

# **TWISTS AND TURNS OF DEMOCRATIC TRANSITION AND EUROPEANISATION IN EAST-CENTRAL EUROPE SINCE 1989: BETWIXT EU MEMBER AND NEIGHBOUR STATE-BUILDING**

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*Abstract: With democracy declining and becoming sporadically illiberal and populist in Europe and elsewhere, the questions of democratic transformation gain new resonance and topicality. Within the European Union and its neighbourhoods, the results of long-pursued Europeanisation are being reconsidered against the new criteria of democratic transition resilience, as well as against the new realities of emerging de-democratisation and de-Europeanisation undercurrents – and the re-emerging split of Europe. The thirtieth anniversary of the Central and Eastern European countries' democratic transition and 'return to EUrope' provides a good opportunity to reassess successes and shortcomings of their transformation trajectories. Rather than engaging in a metrical exercise of measuring the quality of democracy in each EU member state, this article approaches the puzzle of East-Central European states' transition resilience from an interdisciplinary law and politics perspective on the respective countries' transition to EU 'member-statehood' and 'neighbour-statehood' as distinct types of statehood. In so doing, it develops an account of European Union 'member state-building' and 'neighbour state-building' as an inherent part of the respective countries' simultaneous transformation, European integration, and state-building agendas. Drawing on the democratisation, Europeanisation and state-building literatures, as well as a wealth of primary sources, this article bridges the discussion of the differentiated EU-induced and EU-centric transition trajectories of candidate and non-candidate countries in light of them becoming successfully, or less so, 'ideal' EU members or neighbours, respectively.*

*Keywords: Central and Eastern Europe, transformation, democratic transition, Europeanization, state-building, EU member state-building, EU neighbour state-building.*

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## 1 Introduction

European history advances in practically tri-decadal cycles. The close of 2019/2020 has arguably ended the cycle in European history and politics that commenced in 1989, thus ma(r)king a new opening for change or continuity. The 1989 Revolution brought sweeping changes throughout the whole of Central and Eastern Europe as Communist rule and socialism crumbled across the region, and states embarked on their paths of 'return to Europe', reforming their political, administrative and socio-economic orders, as well as – in the case of some countries – their own fundamental constitutional orders. As observes Magocsi in his *Historical Atlas of Central Europe*, the 'greatest transformation took place in those states that had a federal structure during the Communist era – Czechoslovakia, the Soviet Union, and Yugoslavia' as, within the next two decades, 'four countries [ie the former three plus the East-German Democratic Republic] ceased to exist and eventually thirteen new countries came into being'.<sup>1</sup> Among them, one can find ten post-socialist Central and Eastern European countries (CEECs) that, some fifteen years later, became 'new' EU member states (Bulgaria, Czechia, Hungary, Poland, Romania, Slovakia, Slovenia *plus* three post-Soviet Baltic republics – Estonia, Latvia and Lithuania), and *inter alia* three post-Soviet newly independent states that, thirty years past, still struggle for their full independence from Russia's *postcolonial* embrace and the much-wanted 'return' to Europe (namely, two 'Western NISs' – Moldova and Ukraine save Belarus, and a South Caucasian republic – Georgia). Colloquially, the two groups are usually referred to as 'new Europe' and 'new Eastern Europe' – which tethers the respective discursive markers of their idenitarian belonging and development trajectories set or sought.

These three decades of democratic transition in the CEECs can roughly be divided into two main stages: the period of *systematic transformation* of the CEECs' economies and their preparation for EU membership (1989–2004) and the period of *systemic convergence*, ie the adaptation of the CEECs' national economies to the Single Market of the European Union, as well as the EU *acquis*, policies and key socio-economic and governance indicators of the 'old' member states (2004–2019). One can argue that, formally, the socio-economic transformation began in East-Central Europe in the *annus mirabilis* of 1989 and ended by 2004, when they joined the European Union. A more realistic account would suggest, however, that transformation is a process rather than a destination: as much as European integration itself is a moving target and the EU is changing as well, the process of transformation appears not to

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<sup>1</sup> Paul Robert Magocsi, *Historical Atlas of Central Europe* (3rd edn, University of Toronto Press 2018) 221.

have an expiration date. This is also true for the EU's post-2004 Eastern neighbours – the 'New Eastern Europe' states, which, after regaining their independence in the early 1990s, have been longing for closer integration with the Euro-Atlantic structures while transforming their political and economic systems and defending their sovereignties at the same time from the postcolonial claims of their own big eastward neighbour.

This article will, therefore, bridge the legal and political discussion of democratic transition in *wider* Europe, including the 2004/07 CEE entrants and the EU's new Eastern neighbours.<sup>2</sup> Structuring the discussion around the identified milestone developments in the given countries' status change within the united and institutionalised Europe (ie EU-Europe or EUrope), this article will cast an EU-centric foreign policy perspective, with an eye on the Union's enlargement and neighbourhood policies as drivers of nation-state transformation and (re)constitution as an EU member or neighbour state, respectively. Thereby, it will advance an encompassing analytical perspective – ie *EU member and neighbour state-building* – that cuts across juxtaposing propositions from *European integration theories* (issues in legal, economic and political integration; integration of core state powers; multi-level governance; enlargement; Europeanisation), *state-building* and *state transformation, modernisation, and development* literatures, as well as *transition* and *democratisation* studies.

Methodologically, this study of law and politics of EU member and neighbour state-building is primarily guided by the *interdisciplinary research logic and methods* that help unearth the relationship between European integration and state-building processes, bring to the surface tacit understandings of some of its facets (state transformation and modernisation as a 'collateral benefit' of EU member state-building), as well as helping to expose relevant misunderstandings or gaps in the field concerned (alleged linearity and determinism of democratisation, EU accession and Europeanisation processes; reverse spill-overs of de-democratisation and de-Europeanisation). In particular, the study incorporates, as part of its interdisciplinary methodological toolkit, the techniques of *deriving* (extending and modifying conventional research programmes, thus producing new objects of analysis), *digging* (engaging with socially and materially constructed reality combined with unearthing tacit relationships and articulating new meaning of under-the-surface mat-

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<sup>2</sup> In what follows, the article will collectively refer to the EU's 2004/07 'new member states' as 'Central and East European countries' (CEECs), as established in the literature and much of the political discourse. Instead, the term 'East-Central Europe' (ECE) is used to denote a geographically and politically broader region that includes both the EU's 'new member states' ('new Europe') and the neighbouring post-Soviet countries of the so-called 'new Eastern Europe' (NEE).

ters that are usually taken for granted), *abducting* (ampliative and generative inference and fostering of creative interdisciplinary interactions), *exemplifying*, *explaining* and *generalising* (using the capacity of single instance, or the situated example, to produce other forms of knowledge, by making intelligible complex contexts and hinting beyond the concrete at something larger and more general).<sup>3</sup>

In addition, the study also draws on applicable *disciplinary* – legal and political – research methods, such as *doctrinal analysis*, *content* and *discourse analysis*. The European institutional discourses and the European Union's practices of building the member- and neighbour-states will be examined in order to uncover the gravity of the European integration perspective (and process) for democratic transition and resilient domestic transformation in East-Central European states. Symptomatically, the EU institutional discourse on the CEECs' transition and performance in a family of European liberal democracies has been shaped by Commission communications and reports, the European Parliament's debates and enquiries, the European Council's conclusions and statements, as well as, more recently – the case law of the Court of Justice of the European Union. In addition, this take will incorporate analysis of within-EU popular discourses, as represented *inter alia* in a series of standard and special public opinion polls (ie 'Eurobarometers'), aiming to pinpoint varied popular expectations, perceptions and support (legitimation) with regard to the EU's enlargement process, the acceding countries themselves, and the ensuing statehood-transformative practices of EU member state-building through Europeanisation both within and beyond the enlargement paradigm. As the EU member state-building process is a two-way street, with every next enlargement iteration, as well as treaty reforms, re-defining the parameters of EU member-statehood in constitutional, administrative, judicial and not least identitarian terms, popular evaluation and legitimation of the process by the EU's two-tier 'peoplehood'<sup>4</sup> is of key importance. In an endeavour to uncover deeper dimensions of EU member-statehood as a unique legal-political and identitarian category, rather than pondering on the mere facts and processes of the acquisition of EU membership status, this article will regard the EU accession-induced democratisation, transformation and Europeanisation in East-Central European states as 'collateral benefits' and as an essential part of the Union's member state-building policy. It will also present an argument about the spill-over effects of this policy onto the EU's emerging neighbourhoods that, for the moment, are not

<sup>3</sup> Celia Lury and others (eds), *Routledge Handbook of Interdisciplinary Research Methods* (Routledge 2018) 90-94, 164-168, 284-286, 296-310.

<sup>4</sup> Jan Pieter Beetz, 'A Two-Tier Conception of European Union Peoplehood: A Realist Study of European Citizens' Bonds of Collectivity' (2017) 23(6) *European Law Journal* 467.

part of the Union's member state-building agenda but do follow similar templates of EU-style regime change, democratisation and multi-layered Europeanisation. As will be argued, such policy templates and processes have so far resulted in the production of a special category of state and statehood that transcend the boundaries of national sovereignty – ie an EU 'neighbour state'.

Much of the literature in the field has richly covered the causal and procedural aspects of EU-induced transformation through enlargement and Europeanisation as such, with the teleological and effect-related aspects of these phenomena enjoying considerably lesser attention. In what follows, this article will employ the EU member/neighbour state-building perspective in order to address both the causality, (non-)linearity, multi-layeredness, collaterality and consequentialism of the state-transformative processes in East-Central Europe since 1989. Dimensionally, the study into *causality* will involve the examination of external incentives, European integration dynamics, multi-level governance politics and the EU legal order development, with repercussions for the adjustment, or re-constitution, of domestic constitutional orders of EU member and neighbour states. The *(non-)linearity* aspect will be traced across the overlapping processes of (a) revolution-making and counter-revolution, (b) democratisation and de-democratisation, (c) Europeanisation, de-Europeanisation, re-nationalisation, and re-Europeanisation trends, (d) EU accession versus withdrawal processes, as well as the interim versus 'eternalised' status acquisition on the spectrum 'between membership and non-membership' in the EU. The *multi-layered dimensionality* will be examined all along the relevant developments in geographical, legal, political, socio-economic and cultural terms. Last but not least, the enquiry into the *collaterality*, or 'collateral benefits', of the simultaneously unfolding processes and phenomena along the democratisation–Europeanisation–state-building nexus will be intrinsically instrumental in unveiling the *consequentialist* rationale and thus providing teleological explanations of the EU member and neighbour state-building paradigm.

In what follows, the article will first situate the herewith advanced analytical perspective within the nexus of EU-induced and EU-centric state transformation and state-building in general, and will outline the EU member/neighbour state-building approach in particular. Structuring the empirical discussion around the milestone developments in adjacent geographical realms of 'wider' Europe, the article will then discuss the causalities, (non-)linearities, multi-layeredness, and collaterality of EU member and neighbour state-building practices before and after 2004 – a juncture for both the EU's enlargement and neighbourhood policies in East-Central Europe.

## 2 Democratic transition and Europeanisation of East-Central Europe: a European Union member and neighbour state-building perspective

The European Union has a remarkable gift and track record of transforming the trajectories of nations – whether as part of the process of their EU accession or broader Europeanisation beyond the borders.

Whether the idea of ‘normative power Europe’,<sup>5</sup> ‘transformative power Europe’<sup>6</sup> or other ‘adjectivised’ representations of European international identity and actorness – all consider, in one way or another, the promotion of democracy, human rights and the rule of law to be a quintessential characteristic of EU foreign policy, which has led some authors to argue that, in every case, we face an inherently ‘*democratising power Europe*’.<sup>7</sup> The literature abounds in accounts of the EU’s efforts and failures in democracy promotion across its neighbourhoods.<sup>8</sup>

Notably, in the European inside-out context, the idea of *democratisation* (ie democratic consolidation or transition) is densely embedded in discussions of the appeal and transformative power of Europe. Broadly captured in the ‘Europeanisation’ scholarship, the European Union’s transformative-power performance has been observed with every completed and open enlargement post-1995,<sup>9</sup> as well as in the context

<sup>5</sup> Ian Manners, ‘Normative Power Europe: A Contradiction in Terms?’ (2002) 40(2) *Journal of Common Market Studies* 235.

<sup>6</sup> Heather Grabbe, *The EU’s Transformative Power. Europeanization through Conditionality in Central and Eastern Europe* (Palgrave Macmillan 2006); Tanja A Börzel and Thomas Risse, ‘The Transformative Power of Europe: The European Union and the Diffusion of Ideas’ (2009) 1 KFG Working Papers <[http://userpage.fu-berlin.de/kfgeu/kfgwp/wpseries/WorkingPaperKFG\\_1.pdf](http://userpage.fu-berlin.de/kfgeu/kfgwp/wpseries/WorkingPaperKFG_1.pdf)> accessed 20 July 2020.

<sup>7</sup> Irene Hahn, ‘Democratising Power Europe? Modes of EU Democracy Promotion in Post-Socialist Europe’ in Edmund Ratka and Olga A. Spaiser (eds), *Understanding European Neighbourhood Policies: Concepts, Actors, Perceptions* (Nomos 2012) 287.

<sup>8</sup> See one of the early-on and comprehensive enquiries: Sandra Lavenex and Frank Schimelfennig (eds), *Democracy Promotion in the EU’s Neighbourhood: From Leverage to Governance?* (Routledge 2013).

<sup>9</sup> Maria Green Cowles, James Caporaso, and Thomas Risse (eds), *Transforming Europe. Europeanization and Domestic Change* (Cornell University Press 2001); Leonardo Morlino and Wojciech Sadurski (eds), *Democratization and the European Union. Comparing Central and East European Post-Communist Countries* (Routledge 2010); Soeren Keil, ‘Europeanization, State-building and Democratization in the Western Balkans’ (2013) 41(3) *Nationalities Papers* 343; Arolda Elbasani (ed), *European Integration and Transformation in the Western Balkans: Europeanization or Business as Usual?* (Routledge 2013).

of structuring its relations with immediate<sup>10</sup> and further<sup>11</sup> neighbourhoods.<sup>12</sup>

Europeanisation<sup>13</sup> is generally regarded as the European Union's impact (and the process of impacting) on domestic institutions, discourses, political processes and policies of both the member states, candidate countries, and the adjacent neighbourhood countries (so-called 'Europeanisation beyond borders'). Following one of the signature authors advocating for this approach, *Europeanisation* is defined as:

Processes of (a) construction, (b) diffusion and (c) institutionalization of formal and informal rules, procedures, policy paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies.<sup>14</sup>

The rationality of this externally incentivised domestic transformation process is engrained in the so-called '*external incentives model*' (EIM) – a 'rationalist bargaining model' which underpins EU *conditionality*.<sup>15</sup> The latter is tailored in a differentiated manner to acceding countries and other types of the EU's structured relations with third countries. The implementation of the conditionality approach is anything but

<sup>10</sup> Frank Schimmelfennig, 'Europeanization beyond Europe' (2012) 7(1) *Living Reviews in European Governance* 1.

<sup>11</sup> See eg Georgiy Voloshin, *The European Union's Normative Power in Central Asia: Promoting Values and Defending Interests* (Palgrave Macmillan 2014).

<sup>12</sup> For an overarching discussion of the reach and scope of Europeanisation 'beyond EU member states' (ie including quasi-member states, candidate countries, neighbourhood countries, other OECD countries, as well as those in further-away regions of Latin America, Asia and Africa), see Frank Schimmelfennig, 'EU External Governance and Europeanization Beyond the EU' in David Levi-Faur (ed), *The Oxford Handbook of Governance* (OUP 2012).

<sup>13</sup> In this article, the phenomenon and processes of 'Europeanisation' feature as an object of analysis – and not as an analytical lens itself. The article goes beyond asking what the impact of EU membership on member states is, thus pondering on the fundamental questions 'to what end are states being Europeanised?' and 'how well reconcilable is it with their nation-state building agendas?'. Thereby, it casts a 'long view' on Europeanisation, seeing it as a process that certainly does not end with EU accession and has no point of saturation or a fixed *finalité* – wherefore it is bound to entail, one way or another, a conflict of sovereignties.

<sup>14</sup> Claudio M Radaelli, 'The Europeanization of Public Policy' in Kevin Featherstone and Claudio M Radaelli (eds), *The Politics of Europeanization* (OUP 2003) 30.

<sup>15</sup> Frank Schimmelfennig and Ulrich Sedelmeier, 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe' (2004) 11(4) *Journal of European Public Policy* 663. The authors posit that the 'external incentives model' (EIM) envisages that 'EU external governance mainly follows a strategy of conditionality in which the EU sets its rules as conditions that the CEECs have to fulfil in order to receive EU rewards. These rewards consist of assistance and institutional ties ranging from trade and co-operation agreements via association agreements to full membership' (ibid, 663). See also Frank Schimmelfennig and Ulrich Sedelmeier (eds), *The Europeanization of Central and Eastern Europe* (Cornell University Press 2005).

a simple story of success or failure: whereas some studies reveal the reinforcing nature of the EU's reward strategy, or positive conditionality,<sup>16</sup> others point to selective cherry-picking in the adoption of rules, as well as other inefficiencies of both positive and especially negative conditionality approaches in practice.<sup>17</sup> Consensus is emerging within the scholarly community, however, as regards direct correlations between the character of the EU's reward (including, but not limited to, the membership perspective) and the effectiveness of conditionality – an assumption that has also been recently confirmed by statistical analysis.<sup>18</sup>

Whereas debates advance on the substantial and implementing-procedural aspects of EU conditionality and Europeanisation practices, not many discussions dig into functional consequentialism-embracing explanations. Oftentimes, this leads to treating these processes of EU-induced transformation as auxiliary, and thus unrelated to *nation-* and *state-building* at large. By contrast, endeavouring to give causal efficacy to the future (and thus embracing both causality and consequentialism), the current article develops a *teleological approach* to, and explanation of, *EU-induced* and *EU-centric* democratisation and state transformation processes as part of EU enlargement agendas, as well as broader structural frameworks for EU relations with its immediate neighbourhood.

It is actually where the above-discussed EU-isation propositions, broadly seen, do intersect with theoretical propositions from the state theory, including first and foremost *state-building* and *state-transformation* (modernisation, transition, development) literatures. The 1989 Revolutions undoubtedly changed the parameters of state-building and democratic transition across East-Central Europe, even if, in some instances, as in Russia, the developments resembled more a 'mimetic' rather than a genuine revolutionary change. The proliferating, from the mid-2000s, illiberal counterrevolutions, however, too, present equally constitutive turns in state transformation. As far as state modernisation paths are concerned, the menu of choice in the region is innately linked to the 'choice for Europe'. For some authors, the notion of European integration actually resembles a 'triple modernization, encompassing economic, institutional and cultural changes'.<sup>19</sup> An international political economy perspective on the practices

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<sup>16</sup> Grabbe (n 6).

<sup>17</sup> Dimitry Kochenov, *EU Enlargement and the Failure of Conditionality. Pre-accession Conditionality in the Fields of Democracy and the Rule of Law* (Wolters Kluwer 2008).

<sup>18</sup> Tanja A Börzel and Frank Schimmelfennig, 'Coming Together or Drifting Apart? The EU's Political Integration Capacity in Eastern Europe' (2017) 24(2) *Journal of European Public Policy* 278.

<sup>19</sup> Joanna Konieczna-Salamatin and Maja Sawicka, 'The East of the West, or the West of the East? Attitudes toward the European Union and European Integration in Poland after 2008' (2020) *East European Politics and Societies and Cultures* (OnlineFirst) 1.



of EU-induced state-building in Central and Eastern Europe, too, reveals salient developmental effects as a type of ‘collateral benefit’ of European integration.<sup>20</sup> In her comprehensive analysis of the EU’s passive and active leverage on CEECs before their accession to the Union, Vachudova<sup>21</sup> uncovers the process and effects of political system modernisation and the reform of the state and economy in acceding countries. As far as the post-accession dynamics of nation-state transformation is concerned, the literature on the integration of ‘core state powers’, among others, presents valuable insights into the changing constellations of the gradual transition of certain state powers that have been integral in modern nation-state building (coercive – military and police – force; public finance; public administration) to the realm of European integration.<sup>22</sup>

From this point of view, EU-isation, broadly seen, presents a crucial aspect of state-building processes in the region that essentially revolve around the gravity of European integration and identity, being at the same time inherently conducive to the European Union’s powerful drive towards building ‘ideal’ *members* and *neighbours*. Collaterality is therefore an engrained fundamental quality of the EU member/neighbour state-building paradigm as conceptualised below.

The idea of EU ‘*member state-building*’ was inaugurated simultaneously with, and in the context of, the EU’s ‘big bang’ enlargement eastwards that celebrated the largest-scale transformative revolution in Europe when eight CEECs joined the European Union in May 2004. In their idea-pioneering article, Knaus and Cox<sup>23</sup> presented EU ‘member-state building’, in contrast to traditional capacity-building, as ‘a vastly more sophisticated form of institution-building’, ‘a model unique to the European continent’. They went on to argue that ‘[t]his form of “regime change” EU-style is cheap, voluntary and hence long-lasting’.<sup>24</sup> Casting a retrospective on the EU’s accomplished enlargements, Hillion<sup>25</sup> even pon-

<sup>20</sup> László Bruszt, Ludvig Lundstedt and Zsuzsa Munkacsi, ‘Collateral Benefit: The Developmental Effects of EU-Induced State Building in Central and Eastern Europe’ (2020) 27(5) *Review of International Political Economy* 1170.

<sup>21</sup> Milada Anna Vachudova, *Europe Undivided: Democracy, Leverage, and Integration after Communism* (OUP 2005).

<sup>22</sup> Philipp Genschel and Markus Jachtenfuchs (eds), *Beyond the Regulatory Polity? The European Integration of Core State Powers* (OUP 2013); Philipp Genschel and Markus Jachtenfuchs, ‘From Market Integration to Core State Powers: The Eurozone Crisis, the Refugee Crisis and Integration Theory’ (2018) 56(1) *Journal of Common Market Studies* 178.

<sup>23</sup> Gerald Knaus and Marcus Cox, ‘The “Helsinki Moment” in Southeastern Europe’ (2005) 16(1) *Journal of Democracy* 40.

<sup>24</sup> *ibid.*, 41.

<sup>25</sup> Christophe Hillion, ‘Accession and Withdrawal in the Law of the European Union’ in Anthony Arnall and Damian Chalmers (eds), *The Oxford Handbook of European Union Law* (OUP 2015) 132.

dered that '[t]he *EU member-state-building policy* [...] has become a standard facet of the EU accession process'. Thereby, it is not just a one-dimensional formal legal status that has been undergoing transformation – in fact, through the evolving enlargement policy, the EU institutions 'have actively contributed to transforming applicant states into operating members of the Union, in constitutional, administrative and judicial terms, thereby articulating the attributes of EU membership'.<sup>26</sup>

When it comes to the EU's state-transformative drive, the effort in building 'ideal' members and neighbours ranges across a whole set of the EU's privileged partnerships, political association, market integration and other offers '*between membership and non-membership*'.<sup>27</sup> Therefore, the processes of EU-induced transformation in the countries of East-Central Europe should be regarded as at least two-track processes, with double transition pursued by the respective states at the same time. These are transition to democracy and transition from an ordinary nation-state to an EU member/neighbour state, which presupposes the articulation of a particular quality of *Europeanised statehood*.<sup>28</sup>

Even though, from their first contractual relationship with the EC/EU, the Baltic states had constantly been pressing for an accession perspective, it took the EU quite a while to grant one and let Estonia, Latvia, and Lithuania bandwagon on the EU's eastward enlargement. Due to immense political and, more importantly, *acquis* conditionality, it took the Baltic countries even more time to transform 'from post-Soviet republics to EU member states',<sup>29</sup> inasmuch as such a transformation implied not only dismantling the Communist and Soviet government ideologies and structures with the simultaneous build-up of democratic institutions. It also required developing certain qualities and standards of EU 'member-statehood', which draw on the continually developing communitarian *acquis*, ie the founding treaties, reform and accession treaties, the then-European Court of Justice's case law, EU decision- and policy-making rules and practices, etc.

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<sup>26</sup> *ibid*, 130.

<sup>27</sup> Andriy Tyushka, *Between Membership and Non-Membership in the European Union: Ukraine's Actual and Potential Status* (VDM Verlag 2010).

<sup>28</sup> In the specific context of the Western Balkans, the EU's member state-building effort goes well beyond just including the traditional focus on the implementation of the *acquis* and, as 'a reaction to existing and perceived state weaknesses in the Western Balkans', it furthermore resembles 'an attempt by the EU to build states that fit the standardised model of a "European state"'. See Soeren Keil and Zeynep Arkan, 'Introduction: European Union Foreign Policy in the Western Balkans' in Soeren Keil and Zeynep Arkan (eds), *The EU and Member State Building: European Foreign Policy in the Western Balkans* (Routledge 2015) 6-7.

<sup>29</sup> Peter Van Elsuwege, *From Soviet Republics to EU Member States: A Legal and Political Assessment of the Baltic States' Accession to the EU* (Martinus Nijhoff 2008).

First and foremost, EU 'member state(hood)' is understood as a legal title conferred upon a European nation-state that becomes a full-fledged member of the European Union. Looking beyond the purely legalist realm of this EU-specific legal title, Bickerton<sup>30</sup> suggests also to consider 'member statehood' as a 'historically specific and distinctive form of state', which 'can be differentiated conceptually and in practice from earlier forms of state, most notably the modern nation state'. Arguing that the process of state transition from an 'ordinary' nation-state to an EU 'member state', which chiefly happens via the transformation of state-society relations, is the key driver of European integration, Bickerton<sup>31</sup> defines '*member statehood*' as 'a distinctive and stand-alone form of state' that is 'something far more extensive and significant than merely a legal title' – '[i]t refers to a form of state where power and authority is constituted horizontally rather than vertically, through the participation by national by national governments in transnational networks of rule'. One of the defining ex-post characteristics of a nation-state's transformation into an 'EU member state' is, in addition to legal and formal-organisational features, an outcome where 'deliberation and consensus-making have become ends in themselves rather than means to a nationally strategic end'.<sup>32</sup> Seen from that angle, the rationale and process of EU member state-building also bears a distinct imprint on the understanding of 'transition' as such: if transition from non-democratic to democratic government could be traced back for its beginnings and the anticipated accomplishment to a specific moment in time, the transition to 'EU member statehood' is a lasting process which evolves along with the evolution of EU policies, polity and identity as a supranational entity – and thus hardly stops (or at least is hardly due to stop). Applying the EU member state-building lens to the EU's (foreign and enlargement) policy vis-à-vis the Western Balkans, Bieber<sup>33</sup> argues that it is less reminiscent of the known EU politics of enlargement and is more creative in the sense that it encompasses a 'long-distance' state-building strategy.

Similarly, one can think of '*neighbour state-building*' politics through the dense and partially overlapping web of *multilateral* (such as the 2004 European Neighbourhood Policy or the 2009 Eastern Partnership) and

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<sup>30</sup> Christopher J Bickerton, *European Integration: From Nation-States to Member States* (OUP 2012) 53.

<sup>31</sup> Christopher J Bickerton, 'A Union of Member States: State Transformation and the New Intergovernmentalism' in Christopher Bickerton, Dermot Hodson and Uwe Puetter (eds), *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era* (OUP 2015) 54.

<sup>32</sup> *ibid.*, 69.

<sup>33</sup> Florian Bieber, 'Building Impossible States? State-Building Strategies and EU Membership in the Western Balkans' (2011) 63(10) *Europe-Asia Studies* 1783.

*bilateral* (Association Agreements, Partnership and Cooperation Agreements, other bilateral economic or comprehensive partnership deals) policy frameworks.<sup>34</sup> In addition to the politically observable process of EU-isation of state-building processes in the countries of proximity, the very spirit and letter of (post-Lisbon reformed) EU Treaties, too, sets the imperative – a political mandate – for the EU ‘to engage with the neighbours, precisely with a view to asserting its own values’, as Article 8 TEU (the so-called ‘neighbouring state-building policy’ clause) prescribes.<sup>35</sup>

The Union’s ‘*neighbour state-building*’ politics is a discursively and politically discernible ‘sustainable [(geo)political] effort of the European Union to *shape* the neighbourhood according to its own “template”, that is to indirectly “build” *would-be* member states’.<sup>36</sup> Regardless of whether or not the neighbouring states would be willing and able to access the EU any time soon, the Union’s strategy is to make the neighbourhood at least ‘compatible’ with what EU member-*statehood* requires. As the ties and transactions between the EU and its neighbours to the east are growing, the European Union has been increasingly keen, especially since its 2003/04 opening to a ‘wider Europe’, to promote the formation of a ‘ring of friends’, ie like-*minded* and like-*governed* states that, ideally, would mirror the EU’s ideal ‘Self’, which – for good and less so reasons – has been regarded in Brussels as a model for state development and governance.

Undoubtedly, the idea of an EU-driven and EU-centric alignment beyond enlargement presents both a theoretical challenge for the modern/nation-state paradigm and a more practical dilemma for the pursuit of sovereignty by the newly independent states in the Union’s neighbourhood – this time, bound to oscillating between various forms of Brussels hegemony.<sup>37</sup> It should be argued, however, that the EU’s normative and structural power exercise in the neighbourhood presents a different – deliberative and consensual – form of hegemony as it draws on voluntary (ie consent-based) political undertakings and a legal (ie contractual or

<sup>34</sup> Andriy Tyushka, ‘From “Member-State Building” to “Neighbour-State Building” Policy: Reconsidering the EU’s Approach towards the Eastern Neighbours’ (2014) Paper presented at the Global Europe Centre’s Conference ‘Europe’s Near Abroad: Building an Understanding of the Changing Eastern Neighbourhood’, Canterbury, University of Kent, 30 June 2014.

<sup>35</sup> Christophe Hillion, ‘Anatomy of EU Norm Export Towards the Neighbourhood: The Impact of Article 8 TEU’ in Roman Petrov and Peter Van Elsuwege (eds), *Legislative Approximation and Application of EU Law in the Eastern Neighbourhood of the European Union* (Routledge 2014) 18.

<sup>36</sup> Andriy Tyushka, ‘Building the Neighbours: The EU’s New Association Agreements and Structural Power in the Eastern Neighbourhood’ (2017) 25(1) *Journal of Contemporary Central and Eastern Europe* 48.

<sup>37</sup> See eg Christopher J Bickerton, ‘From Brezhnev to Brussels: Transformations of Sovereignty in Eastern Europe’ (2009) 46(6) *International Politics* 732.

agreement-based) formalisation of the negotiated forms of relationship with third countries.<sup>38</sup> Moreover, the third countries' convergence with European Union norms and policies is a less asymmetric and straightforward (and thus much more nuanced and multi-layered) matter than it appears. In their seminal take on the patterns of policy convergence between the EU and its neighbourhoods, Barbé and others<sup>39</sup> challenge the simplistic view, and posit that 'there is more than just externalization', as, in addition to convergence with the EU norms, there are at least two more layers to be observed, ie convergence towards international norms and one towards bilaterally developed norms. Thereby, the parameters of the individual neighbour states' EU-style transformation present a much more diversified set of – *negotiated* – state-building, modernisation, institutional and capacity-building as well as policy alignment choices than that of the EU member state-building process.

As such, the idea and process of EU '*neighbour state-building*' has to be distinguished from other similarly resonating concepts, including the very liberal and post-liberal ideas of '*international state-building*', or the processes of providing multiverse external support to domestic '*state-building*' efforts in countries that are lacking, repairing or reforming their state institutions.<sup>40</sup>

Instead, the EU '*neighbour state-building*' account is more grounded in discussions on the *intertwined* nature of *domestically driven* state-building agendas (democratic transformation, transition, reforms) and *externally incentivised* forms of such transition that interact through the layers of foreign-political *alignment*, legislative *approximation*, political *association*, and market *integration*.<sup>41</sup> In a similar vein, Wolczuk<sup>42</sup> argues that 'Ukraine's European integration has become intertwined with statebuilding'. In that, she also draws on Orenstein, Bloom, and

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<sup>38</sup> Back in 2007, the then-President of the European Commission José Manuel Barroso dubbed the idea of the European Union itself as 'the first non-imperial empire', not least because 'the EU empire is built on voluntary pooling of power and not on military conquest'. See José Manuel Barroso, President of the European Commission (2004-2014), 'European Union Is "Non-Imperial Empire"' (*Euractiv Youtube*, 10 July 2007) <<https://www.youtube.com/watch?v=-I8M1T-GgRU>> accessed 20 July 2020.

<sup>39</sup> Esther Barbé and others, 'Drawing the Neighbours Closer ... to What?: Explaining Emerging Patterns of Policy Convergence between the EU and Its Neighbours' (2009) 44(4) *Cooperation and Conflict* 380.

<sup>40</sup> David Chandler, *International Statebuilding: The Rise of Post-Liberal Governance* (Routledge 2010); Anna-Sophie Maass, 'The Actorness of the EU's State-Building in Ukraine: Before and after Crimea' (2020) 25(2) *Geopolitics* 387.

<sup>41</sup> Andriy Tyushka, 'Association-Cum-Integration: The EU-Ukraine Association Agreement and "Association Law" as an Institution of Ukraine's European Integration' (2017) 13 *Croatian Yearbook of European Law and Policy* 87.

<sup>42</sup> Katarzyna Wolczuk, 'State Building and European Integration in Ukraine' (2019) 60(6) *Eurasian Geography and Economics* 737.

Lindstrom<sup>43</sup> and applies their ‘quadruple transition’ framework (linking simultaneously the processes of nation-state building, democratisation, marketisation, as well as integration) to the analysis of Ukraine’s ‘state-building/European integration’ nexus, inasmuch as Ukraine’s ‘project of nation-state building, democratization and marketization has been embedded within transnational agenda and pressures, most importantly but not limited to those of the EU’.<sup>44</sup>

Consequently, European Union ‘neighbour state-building’ should be regarded as a domestically driven but externally incentivised and externally conditioned (as well as externally assisted or directly supervised) process of domestic change in a neighbouring country to the *particular* rationality of both government and governance practices.

In practical terms, the process unfolds through the legislative and regulatory approximation of legal, political, socio-economic and business-operational systems, which are operating within the EU’s *extended* (to the neighbourhood) governance structures, as well as the latter ones’ ‘internalisation’ (both through domestic legitimation and ‘transplantation’) into the neighbour-states’ domestic realms of governance.<sup>45</sup> In certain cases, the ‘internalisation’ of EU governance rationalities within domestic legal and political orders has profound legal consequences, for instance changing national constitutions by inserting so-called ‘European and Euro-Atlantic integration’ clauses, as happened in the 2014 EU-associated and long-time European integration-oriented Georgia (2017) and Ukraine (2019).<sup>46</sup> To a lesser degree, changes in at least ‘constitutional identity’ can be observed in the context of Europeanisation through even less-ambitious EU bilateral agreements with its neighbour states, such as the 2017 EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA).<sup>47</sup> Substantially, the processes of EU neighbour state-building extend well beyond discursive frames and geopolitical narratives, cultural affinities, policy emulation or political simulations – they reach into quintessential constitutional-legal and identitarian fabrics of nation- and state-building.

<sup>43</sup> M Orenstein, S Bloom, and N Lindstrom, ‘A Fourth Dimension of Transition’ in M Orenstein, S Bloom, and N Lindstrom (eds), *Transitional Actors in Central and East European Transitions* (University of Pittsburgh Press 2008) 6.

<sup>44</sup> Wolczuk (n 42) 737.

<sup>45</sup> Tyushka (n 36) 49-55.

<sup>46</sup> For a more detailed analysis of constitutional change in response to Europeanisation in select post-Soviet states, see Roman Petrov and Peter Van Elsuwege (eds), *Post-Soviet Constitutions and Challenges of Regional Integration: Adapting to European and Eurasian Integration Projects* (Routledge 2017).

<sup>47</sup> See eg Anna Khvorostiankina, ‘Europeanization through EU External Agreements and the Issue of “Constitutional Identity”: The Case of the EU-Armenia CEPA’ (2018) 4 *Kyiv-Mohyla Law and Politics Journal* 15.

Notably, in contrast to EU ‘member state-building’ politics, with its overemphasis on accession conditionality, the ‘neighbour state-building process’ unfolds in differently conditioned frameworks of the European Union’s positive incentives and negative conditionality clauses (ie differentiated conditionality: ‘more for more’ and ‘less for less’, respectively). Last but not least, the practices of EU member and neighbour state-building are neither mutually exclusive nor mutually deterministic: transition between the two can (but does not have to) happen – and if it does, it proceeds not necessarily in a linear way. In addition to EU-accession aspiring neighbours in South-Eastern Europe, there are, for instance, other European neighbours (Switzerland, EEA states) that do not pursue any membership in the European Union. On the other hand, the UK’s withdrawal from the EU clearly demonstrates that a neighbour-to-member-to-neighbour transition is not impossible either. The ties that are expected to bind the EU and UK post-Brexit, however, will not allow this transition to revert back to the point of UK being an ‘ordinary’ nation-state – there is no comeback to the *status quo ante*.<sup>48</sup> The lasting and sustainable effects of EU member- or neighbour-statehood are thus central to the consequentialist logic of European Union member and neighbour state-building.

### **3 Mission ‘Transition’: from ‘post-Communist’ states to European Union associates**

After (re)gaining their independence in 1989/90 following the collapse of communism, the fall of the ‘Eastern Bloc’ and the dissolution of the Soviet Union itself, most East-Central European countries started pursuing their ‘return to Europe’ in both discursive and political terms – chiefly via transitioning to liberal democratic and market-based political and economic systems, as well as seeking integration with Western institutions including the European Union and NATO. In political, economic and legal terms, such a ‘return to Europe’ of the CEECs was set to unfold initially as a process of drawing the post-Communist countries closer

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<sup>48</sup> Even though the Brexit campaign, as a sovereigntist move, revolved around the motto of ‘taking back control’, ie restoring the UK’s full sovereignty in decision-making, it is hardly imaginable that, under any constellation of post-Brexit EU-UK structured engagement, the need for the pooling of sovereignty will be ruled out. Managing EU-UK and inter-state externalities in trade and services at the very least will still necessitate shared law-making, binding for both parties, practised self-restraint in view of the political commitments undertaken, as well as the pooling of sovereignty for the sake of joint decision-making. Consequently, the reality of sovereignty post-Brexit is more complex than conventionally portrayed, as admitted, for instance, by British MP Lord Wallace. See Lord Wallace, ‘The Reality of ‘Sovereignty’ Post-Brexit Is More Complex Than the Government Lets On’ (*PoliticsHome*, 31 March 2020) <[www.politicshome.com/thehouse/article/the-reality-of-sovereignty-post-brexit-is-more-complex-than-the-government-lets-on](http://www.politicshome.com/thehouse/article/the-reality-of-sovereignty-post-brexit-is-more-complex-than-the-government-lets-on)> accessed 18 August 2020.

to the European Union (and thus – transition) via association, but soon it transformed into a more comprehensive process of politico-economic state transformation via EU accession.

Following two decades of stagnation in the 1970s and 1980s, the CEECs' transition from a planned to a market-based economy was anything but a quick and easy process, and neither was their political transition from closed, widely authoritarian socialist and communist regimes to open and liberal democratic orders. Exceptions applied, of course, in particular regarding the Baltic states, which just regained their independence after the semicentennial Soviet rule, and Hungary. The latter had opened up quite early enough to allow for an intensified exchange with the Western world and was better-placed to pursue democratic transition due to the 'lighter' version of communism it introduced following the 1956 revolution, which allowed for greater cultural diversity and personal freedoms, as well as featuring elements of a regulated-market economy (so-called 'goulash communism' or Kadarism). Poland's case is a vivid example of how a shock to the system triggered a simultaneous political and economic transition in a very short period: the 1989 victory of the *Solidarność* opposition movement, founded as a trade union in 1980, and the subsequent formation of an all-party Christian-democratic government paved the way for the establishment of liberal democracy and a free-market economy; the 'shock therapy' approach to economic reform, introduced by finance minister Leszek Balcerowicz (known as the 'Balcerowicz plan'), brought about a swift transformation of the country's economic foundations.

Whereas the international-systemic preconditions created momentum for Central and East European states' democratisation and free-marketisation, the profound transformation processes in the countries were chiefly boosted and sustained by their drive to 'return to Europe'.<sup>49</sup> Thus, the (hi)story of the CEECs' post-1989 transformation is inherently a story of their EU and NATO accessions and their performance as members of an integrated and institutionalised Europe.

As soon as the post-Soviet Baltic republics and other post-socialist East-Central European states charted their pro-integrationist European development paths in the early 1990s, the EC-12 (and, from 1995, the EU-15) were quick to embrace and support the CEECs in their fundamental political and economic reconstruction agendas – even if the prospect of the CEECs' EU membership was generally regarded by the EU's decision-makers as unrealistic any time soon. By an overwhelming

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<sup>49</sup> Andrew Roberts, 'Democracy and Democratisation in Post-Communist Europe' in Adam Fagan and Petr Kopecky (eds), *The Routledge Handbook of East European Politics* (Routledge 2018).



majority, the EC-12 citizens welcomed in 1991 the then-Community's enlargement to the Baltic (72%) and other Soviet (61%) states, whereas only 15% and 22% of European citizens objected to such a move, respectively.<sup>50</sup> Remarkably, these were the British who were most positive about the EC's enlargement to both the Baltic (81%) and the Soviet (76%) republics.<sup>51</sup> The 1999 *Flash Eurobarometer no 68* shows, however, that the EU-15 was not equally optimistic when it came to the assessment of real possibilities for former Socialist and post-Soviet Baltic states to join the EU in the nearest future: while, in general, the majority held the view that only Hungary (56%), Poland (55%) and conditionally Czechia (50%) would likely make it to become EU members soon, only about a third of EU citizens thought that Romania (29%), Bulgaria (28%) and Estonia (24%) would make it, too, in the near future.<sup>52</sup> Any quick moves along this path were also discouraged by the majority of the then-EU member states.

Being itself busy with its EFTAn enlargement round<sup>53</sup> and preparing for the launch of the Economic and Monetary Union (EMU), the European Union saw itself far from ready to absorb a further dozen states-in-transformation from the changing region.

The June 1993 Copenhagen European Council was a game-changer in the sense that, in anticipation of the CEECs' forthcoming EU membership applications, it, for the first time ever, formulated the conditions for EU accession (widely known as the '*Copenhagen criteria*').<sup>54</sup> The 1993 European Council Conclusions put it explicitly that 'the associated countries in Central and Eastern Europe that so desire shall become

<sup>50</sup> Flash Eurobarometer No 6: 'EG-Bürger und Manager Meinung zu: EG-Mitgliedschaft der Baltischen- und der Sowjetrepubliken; EG-Initiativen in Jugoslawien; Allgemeiner Agrarpolitikreform; Sommer-Streiks in der EG-Kommission' (9-23 September 1991) 2.

<sup>51</sup> *ibid.*, 3

<sup>52</sup> Flash Eurobarometre 68: 'L'élargissement de l'Union Européenne' (20 July 1999) 7.

<sup>53</sup> The 1995 Enlargement of the European Union (aka 'the EFTAn Round') included the accession of three of the European Free Trade Association's (EFTA) members – Europe's neutral states of Austria, Finland and Sweden.

<sup>54</sup> Essentially, the 'Copenhagen criteria' for EU accession laid out a set of economic and political system-related preconditions for EU membership-fitness of the candidate countries and anchored the EU's own absorption capacity as a necessary precondition for any future enlargement: 'Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union. The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries' (European Council (n 55) 13).

members of the European Union', whereby '[a]ccession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required'.<sup>55</sup> Essentially, these preconditions included, *inter alia*, the would-be EU member states' achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for, and protection of, minorities – all of which have become, in recent years, points of contention between the EU institutions, 'old' member states and some 'new(er)' Europe countries. The Copenhagen criteria were introduced to ensure both political and economic convergence between 'old' and 'new' EU member states – and the commitment and ability of the latter to adopt and effectively implement EU laws and policies, ie the EU *acquis*. Seen from the member state-building perspective, the Copenhagen criteria represent not only basic legal aspects of EU enlargement<sup>56</sup> – they embody some of the core socio-economic, political-administrative, legal and constitutional parameters of EU member-statehood, which since then has also become developed through several rounds of treaty revisions, EU-level adjudication on the nature of EU law, the member states' obligations and responsibility for infringements, internal market freedoms, etc, as well as the ensuing consensual-political practices.

In March 1994, Hungary became the first CEEC to apply for EU membership. Within the next two years, all of the CEEC-10 had filed their EU accession applications. As the state and pace of reforms in the then-associated CEECs differed, the European Commission recommended, in its *Agenda 2000* Communication of July 1997,<sup>57</sup> the opening of negotiations with only five of them (namely, the Czech Republic, Estonia, Hungary, Poland and Slovenia), while halting negotiations with the other half until their economic (Bulgaria, Latvia, Lithuania, Romania and Slovakia) and political (Slovakia) transitions were further advanced. Cyprus was, too, included in the first-wave negotiations, whilst Malta had then temporarily suspended its application. Thus, in March 1998, the European Council launched negotiations with the '5+1 first wave' EU accession candidates, whereas the other half were stuck in the waiting room until early 2000. Following the 1999 Helsinki European Council, both the opening of accession negotiations with the '5+1 second-wave' states and the overall revision of the enlargement strategy ensued. Even though the

<sup>55</sup> European Council in Copenhagen, 'Conclusions of the Presidency' (21-22 June 1993) 13 <[www.consilium.europa.eu/media/21225/72921.pdf](http://www.consilium.europa.eu/media/21225/72921.pdf)> accessed 20 July 2020.

<sup>56</sup> Thomas Bruha and Oliver Vogt, 'Rechtliche Grundlagen der EU-Erweiterung' (1997) 30(4) *Verfassung und Recht in Übersee* 477.

<sup>57</sup> Commission, 'Agenda 2000: For a Stronger and Wider Union' COM(97)200 final (Strasbourg, 15 July 1997) <[https://ec.europa.eu/commission/presscorner/detail/en/DOC\\_97\\_6](https://ec.europa.eu/commission/presscorner/detail/en/DOC_97_6)> accessed 20 July 2020.

1999 Council conclusions warned against any ‘wholesale’ approaches and prescribed decision-making on the CEECs’ accession in each case individually (based on a country’s progress in negotiations), ultimately, the EU’s fourth (the so-called ‘10+2’ or ‘big bang’) enlargement round of 2004/07 involved effectively all ten Central and Eastern European countries (CEECs) and the two Mediterranean islands of Malta and Cyprus. Whereas the accession treaties with eight CEECs and Malta and Cyprus were duly signed in April 2003 (with their EU accession planned for May 2004), two CEECs – Bulgaria and Romania – lagged behind in their reforms and negotiations for several more years, owing such a delay not least to the protracted corruption in the public sphere and the ‘fragile robustness’ of their judicial and public administration systems, until they finally joined the EU in January 2007.

Whereas the circumstances of individual countries varied, most of the 2004/07 CEECs admittees to the EU had been undergoing wholesale transformation of their social-political, institutional, and economic orders. It was clear that the European Union would be profoundly changed by that enlargement – the mission was not to let the EU become weakened by it. Contractual frameworks, with thoroughly stipulated transformation and approximation agendas, benchmarks and rewards (from financial and technical assistance to EU membership for those who successfully complete the path of becoming *EU*ropean), the so-called ‘Europe Agreements’, were seen as appropriate tools to prepare both the candidate states for their EU accession and the European Union itself for this uptake.

Re-designed into pre-accession tools, the EU’s association agreements with the CEECs (aka ‘*Europe Agreements*’)<sup>58</sup> were all seeking to facilitate the 1989-commenced economic and political transition of Central and Eastern European states, and foresaw economic aid therefor – but each pursued distinct areas of intervention. As scrupulously observed by Phinnemore,<sup>59</sup> distinct Europe Agreements had aimed to ‘support the efforts of the associate “to complete the conversion to a market economy” (Hungary, Bulgaria, Romania, Latvia, Lithuania and Slovenia), “make progress towards realizing [...] economic freedoms on which the EC is based” (Hungary), and “consolidate [...] democracy” (Romania)’, as well as “to provide decisive support for the implementation of reform and to help

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<sup>58</sup> Initially, the European Commission was not planning to include EU membership as an objective of EU-CEECs Association Agreements but just to reassure the countries that the ‘association’ relationship would not anyhow preclude the possibility of them gaining membership. Cf Commission, ‘Association Agreements with the Countries of Central and Eastern Europe: A General Outline’ COM(90)398 final (Brussels, 27 August 1990).

<sup>59</sup> David Phinnemore, *Association: Stepping-Stone or Alternative to Membership?* (Sheffield Academic Press 1999) 44.

[the associate] cope with economic and social consequences of structural readjustment” (Poland, Czech Republic, Slovakia, Romania and Slovenia). In addition to financial cooperation and the special technical and pre-accession assistance programmes (such as PHARE),<sup>60</sup> the making of the CEECs EU membership-fit was facilitated by political dialogue, legislative and regulatory approximation and gradual policy harmonisation – first and foremost, in the horizontal areas of competition and state aid.<sup>61</sup>

From among the CEECs, the three Baltic states – Estonia, Latvia and Lithuania – present a unique collective case of by far the only post-Soviet republics that rapidly and successfully ‘returned to Europe’. In fact, their ‘re-becoming’ European was only formalised via successive EU and NATO accessions, as even when they had been part of the Soviet Union, the Baltic republics were substantially regarded as ‘intrinsically European’ states, a quasi-abroad, rather than genuinely belonging to the Soviets.<sup>62</sup> Still, after more than forty years of Soviet occupation and ‘de-Europeanisation’, ‘catching up’ with the CEECs was looming large – and, thus, rather unsurprisingly, the political and economic conditionality (including the anchoring of the respect for democratic principles and human rights as well as the principles of a market economy as ‘essential elements’ of the agreements) were enhanced in the EU’s association agreements with the Baltic states when compared to the *Europe Agreements* with other CEECs.<sup>63</sup> As carefully observed by Graney,<sup>64</sup> whereas the ‘post-Soviet Lithuania has highlighted its long tradition of independent statehood under the Grand Duchy of Lithuania and as part of the Polish-Lithuanian Commonwealth’, ‘the “re-Europeanization” of Estonian and Latvian history after the Soviet interlude emphasized the long European pedigree of these states and peoples, including the assertion that they had been part of Europe at least since Roman times’. In addition to this discursive rejoining of Europe by being ‘convincingly European’, the then-demonstrated and sustained ability of the Baltic states

<sup>60</sup> PHARE had been the EU pre-accession support programme originally allocated in 1989 for Poland and Hungary, an acronym from the official title ‘Poland and Hungary: Assistance for Restructuring Economies’ (Phare). Since 1990, Phare has been extended to Bulgaria, Czechia, Slovakia, Romania, Estonia, Latvia, Lithuania and Albania and other European countries (seventeen in total by 2000).

<sup>61</sup> Cf, eg, Commission, ‘The Europe Agreements and Beyond: A Strategy to Prepare the Countries of Central and Eastern Europe for Accession’ (Communication) COM(94) 320 final.

<sup>62</sup> Bruce Grant, *The Captive and the Gift: Cultural Histories of Sovereignty in Russia and the Caucasus* (Cornell University Press 2009) 154.

<sup>63</sup> Elsuwege (n 29) 129-155.

<sup>64</sup> Katherine Graney, *Russia, the Former Soviet Republics, and Europe since 1989: Transformation and Tragedy* (OUP 2019) 179.

to 'act European'<sup>65</sup> facilitated what can be regarded as the most successful case of resilient transition and transformation *qua* Europeanisation.

#### **4 Under (re)construction: European Union member state-building through the CEECs' re-Europeanisation and the arrival of the 'new' EU member states**

The EU's biggest-ever 2004 enlargement to countries of East-Central Europe, which had been in traction since the mid-1990s, presented something truly mesmerising and challenging at the same time – not least as the joining of a whole new cohort of states could halt institutional functioning, decision-making or even the very idea of a 'union'. The necessity to reform the EU had thus already been looming large past Amsterdam-1997<sup>66</sup> – the Intergovernmental Conference (IGC) of 2000, the reformed Treaty of Nice (2001) and the 'Future of Europe' debate following the 2001 Laeken Declaration all sought to prepare the EU, in one way or another, for the 'big bang' enlargement.

The European public, too, had been watching the process cautiously. When it comes to the challenges for the EU in enlarging eastwards, EU citizens identified in early 2003 the following three nearly equally salient priorities, with the promotion of democracy within the EU decision-making processes seen as the prime objective (27%), followed by the need to strengthen the Union's foreign and security policies (23%), and the need to promote an exchange of experiences and good practices between older and newer member states (19%), respectively.<sup>67</sup>

To ensure that the EU's decision-making capacity, the *acquis communautaire* and unity would be neither impaired nor undermined, a multidimensional process of 're-Europeanisation' was set in motion. Thereby, the CEECs' 'return to Europe' was facilitated through distinct catch-up, convergence- and transformation-oriented assistance programmes. Distinct democratic transition- and market access-related *conditionality*<sup>68</sup> mechanisms were integrated in those assistance programmes as part of reward and sanctioning tools. Quintessentially, the democratic and

<sup>65</sup> *ibid*, 177. For a more detailed analysis, see *ibid*, 171-209.

<sup>66</sup> The 1996 IGC, too, focused on preparing the EU institutionally for enlargement, but the 1997 Amsterdam Treaty revision largely failed to deliver on this goal. Right after the Amsterdam European Council, the European Commission published in July 1997 its influential Communication Agenda 2000: For a Stronger and Wider Union, which served as a blueprint for the post-EFTAn enlargement strategy. See Commission (n 57).

<sup>67</sup> Flash Eurobarometer 140: 'Enlargement of the European Union' (11 April 2003) 33.

<sup>68</sup> Geoffrey Pridham, 'Change and Continuity in the European Union's Political Conditionality: Aims, Approach, and Priorities' (2007) 14(3) *Democratization* 446; Luca Tomini, *Democratizing Central and Eastern Europe. Successes and Failures of the European Union* (Routledge 2015).

free-market conditionality mattered *equally* for both the CEECs' own transformation and their transition to 'EU member statehood' inasmuch as 'the rule of law and open economies' have long been regarded as 'two sides of the same coin', as emphasised by the 2004-2014 President of the European Commission José Manuel Barroso.<sup>69</sup>

For the CEECs to catch up with the EU average in terms of economic growth and income, the European Union invested massively to support the new member states' drive – first, through its Cohesion policy (set up in 1994) and, since 2014, through the Investment Plan for Europe (aka 'the Juncker Plan'). As a result, from 2003 through 2017, GDP per capita in the ten new EU member states grew unprecedentedly by 84%.<sup>70</sup> A wealth of other positive results on the ground included the bettering of socio-economic conditions, business and investment, infrastructure, connectivity, as well as the quality of life in general. In the case of Poland, for instance, these thirty years of transformation have allowed the country to considerably narrow the gap in the level of socio-economic development compared with developed countries: if in 1989 the estimated average GDP per capita (PPP) made up only 34.2% of the G7 countries' PPP average, by 2019 it had already increased to 61.7%.<sup>71</sup> Steady growth has also been noted in labour productivity and gross savings rates thirty years on.

The positive image and the narratives of enlargement success could also be identified in EU public attitudes. In contrast to the worries expressed in the 2003 Eurobarometer surveys, in 2009, EU citizens overwhelmingly saw the integration of the CEECs into the EU in terms of possibilities and added values, rather than as challenges, inasmuch as 92% regarded the Union's 2004/07 eastward enlargement conducive to increased opportunities to move and travel freely within Europe, 76% agreed that the enlargement had contributed to modernisation and growth in CEEC economies, 73% held that it facilitated the spread of democratic values and protection of human rights and, equally, 73%

<sup>69</sup> José MD Barroso, 'The Rule of Law and Open Economies – Two Sides of the Same Coin', Speech by EC President Barroso (14/403), Brussels, 22 May 2014, <[https://ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_14\\_403](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_14_403)> accessed 18 September 2019.

<sup>70</sup> Commission, 'Reconciling Europe's Geography with Its History: Commission Marks 15th Anniversary of 2004 Enlargement', 30 April 2019 <[https://ec.europa.eu/regional\\_policy/en/newsroom/news/2019/04/30-04-2019-reconciling-europe-s-geography-with-its-history-commission-marks-15th-anniversary-of-2004-enlargement](https://ec.europa.eu/regional_policy/en/newsroom/news/2019/04/30-04-2019-reconciling-europe-s-geography-with-its-history-commission-marks-15th-anniversary-of-2004-enlargement)> accessed 30 April 2019. For general and country-specific data on EU-CEEC convergence and cohesion policies, see also Commission, 'Growing Together: EU Support to Member States that Joined in 2004 (Factsheet)' 30 April 2019 <[https://ec.europa.eu/commission/publications/growing-together-eu-support-member-states-joined-2004\\_en](https://ec.europa.eu/commission/publications/growing-together-eu-support-member-states-joined-2004_en)> accessed 30 April 2019 .

<sup>71</sup> Marcin Zieliński, 'Tak Polskę zbudowano. 30-lecie planu Balcerowicza' (*Gazeta Wyborcza*, 1 January 2020) <<https://wyborcza.pl/7,75968,25559301,tak-polske-zbudowano-30-lecie-planu-balcerowicza.html>> accessed 20 July 2020.

were convinced that the enlargement had helped increase the European Union's global role,<sup>72</sup> among other things.

About 7 in 10 EU citizens (58%) agreed in 2009 that the 2004/07 enlargement had helped to preserve security and stability in Europe (not least by allowing for progress in the fight against organised crime and illegal immigration), whereas at least half or more respondents worryingly considered that the enlargement had: made the enlarged EU more difficult to manage (66%); contributed to job losses in their country (56%); caused problems because of divergent cultural traditions of the new member states (54%); led to an increased feeling of insecurity (50%) in the European Union as a whole.<sup>73</sup>

Naturally, the reshaping of the EU's political system and strategic milieu for multi-level policy-making in principle, not least by nearly doubling its membership, has seen the intensification of (temporal, geographical and policy-specific) differentiation trends criss-crossing Europe. It has incrementally been seen turning into a 'two-speed', 'multi-speed', 'multi-tier' and so forth differentiated Union (commonly referred to as a '*variable geometry Europe*') as the quantity and issue-areas of enhanced cooperation, advanced integration as well as persistent 'opt-outs' started proliferating – from the Schengen area to the Area of Freedom, Security and Justice (AFSJ), from the Eurozone area to the European Stability Mechanism (ESM), the Common Security and Defence Policy (CSDP) or enhanced Permanent Structured Cooperation (PESCO), etc. Looking into the manifold dimensions of constitutional and instrumental differentiation in the European Union, Schimmelfennig and Winzen<sup>74</sup> discovered that the founding members of the EU *almost* never stayed out of any deepening of European integration, whereas other 'old' member states, in particular the UK, Ireland and Sweden, account for 50% of all differentiation ('opt-out') clauses. Similarly, the state and politics of differentiated integration vary among the 'new' EU member states, with 'some of the 2004 accession countries [likely to be] in the process of transitioning into trajectories similar to Britain or Denmark'.<sup>75</sup> On a general level, however, within about ten years after their EU accession, the 'new' member states from East-Central Europe had become *nearly* fully integrated at treaty-level and converged with 'old' member states in the dimension of legislative differentiation.<sup>76</sup>

<sup>72</sup> Flash Eurobarometer 257: 'Views on European Union Enlargement' (February 2009) 5.

<sup>73</sup> *ibid.*, 30.

<sup>74</sup> Frank Schimmelfennig and Thomas Winzen, *Ever Looser Union: Differentiated European Integration* (OUP 2020) 58.

<sup>75</sup> *ibid.*, 59.

<sup>76</sup> *ibid.*, 107-119.

Of course, the results of transformation and Europeanisation on the ground are much more complex and ambivalent than allowing a simplistic yes/no answer to a question on its success. Both among the 'new' EU member states and the 'older' ones, the CEECs' transformation qua EU enlargement is seen at best as a mixed success. Early signs of scepticism about the transformative power of European integration and the unfinished transition of CEECs were already noticed in the 2005 failed referenda on the EU constitution in France and the Netherlands, where the EU's unpopularity was *inter alia* blamed on the 'new' EU members. Social tensions across the EU (both along the old *East/West divide* and the emerging *liberal/illiberal rupture*) became even more pronounced with new-era systemic shocks, such as the Russian aggression against Ukraine, Europe and the liberal democratic order more generally, the rise of radical parties in Europe, the Euro and the migration crisis, the arrival of the post-truth era, etc.

### **5 *Europeanisation revisited: an illiberal turn, (varied) transition resilience and de-democratisation trends in EU member states***

Democratic governance, the rule of law, respect for fundamental freedoms and human rights are not only at the heart of the EU's member state-building drive but also constitute a salient agenda in the Union's external relations, underpinned by a differentiated conditionality policy. Within the EU itself, however, the safeguarding of the above-mentioned values and principles has until recently remained a largely theoretical exercise as, effectively, no post-accession conditionality mechanisms have been put in place. Acceding to the European Union, the CEECs successfully pursued their longed-for 'return to Europe'. *Conditionality-induced Europeanisation* has substantially driven the EU's 'new' member states' liberal-democratic and market-economic transitions. With the loss of the most credible incentive – ie the EU accession/membership perspective – the CEECs' *post-accession* trajectories of democratic performance and EU member state-building seem to have lost traction and, in certain cases, direction.

Examining the credibility and sustainability of conditionality-induced Europeanisation in the EU's Central and East European 'new' member states, Schimmelfennig and Sedelmeier<sup>77</sup> find that incentive-driven pre-accession Europeanisation loses its force in post-accession conditions, thus affecting the determinacy of compliance; furthermore, the absence of positive rewards (and, thus, the possibility of only

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<sup>77</sup> Frank Schimmelfennig and Ulrich Sedelmeier, 'The Europeanization of Eastern Europe: The External Incentives Model Revisited' (2020) 27(6) *Journal of European Public Policy* 814.



negative conditionality – ie sanctions – being applied) in post-accession conditions and the lack of credible, specified and effective mechanisms of post-accession democratic conditionality, which could clearly communicate/elicit the costs of non-compliance, *disincentivise* compliance in principle (especially when it comes to non-acquis matters). Nonetheless, Schimmelfennig and Sedelmeier's<sup>78</sup> comparative study reveals that '[t] here is no general and sustained deterioration of democracy in the CEE new member states, [... but] there are cases in which backsliding clearly manifests itself in breaches of liberal democratic rules', namely Hungary (since 2010), Poland (since 2015) and Romania (temporarily, in 2013).<sup>79</sup> In addition to *generally* sustained liberal-democratic compliance post-accession, *most* of the CEE 'new' member states also 'outperform most old member states', with the exception of Poland that 'has become a compliance laggard in the enlarged EU'.<sup>80</sup>

Still, the slow(ed) progress and sporadic setbacks of Europeanisation and the (under)performance of member-statehood in a number of 'new' EU member states appear a considerable challenge for the EU in the face of its internal discontents and misdevelopments. These include, but are not limited to, the UK's departure, or 'Brexit', the rise of populism and the radical right,<sup>81</sup> as well as the broader international circumstances, such as the crisis of liberal-democratic transformation and the liberal international order more generally. Such developments cannot but cast a shadow on the successes and sustainability of democratic and socio-economic 'transformation *qua* Europeanisation', as well as the resilience of transition to EU member-statehood. The United Kingdom's lasting and disenchanting withdrawal from the European Union unprecedentedly proves that EU member-statehood can be *undone* also quite formally and legally – and accomplished even after building-up such a status for over four decades of membership. Not surprisingly, the rise of contentious populist politics, illiberalism and Euroscepticism elicit concerns about (even the scantest) possibility of any next disintegration moves – 'Polexit', 'Czech-out', 'Slovakexit', 'Hungarexit', or 'Italeave', etc, as popular public and political discursive frames incrementally suggest.

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<sup>78</sup> *ibid*, 821.

<sup>79</sup> Similar conclusions were made in the earlier-published statistical analysis by Börzel and Schimmelfennig (n 18) 283. See also Daniel Bochsler and Andreas Juon, 'Authoritarian Footprints in Central and Eastern Europe' (2020) 36(2) *East European Politics* 167.

<sup>80</sup> Schimmelfennig and Sedelmeier (n 77) 820.

<sup>81</sup> Bojan Bugarič, 'The Rise of Nationalist-Authoritarian Populism and the Crisis of Liberal Democracy in Central and Eastern Europe' in Uladzislaw Belavusau and Aleksandra Gliszczyńska-Grabias (eds), *Constitutionalism under Stress* (OUP 2020) 21-37.

In November 2018, European Council President Donald Tusk pondered on the multiple crises that have been unfolding in Europe since the late 2000s:

We have a situation inside the European Union, a situation which is illustrated most clearly by Brexit – the departure of the United Kingdom from the European Union, but also many other negative phenomena – [...] the rise of nationalism and anti-European, not only rhetoric, but also anti-European emotion, in many European capitals.<sup>82</sup>

Added to this is the rise of illiberalism with the simultaneous decline of democracy, among other ontological crises of European integration and *union*.

The relative decline of democracy and the slowdown of the fourth and subsequent waves of democratisation worldwide have triggered the emergence of hybrid forms of semi-democratic government, most commonly referred to as ‘illiberal democracy’, which many thinkers would find an illogical, oxymoronic and self-defeating term. As ‘*liberal vs illiberal*’ cracks have also appeared on the political map of Europe, it comes as no surprise that the latter one, too, has become redefined in such terms. Currently, two substantially different contemporary ways of defining Europe and Europeaness can be singled out. As deftly summarised by Graney,<sup>83</sup> the *first* is “a modern, EU-oriented” view of Europe, “embraced mainly by elites,” that is predominantly secular and based on the possession of more extrinsic characteristics based on common fidelity to values and behaviours such as liberal democracy, tolerance, and human rights; the *second* is ‘more populist and finds Europe to be essentially “a group of white, Christian peoples that see themselves constituting a distinct civilization”’. The former is ‘the cosmopolitan, the civic, and the liberal view, according to which Europe is chiefly a values-based civilization’, whereas the latter is an ‘illiberal, communal and cultural’ view, which is ‘based on intrinsic characteristics that certain “European” countries and peoples have developed as a result of their historical experience’.<sup>84</sup>

In light of the above divisions, again, the perception has resurfaced of East-Central Europe being at once both ‘Europe but not Europe’.<sup>85</sup>

<sup>82</sup> Donald Tusk, ‘Poland and Europe. Two Anniversaries, Two Lessons’, Speech by European Council President Donald Tusk, 11 November 2018 <[www.consilium.europa.eu/en/press/press-releases/2018/11/10/speech-by-president-donald-tusk-november-11-2018-poland-and-europe-two-anniversaries-two-lessons/](http://www.consilium.europa.eu/en/press/press-releases/2018/11/10/speech-by-president-donald-tusk-november-11-2018-poland-and-europe-two-anniversaries-two-lessons/)> accessed 18 September 2020.

<sup>83</sup> Graney (n 64) 43.

<sup>84</sup> *ibid.*

<sup>85</sup> Maria Mälksoo, *The Politics of Becoming European: A Study of Polish and Baltic Post-Cold War Security Imaginaries* (Routledge 2010) 57.

In his book *Counter-Revolution: Liberal Europe in Retreat*, Zielonka<sup>86</sup> explores the undercurrents of the proliferating counter-revolution in Europe which risks throwing back East-Central Europe to the past inasmuch as the space for the liberal project is shrinking there due to both endogenous and particularly exogenous pressures of ‘anti-liberal insurgents’ from all over the continent. He clearly makes a case for such an anti-liberal revolution unfolding well beyond the hotly debated cases of Hungary and Poland:<sup>87</sup>

Today, the entirety of Europe is in a state of confusion, with the liberal system beginning to crumble not just in Warsaw and Budapest, but also in London, Amsterdam, Madrid, Rome, Athens, and Paris. Europe’s citizens feel insecure and angry. Their leaders look incompetent and dishonest. Their entrepreneurs seem frantic and distressed. Political violence is on the rise, chiefly because of terrorism, but not just.<sup>88</sup>

It looks, though, that the resurrected good-old East/West divide in Europe no longer runs strictly across geographical or historical lines – but incrementally along the emerging identitarian watershed of ‘liberal/illiberal’ Europe.

Nonetheless, these were the two ‘new’ EU member states from the 2004/07 Eastern enlargement round – Poland and Hungary – that had fingers pointed at them first when Brussels decided to withstand the tide of illiberalisation and thus to seriously – ie by way of legal action – enforce the rule of law and democracy within the European Union.

Against all original fears and expectations about the imminent potential difficulties associated with the inclusion to the EU of fairly young East-Central European democracies, Article 7 TEU, introduced into the EU Treaty by the Treaty of Amsterdam back in 1997, found its application only after some twenty years. *Article 7 TEU*, or the so-called ‘yellow card’, provides for ‘a special decision-making procedure, with limited jurisdiction for the Court of Justice’, which is to be enacted in order ‘to warn a Member State which might commit a serious and persistent breach’ of the *principles* and *values* upon which the European Union is founded, as expressed *inter alia* in Art 2 TEU.<sup>89</sup> It was not until Poland and Hungary

<sup>86</sup> Jan Zielonka, *Counter-Revolution: Liberal Europe in Retreat* (OUP 2018). See also Jan Zielonka and Jacques Rupnik, ‘From Revolution to ‘Counter- Revolution’: Democracy in Central and Eastern Europe 30 Years On’ (2020) 72(6) *Europe-Asia Studies* 1073.

<sup>87</sup> Importantly, it was the Netherlands and France (not any of the ‘new’ EU member states) that in 2005 failed the Treaty Establishing a Constitution for Europe (TCE) and thus further integration, liberalisation and constitutionalisation of the EU.

<sup>88</sup> Zielonka (n 86) x.

<sup>89</sup> Steve Peers, *EU Justice and Home Affairs Law: EU Justice and Home Affairs Law* (Volume I: EU Immigration and Asylum Law, OUP 2016) 50. Notably, the so-called ‘yellow card’ procedure as applicable within the EU’s area of freedom, security and justice (ie Art

celebrated their fifteenth anniversary of EU membership that Art 7 TEU was triggered for the first time ever.<sup>90</sup>

It is hard to disagree with Zielonka<sup>91</sup> that Poland ‘has grown more than any European country over the past decade, yet in 2015 the majority of Poland’s electorate supported a counter-revolutionary party campaigning on an anti-liberal and anti-European ticket’; in the meantime, in Hungary, which was doing less well economically, ‘the combination of weak state capacity, incompetent economics, and corruption paved the way for an authoritarian, if not autocratic, leader such as Viktor Orbán’.<sup>92</sup>

Emblematically, the ‘banned manoeuvres’ in certain of the EU’s ‘new’ member states’ Europeanisation and convergence with the rest of the Union have also brought a new institutional discourse to the table – ie that of the Court of Justice of the European Union (CJEU), which until now has not been very explicit in matters of the successes and failures of the CEECs’ European integration and member-statehood qualities. Both Poland and Hungary have challenged the authority of the EU top court and the primacy of EU law in select aspects of multilevel governance.<sup>93</sup>

As part of the country’s sweeping judiciary reforms, Poland established in 2017 a special chamber charged to oversee judiciary discipline. Triggering the Article 7 TEU procedure, the EU Commission first raised concerns, delivered a reasoned opinion, and then brought an action to the EU’s top court complaining about the disciplinary chamber’s independence – not least as it is dominated by judges selected by Poland’s ruling Law and Justice (PiS) party. The Polish Supreme Court also questioned the legitimacy of such a body in its own ruling. On 8 April 2020, the CJEU ruled in Case C-791/19 *Commission v Poland*,<sup>94</sup> ordering War-

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7 TEU, even though the treaties do not explicitly refer to any ‘coloured’ procedures) is to be distinguished from the ‘yellow card’ and ‘orange card’ procedures applicable within the EU law-making domain, under which the EU Member States’ national parliaments may object to a draft legislative act on grounds of the principles of subsidiarity and proportionality as set out in Art 7(2) and Art 7(3) of the Protocol (No 2) on the Application of the Principles of Subsidiarity and Proportionality (the so-called ‘Early Warning System’ (EWS)). See eg Michael Zander, *The Law-Making Process* (7th edn, CUP 2015) 440-441.

<sup>90</sup> On the EU’s legal framework for strengthening the rule of law (in Poland as well as EU-wide), see Agnieszka Grzelak, ‘Ramy prawne UE na rzecz umacniania praworządności. Uwagi na tle wniosku Komisji Europejskiej z 20 grudnia 2017 r.’ (2018) 2 *Sprawy Międzynarodowe* 213; Carlos Closa, ‘Institutional Logics and the EU’s Limited Sanctioning Capacity under Art 7 TEU’ (2020) *International Political Science Review* (OnlineFirst).

<sup>91</sup> Zielonka (n 86) 7.

<sup>92</sup> *ibid.*

<sup>93</sup> Zosia Wanat and Lili Bayer, ‘EU Top Court’s Authority Challenged by Poland and Hungary’ (*POLITICO*, 13 May 2020) <[www.politico.eu/article/ecj-authority-challenged-by-poland-and-hungary](http://www.politico.eu/article/ecj-authority-challenged-by-poland-and-hungary)> accessed 13 May 2020.

<sup>94</sup> Case C-791/19 *Commission v Poland*, Order (on interim measures) of 8 April 2020, ECLI:EU:C:2020:277.

saw to immediately suspend the functioning of a much-criticised judicial disciplinary chamber that may be used to undermine the independence of judges. The case resolution is still pending a final judgment on Poland's failure to fulfil its obligations under EU law as a member state.

As part of its larger 'balancing on the edge' strategy, Hungary has so far been avoiding direct conflict with the CJEU. In 2011, for instance, when the CJEU ruled against Budapest for effectuating a legal change that led to removing close to 300 judges from their posts, Hungary re-adjusted the retirement rules but never reinstated the change-affected judges to their previous (senior) positions. Similarly, in May 2020, it also backed down in its own clash with the CJEU over the (il)legality of placing asylum-seekers or third-country nationals in the Röszke transit zone at the Serbian-Hungarian border. Following the CJEU's judgement of 14 May 2020 in Joined Cases C-924/19 PPU and C-925/19 PPU,<sup>95</sup> the Hungarian authorities let detained people out of the barbed-wire compounds (officially called 'transit zones') but denied that this was a move in fulfilment of the EU top court's ruling.

In the same vein, Hungary has so far been balancing on the edge of activation of the 'Article 7' procedure in front of the court.<sup>96</sup> In September 2018, just a year after the Commission triggered action against Poland, the 'Article 7' procedure was *halfheartedly* triggered against Hungary over similar concerns on judicial independence and creeping democratic backsliding in the country, not least as prime minister V Orbán and his ruling party (Fidesz) have lately been increasingly challenging European Union rules and values on the rule of law, an independent judiciary, media and academic freedom and other foundational values.

As such law-related overtures risk(ed) spreading the 'authoritarian rot in Europe',<sup>97</sup> the European Parliament voted on 12 September 2018 for action against Hungary, alleging breaches of the core values

<sup>95</sup> Joined Cases C-924/19 PPU and C-925/19 PPU *FMS and Others v Országos Idegenrendészeti Főigazgatóság Dél-alföldi Regionális Igazgatóság and Országos Idegenrendészeti Főigazgatóság* ECLI:EU:C:2020:367.

<sup>96</sup> Nanette Neuwahl and Charles Kovacs, 'Hungary and the EU's Rule of Law Protection' (2020) *Journal of European Integration* (OnlineFirst) 11-12.

<sup>97</sup> Kenneth Roth, 'Stopping the Authoritarian Rot in Europe' (EU Observer, 23 April 2020) <<https://euobserver.com/opinion/148147>> accessed 23 April 2020. R Daniel Kelemen contends that the EU has actually become trapped in an 'authoritarian equilibrium', owing to the trifecta of (1) the EU's 'half-baked' party politics and 'ingrained reluctance' to interfere in domestic politics of its member states, (2) the EU's contribution (funding, investment) to sustaining autocratic regimes among member states, and (3) the EU's internal market's freedom of movement that 'depletes the opposition and generates remittances, thereby helping these regimes endure'. See R Daniel Kelemen, 'The European Union's Authoritarian Equilibrium' (2020) 27(3) *Journal of European Public Policy* 481.

upon which the EU is founded.<sup>98</sup> Until now, however, no action has been brought in front of the court. The issue was reopened in late March 2020 when, faced with the spread of the coronavirus Covid-19 pandemic, the Hungarian Parliament granted the country's prime minister V Orbán the ability to rule by decree for an indefinite period. This development reactivated the debates in the European Parliament and gave the Commission a new push to consider activating the 'Article 7' procedure.

The scope of the problem is, however, much bigger and requires looking beyond the 'paradigmatic cases' of Hungary and Poland, as Cianetti and others posit.<sup>99</sup> The challenge of the proliferation of similar illiberal practices across EU member states has already urged EU institutions to think in terms of designing an EU permanent mechanism on democracy, rule of law and fundamental rights. Such legal creativity and mechanism strengthening appears necessary also for the reason that Polish 'resistance' to EU law supremacy and direct effect is not an episodic or the only case in point<sup>100</sup> – enforcement of Europe's foundational values in Central and Eastern Europe has both a mounting historical record and, most likely, will have a future, too.<sup>101</sup> With the proven and rather rare exception of the Baltic states in their transition to *full* democracies,<sup>102</sup> the other CEECs recurrently face the dangers of backsliding to illiberal paths: corruption scandals and lagging judicial reforms in Bulgaria and Romania, as well as *ad hoc* illiberal alliances of the Visegrád Group (aka 'V4') (Hungary, Poland, Czechia, and Slovakia) that run at odds with Brussels' liberal policies on migration and security, combined with repeated threats to judicial independence – all point to assessing these East-Central European states' transition to *liberal* democracy as *unfin-*

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<sup>98</sup> European Parliament Committee on Civil Liberties, Justice and Home Affairs, 'Report on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded' (2017/2131(INL)) 4 July 2018, Rapporteur: Judith Sargentini (aka 'Sargentini' Report) <[www.europarl.europa.eu/doceo/document/A-8-2018-0250\\_EN.html](http://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.html)> accessed 18 May 2020.

<sup>99</sup> Licia Cianetti, James Dawson and Seán Hanley, 'Rethinking "Democratic Backsliding" in Central and Eastern Europe: Looking beyond Hungary and Poland' (2018) 34(3) *East European Politics* 243.

<sup>100</sup> Izabela Kraśnicka, 'Reception of EU Law in Polish Courts: A Case of "Teddy Bear" Law' in Elzbieta Kuzelewska and others (eds), *European Judicial Systems as a Challenge for Democracy* (Intersentia 2015) 143-158.

<sup>101</sup> Tine Carmeliet and Georgia Christina Kosmidou, 'Enforcing Europe's Foundational Values in Central and Eastern Europe: A Case in Point' in Elzbieta Kuzelewska and others (eds), *European Judicial Systems as a Challenge for Democracy* (Intersentia 2015) 159-180.

<sup>102</sup> Licia Cianetti, 'Consolidated Technocratic and Ethnic Hollowness, But No Backsliding: Reassessing Europeanisation in Estonia and Latvia' (2018) 34(3) *East European Politics* 317-336.

ished<sup>103</sup> and *unresilient*.<sup>104</sup> In the Covid-19 pandemic and post-pandemic realities, these trends might not only accelerate<sup>105</sup> but also proliferate further across Central Europe, thus reversing the transformation trajectories to where it all began by way of de-Europeanisation and de-democratisation more generally.

The first signs of *reverse transformation* were recorded in the first decade of the 21<sup>st</sup> century, just twenty years after the CEECs stepped the path of democratisation and were gradually returning to Europe. As early as 2007, the scholarly community started discussing the region in terms of democratic decline, especially when it came to party systems and a growing populist backlash<sup>106</sup> – first and foremost, in the ‘nucleus of Central Europe, the four so-called Visegrád countries’ that have become ‘a real home for populism’.<sup>107</sup> During the 2008 global crisis and the ensuing 2008-2013 European financial crisis, the decline of the East-Central European ‘deficit democracies’ only accelerated, as argues Ágh,<sup>108</sup> paving the way for a ‘growing gap between the formal democracy and substantial democracy’ and thus rendering it ‘difficult to find the proper term for these hybrid polities between democracy and *non*-democracy’. He further makes the case for treating reverse-transition developments in Hungary since the 2010 elections at least as a ‘worst-case scenario’ but cautions as well that trends in other ECE countries are also worrying, not least as democracy becomes hollowed out and the ‘de-Europeanisation’ and

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<sup>103</sup> As an unfinished project, the progress of democratic development in East-Central Europe is hardly immune to both domestic and external challenges and threats of sorts. See Jan Holzer and Miroslav Mareš (eds), *Challenges to Democracies in East Central Europe* (Routledge 2016).

<sup>104</sup> In contrast to the partially problematic institutional and political fabrics of individual CEE counties’ transition, in economic, industrial-technological and environmental terms, the transition and resilience of East-Central European states and their regions have demonstrated a better – even though, uneven – track record. See, eg, Adam Drobniak, Adam Polko and Jan Sucháček, ‘Transition and Resilience in Central and Eastern European Regions’ in Gábor Lux and Gyula Horváth (eds), *The Routledge Handbook to Regional Development in Central and Eastern Europe* (Routledge 2018) 240-260.

<sup>105</sup> See eg Aleksandra Kustra-Rogatka, ‘Backgrounder: Poland’s Presidential Elections, Covid-19, and the Rule of Law Crisis’ (*Democracy Reporting International*, 4 May 2020) <[https://democracy-reporting.org/de/dri\\_publications/backgrounder-polands-presidential-elections-covid-19-and-the-rule-of-law-crisis](https://democracy-reporting.org/de/dri_publications/backgrounder-polands-presidential-elections-covid-19-and-the-rule-of-law-crisis)> accessed 4 May 2020.

<sup>106</sup> Jacques Rupnik, ‘From Democracy Fatigue to Populist Backlash’ (2007) 18(4) *Journal of Democracy* 17; Ivan Krastev, ‘Is East-Central Europe Backsliding? The Strange Death of the Liberal Consensus’ (2007) 18(4) *Journal of Democracy* 56.

<sup>107</sup> Ivan T Berend, *Against European Integration: The European Union and Its Discontents* (Routledge 2019) 74-75.

<sup>108</sup> Attila Ágh, ‘De-Europeanization and De-Democratization Trends in ECE: From the Potemkin Democracy to the Elected Autocracy in Hungary’ (2015) 8(2) *Journal of Comparative Politics* 4.

'de-Democratisation' trends deepen.<sup>109</sup> For the EU's political system and very existence as a liberal democratic supranational polity, such trends, if proliferated and exaggerated, may become detrimental to its ontological security.

The lagging behind, disruption and even reversal of the democratisation and Europeanisation processes can also be observed within the EU's neighbourhoods, including the 'new' Eastern European space.<sup>110</sup>

## **6 *Love thy neighbour: 'new' Eastern Europe, the European Union and neighbour state-building***

Following the general success of the 2004/07 eastward enlargement, the European Union embraced the logic of Europeanisation and EU member state-building also with regard to the Western Balkans candidate countries in *South-East Europe*, with Croatia having become the first of the seven countries to join the EU in July 2013, and accession negotiations opened with Montenegro and Serbia while being half-green-lit for Albania and North Macedonia; and remaining 'potential candidate countries' in the region, ie Bosnia and Herzegovina and Kosovo, being put on the waiting list. Importantly, the process of accession negotiations opening with Albania and North Macedonia, initially due to start in autumn 2019, stalled and were postponed despite major reforms on their part after France, supported by a small group of EU member states, vetoed the move and submitted instead a non-paper on a new – *enhanced* – enlargement methodology, which puts particular emphasis on the rule of law and *acquis* conditionalities<sup>111</sup> and seeks to drive a more partnership-based engagement with candidate states before their accession to the European Union.<sup>112</sup> Such a move evidently built on a crucial and sensitive moment in European integration and the EU's internal dynamics post-2010s.

Such political hesitance has also been supported publicly, as European citizens remain predominantly against further enlargement of the EU, as the 2014 polls showed: the idea is firmly supported by some 37%

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<sup>109</sup> *ibid.*

<sup>110</sup> Adam Szymański, 'De-Europeanization and De-Democratization in the EU and Its Neighborhood' (2017) 15(2) *Yearbook of the Institute of East-Central Europe (RIESW)* 187.

<sup>111</sup> On a more recent critique of a (quantitative) *acquis* alignment-based approach to the rule of law in its enlargement policy and the insufficient emphasis on the quality of the domestic change process as well as legality as a core element of the rule of law, see Lisa Louwerse, 'Mind the Gap: Issues of Legality in the EU's Conceptualisation of the Rule of Law in Its Enlargement Policy' (2019) 15 *Croatian Yearbook of European Law and Policy* 27.

<sup>112</sup> Spasimir Domaradzki, 'A New Approach: The EU and the Western Balkans' (*Visegrad Insight*, 12 February 2020) <<https://visegradinsight.eu/a-new-approach-eu-western-balkans>> accessed 12 May 2020.



of the population only, whereas 49% are against any near-future European Union enlargement.<sup>113</sup> Rather unsurprisingly, the inter-regional comparison between 'old' and 'new' EU member states shows that, within 'new' EU member states (ie relatively recent EU entrants themselves), there are no significant differences in support for further enlargement, whereas the 'old' member states show considerable variance on that matter.<sup>114</sup>

Back in 2003, EU citizens' public support for further enlargement beyond the 2004/07 round had been far more enthusiastic than it is today. In contrast to today's lasting mood of '*enlargement fatigue*', some seventeen years, two enlargements (the CEECs in 2004/07 and Croatia in 2013) and one abridgement (2016-2020 'Brexit') back, EU citizens were largely (54%) welcoming of the EU's further enlargements, provided that, prior to any new enlargement, there was a Europe-wide agreement on the 'definitive borders of the European Union'.<sup>115</sup> Significantly, already back then, EU citizens were willing also to explore *alternative* ways of structuring the EU's relations with neighbours below the level of full-fledged membership (69%).

In 2006, however, a striking majority of EU citizens (72%) expressed their agreement with further EU enlargement 'provided the process doesn't go too fast'.<sup>116</sup> Nearly the same majority (70%) agreed that, in parallel to the ongoing enlargement process unfolding at an acceptable pace, the EU should offer other neighbouring countries a different type of relationship which falls short of full membership.<sup>117</sup>

Currently, as the EU enlargement process is undergoing a 'face-lifting' reform following the 2019 French-driven detour, Brussels has been working out strategies for a *structured and enhanced EU engagement* with the Western Balkans while maintaining a credible enlargement perspective.<sup>118</sup> Akin to these efforts, the European Union has also been facing, since the early 2000s, manifold internal and external dilemmas of structuring its engagement with other 'post-Soviet' Eastern European and South Caucasian neighbours that have largely been lacking any credible accession perspective.

<sup>113</sup> Standard Eurobarometer 81: 'Public Opinion in the European Union' (Spring 2014) 143-144.

<sup>114</sup> Gordana Đurović, Miloš Bigović and Nikola Milović, 'Support for Further Enlargement of the EU: Statistical Analysis of Regional Differences' (2017) 19(3) *Journal of Balkan and Near Eastern Studies* 243.

<sup>115</sup> Flash Eurobarometer 140 (n 67) 77-78.

<sup>116</sup> Special Eurobarometer 259: 'The European Union and Its Neighbours' (October 2006) 20.

<sup>117</sup> *ibid*, 21.

<sup>118</sup> Commission, 'Enhanced EU Engagement with the Western Balkans' (2020), <[https://ec.europa.eu/neighbourhood-enlargement/policy/eu-and-western-balkans\\_en](https://ec.europa.eu/neighbourhood-enlargement/policy/eu-and-western-balkans_en)> accessed 6 May 2020.

The EU's 2004/07 – Eastern – enlargement has not only shifted the EU's new external border but it has also shifted the perception of 'Europe' and the 'East',<sup>119</sup> thus amalgamating the space beyond the new border into a '*New Eastern Europe*'. As more public and political discourses in the region move past the 'post-Soviet' sphere, the more visible it becomes that yet another dilemma of 'two Europes' is looming large – thirty years after the first of its kind surfaced.

Even though post-Soviet and post-Socialist/Communist countries commenced their state-building and transformative agendas simultaneously early on in 1989/1990, the gap in where they find themselves today is clearly seen. Some pundits even argue that, for instance, Ukraine is now where Poland was two decades ago. Whereas in Poland and other CEECs the priority tasks include enhancing European integration and their own further Europeanisation, in Ukraine, but also in other post-Soviet countries, the key issues in state-building and transformation are still '*de-Sovietisation, decolonisation, de-Russification, de-oligarchisation*' and only then '*democratisation and Europeanisation*'.<sup>120</sup> It should also be added that external factors played diametrically-opposite roles in the cases of the CEECs' and post-Soviet countries' transitions: whilst for East-Central Europe, the (credible perspective and actual process) of joining Western Euro-Atlantic institutions presented the necessary push and alignment model for democratic transitions, the New Eastern Europe's (ie 'Western' New Independent States) democratic transformation and state-building have more generally been externally constrained inasmuch as the countries have been trapped between the enlarging EU and the postcolonial neo-imperial Russia, with no perspective in sight of joining the former nor any wish to rejoin the latter. Moreover, if, thirty years back, the battle of ideologies in post-Communist CEECs was swiftly won by the one-time knockdown of communism, the ideological struggle in New Eastern Europe has been continuing until now – between democracy *vs* authoritarianism, liberalism *vs* illiberalism, not to mention the heavy and lasting legacy of many shades of 'post-Sovietness', including permeating corruption, state and media capture, oligarchy, and Russia's undying interest in (re)claiming its 'sphere of influence'.

A series of revolutions across the countries of New Eastern Europe – including Ukraine's three revolutions (the 1990 Granite Revolution, the 2004 Orange Revolution, and the 2013/14 Euromaidan/Dignity Revolu-

<sup>119</sup> Kaija E Schilde, 'Who Are the Europeans? European Identity Outside of European Integration' (2014) 52(3) *Journal of Common Market Studies* 650.

<sup>120</sup> Hryhoriy Perepelytsia, 'Urkaïna ta Polshcha: 25 rokiv postkomunistychnogo tranzytu (porivnialnyi analiz)' ['Ukraine and Poland: 25 Years of Post-Communist Transit (A Comparative Analysis)'] (2018) 1 *Sprawy Międzynarodowe* 193.

tion),<sup>121</sup> Georgia's two revolutions (the 2003 Rose Revolution and the 2018 Rave Revolution), Armenia's 2008 presidential election protests as well as the 2015 Revolution of socket (aka #ElectricYerevan, ElectroMaidan) and the 2018 Velvet Revolution, but also Moldova's 2009 Twitter Revolution – possibly best exemplified the popular determination to break with the *vicious circle* of post-Sovietness and re-boost the *virtuous circle* of transformation, including by forging closer ties with united Europe, up to acceding to the European Union, as, for instance, Ukraine, Georgia and Moldova have been aspiring to do for the past two decades.

Largely inspired by the success of its own enlargement as well, the European Union has engrained the enlargement methodology *lite* into its foreign-policy repertoire, which, in the immediate neighbourhood space, has been particularly (but falsely so?) reminiscent of accession conditionality-driven transformative agendas. '*Mesmerised by enlargement*', the EU's new Eastern policy post-2004 was essentially designed with EU interest in mind – to *capitalise* on enlargement and concurrently *capitulate* on accession-related political and economic commitments vis-à-vis new Eastern neighbours.<sup>122</sup> Consequently, the rationality of building EU- and European integration-*compatible* neighbours substantially underpinned the European Union's effort in structuring its engagement with the neighbours (especially in the framework of the association of the three Eastern Partnership countries), thereby also complementing the neighbours' own state-building and pro-European development agendas. Significantly, both liberal-democratic and market access-acquis conditionality have been, to varying degrees of success, guiding the dynamics of bilateral relations with the EU's Eastern European and South Caucasian neighbours.

This is quite symbolic as well, given that such a political framework sometimes creates misleading analogies of a 'wider Europe'-in-the-making by way of enlargement, whereas the latter might not be on offer any time soon, if at all. The cross-border spill-overs and regional integration projects along the EU's eastern borderlands even further contribute to the blurring of a new-age 'paper curtain' and the divide between 'new' and 'newer' Eastern Europe.<sup>123</sup>

<sup>121</sup> 'The Three Revolutions Project (3R)', College of Europe in Natolin, available at <www.3rnatolin.eu> accessed 20 July 2020.

<sup>122</sup> Simon Lightfoot, Balázs Szent-Iványi, and Kataryna Wolczuk, 'Mesmerized by Enlargement: The EU's Eastern Neighborhood Policy and New Member State Transition Experience' (2016) 30(3) East European Politics and Societies 664.

<sup>123</sup> Halyna Lytvyn and Andriy Tyushka, 'Rethinking the Governance-Governmentality-Governability Nexus at the EU's Eastern Frontiers: The Carpathian Euroregion 2.0 and the Future of EU-Ukrainian Cross-Border Cooperation' (2020) 11 Eastern Journal for European Studies 146.

Quite figuratively, in no other policy area but in its infrastructure and connectivity does the *connection* between the EU's CEECs 'new' member states and its new Eastern Partners become so visible, palpable and instrumental to *wider European region*-building. It is also symbolic that regional development, transport and tourism matters are occasionally discussed jointly for the entire *extended* East-Central European space from Czechia to Georgia: for instance, the European Parliament's Committee on Regional Development suggested, in its Opinion on improving the connection and accessibility of the transport infrastructure in Central and Eastern Europe, that, for the sake of the EU and its borderlands' cohesion, the Commission would need to consider both boosting the development of North-South transport corridors (such as the Via Carpathia route), extend its TEN-T transport networks to Western Balkan candidate countries and Eastern Partners as well, 'for the benefit of Central and Eastern Europe as a whole'.<sup>124</sup>

Since the adoption the European Commission's '*Wider Europe – Neighbourhood*' Communication,<sup>125</sup> the relations between the European Union and its new Eastern neighbours have been generally built around a broader multilateral framework of the 2004-launched European Neighbourhood Policy (ENP), with a regional – Eastern European – focus instated in 2009 when, upon a Polish-Swedish proposal, the Eastern Partnership (EaP) initiative was set in motion.<sup>126</sup> Both policy frameworks have been subject to much criticism and exposure in public debate, with the ENP having undergone two revisions and the EaP's revision unfolding in late 2020. Some fifteen years back, however, in 2006, only about one-fifth of the EU population was actually aware of the European Neighbourhood Policy (ENP), and the great majority (82%) were largely unfamiliar with such an EU policy framework for structuring its relations with the immediate neighbours.<sup>127</sup> The main (purposeful?) mystery has been, among other things, the question of the perspective of EU accession that was neither explicitly granted nor explicitly precluded

<sup>124</sup> European Parliament Committee on Regional Development (EP REGI), 'Opinion of the Committee on Regional Development for the Committee on Transport and Tourism on improving the connection and accessibility of the transport infrastructure in Central and Eastern Europe' (2015/2347(INI)) Brussels (21 April 2016) 4 <[www.europarl.europa.eu/doceo/document/A-8-2016-0282\\_EN.html](http://www.europarl.europa.eu/doceo/document/A-8-2016-0282_EN.html)> accessed 20 July 2020.

<sup>125</sup> Commission, 'Wider Europe – Neighbourhood: Proposed New Framework for Relations with the EU's Eastern and Southern Neighbours' (IP/03/358) 18 March 2003 <[https://ec.europa.eu/commission/presscorner/detail/en/IP\\_03\\_358](https://ec.europa.eu/commission/presscorner/detail/en/IP_03_358)> accessed 16 September 2019.

<sup>126</sup> For a comprehensive overview of the ENP and EaP policy frameworks development, see, eg, Tobias Schumacher, Andreas Marchetti and Thomas Demmelhuber (eds), *The Routledge Handbook on the European Neighbourhood Policy* (Routledge 2018).

<sup>127</sup> Special Eurobarometer 259 (n 116) 19.

by these policy frameworks, which, particularly in the context of some Eastern European neighbour states' aspirations, has been increasingly seen as problematic, leaving them levitate 'between membership and non-membership'.<sup>128</sup>

In light of the accelerating democratic-revolutionary transformations in select Eastern European neighbours, the EU extended the offer of political association and economic integration, via enhanced Association Agreements with the Deep and Comprehensive Free Trade Area Component (AA/DCFTA), to Ukraine, Georgia, Moldova as well as Armenia and Azerbaijan. The latter two fell out of the association process as Azerbaijan pushed for its own contractual framework with the EU, and Armenia had to thoroughly rethink its association with the EU against the tabled resolute Russian 'offer one cannot refuse' and thus, pressed by the Kremlin and impressed by the domestic and international disturbance in Ukraine following its revolutionary move to defend the country's 'European choice', Yerevan acceded to the Russia-led Eurasian Economic Union (EAEU). Still, in 2016, Armenia used the window of opportunity and signed with the EU the Comprehensive Economic Partnership Agreement (CEPA), which in many regards draws on the economic parts of the declined AA/DCFTA deal. In turn, Georgia, Moldova and Ukraine signed with the European Union their AA/DCFTAs in 2014 and walked the priority lane of European integration via association.<sup>129</sup>

Just like the EU's initial Association Agreements with the CEECs ('Europe Agreements'), the new-generation Association Agreements with the Deep and Comprehensive Free Trade Area Component (AA/DCFTA) it concluded with the EaP3 do not explicitly envisage an accession perspective – and, traditionally, do not explicitly preclude it either. The *déjà vu* also accompanies the very content and scope of the new-generation AAs, which are heavily *integration-oriented* association frameworks, and thus *ipso facto* extend the European Union's *member state*-building templates and agendas beyond the current membership and, importantly, beyond the enlargement rationale as such. This leads one to argue to the contrary: by mimicking its *member state*-building process onto its (Eastern) neighbours without envisioning at the same time any transition to *member-statehood* as such (ie by pursuing the EU-incentivised 'transformation qua Europeanisation' beyond the realm of current and potential candidate countries), the European Union is set to extend the European identity and rationalities of both governance and integrated *statehood* on what is deemed (or, doomed) to become lastingly an aligned, differentiatingly integrated, and institutionally-embedded (but formally not

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<sup>128</sup> Tyushka (n 27).

<sup>129</sup> Tyushka (n 41).

represented therein) *neighbourhood*. In other words, by Europeanising the neighbourhood via enhanced association, the European Union unavoidably shapes the countries' own state-building agendas, and thus is structurally and consistently engaged in *neighbour state-building*, that is, steering the new Eastern European neighbours' transformation in a particular EU-centric direction, with the illusory and distant reality of them becoming 'would-be members', deceptively *substituting* the carrot of accession conditionality as we know it. As long as the EU's and EaP3 associates' own agendas in their state-building and strategic development coincide, the process of democratic transformation and Europeanisation is bound to continue – even in spite of the disillusioning possibility of Georgia, Moldova and/or Ukraine getting stuck as 'eternal' *would-be* members (effectively, 'non-members'). In light of the proliferating temporal, geographical and political differentiation in European integration within and beyond the EU, '*non-member*' status may potentially offer more incentive, inclusivity and future – should the EU's institutional discourse and constitutional and political differentiation *shift from 'binary' to 'graded' membership* in the not too distant future.<sup>130</sup> In any case, the '*non-member*' and '*neighbour-state*' statuses with the EU are already an expression of a privileged, relatively inclusive, enhanced, and structured relationship of mutual engagement which considerably contrasts with the regular 'third country' positioning vis-à-vis the European Union.

In her genuinely comparative and transformation-focused book *Russia, the Former Soviet Republics, and Europe since 1989: Transformation and Tragedy*, Graney<sup>131</sup> places the strength of Europeanisation projects in Georgia, Moldova and Ukraine already now very close to that of the now-EU and NATO member states (and formerly, too, Soviet republics) of Estonia, Latvia and Lithuania, whereas classifying Armenian and Azerbaijani Europeanisation projects as rather moderately strong, leaving Belarus, Kazakhstan, Russia and Central Asian republics further behind. Whereas Moldova, Ukraine and Belarus appear unambiguously European in the geographical sense, only the former two embraced the Europeanisation possibilities broadly enough, with Belarus dragging behind on the way towards limited economic Europeanisation and showing close to no interest in political transformation.<sup>132</sup> On the other hand, the South Caucasian states have long been geographically considered as the endpoint of Europe; however, their lasting ties with the European

<sup>130</sup> Schimmelfennig and Winzen (n 74) 156-175; Tyushka (n 27).

<sup>131</sup> Graney (n 64) 10-11.

<sup>132</sup> *ibid.*, 210-263. The most recent mass protests in Belarus, which ensued after the troublesome August 2020 presidential elections, demonstrate a surprising break with the decades-long path dependency and might become a turning point in the country's democratic transition.

Union and more recent joint economic and political undertakings point to the emergence of Georgia, Armenia and Azerbaijan as Europe's 'new eastern boundary'.<sup>133</sup> This is particularly so since one of them – Georgia – has since 2014 been an EU associate country just like Moldova and Ukraine, who all signed with the European Union far-reaching Association Agreements with Deep and Comprehensive Free Trade Components (AA/DCFTAs) and have long been expressing their European integration aspirations. Armenia, too, was moving along that path until Russia made it do a U-turn and reset the country's foreign-political and domestic-developmental compass north-eastwards – aligning with the Russia-led Eurasian Economic Union.

Domestic official discourses in EaP3-associated states richly feature the frames of the countries' European identities: 'Georgia is Europe!' and 'Ukraine is Europe!' have not only become ornaments of pathetic political speeches – they have also shaped in the last two decades peoples' own understandings of belongingness and the future. In addition to claiming their 'return to Europe', akin to that of the CEECs in the mid-1990s, Georgia, Moldova and Ukraine have, too, been telling their stories of Europe and Europeanness<sup>134</sup> – even if the official Brussels has not yet been willing to acknowledge the possibility of such a 'return' by granting the prospect of EU accession.<sup>135</sup> Paradoxically, the closer the ties the new Eastern European associates forge with Europe, the more distant their membership perspective appears – the Union that they started legally and politically approximating with half a decade ago is fading away, giving way to emerging new *Europes* of sorts. For Ukraine, whose choice for Europe has been excruciatingly tested time and again, this paradox is hard to face. As deftly observed by Getmanchuk,<sup>136</sup> '[i]f earlier [Ukraine] tried to jump into the last car of a train moving towards a bright European dream, now more and more often a feeling begets that we are trying to catch at least the footplate of the Euro-Express, which is racing at breakneck speed in an unknown direction'. This notwithstanding,

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<sup>133</sup> *ibid.*, 264-316.

<sup>134</sup> Andrey Makarychev and Alexandra Yatsyk, *Celebrating Borderlands in a Wider Europe: Nations and Identities in Ukraine, Georgia and Estonia* (Nomos Verlag 2016) 125.

<sup>135</sup> As the recent turns in EU enlargement to the Western Balkans showcase, the European Union's lasting 'enlargement fatigue' has gradually transformed into 'enlargement resistance', which adds the EU's internal problems and disintegration challenges to the 'Copenhagen criteria' and 'absorption capacity' doorstoppers. See, eg, Spyros Economides, 'From Fatigue to Resistance: EU Enlargement and the Western Balkans' (20 March 2020) 17 Dahrendorf Forum IV – Working Paper 1.

<sup>136</sup> Aliona Getmanchuk, 'Peredmova: Ostanni Romantyky Evropy' ['Preface: The Last Romantics of Europe'] in Kateryna Zarembo (ed), *Nova Evropa: Eseyi Ukrayinskykh Intelektualiv* [*New Europe: Essays of Ukrainian Intellectuals*] (Vydavnytstvo Starogo Leva 2018) 9.

Ukrainians can be named ‘the last romantics of Europe’<sup>137</sup> – and rightly so as they were first in the 21<sup>st</sup> century to stand, fight and die for European values. The 2013/14 Revolution of Dignity and the following defensive war against Russian hybrid aggression are inextricably linked with Ukraine’s European choice.

The political symbolism of a ‘European choice’ and ‘Europeanness’ proliferates across all three EaP associates, as it does, to a lesser extent, in other reform-oriented ‘post-Soviet’ states, whose transformative and state-building agendas, just as popular discourses, have been time and again driven by the idea of a ‘*Evroremont*’ (literally: ‘Eurorepair’),<sup>138</sup> ie transition to a European-style democracy.<sup>139</sup> Understandably, in some policy and political contexts, however, the ‘*Evroremont*’ framing and politics prove just to have been deft masking of pertinent post-Soviet practices.

But even being *half-heartedly Europeanised*, as many authors would argue, the EU’s EaP3 associates are becoming increasingly embedded in the European Union policy-*shaping* milieus – all in the spirit of the promised (by the Association Agreements) ‘stakes’ in the EU internal market and ‘system’.<sup>140</sup> The core EU institutions are closed for any third-country participation but, for the past couple of years, EU-EaP Ministerials, including foreign affairs ministers and the EU’s HR/VP, have been launched. EaP3 associates’ ministers are also occasionally invited as observers to the Council’s meetings. More recently, in May 2020, following the breakout of the COVID-19 pandemic, Ukraine was invited to join the EU’s Health Security Committee as an observer in pursuit of closer cooperation in fighting this novel coronavirus.<sup>141</sup>

In addition to these sporadic and largely *informal* institutional engagement modalities, the EU’s neighbour-states, including all the EaP6, have been incrementally involved in the operations of EU agencies. In 2007 to 2017 alone, the Eastern partners structured their relations with

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<sup>137</sup> *ibid.*, 12.

<sup>138</sup> In the popular culture of select post-Soviet societies, ‘*Evroremont*’ also signifies what it quite literally means – ‘Eurorepair’, ie home or apartment renovation that uses more expensive modern materials, technology and (un-Soviet) styles.

<sup>139</sup> Oleksandra Seliverstova, ‘Keeping Alive the “Imaginary West” in post-Soviet Countries’ (2017) 25(1) *Journal of Contemporary Central and Eastern Europe* 117.

<sup>140</sup> Tyushka (n 41) 92-105.

<sup>141</sup> Other non-EU states that are part of the EU’s Health Security Committee as ‘observers’ are the EU-associated via the SAA Serbia, the member of the EU Customs Union and EU candidate country Turkey, and the three EEA states – Iceland, Liechtenstein, and Norway. See European Commission – Health Security Committee members, n.d., available at <[https://ec.europa.eu/health/preparedness\\_response/risk\\_management/hsc/members\\_en](https://ec.europa.eu/health/preparedness_response/risk_management/hsc/members_en)> accessed 18 August 2020.



EU agencies as follows: EASA (Azerbaijan, Georgia and Moldova in 2009; Armenia in 2011; and Ukraine in 2015); Frontex (Ukraine in 2007; Georgia and Moldova in 2008; Belarus in 2009; Armenia and Azerbaijan in 2012 and 2013, respectively); CEPOL (Georgia – 2011; Moldova – 2012; Armenia – 2016); Europol (Moldova in 2014; Georgia and Ukraine in 2016); Eurojust (Moldova – 2014; Ukraine – 2016); EMCDDA (Ukraine – 2010; Moldova – 2012), etc.<sup>142</sup> As the only non-EU (ENP/EaP) country, Ukraine has also been cooperating, since 2016, with the European Defence Agency (EDA). Furthermore, the EaP6's varied participation in the EU's CSDP missions as well as generally high (as far as the EaP3 associates are regarded) alignment with the EU's CFSP declarations for over a decade now are irrefutable signs of increasing cooperation and a 'technocratic form of integration into the EU, a sort of *de facto technocratic membership*'.<sup>143</sup>

Incrementally, the European Union, too, engages externally in matters that have originally belonged to internal policy areas, such as asylum, migration, culture and social policies, employment, environment, energy, gender, sports or health.<sup>144</sup> Through structuring its engagement with Eastern neighbours also in these policy domains, the scope of EU neighbour state-building extends to new breadths and further dissociates neighbour-statehood from ordinary third-country nation-statehood.

On the trade-transactional and economic convergence side, the situation varies from country to country, but the trend of the European Union becoming their trade partner number one is firmly set in motion, whereas some of the associates, namely Ukraine, are already in the process of negotiating the so-called '*industrial visa-free regime*' (ie a freer circulation of certified industrial goods among Ukraine and the EU member states). The pace of European integration-driven domestic reforms is not unproblematic but has a record of a series of political, legal and constitutional transformations.<sup>145</sup> Last but not least, the performance of the *joint bodies* set up under Association Agreement frameworks just half a decade ago shows a strong record of decision-making which is conducive to further dynamisation of the EU-EaP3 associates'

<sup>142</sup> Karina Shyrokykh and Dovilè Rimkutė, 'EU Rules Beyond Its Borders: The Policy-specific Effects of Transgovernmental Networks and EU Agencies in the European Neighbourhood' (2019) 57(4) *Journal of Common Market Studies* 749.

<sup>143</sup> *ibid.*, 750.

<sup>144</sup> Simon Schunz and Chad Damro, 'Expanding Actorness to Explain EU External Engagement in Originally Internal Policy Areas' (2020) 27(1) *Journal of European Public Policy* 122.

<sup>145</sup> For a recent comprehensive overview of EU-Ukrainian, EU-Moldovan and EU-Georgian AA/DCFTA implementation and the dynamics of domestic reforms, see Anna Zygierewicz (ed), *Association Agreements between the EU and Moldova, Georgia and Ukraine* (European Parliamentary Research Service 2018).

structured engagement and both the Union's and associate states' own legal-systemic change.<sup>146</sup>

All in all, the patterns of the EU-neighbourhood relations and the EU neighbourhood's Europeanisation point to the formation of a European centre of gravity for both the *nation-state* and *neighbour state*-building agendas of the EU's three Eastern associates, and, to a lesser extent, the remaining three Eastern partners. Not only is their transformation trajectory reminiscent of that of the mid-1990s' CEE EU associates – the 'new Eastern Europe's transition to EU 'neighbour statehood' is guided by the similarly tantalising 'would-be' membership rationality.

### **7 Conclusions: EU member and neighbour state-building in a wider Europe decades ago and decades to go**

The process of democratic transformation and transition from 'post-Soviet/Socialist' states to EU member states commenced quite *alee* as it was unfolding in the generally favourable conditions of the external opportunities structure in a post-bipolar and post-Cold War Europe as well as in the presented external incentives of European integration. After the CEECs' accession to the European Union had completed their longed-for 'return to Europe', their democratic transition and conditionality-induced Europeanisation started *sporadically* showing signs of unsustainability, thus dragging *aweather* the process and progress of building up their EU member-statehood.

Liberal democracy and the market economy are obviously part and parcel of EU member-statehood, but not just them: a whole set of normative conventions and political practices, strategic interaction and policy-making rules make the EU's liberal-democratic and market-economic foundation genuinely distinct. After all, there are liberal democracies and market economies beyond the EU, but not all of them are 'EU-fit' by default. Making the aspiring candidate countries 'EU-fit' while incentivising their transformation is an inseparable part of the EU member state-building agenda which, over the years, has also spilled over beyond enlargement politics and is practised within the European Union's neighbourhood policies alike. What EU member and neighbour state-building have clearly in common are two pillars of support for simultaneously occurring transformation, state-building and modernisation processes – ie the EU-induced and EU-centric market-economic transition (via eco-

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<sup>146</sup> Andriy Tyushka, 'Beyond Institutional Design and Executive Implementation: Power and Performance of "Association Bodies" under the EU's Association Agreements with Georgia, Moldova and Ukraine' Paper presented at the UACES 49th Annual Conference, Lisbon, 1-4 September 2019.

conomic integration) and the political regime transformation (via democratisation and Europeanisation).

With an eye on several illustrative cases, this article has looked into how, during three decades of transformation, the tables were turned, and the forerunners of democratic transition became one of the main resistants to European integration and liberal democratisation at large, whereas the laggards and 'last-wagon-jumpers' succeeded in catching up with the rest of the CEE region and accomplish a more *resilient* democratic transition. The article has shown how Poland and Hungary, the leading forces of the post-1989 democratisation movement in East-Central Europe, big *Euroenthusiasts* and 'model candidates' for EU accession, took a detour some ten years after joining the EU and (temporarily – one would wish to think) paused the construction of their EU member-statehood, thus wholeheartedly re-embracing *sovereignism*. On the other hand, the above analysis has also demonstrated that the Baltic states that joined the eastward enlargement cohort of CEECs somewhat later, overall receiving lesser EU-institutional and public support and attention, succeeded nonetheless in making their liberal-democratic transition resilient and became 'exemplar' European Union member states at least as far as their compliance with the Union's fundamental norms, values and principles is concerned. A comparative look into these cases only reaffirms what has always been intuitively assumed: democratic transformation is not always a straightforward, linear and programmatic path – nor is it always bound to succeed and endure.

In general, though, twenty years after the fall of the 'Iron Curtain' and revolutions in East-Central Europe, the citizenry of the enlarged European Union believed that these landmark events brought more freedom to all parts of Europe (79%), provided good business opportunities for Western enterprises in the CEE region (80%), and, most significantly, contributed to the free movement of people within Europe (86%).<sup>147</sup> Emblematically, the majority of European citizens held the view that such changes were important not only for the CEECs but for the whole of Europe. Commemorating the historic twentieth anniversary of the fall of the Iron Curtain and the fifth anniversary of the CEECs' EU membership, EU Enlargement Commissioner O Rehn recalled civil society's crucial contribution as a driver of democratisation in Europe and the EU's ability to recover from crises by '*failing forward*' to even greater integration and a 'wider Europe', effectively, not least in view of the pertinent *raison d'être* of EU enlargement: 'to extend the area of liberty and democracy, peace and prosperity throughout Europe'.<sup>148</sup>

<sup>147</sup> Flash Eurobarometer 257 (n 72) 5.

<sup>148</sup> Olli Rehn, 'The EU and the Western Balkans: The Critical Year of 2009', Speech by EU Commissioner for Enlargement Rehn (08/441), Brussels, 18 September 2008, <<https://>

What had started as a lamentable crisis of non-compliance with EU values and the fundamental vision of good governance and democracy in select member states, might equally present a 'perfect storm' for 'failing forward' and taking EU member state-building to the next level. As both democratic transition and EU member state-building processes are lasting phenomena that do not (or should not, at least) stop at the moment of accession to the European Union, they require sustainable effort in monitoring compliance among EU member states with regard to what constitutes core parameters and shared idea(l)s of European Union member-statehood and European identity at large. The 2020-launched European Rule of Law Mechanism, with the Annual Rule of Law Report at its heart,<sup>149</sup> is certainly a move towards consolidating the rule of law culture in the EU and in post-accession member state-building policy at large.<sup>150</sup>

The idea of 'failing forward' strongly resonates also in the contemporary context of the multiplying crises both within the European Union, in its surrounding regional realms and globally, where the ambit of the EU's external engagement broadens and thus necessitates like-minded and like-governed partners to tackle crises and succeed jointly. Building a neighbourhood akin to would-be EU members' parameters represents both an ontological necessity and a convenient instrumental skill: after all, what the European Union has proven to be good at is transforming states by Europeanising them. In much of the EU's own discourse and European studies scholarship in general, 'Europeanisation' equals 'democratisation', and vice versa – and, thus, both processes are closely intertwined, embedded and partially overlapping in their core ideas, although representing distinct (distinguishable) phenomena. The confounding of EU-induced democratisation processes in New Eastern Europe and the Eastern neighbours' own European integration-oriented state-building and strategic development agendas represent a remark-

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[ec.europa.eu/commission/presscorner/detail/en/SPEECH\\_08\\_441](https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_08_441) accessed 20 July 2020.

<sup>149</sup> Commission, 'The European Rule of Law Mechanism', 23 March 2020, <[https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism\\_en](https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/rule-law-mechanism_en)> accessed 23 March 2020. For the Commission Communication and the First Rule of Law Report 2020, see Commission, '2020 Rule of Law Report – Communication and Country Chapters', 30 September 2020, <[https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters\\_en](https://ec.europa.eu/info/publications/2020-rule-law-report-communication-and-country-chapters_en)> accessed 30 September 2020.

<sup>150</sup> The rule-of-law deal, reached in early November 2020 on linking EU funds to the rule of law, represents a major step forward for 'Europe of values', which will become legally reinforced as a parameter of EU member-statehood. See European Parliament, 'Rule of Law Conditionality: MEPs Strike a Deal with Council', 5 November 2020 <[www.europarl.europa.eu/news/en/press-room/20201104IPR90813/rule-of-law-conditionality-meps-strike-a-deal-with-council](http://www.europarl.europa.eu/news/en/press-room/20201104IPR90813/rule-of-law-conditionality-meps-strike-a-deal-with-council)> accessed 5 November 2020.

able blend of tantalising and enlargement-inspired transition from nation-statehood to *neighbour*-statehood – even without a credible accession perspective. Growing opportunities for mutual structured engagement as well as the associate neighbours’ ‘stake’ in the EU system and internal market so far provide for a sufficiently incentivising conditionality. In order to make such a transformation reverse transition-proof, a *formal* shift from binary to gradual membership is inevitable – at least to account for the proliferating *practice* of within-EU and wider EUropean differentiated integration, as well as to foster the resilient democratic transition and interconnectedness of its new Eastern European neighbours.



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