricht Treaty can consistently be applied to issues surrounding energy. The Maastricht era saw the adoption of the first energy packages, the *European Energy Charter* (1991) and the *Energy Charter Treaty* (1994), from which the EU and the Euratom is now withdrawing.<sup>119</sup> Although regulated outside the framework of the Founding Treaties, energy policy and the security of energy supply were also a major focus of attention during this period. To be more precise, it has always been important for the integration project. The Founding Fathers of the integration realised that cheap and stable energy flow is essential to economic prosperity. The 1956 Suez and the 1973 oil crises proved this, just like the ongoing war in Ukraine. As Miklós Vilmos Mádl argues in his contribution,<sup>120</sup> the European Union's predecessors – namely the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (Euratom) – was founded on the pillar of energy. Although in today's modern world energy is a commodity needed in every aspect of life, in the eye of the European public it was taken for granted and largely disregarded besides the vocal arguments about pro and contra certain energy sources. However, this status quo was turned upside down in recent years and energy came into the spotlight.

Energy prices have significantly started to rise due to a multitude of reasons in 2021,<sup>121</sup> but the real shock that changed the perspective of how we view energy came with the 2022 outbreak of the *Russian-Ukrainian war*. Energy prices have skyrocketed in the following period to levels never seen before.<sup>122</sup> The increase was so huge that it was felt by every consumer, be it industrial or domestic, and for the first

119 The reason behind the withdrawal is that the Energy Charter Treaty, which supports investments in fossil fuels is no longer in line with the climate ambitions enshrined in the European Green Deal and the Paris Agreement. The Treaty is currently undergoing a modernisation procedure after which individual member states can approve the modernised treaty.

120 Contribution by Miklós Vilmos Mádl 'The EU's Energy Policy from the Perspective of a Central-Eastern European Country: Hungary'.

121 For example, the growing demand for energy following the opening after the Covid-19 pandemic at a period when the supply was still not high.

122 Eurostat, gas prices for household consumers from the second half of 2021 to the second half of 2022 have increased by an average of 80%, electricity prices for household consumers in the same period have increased by an average of 60%.

time in a decade the number of people without access to modern energy was rising globally.<sup>123</sup> In Europe what made the situation particularly difficult was our Continent's dependence on Russian primary energy sources. There are several reasons why this reliance on Russia has developed. Factors like geographical proximity and existing infrastructure limitations play significant roles in the development of this dependence.<sup>124</sup> The crises exposed how vulnerable the prevailing concept of satisfying our European primary energy needs truly was and also raised questions about the adequate working of the European internal energy market in which due to interconnectivity even those not physically dependent on Russian supplies experienced the devastating effects of the energy crisis. The scepticism towards the adequacy of the current framework in energy logically raises the idea to take a look at the origins and the motivations behind the adoption of such concepts and this subsequently connects us to the period around the Maastricht Treaty.

Throughout the history of the Community, there has been a constant dichotomy concerning energy issues.<sup>125</sup> It was always an area that has been approached with caution both in terms of market structures<sup>126</sup> and the selection of energy sources. Notwithstanding the importance of the issue at the foundation of the community, the following decades were characterised by a general reluctance towards deepening the role of the community in the sphere. This attitude was down to the fact that the strategic and political importance of energy with respect to national sovereignty was so significant that the member states were not keen on giving it up in favour of the community.<sup>127</sup> The only area that prompted a degree of increased cooperation was in addressing concerns about energy security. This began in 1968 with preventive measures to maintain minimum stocks of oil<sup>128</sup> and then followed by the 1973 oil crisis when an emergency system was established that in hindsight did not have significant practical implications.<sup>129</sup> Nevertheless these events have highlighted the issue of vulnerability in the sector and the importance of greater cooperation in tackling the challenges.<sup>130</sup>

Then came the period of the Maastricht Treaty when the previously prevailing concepts of managing energy began to be challenged. There were attempts to include a separate chapter on energy within the Maastricht Treaty but in the end it was not successful.<sup>131</sup> Nevertheless, the Maastricht Treaty provided the possibility to treat energy as part of the European common market and to regulate this commodity

123 IEA, 2022, p. 29.

124 Paillard, 2010, pp. 65–67.

125 Vasconcelos, 2015, p. 19.

126 Talus, 2013, p. 99.

127 Talus, 2016, p. 3.

128 Contribution by Martin Svec 'EU Membership: Implications for the Czech energy security'.

129 Lehotay, 2020, p. 264.

130 Contribution by Marija Vljakovic 'The EU Energy Policy from the perspective of an EU Candidate Country: The Republic of Serbia'.

131 Thaler, 2016, pp. 574–575.

as a product rather than a national public service.<sup>132</sup> As a result of the growing dissatisfaction with the then prevailing market structures in the energy sector<sup>133</sup> and inspired by the positive experiences of certain states that have liberalised their energy markets,<sup>134</sup> the years following the Maastricht Treaty saw the adoption of the first energy packages beginning the liberalisation of the electricity and gas markets. Also, the same period saw first the adoption of the Energy Charter in 1991 and later, in 1994, the Energy Charter Treaty that enhanced energy security through promoting cooperation and safeguarding investment in the energy sector. Moreover, this was the time that saw the emergence of environmental issues firstly in the Single European Act<sup>135</sup> and then later with much more emphasis in the Maastricht Treaty. In essence the three strands of the European Union energy policy which are the internal energy market, the security of supply, and the protection of the environment<sup>136</sup> in a sense can all be traced back to the period around the Maastricht Treaty.

The works in the chapter reflect these three strands of European Union energy policy. The issue of energy security is addressed by multiple papers of the chapter. *Martin Svec* in his contribution focuses on the problem of energy security from the perspective of the Czech Republic. The chapter explains the evolution behind the dependency of the community on the import of Russian primary energy sources and the strategic consequences of this high-level dependency. While examining the evolution of achieving greater energy security in the Czech Republic and discussing this issue in the time frame of its European Union membership, the author also explores how energy security was addressed at the level of the European Union, highlighting the EU's role as the cornerstone in ensuring energy security. The paper provides a great overview of the general issues surrounding energy security in the European Union while also pointing to the specificities of a state formerly behind the Iron Curtain through the example of the Czech Republic. To this analysis, *Marija Vlajkovic's* paper serves as a valuable complement as it delves into topics like the Energy Community, which among other things bolstered energy security by fostering increased cooperation with the neighbouring countries of the European Union. Furthermore, *Tamás Szendrei* provides a contemporary perspective on how the EU combatted the supply security implications of the Russian-Ukrainian war.<sup>137</sup>

The second theoretical strand of the EU energy policy, i.e., the internal energy market, is also addressed by multiple authors of the chapter. The contribution by Miklós Vilmos Mádl gives an overview of the development of the internal energy market. Within the topic of market liberalisation, the paper examines the evolution

132 Béres Zsuzsa Presentation 'Maastricht 30 conference 'Maastricht 30' from the Perspective of the Current Energy Crisis'.

133 Penttinen, 2021, p. 82.

134 Pollitt, 2018, p. 2.

135 Single European Act: Declaration on Article 130r of the EEC Treaty.

136 Thaler, 2016, p. 574.

137 Contribution by Tamás Szendrei 'The European Union's Energy Policy from the perspective of a Central-Eastern European Country: Romania'.

in the electricity sector by elaborating on the origins of the concept of market liberalisation, discussing the liberalisation packages of the electricity sector and the current stage of liberalisation. The contribution also approaches the issue at hand from the perspective of a member state by addressing how the packages have influenced the Hungarian legislation and market structure.<sup>138</sup> Furthermore, the work also looks at the outcomes of the liberalisation by analysing whether it was successful in reaching its desired goals.<sup>139</sup> Other authors of the chapter have also highlighted important aspects of the internal energy market. *Marija Vlajkovic* addressed how the liberalisation packages had their effects on candidate countries such as Serbia while Martin Svec in his paper elaborated on the energy security implications of the internal energy market.

None of the authors have specifically analysed the third strand of the European Union's energy policy concerning environmental aspects. However, all of them have touched upon this issue within the context of their respective topics. Tamás Szendrei in particular provided an interesting perspective through the detailed analysis of the Romanian energy mix demonstrating how the ever-growing emphasis on climate concerns within the European Union influences national energy mixes.<sup>140</sup> Furthermore, Miklós Vilmos Mádl's contribution highlights the period during the establishment of the internal electricity market when environmental concerns were becoming increasingly addressed in the secondary legislation.<sup>141</sup>

Over the decades, the European Union's competencies in the energy sector have been slowly but constantly expanding resulting in many interesting legal concepts that are worth addressing. This chapter does not seek to address all of the energy law implications of the European Union as that would not fit into the limitations of this book, but it seeks to provide the readers with a comprehensive understanding of those main energy action areas of the European Union that used to and still shape the sector. The authors enrich their analysis of these main areas by delving into the historical context of the discussed issues, allowing the reader to better understand the factors that drive the development of the sector.

### 3. Concluding thoughts

As it was mentioned in the introduction, at the “Maastricht era” the continued internal deepening of the integration and the continued geographical enlargement

138 Fazekas and Németh, 2022, pp. 91–101.

139 Rathke, 2015, pp. 1–39.

140 Contribution by Tamás Szendrei ‘The European Union's Energy Policy from the perspective of a Central-Eastern European Country: Romania’.

141 Noreng, 2018, pp. 228–229.

became the two key principles for the future of the EU. It has become clear in the thirty years since 1992, however, that the EU has hit “the walls” in both areas. In the process of deepening, which could result in a federal Europe, *national sovereignty* and *national identity* became the walls that halted this strive or at least slowed down. The failure of the Constitutional Treaty’s ratification process in 2005 was the first sign that, despite the attempts to strengthen a common European identity, the European citizen’s national identity comes first, with a common European identity taking only the second place. Although considerable time has passed since then, the issue of national sovereignty is more topical than ever both in the political and legal sphere.

As for the continued expansion, certain factors are calling a halt to further expansion. The long accession process of the Western Balkan countries makes it clear that there are still many conflicts to be resolved in the region once referred to as the “Powder keg of Europe.” It is suffice to recall here the case of Kosovo, a potential candidate state, which is probably the most difficult conflict that must be resolved before both Serbia and Kosovo enter the EU. The other factor that puts a stop to further enlargement is that in the last decades Russia has repeatedly made it clear where its acceptable geopolitical borders lie, for example in the so-called “five-day-long war” – the Russian-Georgian war in 2008 – and the Russo-Ukrainian War started in 2022. In both cases, Russian aggression was triggered by Moscow’s perception that the actions of the attacked countries – namely their cooperation with the EU and especially NATO – posed a threat to Russian national security.

The probably most successful venture out of those goals set in the Maastricht Treaty was the creation of the Economic and Monetary Union. While the EMU started to function with serious shortcomings, namely it was far from being a so-called optimum currency area and lacked proper supervisory mechanisms, the latter was remedied after the Eurozone crisis. The Banking Union and its institutions proved to be effective tools in safeguarding the stability of the financial system of the Eurozone. One may identify it as a positive aspect that membership in the Eurozone is not coerced by the already club members, despite treaty obligations. All those countries accessed so far did it because they deemed that the accession would facilitate the economic growth of their countries. As a Central-European peculiarity, the decision makers of the Czech Republic and Poland do not regard accession to the Eurozone as advantageous for the economy of their countries. Hungary used to share this attitude, however, in 2023 high ranking decision-makers started to talk about a possible – and yet not official – target date, namely 2030.

As mentioned earlier, the shortage of fossil energy sources in Europe made energy policy an important issue, even at the time of founding the integration. Since this issue still existed in the Maastricht era and international experiences were positive with liberalised energy markets, the years following the Maastricht Treaty saw the adoption of the first energy packages beginning the liberalisation of the electricity and gas markets of the EU. However, the Russo-Ukrainian War proved that there is still a long road ahead of the Union in this regard.

As can be seen from the above, few of the goals set at the time of the EU's creation as we know it today – the signing of the Maastricht Treaty – have been realised in the form envisaged by its framers: the political realities of the past thirty years have largely overridden the euphoric mood of the time. It is therefore necessary to draw the conclusions from the lessons presented, thereby to decide on the objectives for the next thirty years. The editors provided a framework for various authors to introduce their thoughts and opinions as a valuable contribution to the scientific debate about European integration. Even if the editors do not always identify themselves with these opinions, they wish to invite the reader to derive these conclusions through a comprehensive examination of the chapters within the book.

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