

INSTITUTIONAL REFORMS IN THE CONTEXT OF THE FUTURE OF EUROPE CONFERENCE FROM THE PERSPECTIVE OF A CENTRAL-EASTERN EUROPEAN COUNTRY: HUNGARY



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Abstract

The history of the institutionalised cooperation in Europe now looks back to more than seven decades. The rapid development of the European integration has had its formidable successes including, particularly, the ability to contribute to preserving the peace in the old continent after the cataclysm of the Second World War or to create an internal market along with the fundamental freedoms Europeans enjoy today. On the other hand, the European cooperation has also had its shortcomings and failures especially in the past one and a half decades and has arrived at a crossroad from many aspects. The Treaty of Maastricht was a symbolic stage in this history, and the question of renewal is more urgent than ever. This paper therefore sheds light on the importance of the Maastricht Treaty in this historical development of the European integration. In light of this, it seeks to answer the question of why different regions have different viewpoints vis-à-vis the future of the European integration and it aims to explore the main Central-European or Hungarian perspective.

Keywords: History of the European integration, Maastricht Treaty, Treaty of Lisbon, European democracy, European Court, Transnational list, lead candidate system

Lénárd Sándor (2025) 'Institutional Reforms in the Context of the Future of Europe Conference From the Perspective of a Central-Eastern European Country: Hungary'. In: János Ede Szilágyi and György Marinkás (eds.) *Maastricht 30: A Central European Perspective*, pp. 567–581. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2025.jeszgymmcep_22

1. Introduction

The European cooperation that consists of the countries of the “Western block” has, for a long time, brought peace and prosperity in that area of Europe. This model served as a source of desire and aspiration for those countries that remained under Soviet occupation east of the Iron Curtain. However, even though the European integration was a success story, it has been going through one of the most challenging and treacherous eras of its more than 70-year old history. Its demographic, relative economic weight in the global economy and military spending have all been shrinking for decades.¹ The European cooperation was challenged by a crises period of the 2010s starting with the Great Recession² and European debt crises in the early 2010s and the protracted Russo-Ukraine conflicts that later on proved to be too acrimonious and difficult to be prevented by either the European Union or its defining Member States. On top of that, a migration crisis started in 2015 and the coronavirus pandemic that hit the European Union unprepared³ and the subsequent dividing debates on the need for economic recovery also put the European cooperation to the test. Consequently, Europe seems to have lost the unprecedented opportunity of self-determination and autonomy over the Old Continent that was regained after the end of the Cold War in the early 1990s. Beyond its devastating human costs and tragedy, the war along with its economic consequences most seriously impact the growth and competitiveness of the European continent. While the world has entered an era of absolute power rivalry and the sphere of influence has once again become a reality, the European integration is struggling to find and express Europe’s interests, narrate its story or provide a vision. Since the European integration is currently facing its most demanding and complex challenges, a healthy and fruitful discussion over its future, its revitalisation and reforms including its guiding principles, institutional arrangement and decision-making process is more urgently needed than ever.

For various reasons, the era of the Treaty of Maastricht represents an important and decisive milestone in the historical evolution of the European cooperation. With the fall of the Iron Curtain or the reunification of Germany, many new economic and strategic opportunities were made available for the European integration. Commemorating the 30th anniversary of this European milestone is therefore a good occasion to make an assessment of the past thirty years taking also into account the challenges of the future. Accordingly, the paper will first highlight the significance of the Treaty of Maastricht entered into force in 1993 as well as the path the European integration chose to pursue afterwards (II). One of the main objectives of the paper

1 See, for example: Europe Uncensored, 2020.

2 The longest economic downturn since the Second World War was the “Great Recession” between 2007 and 2009. The “Great Recession” has many economic and financial effects and rippled through the World. See: Federal Reserve History, 2013.

3 As a former counsel of the European Parliament, my personal recollection is that the European Parliament was occupied with environmental issues even in the early days of March 2020 when the devastating reports on COVID-19 cases came to light from the northern regions of Italy.

is to shed light on the institutional reform from a Hungarian perspective. To this end, the paper will first explore the different viewpoints the different regions have vis-à-vis the European cooperation, especially the difference between the “Old Europe” that includes countries before the eastward enlargement and the “New Europe” that consists of the countries of the eastward enlargement. Based on these different viewpoints, the main emphasis of the European integration will also be considered (III.). In this wider context, the paper explores the roots and background of the Conference on the Future of Europe and aims to unpack the question of institutional reforms as well as the principles that can drive and support the institutional arrangement (IV). The paper ends with a concluding section with a view to the future challenges (V.).

Based on the “Maastricht 30” international scientific conference organised within the framework of the collaboration between the Ferenc Mádl Institute of Comparative Law and the Ministry of Justice, the paper aims to enrich the ongoing academic and policy dialogue on the future of Europe with the contribution of the Central-European and Hungarian perspective.

2. The crossroad of history: the Maastricht Treaty

The birth of the institutionalised European cooperation was defined by two historical and geopolitical forces. On the one hand, the European integration was built on the ruins of a Europe that was devastated by an unprecedented war. The tragedy of the Second World War demanded a framework that provided for lasting peace. As Robert Schuman proposed, uniting and margining the steel and coal industry across Germany and France under a supranational authority would mean that ‘any war between France and Germany becomes not only unthinkable but materially impossible.’⁴ Therefore, as a generally accepted theory, the original idea and objective of a European integration was to prevent another war in the Old Continent primarily through economic means. On the other hand, the European integration was forged in the shadow of the unfolding Cold War and the Iron Curtain that divided Europe not only along ideological, but also military lines for many decades. From this perspective, the market-based European cooperation served to reinforce the Western country’s economies, social and political systems to contain the spread of communist ideology and military expansion.⁵ Instead of or in addition to the objective of preserving peace, the function of the European cooperation was also

4 Schuman Declaration May 1950 [Online]. Available at: https://european-union.europa.eu/principles-countries-history/history-eu/1945-59/schuman-declaration-may-1950_en#:~:text=It%20proposes%20that%20Franco%2DGerman,the%20other%20countries%20of%20Europe. (Accessed: 08 August 2023).

5 The term containment refers to a geopolitical strategy adopted by U.S. President Harry S. Truman against the rise of the Soviet Union. See, Isaacson and Thomas, 2012, pp. 353–355.

to maintain the European heritage against a totalitarian ideology. In this sense, the Cold War gave impetus to the growth of the European cooperation in an era when Europe and European countries lost their strategic autonomy as a consequences of the power rivalry between the United States and the Soviet Union.

In the period leading up to the Treaty of Maastricht, the European cooperation focused on an economic and market integration along with the gradual expansion of the four freedoms including the free movement of goods, people and capital along with establishing and providing services. The rapid and spectacular growth of the European integration was accompanied by the solidification of an autonomous European legal system. The innovative and evolutive interpretation of the European Court soon emphasised its distinct, so-called “*sui generis*” nature in key judgements that detached European law from public international law. The 1963 van Gend & Loos decision declared the European law “directly applicable” so that individuals, whether they are corporations or natural persons, can rely directly on its rules and can enforce them in domestic courts.⁶ The 1964 Flaminio Costa⁷ and the 1970 Internationale Handelsgesellschaft⁸ judgments declared that European law enjoys priority over domestic law, including the constitutions of the Member States. Last but not least, the European Court is provided with the authority to become the ultimate arbiter of how provisions of the European law ought to be interpreted. The reference of preliminary procedure authorises and, in certain cases, requires domestic courts to make a reference on questions of interpretation and validity of EU measures to the European Court which in turn can ensure the autonomy and consistent interpretation of the European law. These decisions set the stage for recognising the European law as distinct and autonomous from international treaties and public international law and as binding to part of the domestic law of the Member States.⁹

The efficiency and the achievements of the market-focused integration along with the common vision against the Soviet-type system forged a strong consensus among Member States and provided the European institutions with robust legitimacy. By the 1980s, the outstanding economic success and the rising living standards in countries of the European integration made the cooperation and this model attractive in the eyes of the Central-European countries. The fall of the Iron Curtain and the change of regimes opened a window of opportunity for them not only to be able to express

- 6 Judgment of the Court of 5 February 1963. NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration. Reference for a preliminary ruling: Tariefcommissie - Netherlands. Case 26-62. [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A61962CJ0026> (Accessed: 10 August 2023).
- 7 Judgment of the Court of 15 July 1964. Flaminio Costa v E.N.E.L. Reference for a preliminary ruling: Giudice conciliatore di Milano - Italy. Case 6-64. [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61964CJ0006> (Accessed: 10 August 2023).
- 8 Judgment of the Court of 17 December 1970. Internationale Handelsgesellschaft mbH v Einfuhr- und Vorratsstelle für Getreide und Futtermittel. Reference for a preliminary ruling: Verwaltungsgericht Frankfurt am Main - Germany. Case 11-70. [Online]. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0011> (Accessed: 10 August 2023).
- 9 See, for example, Middelaar, 2009, pp. 97–99.

their European identity and civilisational roots but also to become part of the integration process and their four decades long success story.

The Treaty of Maastricht symbolised this point of time in history. The general mood and prospect of this era was well described by the legendary song of the German rock band, the Scorpions: “the wind of change”.¹⁰ It was not only the symbolic end of a chapter in history, but also the beginning an era of general optimism and high ambitions with the rise of economic globalisation.¹¹ Accordingly, there was also a firm belief in the need for a continuous progress of the European integration as the then President of the European Commission, Jacques Delors compared it to a bicycle which always has to move forward.¹² The institutionalised European co-operation has become an integral and successful part of the European landscape and the newly liberated Central-European countries all longed to participate in this institutionalised cooperation. Hence the Maastricht Treaty represented a watershed moment in this unique historical period and the question was whether the European integration process can make use of the past achievements.

The Maastricht Treaty, however, did not offer any fast track for the eastward enlargement process. Instead, the scope and subject matter of the European cooperation were expanded to include political areas and objectives beyond the largely market oriented integration. By having established the European Union, it introduced two additional pillars of institutional cooperation: a common foreign and security policy, and cooperation between EU governments on justice and home affairs.¹³ The concept of Union citizenship was also introduced and has later been used as a precursor of creating a European demos.¹⁴ The Maastricht reforms started a deepening process in the European integration that was to be attained by the European Convention along with its main result, the text of the Constitutional Treaty.¹⁵ However, as opposed to earlier stages of the European integration, the Maastricht Treaty and the subsequent way this Treaty opened never enjoyed such a high degree of consensus

- 10 The song became the symbol of the change of regimes of 1989 and the Fall of the Berlin Wall. It was performed by the Scorpions at the Brandenburg Gate in 1999, during the 10th anniversary of the Fall of the Berlin Wall. Available at: <http://news.bbc.co.uk/2/hi/europe/513968.stm> (Accessed: 10 August 2023).
- 11 In his book in the early 1990s, Francis Fukuyama argued that the end of the Cold War and the victorious rise of the Western type of liberal democracy marked the most developed and last form of human government. See: Fukuyama, 2006.
- 12 See, for example: Kovács, 2023.
- 13 See, for example: The Maastricht and Amsterdam Treaties [Online]. Available at: https://www.europarl.europa.eu/ftu/pdf/en/FTU_1.1.3.pdf (Accessed: 10 August 2023).
- 14 The Union citizenship is built upon the national citizenship, it does not replace it but instead provides further rights, see: EU citizenship and democracy [Online]. Available at: https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/eu-citizenship_en (Accessed: 10 August 2023).
- 15 The Laeken Declaration in 2001 established the European Convention to elaborate on a Constitutional Treaty for the European integration. The Draft Treaty establishing a Constitution for Europe was adopted by the European Council on 18 June 2004 but was not accepted in the subsequent ratification process.

among the Member States.¹⁶ The political areas are much more difficult to integrate as different countries and regions have different interests or even values that they are willing to abandon. The idea of a strong political integration failed when the Constitutional Treaty was rejected in the French and Dutch referenda.¹⁷ Instead, the Lisbon Treaty was adopted in 2007 as a compromise that contained the necessary institutional and decision-making reforms in order to accommodate a larger eastward enlargement.¹⁸

However, the Treaty of Lisbon was not entirely able to remedy the cracks between some of the regions and some of the Member States. As a result, the past decades and crises period have revealed severe tensions within the European cooperation and shed light on the different perspectives, objectives and expectations Member States have regarding the integration. Moving beyond the successful economic and market-driven integration and establishing a closer political cooperation has not enjoyed such a strong support among such a wide array of Member States as before. One of the major questions is whether the institutional setting and the decision-making process can provide an adequate framework for a productive dialogue that enables the reconciliation of different viewpoints and the effective operation of the European integration. Before highlighting this aspect of the Conference on the Future of Europe, the paper aims to explore the cracks along with the different viewpoints within the European integration and their potential roots and backgrounds.

3. Different regions, different stories, different expectations?

Being a conference presentation, this paper is required to explore and introduce the Hungarian perspective on the institutional reforms in the Context of the Future of Europe Conference. This assumes that there are various regional and country perspectives regarding this question, and it is not possible to narrate it in one single way or along ideological lines.

- 16 The Danish referendum first rejected the ratification of the Maastricht Treaty in June 1992 and only after an exemption was provided under the monetary union a second referendum in 1993 endorsed the Treaty. See, for example: Worre, 1995. In France only a narrow margin (0.8%) supported the ratification of the Maastricht Treaty. See: Lewis-Beck and Morey, 2007, pp. 65–87.
- 17 The Constitutional Treaty was rejected by a wide margin in the French and Dutch referenda, see Draft treaty establishing a constitution for Europe (not ratified) [Online]. Available at: <https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties/draft-treaty-establishing-a-constitution-for-europe> (Accessed: 10 August 2023).
- 18 The Lisbon Treaty is available at: <https://eur-lex.europa.eu/legal-content/ETXT/?uri=CELEX:12007L/TXT> (Accessed: 10 August 2023).

Indeed, the economic and geopolitical events, including the financial and the European debt crises, the large influx of immigration or the Brexit of the last decade revealed some of the different viewpoints the various European regions have about the European Union.¹⁹ For example, the so-called “*Frugal Four*” including Austria, Denmark, the Netherlands and Sweden, are fiscally conservative countries that have been opposing a considerable budgetary redistribution on the EU level or the collective EU debt as a response to the economic consequences of the coronavirus restrictions.²⁰ In contrast, the Southern Member States including Italy or Spain propagate stronger fiscal policy and EU budgetary intervention as a response to recessions. The other wide crack was the diverse approach of the United Kingdom and the Franco-German tandem to the European cooperation.²¹

One of the most visible – and also relevant from the perspective of this paper – division lies between the “old Europe” consisting of countries before the eastward enlargement and the “new” Europe containing countries of the eastward enlargement. The difference is not so much the economic output, the quality of the infrastructure or the living standard but rather the vision and the purpose of the future of the European integration. The East-Central-European countries see the European integration from different perspectives compared to the founding Member States, something that is rooted in the diverse historical experiences.

One of the experiences that defines the perspective of Western European countries and especially the Founding Member States of the European integration is the tragedy and horrors of the Second World War. As Keith Lowe tellingly pointed out, the story that underpins the European integration is akin to famous novel by William Golding, *The Lord of the Flies*. In the novel, a group of children are shipwrecked and stranded on a deserted island. They try to organise themselves so that they can survive on this island, but soon they start arguing with each other, and eventually start killing one another. The novel ends when a ship arrives, and a group of adults step onto the beach and stop them from tearing each other apart. The EU is similar to the arrival of the adults. It is an organisation of parents, keeping all the Member States as ‘children’ in check. After the Second World War the EU, like a parent organisation, has preserved peace.²² This is partly the reason why the “old Europe” insists on and accepted a “top-down approach” of European values and the concept of rule of law along with a corresponding institutional framework and decision-making mechanism in the centre of the discussion on the future of Europe and European integration.

19 On the cracks of the European integration see, for example: Horkay-Hörcher, 2020.

20 See, for example: Rankin, 2020.

21 As the 1963 Elysée Treaty and the 2019 Aachen Treaty both symbolise, the Franco-German tandem has always been at the heart of the European cooperation providing continuous impetus for further integration while the United Kingdom primarily saw the European integration as a trade and commercial association.

22 Lowe, 2019.

However, the Central-European experience is quite different from the Western one. People in Central and Eastern Europe lived under one totalitarian ideology coupled with military oppression in the second half of the 20th century. Consequently, what they had been fighting for through many long decades was to restore national sovereignty and self-determination. In this region, the insistence on the history, culture, tradition, religion and the concept of the nation states serve as the ultimate protectors of the people. In the mind of these countries, they owe their survival to this insistence and dedication to preserve this heritage. This historical and geopolitical experience is also decisive as to how they see the *raison d'être* and purpose of European cooperation. To them, the European cooperation is supposed to provide a strong architecture that can help better safeguard and also express their national identities, sovereignties and cultural heritage against, for example, ideological impositions.²³

So, the different European regions have different historical experiences and therefore different approaches to the European integration. These also led to different expectations and they also see and evaluate the results of the European integration differently through their own experiences and future visions.

Among the major dividing lines between the “Old Europe” and the “Europe of eastward enlargement” including, particularly, the approach of Hungary is the relationship between the Member States and the European Union and the role of sovereignty in the integration process. To what extent can the European integration replace or substitute the Member States’ competences and sovereignties or, alternatively, to what extent should the European Union justify its own competences towards the Member States as the “Master of the European Treaties”? In other words, should the European integration gravitate towards the concept of “*E pluribus unum*” (creating one out of many) or to its original objective “*In varietate concordia*” (unity in diversity). The institutional reform proposals such as the role of the European Parliament, the question of the transnational electoral list along with a more centralised European party system, the so-called “*Spitzenkandidaten* process” (lead candidate system), the horizontal and vertical distribution of competences, the introduction of a qualified majority voting rather than unanimity in the Council, the reform of the European Court as well as its relationship with the Member States’ constitutional and apex courts are all centred around and depend on this underlying vision.

Against this backdrop, the next section aims to explore the context and the main institutional reform issues of the Conference on the Future of Europe and the Hungarian position on these reforms.

23 This is the narrative what, for example, Milan Kundera highlights in his emblematic book, Kundera, 2023.

4. The Conference on the Future of Europe and the Question of Institutional Reforms

The idea of the Conference on the Future of Europe was first raised by the French President, Emmanuel Macron,²⁴ and aimed to initiate a common European deliberation as a response to the crises period of the 2010s.²⁵ As the European Commission and the European Parliament embraced the idea in 2019, the Conference was co-organised by them and the EU Council with the alleged objective to involve citizens, especially including young people and the civil society. Among others, a Multilingual Digital Platform launched in April 2021 served this purpose. The Conference concluded its work on the 9th May 2022 by putting forward a report on the final outcome that includes nearly fifty proposals for deliberations to the three EU institutions.²⁶

One of the sections of the report contains the recommendations on European democracy. Furthermore, among the most frequently discussed topics of the Conference became the question of the European Parliament elections and the redesign and restructuring of the European institutions.²⁷ On this issue, the mainstream suggestions of the Conference's outcome aim to redraw the Lisbon Treaty and draw the European integration into the direction of a "democratic European Federation."²⁸ To this end, the establishment of a common European identity and a common European public space have been tabled as proposals. Further symbolic proposals were also made to facilitate the achievement of this objective – and ignoring the cultural differences within Europe – such as the creation of European sports' teams, pan-European media outlets, network and a single public EU broadcaster or the introduction of the EU Passport.²⁹

As for the institutional redesign, the main proposals were made along the lines of the underlying idea of federalisation. They include, among others, the election of a President of the EU that would merge the competences of the President of the European Commission and that of the Council or strengthening the roles and competences of the main supranational institutions such as the European Parliament, the European Court or the European Central Bank. These suggestions, however, reflect a different vision

24 Macron, 2019.

25 This proposal has become part of the 2019 European Parliament election campaign of the Renew Europe Party.

26 The Final Report of the Conference on the Future of Europe is available at: https://www.eu-zukunftskonferenz.at/user/documents/kantar_report_march_2022_final_en22.pdf (Accessed: 10 August 2023), the Report on the Final Outcome is also available at: <https://wayback.archive-it.org/12090/20220915192132/https://futureu.europa.eu/pages/reporting> (Accessed 10 August 2023).

27 See, Final Report on the Conference, 2022, p. 83.

28 In the view of the Final Report, the federalisation of the European cooperation is necessary for the EU to be able to achieve its full potential.

29 Ibid., p. 88.

from the one that Hungary represented and proposed within the framework of Conference. The paper now explores the differences between the Conference's outcome and the Hungarian positions as well as their underlying reasons in regard to two main areas: on the one hand, the European democracy and on the other, the European judicial area. Even though the Conference's outcome has no legal force, it is the basis of political debate about the future of the European cooperation.

4.1. European Democracy

One of the keys and strategically crucial elements of the discussions within the Conference was the broader question of the strengthening of the European democracy – and decreasing the alleged democratic deficit of the European institutional decision-making – along with the reforms of the European Parliament and its election system and also the role of national parliaments in the decision-making and law-formation process of the European institutions. The ultimate question behind the dilemma of European democracy and the corresponding function of the European Parliament is the theoretical question of sovereignty and the existence of a European demos as the depositary of sovereignty. Who is the sovereign and who can exercise sovereign powers in an integrating Europe? The proposals that are aimed at strengthening both the legislative and oversight powers of the European Parliament are based on the belief that a European demos or people can develop over time as a result of the integration process.³⁰ The suggested reforms of the electoral system are designed to serve this ultimate purpose. Creating an EU-wide transnational electoral list along with a more centralised and “top-down” organised European party system would hold the entire territory of the European Union as one constituency. In the view of their proponents, this election method and reform would be able to address the “democratic deficit” of the European integration while at the same time support and contribute to the idea of federalisation.

In the view of Hungary, however, the European demos does not exist, and the Member States have not provided authorisation to the EU institutions to attempt its formation. The concept of the “ever closer union” is a legal term set forth in Article 1 paragraph 2 of the Founding Treaty.³¹ However, the Treaty uses “*peoples*” in plural that are the peoples of the Member States. Nowhere in the Treaty can the idea be found that there should be one single European people or a single European nation as a result of the integration. The European identity is part of the national identities of the Member States which cannot be substituted or replaced. This attempt would lead to the erosion of the control of Member States over the EU institutions.

30 The introduction of the Union citizenship with the Maastricht Treaty has been used as a vehicle to attempt to create the notion of European citizens.

31 Consolidated version of the Treaty on European Union [Online]. Available at: https://eur-lex.europa.eu/resource.html?uri=cellar:2bf140bf-a3f8-4ab2-b506-fd71826e6da6.0023.02/DOC_1&format=PDF (Accessed: 10 August 2023).

The increasing inability of the European Parliament to conduct meaningful political and public debates on questions that are relevant, timely and important to the Member States should be addressed in other ways.

Instead of the introduction of a transnational electoral list which would expose European politics to rather ideology-driven approaches, the ties and responsibility between the representative and the electorate should be strengthened. The democratic deficit can be addressed by reinforcing the role of national democracies in European legislation and oversight.³² The European democratic model is the democracy of national democracies. Consequently, Members of the European Parliament shall be either delegated by national parliaments as it was the case before 1979 or elected based on individual electoral constituencies. In the eyes of the Hungarian position, this election reform would provide stronger authorisation, closer political ties, and responsibilities as well as meaningful political debates that better consider and reflect on the needs of the Member States. For these reasons, the European citizens' initiative should be strengthened and the European Commission discretion to reject a successful initiative should be narrowed.

Beyond the election reform of the European Parliament, the role and competences of the national parliaments should also be strengthened to increase democratic legitimacy within the European integration. Since the European Union has been built upon European democracies, national parliaments are in the best position to fulfil an oversight role. This way the control of national parliaments shall cover the safeguarding of national and constitutional identities as well as of the principle of subsidiarity. To this end, the so-called already institutionalised “yellow-card-procedure” should be strengthened, leaving enough time to national parliaments to consider a legislative proposal of the European Commission. The introduction of a “red-card-procedure” would guarantee that a European legislation could not be adopted over the opposition of the majority of national parliaments. Last but not least, the establishment of a “green-card-procedure” would provide the national parliaments with the right to table legislative proposals on a European level.

With regards to the view of Hungary, strengthening the ties between the European representatives and the electorate as well as increasing the role of the national parliaments that have stronger relations with the electorate that makes inroads into the European political debates would better promote democratic legitimacy and better serve as guarantee for the principle of subsidiarity enhancing both cultural diversity and innovation.

4.2. The European Court and the European Judicial Area

Beside the concept of European democracy, the European values and the question of rule of law have become the other focal point of the discussion on the future of Europe. Hence, from this perspective, it seems essential to explore the

32 See, for example, Trócsányi, 2021.

reform proposal not only around the European Parliament but the European Court as well. As it was pointed out above, the European Court has been at the forefront of developing the European law and safeguarding its autonomy, precedence of application and primacy. Therefore, the European Court has an impressive legacy that profoundly contributed to the solidification of the “*acquis communautaire*” and the autonomous operation of the European Union.

However, the expanding subject matter of the European law to political and also to constitutionally sensitive areas had posed a challenge. Partly due to the growing political character of the European integration since the adoption of the Treaty of Maastricht, the values set forth in Article 2 of the Founding Treaty along with the concept of the rule of law have been increasingly dominating European political debates. However, the questions of values do not only have political dimensions, but they have been increasingly legalised, and the European Court is more and more involved in these debates. The mainstream proposal formulated within the framework of the Conference was to strengthen the powers of the European Court in order for it to become the final arbiter of debates on values or delimitation of competences.

However, in the Hungarian position, one of the fundamental tensions of the European integration stems from the conflict between the sovereignty of the Member States and the theory of the absolute primacy of European law. The starting point is that the European Union is an association of sovereign states that is based on a complex structure of different constitutional orders and courts. The European Court has not been able to relieve this tension and its jurisprudence ended up favouring the supranational institutions and centralisation.³³ As a response to this tendency, national constitutional and apex courts developed different types of reviews, including the review on whether EU institutions act in conformity with the Founding Treaties (“*ultra vires* review”), whether the European integration keeps the limits set by the national constitutional orders of the Member States (transfer review) and protect the core elements of national constitutional identities (“identity control”). To address the deficiency, the reform will enable the European Court to be a fair and reliable arbiter between the EU and Member States and to this end the Founding Treaties will need to offer adequate guarantees and procedures to defend the sovereignty as well as the constitutional and national identities of Member States.

The relationship between the European Court and national constitutional or apex courts is not a relationship of revision and cannot be addressed in terms of hierarchy. Embracing and old proposal and creating a separate court for the questions of competence would be a reform helping delimit the EU and Member States’ competences in a foreseeable way. Members of the competence court can consist, on a parity basis, of the judges of the European Court as well as of the national constitutional or apex courts.

Another way to safeguard the constitutional and national identities of the Member States in the face of the broadening competences of the European Union

33 See, for example, Blutman, 2020, pp. 33–48.

s to reinforce the judicial dialogue between the European Court and the national constitutional or apex courts. Questions that concern national or constitutional identities ought to be resolved with the involvement of national judiciary. A small but crucially important step forward would be if the national constitutional courts could intervene and present their positions before the European Court. To achieve this, the procedure of the European Court needs to be amended in a way that the relevant national court can participate in a meaningful way to ease the conflict.³⁴

The establishment of a “reverse preliminary ruling procedure” also embraced by the academia would represent a more radical reform avenue.³⁵ A reverse preliminary ruling procedure would require the European Court to submit cases to the competent national constitutional or apex courts regarding issues that concern national or constitutional identity and belong under the umbrella of Article 2 of the Treaty. It can create a true dialogue which is not a one-way street, but rather a two-way traffic among the European network of high courts (*Verfassungsgerichtsverbund*) that would allow them to reach conclusions jointly on questions of fundamental importance. The introduction of such an institutionalised dialogue would also contribute to the acceptance and therefore to the increase of legitimacy of the judgements of the European Court.

Last but not least, especially in light of the increasing legalisation of values set forth in Article 2 of the Founding Treaty, a procedure shall be in place that requires the European Court to apply the underused principle of subsidiarity.³⁶ This would also encourage the European Court to take into account the cultural diversity of the Member States and become the proper guardian of a common European legal culture and heritage.

5. Conclusion

The institutionalised European cooperation has no alternative today. Only such cooperation can provide the European States with the essential leverage, resilience and competitiveness in an age of globalisation, digitisation and intense power rivalry. Nevertheless, the institutional arrangement is never an end in itself. Reforming the institutional arrangements of the European integration poses a preliminary question: what the purpose of the purpose of the European integration is in the 21st century

34 Among others, the President of the Slovenian Constitutional Court, Rajko Knez, stated this position in an interview with Lénárd Sándor. Available at: <https://mandiner.hu/kulfold/2021/09/the-more-diverse-the-integration-becomes-the-softener-the-approach-should-be-conversation-with-rajko-knez> (Accessed: 10 August 2023).

35 Grabenwarter et al., 2021, pp. 43–62.

36 Trócsányi, op. cit.

and what European integration one wishes to have. The European institutional arrangement should be a reflection of the answer to this preliminary question.

Different European regions and different political groups have different opinions on this question. In the view of Hungary as well as other Member States, the more adequate question today is not whether there is a need for a more or less Europe, a more enhanced or a more loose European cooperation. Rather, the more adequate question today is how the European integration can justify itself in the eyes of the Member States since the European integration is not an end in itself nor is it self-evident anymore. The integration therefore shall be measured on a pragmatic basis: to what extent it can defend the interests and civilisational heritage of its Member States in a world that is defined by fierce power rivalry. To what extent it can serve the well-being and freedom of their citizens in an age of globalisation and digitisation. Consequently, any institutional reform shall be a function of this pragmatic analysis: it shall be a means to an end, instead of an end in itself.

For this reason, the institutional reforms shall aim to make the European political and public debates more relevant, focused and pragmatic. To this end, the ties between the representatives of the European Parliament and the electorate shall be strengthened by rethinking the election regulations. Furthermore, for the same purpose, the oversight and legislative competences of the national parliaments shall also be increased in the European decision-making process as the European public sphere is built on the multitude of national public spheres. In the same vein, the establishment of a European judicial area would strengthen the dialogue between European and national high courts and thus would offer a more harmonious cooperation among them. These reforms help protect the constitutional foundations as well as the acceptance and legitimacy of the European decisions and judgements of the European Court.

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