



**GR:REEN**

Global Re-ordering:  
Evolution through European Networks



# **Responding to Crises: Perspectives on the European Union**

Report from the GR:EEN House of Lords  
High-Level Policy Workshop

January 2015



**Responding to Crises: Perspectives on the European Union**

On 28 October 2014 a select audience of officials, parliamentarians, and key stakeholders joined together with members of the European Commission FP7-funded research project 'Global Re-ordering: Evolution through European Networks' (GR:EEN) for a high-level policy workshop held at the House of Lords in the UK. Entitled *Responding to Crises: Perspectives on the European Union*, the workshop was aimed at addressing a variety of areas of challenge and crisis impacting the European Union (EU) in recent years, and to disseminate GR:EEN research to a policy audience, whilst garnering their feedback in order to fine-tune research findings and generate specific policy recommendations. This report is a direct output of those discussions.

In the following pages are a diverse collection of policy briefing papers, as discussed during the workshop, dealing with specific aspects of what we would define as issues of crisis, or at the very least, challenge for the EU moving forward. Kick-starting the collection, Megan Dee and Jens Mortensen consider the EU's response to rising powers in the international system and how such structural changes have impacted EU global trade policy. In their paper they make a strong case for the EU's pragmatism in its global trade strategy, whilst stressing the need for the EU to urgently cast an eye forward to the governance and legitimacy issues of large-scale bilateral trade agreements, such as those currently being conducted with the United States, on the WTO. In their paper, Andreas Goldthau and Nick Sitter also consider the EU's external challenges by engaging with the critical issue of Europe's security of energy supply. Drawing upon examples from the EU's energy relations within states in its near abroad, and in the specified case of Gazprom, they propose that the EU's energy strategy may best be categorised as 'soft power with a hard edge'; whereby the EU utilises its own regulatory rules governing the Single European Market to achieve its objectives with third parties.

The third paper from this collection, written by Len Seabrooke and Duncan Wigan, takes a more reflective look at a burgeoning area of EU international action – tax reform – and the impact of tax justice activists in shaping that reform agenda. Building upon discussions held by activists and policy-makers during the course of the workshop, this paper stresses the importance of activists to the policy process. In particular Seabrooke and Wigan argue that tax activists, and the UK-based Tax Justice Network especially, have been notably successful in advocating issues of tax justice within the EU and propose that such models of organising advocacy can induce higher levels of policy innovation as well as greater legitimacy to the EU.

The final paper detailed in this report, written by Luk Van Langenhove, Ewout Ramon, Josh Gartland, Paula Retzl and Anna Selzer concludes by turning our gaze inward to look at the EU's recent internal challenges, and the topical issue of 'Scoxit' and 'Brexit' and its implications for EU integration. In this paper Van Langenhove et al. present several governance challenges currently impacting European society, including issues of solidarity, efficiency, and legitimacy, all of which were found evident during Scotland's September 2014 independence referendum. They argue that the more statehood powers a region has, the more likely it is to demand, and subsequently achieve, independence. How Westminster now deals with Scotland moving forward therefore will be especially instructive to other European states, not least Belgium and Spain.

As we hope you will agree the following compilation of briefing papers offers an informed and thought-provoking set of insights on the EU and its response to crises. More pertinently these briefings also

highlight several policy recommendations for the EU institutions and member states to take into consideration. Key amongst these include:

- In looking ahead to its new global trade strategy the EU should consider the need for a balanced, multi-level, and time-aware approach to trade negotiations. Specifically it must seek immediate progress in the case of large-scale negotiations, particularly with the United States, whilst also critically revisiting its overall governance approach to global trade rule-making. Resurrecting the previously proposed Reflection Group on the Future of the WTO should be considered as a matter of priority.
- EU member states should take steps to empower the energy market watchdog – the European Commission – to ensure smooth market operations and to keep external suppliers in check. Crucially this will require member states to open up their national gas markets, fully integrate them into broader EU frameworks, and ensure sufficient interconnectors and reverse flow infrastructure be put in place to allow for physical delivery across borders, to liberalise energy sectors, and to ensure investment.
- Unblocking policy pipelines, particularly those in traditionally complex issue areas such as taxation, is possible where actors, including NGOs and Transnational Advocacy Networks, maintain organisational flexibility and where policy processes allow for the introduction of novel or even radical ideas. In so doing the EU polity could encourage policy innovation and enhance legitimacy.
- For Westminster to continue to lead the United Kingdom it must now crucially work to retain the acceptance of its leadership amongst all the constituent parts of the UK. Key to this will be the extent to which ‘even’ devolution can increase participation, representation and efficiency, as well as the justification that Westminster’s politicians are able to furnish as to why the UK should stay together.

Finally, and before turning over to the authors, may we take this opportunity, on behalf of GR:EEN, to thank all of those who were involved with this event leading to the production of this report. Our special thanks to The Lord Purvis of Tweed for hosting the workshop, as well as to Dods and Research Fortnight for providing rapporteurs at the event; the reports from which greatly contributed to the fine-tuning of the policy briefings here re-produced. Particular thanks also to the European Commission’s Head of Representation to the UK, Jacqueline Minor, for speaking at the workshop launch, as well as to Lord Hannay of Chiswick, Lord Wilson of Tillyorn, Baroness Scott of Needham Market, and Professor Avinash Persaud for so expertly chairing our roundtables. Our thanks finally to Michael Moore MP, Denis Redonnet, Tim Abraham, Andrew Janis Folkmanis, Richard Murphy, Heinz Zourek, Lord Purvis, and Andrew Bradley for acting as our panellists. Should you wish to find out more about the workshop please do visit our dedicated webpage at [www.greenfp7.eu/newsandevents/houseoflords](http://www.greenfp7.eu/newsandevents/houseoflords).



**Pr. Shaun Breslin**  
GR:EEN Senior Scientist  
University of Warwick



**Dr Megan Dee**  
GR:EEN Research Fellow  
University of Warwick

### Responding to Crises: Perspectives on the European Union

## Workshop Participants

---

|                                 |                                                                                              |
|---------------------------------|----------------------------------------------------------------------------------------------|
| <b>Tim Abraham</b>              | Head of European Policy, Department of Energy and Climate Change                             |
| <b>Roberto Bendini</b>          | Principle Administrator, DG External Policies, European Parliament                           |
| <b>Andrew Bradley</b>           | Director, International Office of IDEA to the EU                                             |
| <b>Shaun Breslin</b>            | GR:EEN, University of Warwick                                                                |
| <b>James Calder</b>             | Public Affairs Executive,<br>Institute of Chartered Accountants in England and Wales         |
| <b>Fraser Cameron</b>           | Director, EU-Russia Centre                                                                   |
| <b>George Christou</b>          | GR:EEN, University of Warwick                                                                |
| <b>Christine Dalby</b>          | Deputy Head of Representation,<br>European Commission Representation to the UK               |
| <b>Lord Davies of Stamford</b>  | House of Lords                                                                               |
| <b>Megan Dee</b>                | GR:EEN, University of Warwick                                                                |
| <b>Alistair Dillon</b>          | Policy Analyst, EU Committee Office, House of Lords                                          |
| <b>Paul Dowling</b>             | Policy Analyst, EU Committee Office, House of Lords                                          |
| <b>Andrew Janis Folkmanis</b>   | Horizon 2020 Coordinator, European Commission DG Energy                                      |
| <b>Kyle Galler</b>              | Principle Economic Policy Analyst,<br>European Commission Representation to the UK           |
| <b>Lord Hannay of Chiswick</b>  | House of Lords                                                                               |
| <b>Richard Hay</b>              | Partner, Stikeman Elliot (London) LLP                                                        |
| <b>Lord Howell of Guildford</b> | House of Lords                                                                               |
| <b>Luke Hussey</b>              | Clerk, EU Committee Office, House of Lords                                                   |
| <b>Michael Keating</b>          | Professor of IPE, University of Richmond                                                     |
| <b>Katie Kochmann</b>           | Policy Analyst, EU Committee Office, House of Lords                                          |
| <b>Ben Lawton</b>               | Regional Manager, Global Networks, British Council                                           |
| <b>Francesca Manchi</b>         | Political Officer, European Commission Representation to the UK                              |
| <b>Patrick Milner</b>           | Clerk, EU Committee Office, House of Lords                                                   |
| <b>Jacqueline Minor</b>         | Head of Representation, European Commission Representation to the UK                         |
| <b>Jörg Monar</b>               | Rector, College of Europe                                                                    |
| <b>Michael Moore</b>            | MP for Berwickshire, Roxburgh & Selkirk,<br>EU Business Advisor to the Deputy Prime Minister |
| <b>Caroline Morgan</b>          | Political Officer, European Commission Representation to the UK                              |
| <b>Jens L. Mortensen</b>        | GR:EEN, Copenhagen Business School                                                           |
| <b>Richard Murphy</b>           | Director, Tax Research UK                                                                    |
| <b>Ronen Palen</b>              | Professor of IPE, University of the City of London                                           |
| <b>Avinash Persaud</b>          | Chairman, Intelligence Capital Ltd.                                                          |
| <b>Frederik Ponjaert</b>        | GR:EEN, Université libre de Bruxelles                                                        |

|   |                                               |                                                                                                            |
|---|-----------------------------------------------|------------------------------------------------------------------------------------------------------------|
| 6 | <b>Tim Prudhoe</b> .....                      | Partner, Kobre & Kim LLP                                                                                   |
|   | <b>Lord Purvis of Tweed</b> .....             | House of Lords                                                                                             |
|   | <b>David Quentin</b> .....                    | Barrister, Stone King LLP                                                                                  |
|   | <b>Denis Redonnet</b> .....                   | Head of Strategy, European Commission DG Trade                                                             |
|   | <b>Baroness Scott of Needham Market</b> ..... | House of Lords                                                                                             |
|   | <b>Leonard Seabrooke</b> .....                | GR:EEN, Copenhagen Business School                                                                         |
|   | <b>Nick Sitter</b> .....                      | GR:EEN, Central European University                                                                        |
|   | <b>Peter Stephens</b> .....                   | Deputy Director EU Strategy, European Reform Directorate,<br>Department of Business, Innovation and Skills |
|   | <b>Peter Tarn</b> .....                       | London Managing Partner, Harneys                                                                           |
|   | <b>Luk van Langenhove</b> .....               | GR:EEN, UN University-Comparative & Regional Integration Studies                                           |
|   | <b>Benito Wheatley</b> .....                  | Acting Director, Government of the British Virgin Islands                                                  |
|   | <b>Duncan Wigan</b> .....                     | GR:EEN, Copenhagen Business School                                                                         |
|   | <b>Lord Wilson of Tillyorn</b> .....          | House of Lords                                                                                             |
|   | <b>Heinz Zourek</b> .....                     | Director-General, European Commission DG Taxes and Customers Union                                         |
|   | <b>Marieke Zwartjes</b> .....                 | GR:EEN, UN University-Comparative & Regional Integration Studies                                           |

## Rapporteurs

|                                 |                                     |
|---------------------------------|-------------------------------------|
| <b>Alison Goddard</b> .....     | Editor, HE                          |
| <b>Rachel Hall</b> .....        | Public Policy Journalist, HE        |
| <b>Ehsan Masood</b> .....       | Editor, Research Fortnight          |
| <b>Adam Smith</b> .....         | Senior Reporter, Research Fortnight |
| <b>Harriet Jones</b> .....      | Senior Political Consultant, Dods   |
| <b>Katharina Marquart</b> ..... | Dods                                |

- 1. Responding to new powers: The EU’s global trade strategy moving forward**  
*Megan Dee & Jens L. Mortensen* ..... 8
  
- 2. The EU’s ‘Soft Power with a Hard Edge’: Implications for EU Policy Strategy and Energy Security**  
*Andreas Goldthau & Nick Sitter* ..... 16
  
- 3. Activating Networks on Taxation: Issue Entrepreneurs and Policy Catalyzation**  
*Leonard Seabrooke & Duncan Wigan* ..... 20
  
- 4. Integration, Devolution and Regional Leadership**  
*Luk Van Langenhove, Ewout Ramon, Josh Gartland, Paula Rettl & Anna Selzer* ..... 25

# 1 Responding to new powers: The European Union's global trade strategy moving forward

8 Megan Dee (University of Warwick) & Jens L. Mortensen (Copenhagen Business School)

## Introduction

The rapid rise of the emerging economies in the global trading system since the turn of the 21<sup>st</sup> century has generated significant uncertainty for the European Union (EU). Whilst questions remain over the EU's capabilities and influence in other areas of foreign policy, on trade policy and within the global trading system, the EU is undoubtedly a great power. The geopolitical shift which has seen a growing assertiveness, and influence, of the emerging economies within both global markets and global governance, has however, had significant implications for the EU as a global actor and trader, and for its approach to global trade policy. Since 1999 the EU has subsequently, and pragmatically, altered its trade strategy, moving away from its previous managed globalisation strategy (1999-2006), to Global Europe (2006-2010), to the Trade, Growth and World Affairs (TGWA) strategy, launched in 2010 as part of the Europe 2020 Strategy for Smart, Sustainable, and Inclusive Growth.

2015 marks the half-way juncture for the Europe 2020 Strategy to which the TGWA strategy forms a core component. With a new Juncker Commission now in office 2015 further represents a crucial opportunity to re-evaluate the EU's global trade policy, and reconsider how the EU might pursue its trading interests, and develop its strategic outlook, to best adapt to a changing world. In this paper focus is therefore given to the evolution of the EU's trade strategy, its implications for the EU's global trade policy - with particular reference to the ongoing TTIP negotiations with the United States and the WTO Doha Round - and with recommendations made for how the EU might adjust its strategic outlook for the period 2015-2020. Specifically it argues that the EU's new trade strategy should maintain the pragmatic outlook of its predecessors in the pursuit of a deep and ambitious TTIP agreement, but also crucially cast an eye forward to the governance and legitimacy challenges it represents for global trade rule-making and the future of the WTO particularly.

## Evidence and Analysis

### The emergence of a multipolar global trading system

A multipolar world exists where there are several centres or 'poles' of great power within the international system. In contrast to the multipolarity of the 19<sup>th</sup> and 20<sup>th</sup> centuries however, the 'polarity' of the 21st century is being assessed less on military hard power, and more on global shares of Gross Domestic Product (GDP), competitiveness in global markets, shares of world trade, and potential demographic and economic growth. More than this, whilst power continues to be seen in part as a calculable asset, assessed in terms of economic strength, population (and thus market) size, and technological capabilities of the major economies, it is also associated far more with political influence in systems of global governance. Within the global trading system this has become most apparent within the World Trade Organisation (WTO) where the emerging economies, namely including India,

### Responding to Crises: Perspectives on the European Union



## Responding to new powers: The European Union's global trade strategy moving forward

Brazil and China, have asserted an ever-increasing influence over the course of the Doha Round of multilateral trade negotiations. The fact that, by 2025, China and India are expected to have the world's second, and fourth, largest economies respectively, and that the developing economies are likely to outpace both the export and GDP growth of the developed economies by a factor of two or three in the decades ahead, are trends expected to therefore impact not just the wealth, and power, of the world's current global leaders – the United States and EU – but also the global balance of power in political decision-making.

### The evolution of the EU's global trade strategy

Since the birth of the WTO in 1995 the EU's global trade strategy has fundamentally altered in response to the changing dynamics of world trade and the global trading system. In 1999 the EU's 'managed globalisation' strategy positioned the EU as the leading power within the WTO, and its main advocate for the launch of new multilateral trade negotiations which would broaden the multilateral trade agenda to establish new rules on trade and investment, competition, procurement, and trade facilitation, whilst reducing bound tariffs and removing non-tariff barriers (NTBs) in traditional trade policy areas such as agriculture, textiles, services, and industrial goods. Further calling a moratorium on all new bilateral and plurilateral trade negotiations, the 'managed globalisation' strategy established the EU as the WTO's champion, and the Doha Round's principle *demandeur*; being largely responsible for corralling the United States and developing world into supporting its launch. By 2003 the Doha Round was however, to experience the first signs of a new found assertiveness by the emerging economies, and a resultant stagnation in the WTO's multilateral trade negotiations. With ongoing disagreements over the very modalities that the Doha Round negotiation agenda should adopt - along with increasing entrenchment of the diverging stances of developed versus developing nations - the Doha Round was, by July 2006, suspended.

In what must be recognised as a pragmatic response to the impasse within the Doha Round, in 2006 the EU re-evaluated its global trade strategy. With the EU's efforts within the Doha Round proving ever more costly, and in further reaction to the United States' own aggressive pursuit of numerous regional and bilateral preferential FTAs with key partners, the Global Europe strategy brought a close to the EU's moratorium on bilateral and regional preferential trade agreements, and reopened the EU's pursuit of its trade interests beyond the forum of the WTO. Global Europe further signalled a shift in the EU's policy towards the emerging economies. No longer accepting their development status as reason for non-reciprocation of trade concessions within the Doha negotiations, and further recognising that the rising powers were combining their high growth with high barriers to EU exports, the EU raised its demands in expecting the emerging economies to take on greater responsibility in favouring market openness and to give Europe 'something in return'.

However, with continued stalemate preventing progress within the Doha Round, the impact of the 2008 global economic crisis, and with a new Trade Commissioner, Karel de Gucht, taking the helm at DG Trade, the EU again re-evaluated its global trade strategy. Launched in November 2010, the Trade, Growth and World Affairs (TGWA) strategy was a response to several factors. First, the economic crisis resulted in weakened demand for European products and enhanced the EU's reliance on growth through trade, and exports particularly. Second, projections showed that developing and emerging

## Responding to new powers: The European Union's global trade strategy moving forward

10 countries would account for nearly 60 per cent of world GDP by 2030, and with 90 per cent of world growth being generated from outside of Europe. The TGWA strategy thus placed priority onto securing the EU's growth and competitiveness in a changing world, with particular emphasis on securing better access for EU products in traditional markets, whilst broadening its reach to access new markets as well.

In 2013 a Commission policy communication entitled 'Trade, Growth, and Jobs', made in contribution to a European Council debate on the same topic, further honed the EU's global trade strategy. This document set out the EU's prioritisation of ambitious trade negotiations with advanced economies, including the United States and Japan, 'anchoring' the large emerging economies into the global trading system through evenly shared global-responsibilities and reciprocity, and through the pursuit of a 'realistic' agenda within the multilateral trading system.

With the new Juncker Commission in office since the beginning of November 2014, Celia Malmström has taken up the helm at DG Trade. With this new appointment DG Trade shall again be conducting a period of reflection on its trade agenda moving forward and its strategic outlook in dealing with today's global trading system. The Foreign Affairs Council, at a meeting of its Trade Ministers on 21 November 2014, has since further invited the Commission to 'consider updating its strategic document on 'Trade, Growth and World Affairs' in order to come back to them within an appropriate timeframe.

### Policy Implications

The EU's TGWA strategy and subsequent Trade, Growth, and Jobs policy communication signified a major step forward in the EU's response to new powers in the global trading system and which has had several important policy implications which the EU must take into account when considering its next strategic update. These include:

1. TGWA deliberately refocused the EU's global trade agenda onto 'new' privileged policy issues including investment, procurement, and services as well as emphasising the broader need to enhance the EU's foreign market access and to overcome regulatory barriers elsewhere. Important to note is that many of these issues are not dealt with under the current remit of the WTO's Doha Round, but have been pursued through bilateral negotiations with key partners (i.e. the United States, China, Japan, Canada, Singapore, India), and in issue-specific plurilateral negotiations within the forum of the WTO (i.e. the Trade in Services Agreement).
2. Whilst the EU continues to stress that the Doha Round remains its 'top priority' and that it is important for the EU's external trade agenda to 'strengthen the multilateral trading system centred on the WTO', the EU has exerted little energy within the Doha Round negotiations since 2008. Whilst it is important to note that the EU cannot be the sole engine pushing for progress within the Doha negotiations - a multilateral negotiation requires that all members demonstrate willingness to find compromise and consensus - the EU nevertheless has an important role to play as the world's largest trading bloc and the foremost champion of multilateralism, if it

### Responding to Crises: Perspectives on the European Union

has the political will to do so. The EU did seek to play a mediatory role in 2011 in an effort to facilitate a compromise between American and Chinese interests on sectoral tariffs in the non-agricultural market access (NAMA-sectorals) negotiations, but it has since adopted much more a back seat. The EU's support and consent remains critical to the progress and eventual outcome of any Doha deal, including any Doha-Lite deal stemming from the Post-Bali Work Package, but the EU's performance within the WTO in recent years has been much more that of a cruiser than a pusher.

3. The Transatlantic Trade and Investment Partnership (TTIP) is at the forefront of EU global trade policy at this time and will continue to be for the foreseeable future. TTIP is however a 'game-changer' for the global trading system. Portrayed by some as a necessary and strategic response to the changing trading order, and one that will in turn kick-start multilateral negotiations, it is, fundamentally, a post-crisis response by the EU and US to defend against future competitors, shape the future parameters of competitiveness in the global economy, and safeguard against the erosion of shared Atlantic values.

The EU's trade strategy furthermore presents a number of challenges which require due attention in the next five year period. These include the likely efficacy of the EU's ambitious, and far-reaching, negotiation agenda; the sufficiency of its trade strategy in addressing current trade dynamics; and the legitimacy of its approach in terms of global trade rule-making.

### Efficacy

The EU's prioritisation of bilateral over multilateral trade negotiations since 2006, and with advanced industrialised countries particularly since 2013, is considered a pragmatic response to the ongoing stalemate and multilateral governance dilemma impacting the WTO. There are however, no guarantees to the EU's Competitiveness-First trade agenda. As the EU's hard-fought FTA negotiation with Canada and the ongoing TTIP negotiations have increasingly proven, the EU's bilateral trade negotiations today are neither simple nor easy. To make the types of gains necessary for enhancing EU growth and competitiveness, the EU must deal at the bilateral level with other equal partners. Its bargaining strengths and capacity to make demands whilst resisting pressure for its own reforms, is therefore much reduced compared to negotiations with weaker or smaller states where the asymmetry of power stands in the EU's favour.

The proliferation of the EU's bilateral and plurilateral trade and investment agenda has moreover meant that, today, the EU is conducting an array of ongoing negotiations spanning a vast global network, including with the USA, ASEAN, Singapore, Malaysia, Vietnam, Thailand, Japan, India, the Andean Community, MERCOSUR, Egypt (dialogue only), Morocco, Iraq (over access to the WTO), Azerbaijan, Kazakhstan, and China. With so many negotiations under way, questions must start to be raised as to the efficacy of the EU's approach. It further flags potential issues of how coherent each of these negotiating agendas are and the extent to which the EU will be able to then consolidate agreements made, particularly if, in the process, it alienates the WTO. Whilst these negotiations do present a substantial potential gain for the EU if concluded (TTIP alone is anticipated to inject €120billion into

## Responding to new powers: The European Union's global trade strategy moving forward

---

12

the EU economy), the EU will nevertheless be required to exert considerable energies if it is to achieve outcomes that it can count a success, and which in fact bolster EU growth and competitiveness.

In the case of the TTIP negotiations the question of efficacy is especially pertinent. Negotiations have already hit a wall of political resistance and normative contestations, with growing concerns over its highly ambitious scope and, until recently, limited transparency. Momentum within negotiations has moreover started to wane and the window of opportunity for concluding negotiations before the American Presidential election cycle begins threaten progress, not least over regulatory convergence and the Investor-State Dispute Settlement Mechanism.

A core objective of the TTIP negotiations has been the need to find regulatory convergence between the EU and United States. On this issue however, critics in Europe have particularly targeted the notion of TTIP as a 'living' agreement, fearing that it signals a future, pro-business regulatory approach. It is likely that an ambitious TTIP will be equipped with a horizontal chapter defining crosscutting disciplines across numerous regulatory barriers, with extended transparency requirements, and an institutional chapter establishing an independent body that will be mandated to tackle regulatory trade barriers in the future. However, the uncertain scope of the Horizontal Chapter on Regulatory Coherence has generated widespread misunderstandings. While TTIP is likely to host an institutional platform for future trade-related regulatory governance, in the form of the Regulatory Cooperation Council, this has so far been seen as a decision-making regulatory body beyond democratic control, potentially covering both prospective and existing regulatory measures of general application. This uncertainty has particularly fuelled anti-TTIP sentiments in Europe.

Another core TTIP objective concerns investment rules. The aim is to facilitate more private investment across the Atlantic and to develop a transatlantic model for future investment-related trade agreements, especially with the emerging economies. However, the Investor-State Dispute Settlement Mechanism is criticised for granting firms the right to sue governments and demand compensation if proven that investor rights have diminished, by unfair, illegitimate and disproportionate public policies. It is seen as the irreversible shift from public to corporate power, forcing governments to compensate firms for legitimate public regulations to protect environmental or health interests. The legal process of secret, unaccountable tribunals, whose composition is hampered by conflicts of interests, has further politicised the issue.

In addition, critical efficacy issues are also present over the EU's efforts to conduct free trade and investment agreements with the emerging economies. In the case of China, challenges most notably exist in tackling the missed business opportunities owing to market access and regulatory barriers reported by 45 per cent of EU companies based there. Challenges also exist over the prominence of state-owned enterprises, unequal access to subsidies, and with serious questions over the adequacy of China's intellectual property enforcement. In the EU's ongoing negotiations with India and Brazil/MERCOSUR moreover there remain no clear signs of progress despite their longevity, particularly in addressing non-tariff barriers. In the case of India especially, this includes quantitative restrictions, import licensing, mandatory testing, certification for large quantities of products, and lengthy customs procedures.

### Sufficiency

Events and economics move quickly in global trade and the TGWA strategy is already showing signs of being insufficient to the current trade climate. Launched in 2010 when achieving EU recovery from global recession was a critical driving factor, TGWA was crucially about surviving crisis. Since then the politics of global trade governance has shifted dramatically. TTIP has itself produced a knock-on effect for global trade governance; spurring on other mega-regional negotiations, diverting energy, momentum, and political will away from the WTO, and raising criticisms of the EU and United States as seeking to re-establish their former co-hegemony of the global trading system.

The EU's Trade, Growth and Jobs communication by the Commission to the European Council in 2013 has provided an important update to the TGWA strategy, and is a formal policy document reflecting on several of these issues. Importantly it does also engage with crucial questions of the EU's place in global value chains and in 'value generation', particularly in services where the EU is especially well placed, and in setting out specific steps forward for the EU in dealing with key trading partners at the multilateral, plurilateral and bilateral levels. This document does also require updating however, particularly with reference to developments, albeit limited, within the WTO. Most crucially this includes reference to and consideration of the WTO's Bali Agreement from December 2013 and the WTO's new focus onto 'early harvest' deals rather than the single undertaking. It further set out a new 'post-Bali work programme' which the EU has given its support to but which has thus far made limited progress. The document moreover presents no clear EU policy or agenda for addressing the future of the WTO, or how TTIP and the EU's other negotiated agreements will explicitly complement multilateral trade liberalisation. It is also important to note that the EU has not established a Reflection Group on the Future of the WTO, as set out in its 2010 TGWA strategy, and which has not been referenced either within the Trade, Growth, and Jobs communication or in the Foreign Affairs Council's own deliberations on the EU's trade agenda on 21 November 2014.

### Legitimacy

The EU has consistently emphasised that its pursuit of trade liberalisation in bilateral and plurilateral trade and investment agreements is complementary to multilateralism and can help kick-start negotiations within the WTO – indeed signalled by the framing of TTIP regulatory issues as 'WTO+'. This has not however, been translated into any explicit effort to reinforce the role of the WTO as the legitimate trade legislator within the global trading system. More pressingly, there has been no clear signal by the EU that it has either considered or will look to address, the external legitimacy of TTIP in terms of clarifying its global economic effects, in ensuring greater transparency, or the need to safeguard the ongoing and legitimate role of the WTO.

It is important that the EU should now consider an update of its trade strategy for the next five year period of the Europe 2020 Strategy. This update should explicitly draw upon the Trade, Growth and Jobs communication from 2013, along with recommendations from the November 2014 Foreign Affairs Council, but go further in updating its agenda to encompass more recent developments with the United States, Japan, China, and within the WTO. Such a refresh should particularly consider:

### 1. A balanced, multi-level, and time-aware strategy

The EU should outline the need for a clear balanced, coherent, multi-level, and time-aware approach to the EU's negotiating agenda moving forward. This is evident to a certain extent within the EU's Trade, Growth and Job 2013 communication but should be updated for the new Commission. As the Doha Round has demonstrated, negotiation agendas can soon be outdated. A balanced prioritisation of the TTIP negotiations alongside the WTO's Post-Bali Work Programme should be addressed first and foremost.

### 2. Progress in TTIP

In the case of TTIP urgent clarification of the mandate of the proposed Regulatory Cooperation Council is required. It should be stressed that the Regulatory Cooperative Council holds the potential of raising the transparency level of business-regulators interaction, and of improving the political oversight capacity of the TTIP implementation process. Its decision making capacity must therefore be carefully crafted and specified. It is also imperative to clarify the procedural rules of the envisioned chapter on investor rights in the TTIP. A hybrid model of an investigatory panel process open to private claims and a state-to-state Appellate Body can perhaps bridge this polarised debate. A roster of pre-selected panellists serving in an independent capacity should be established along with the creation of a permanent Appellate Body.

### 3. The Doha Development Agenda

Whilst the EU cannot be a sole engine driving forward the WTO, it does remain the Doha Round's principle *demandeur* and the world's largest trading bloc. It should not sit on the side-lines if it is also to expect results. It requires to translate its policy rhetoric into activity. The EU must therefore demonstrate a genuine willingness to actively reengage in the Doha Round's Post-Bali Work Programme.

Whilst broad-based single undertakings represent the best case scenario for multilateral trade negotiations, enabling all players to achieve a positive sum outcome, they are unrealistic in an emerging multipolar global trading system. The EU should therefore consider means of achieving its trade interests through smaller, more definitive, multilateral trade deals or, as a second best solution, in the pursuit of plurilateral 'coalitions of the willing' within the WTO.

### 4. Governance and the WTO

The EU must critically revisit its governance approach towards global trade-rule making. The WTO is not unfit to govern globalised trade but it needs updated rules to ensure that it remains a vital forum for countering the formation of rival trade blocks. The EU must consider ways and means by which to live up to its own multilateralist principles to reinforce, support, and strengthen the WTO moving forward.

Fulfilling the EU's objective of setting up a Reflection Group on the Future of the WTO, as detailed in its TGWA Strategy, should now be reconsidered as a point of priority for the EU's new trade strategy. Such a group should pay particular attention to: (1) how the emerging economies are represented, and treated within the WTO, particularly with regards principles such as Special and Differential Treatment and Less Than Full Reciprocity; (2) the upgrading of China's WTO status to full member rather than Recently Acceded Member; and (3) considering mechanisms for ex-post analysis of the economic effects of FTAs within the WTO.

16 Andreas Goldthau (Harvard University/Central European University) & Nick Sitter (Central European University/BI Norwegian Business School)

### Introduction

*"Soft power is the velvet glove, but behind it there is always the iron fist"*

Robert Cooper (2004),

Director-General for external relations and political-military affairs,  
EU Council Secretariat

The biggest energy policy challenge that the European Union faces besides climate change is security of supply. Policy recommendations on EU energy security commonly either invoke the need for more EU hard power – such as stronger external energy policy, a tougher stance towards Russia, stronger “pipeline diplomacy” with alternative suppliers of oil and gas – or more attractive soft power – primarily a matter of improving the working of the single energy market and persuading non-EU states in the near abroad to adopt similar market-oriented regimes. This brief assesses the EU’s policy tools in the energy sector, and explores whether what might be labelled ‘soft power with a hard edge’ can amount to a consistent and realistic policy strategy.

### Evidence and Analysis

#### EU hard and soft power in energy

Hard power rarely works in the EU energy sector, primarily because the EU lacks the will and cohesion to exercise military and economic hard power to secure energy supplies. To be sure, the EU has exercised hard power in the form of counter-terrorist and -piracy operations; but not in order to secure energy supplies. Historical European examples of hard power in this sector include the establishment of the Anglo-Persian Oil Company, later BP. Contemporary US examples include the Fifth Fleet’s contribution to keeping the Strait of Hormuz open to international oil trade. Of course the EU has used energy as means and ways of exercising hard power, such as the oil embargo on Iran and sanctions against Russia. However, to the extent that the EU has hard economic power in the energy sector, this is primarily located at the member state level. What is more, it has not used hard (economic) power for energy-related ends. In short, the EU’s lack of hard power in the energy sector is not due to an ‘expectations – capability gap’, but to what might be called an ‘expectations – willingness gap’.

Soft power, on the other hand, is problematic for the EU energy sector because it cannot work if the targets (notably Russia) do not find the EU attractive as a model. To be sure, if non-member states do find it important to participate in the European integration project, this can give the EU leverage in terms of energy policy. A good example is Norway joining the European Economic Area, and the

#### Responding to Crises: Perspectives on the European Union



## The EU's Soft Power with a Hard Edge: Implications for EU Policy Strategy and Energy Security

---

17

European Energy Community (which commits most of the West Balkans states, the Ukraine and Moldova to implementing EU gas rules on a voluntary basis). However, the EU's effort to extend its rule-based regulatory regime for investment, trade and transit to the former Soviet states with the European Charter Treaty failed. Russia did not find it attractive, and the incentives coming with the ECT did not convince other CIS countries either.

However, there is some middle ground, and it stems from the EU being the world's most attractive energy import market, both in oil and, probably more importantly, in gas. This market might give EU soft power a hard edge.

### Assessing the EU toolbox: why markets give soft power a hard edge

The most powerful instrument in the European Union's energy policy toolbox is the regulatory rules that govern the Single European Market. This is of utmost importance in gas, the bloc's most vulnerable energy sector. Three sets of directives, issued in 1998, 2003 and 2009, established the internal gas market. Combined with competition law, they provide the EU's *soft power* (the attraction of the Single Market) *with a hard edge* (conditions for third-country firms accessing this market). Important examples include:

- EU competition rules, such as prohibition of companies' abuse of their dominant position, have forced energy firms to change their business practices. In the 1990s and early 2000s, the Commission broke up the Norwegian monopoly exporter GDF and other joint marketing ventures, including plans by Enterprise Energy, Marathon and Statoil to jointly market gas for the Corrib gas field, and the Danish gas supplier DONG's agreement with the country's main gas producers (Shell, A.P Møller and ChevronTexaco) to market their production jointly. The Commission and its network of national competition authorities has vetted and cleared a number of mergers, but their overall approach has been to use this power to impose conditions (usually divestment) for approving mergers and acquisitions, in order to promote competition.
- Since 2000, the Commission's tactic vis-à-vis external suppliers has been guided by pragmatic problem solving. Its investigations of 'destination clauses' in gas contracts (i.e. rules whereby exporters restrict the buyer's freedom to re-sell gas anywhere in the EU or demanded a share of the profits in the case of resale) resulted in the removal of the practice from bilateral supply contracts between Gazprom on the one side and Italy's ENI, Germany's EON Ruhrgas and Austria's OMV on the other, as well as between Algeria's Sonatrach and its European business partners.
- The EU legal requirement that made firms 'unbundle' transport and trade of gas and permit third party access to pipelines, has fostered competition among suppliers. External producers such as Gazprom need to comply with EU and national tariff regulations to the extent that they want to 'come and play' on the EU market. Gazprom has sought, and partially secured exemptions from these rules on the pipelines linked to the Nord Stream project (which runs directly from Russia to Germany under the Baltic Sea, built by a consortium of Gazprom, E.ON, BASF, Gasunie and GDF Suez); but the Commission made clear that there would be no exemptions for South Stream (which runs under the Black Sea to Bulgaria and onwards to Central Europe, planned by

a Gazprom-ENI joint venture). The six EU states involved agreed to let the Commission 'assist' with their renegotiations with Gazprom.

- Article 11 of the 2009 directive – the so-called Gazprom clause – allows EU member states to take into account security of supply risks when they vet and certify third-country firms' acquisitions, ownership and operation of gas transportation networks. It is noteworthy that this does not apply to EU-firms. Russia, which joined the WTO in 2012, complained in 2014 that this clause violates the GATS requirement for non-discriminatory treatment of foreign services and service providers. Still, the EU maintains that regulatory practices as applied in the EU need to reflect the goal of supply diversification, in addition to formal legal provisions.
- The EU supports infrastructure projects, which represent a classic 'public goods' problem, as part of its efforts of 'market making'. This is done with a view to enhance diversity of pipeline routes from Russia (until the Nord Stream pipeline was opened in 2012, some 80 % of Russian gas exports to Europe crossed the Ukraine) and to link the EU market to additional suppliers, notably Azerbaijan and Turkmenistan, through the 'Southern Corridor'. The Commission uses three tools to support pipelines: its regulatory tool kit to permit exemptions from single market rules for specific pipelines; its authority and expertise to lend support to any given project; and financial support for pipelines. The Commission's most high-profile initiative was its support for the Nabucco project, which would bring Central Asian gas from Turkey to Austria via Bulgaria, Romania and Hungary. In one case, it even proposed what effectively amounted to a gas buyers' consortium in the shape of the Caspian Development Corporation, a proposal that has seen renewed momentum in the shape of the recently proposed 'Energy Union'. Although the Nabucco and CDC projects both failed, they nevertheless illustrated that the EU's policy toolbox is somewhat wider than merely Single Market regulation.

### The EU as a global actor in energy: using market power in a geopolitical game

In international politics, the EU regulatory state is emerging as an actor in its own right. This gives rise to a new and different take on the EU as a soft power: one that relies on attraction, but gives its attractiveness a hard edge. This hard edge is directed at both firms and governments:

- The EU's soft power with a hard edge is directed at firms inasmuch as the Commission can and does oblige third-country firms to play by the rules of the Single European Market if they operate in the EU market. It has forced a number of firms to change their business models.
- The EU's soft power with a hard edge is directed at governments inasmuch as the EU seeks to export its rules and support infrastructure projects. However, this power is conditional on the target states' finding the EU regulatory model attractive, and/or assessing its benefits as outweighing the costs.

The EU's soft power coming with a hard edge is all about making energy markets and making them work. Almost everything the European Commission does in the field of energy policy is designed to complete the Single European Market, to extend it to the field of energy, and to render it more attractive for suppliers and consumers. In other words, the EU's hard power derives from its attempts

to mitigate public goods problems. Energy security is one of them – albeit one with a strong strategic dimension. Though often underappreciated, the EU regulatory apparatus, backed up with European market might, does have impact in fostering energy security, even short of hard power tools.

Nevertheless, the reach of EU tools - and hence its soft power with a hard edge - is clearly limited. It is more pertinent to gas than oil, because it is traded on regional rather than global markets. It is more relevant to the near abroad than more distant countries. And it is more applicable to transit countries than suppliers. The longer the attempted reach (in terms of distance), the more specific the tools need to be – as the Caspian Development Corporation initiative indicates. Finally, the EU's power is often more effective with respect to companies than governments, because its reach depends on how receptive the targets are, and the regulatory toolbox that the EU uses to achieve its policy goals. The EU's real hard edge therefore comes into play when its policies target firms, operators and regulators; not the governments of producer states.

### Policy Implications and Recommendations

#### Implications for EU policy

This suggests that EU strategies need to start here. Given the characteristics of its policy toolbox, the EU will need to further sharpen and strengthen its instruments in the areas of competition policy, infrastructure support and market regulation. The EU, the world's largest and most attractive gas import market for decades to come, should invite companies to come, but to come and play according to EU rules. Further empowering the energy market watchdog - the EU Commission - will ensure both smooth market operations whilst competition rules as applied will make sure that external suppliers, as dominant as they may be, are held in check. A 'single voice on energy' will therefore not involve all 28 member states agreeing on a joint Russia policy. Instead, it will emerge through the attractiveness of the world's largest gas import market, its integrated nature ensuring a high level of competitiveness, and a powerful authority guarding market principles - the EU Commission. The 'Single Voice' will articulate the clear message that gas trade is based on the liberal market paradigm and companies supplying the EU market will need to abide by EU rules.

Internally, this crucially requires EU member states to open up their national gas markets, fully integrate them into broader EU frameworks, ensure sufficient interconnectors and reverse flow infrastructure be put in place to allow for physical delivery across borders, and to liberalize their energy sectors to ensure sufficient investment. This will both enhance EU market power and ensure that more than marginal LNG cargos add to the EU's supply structure. EU policies will therefore need to flank the external market-making agenda with efforts to strengthen the operation of the internal market. This is the other side of the coin of the EU strategy to enhance its energy security.

### 3 Activating Networks on Taxation: Issue Entrepreneurs and Policy Catalyzation

20 Leonard Seabrooke (Copenhagen Business School/University of Warwick) & Duncan Wigan (Copenhagen Business School)

#### Introduction: European Networks and Accelerated Policy Development

Launching a European Commission communication in June 2012, Algirdas Šemeta, European Commissioner for Taxation and Customs Union, Audit and Anti-Fraud, laid open ambitious intentions:

‘Let there be no illusion: tax evaders steal from the pockets of ordinary citizens and deprive Member States of much-needed revenue. If we want fair and efficient tax systems, we must stamp out this activity. The political will to intensify the battle is there. Now it is time to translate that into action’.

In this context, policies aimed at redressing the widely perceived detrimental impact of cross border tax evasion and avoidance underwent an on-going process of accelerated development. The 2013 Lough Erne G8 leader’s communique crystallised this shift stating, ‘we commit to playing our part in developing global solutions to the problems of tax evasion and tax avoidance’, calling on the OECD to develop a common template for country-by-country reporting and committing to a global standard for automatic information exchange. With progress on the OECD Base Erosion and Profit Shifting (BEPS 2013) initiative, Europe is addressing a record of impotence on direct taxation and may transcend the severe collective action problem that has dogged efforts in this area to date.

Member state heterogeneity places in tension multiple and often opposed interests and European membership incorporates numerous states which can be understood to follow an offshore strategy; the EU itself is host to the largest tax evasion and avoidance industry in the world. If we include EU member states dependencies, the proportion of the world tax havens hosted by the EU rises to approximately 60%. However, given the fiscal emaciation of many European states in the wake of the global financial crisis and the uncomfortable contrast too easily drawn between on one side, widespread and deep austerity and, on the other, revelations of systematic elite and corporate shirking on taxation the EU has begun to act. Not only have leading member states signed inter-governmental agreements with the US to facilitate the internationalization of the 2010 Foreign Account Taxation Compliance Act, which target US citizens with foreign banks accounts, but the EU policy armory on taxation has been significantly reinforced.

The European Savings Tax Directive has been superseded by the 2011 Directive on Administrative Cooperation in the Field of Taxation. This mandates the Commission to widen the categories of income that member states must automatically exchange information on beyond interest payments, and tightened procedures for doing so, rendering the EU regime potentially compatible with FATCA requirements. Amendments to the Mutual Assistance Directive reinforce the trajectory. A Most Favoured Nation (MFN) clause obliges member states to provide another member state the level of cooperation they have accepted in relation to a third party. Second, it prohibits the reliance on bank secrecy for non-residents in a refusal to supply information on a taxpayer. Third, if any EU member becomes a FATCA partner country, as has Luxembourg, all EU members will be empowered to demand

#### Responding to Crises: Perspectives on the European Union

the same treatment as that afforded US authorities. ‘Son of FATCA’ agreements, signed between member states and non-EU member jurisdictions raise the spectre of MFN claims reaching beyond the boundaries of the EU. Jersey, Guernsey, the Isle of Man, Switzerland and the Cayman Islands signed agreements with the United Kingdom between December 2012 and April 2013. In October 2014 the 28 member states of the EU reached a political agreement to implement the newly minted OECD Common Reporting Standard. This requires jurisdictions obtain information from their financial institutions and automatically exchange that information with other jurisdictions annually.

In short, the agenda for global tax reform has recently gone through a significant and profound shift that is changing transnational regulatory interaction and content. While tax policy has largely been understood to be an enclosed policy preserve of private sector experts, technocrats and state agencies, at the forefront of the drive to implement new policies were civil society actors and nongovernmental organizations (NGOs) pushing the issue through transnational advocacy networks (TANs). Amidst an NGO ‘scramble’ to take the mantle on tax justice issues, the UK-based Tax Justice Network (TJN) emerged as the specialists, widely recognised as knowing best on tax issues. Established in 2003, TJN is a key actor on global tax justice issues and strongly influential in defining campaign issues, targets, accounting metrics, and policy content for the wider NGO community. This Policy Brief provides a framework for understanding how issue entrepreneurs operate in TANs through ‘identity switching’ and professional mobilization. We outline how issue entrepreneurs switch identities between different professional ‘network domains’, and how identity switching is critical for accessing and activating advocacy strategies on technically complex issues.

### Activating Networks in the Face of Complexity

Explaining the rise of global tax justice activism in TANs provides a puzzle given the high level of issue complexity. NGOs might be expected to target issues carrying brute moral or ready emotive content. NGOs able to provide leadership in TANs might be expected to be large and heavily resourced. The issue of taxation is technically complex and opaque to most. TJN is a tiny organization with resources that pale in significance when compared to more established NGOs. We explain activation within TANS and issue leadership as a consequence of strategies from issue entrepreneurs who engage in ‘identity switching’ as a form of professional mobilization. Identity switching permits specific strategies. These strategies draw upon a capacity to access professional and policy arenas from a footing in a particular domain and then to activate a plan of action intended for a different audience. This is identity switching between different ‘network domains’, between different networks of individuals and organizations that belong to a particular identity and includes the corporate, policy, scientific and activist domains.

We also suggest that professional experience more than professionalization is an important part of campaigning on global tax justice. This is because professional experience and skills are vital to understanding the complex technical issues surrounding tax policy, but cannot remain within a professional community if the issue is to gain public support. On tax justice issues the NGO or TAN involved requires cross cutting expertise in law, accounting, tax, economics, and political economy. Without such technical expertise an NGO campaign will be limited to campaigning around particular

## Activating Networks on Taxation: Issue Entrepreneurs and Policy Catalyzation

---

22

public scandals rather than agenda setting and policy innovation. The skills of TJNs core members encompass the competencies necessary to analyse, and provide means of redress for, problems within the international tax environment. Accounting, law, economics, political economy and business constitute the principal disciplines encompassed by the tax justice issue. Apposite professional expertise and experience are important but are infrequently located within larger bureaucratic NGOs. To professionally mobilize on global tax reforms the issue has to be put forward by entrepreneurs with unique capacities to organize rather than belonging to a particular organizational type.

TJN's influence comes from its capacity to build shared narratives, provide research-led alternatives to mainstream measures and indexes, assert clear policy positions, and engage corporate interlocutors in public debate. Members of TJN have been able to speak to and influence audiences in the activist, scientific, policy, and corporate 'worlds'. Issue entrepreneurs able to engage in identity switching between network domains have a greater capacity for professional mobilization on complex technical issues. Following extensive interviews with key members of TJN and other activists and NGO staff, participant observation in meetings and workshops on tax justice, and Case Study Integrity Meetings with tax activists, we located four key strategies.

### The four key strategies are:

**Berserking** – entering an environment and aggressively challenging key policy ideas.

**Narrating** – providing a consistent storyline that challenges existing norms and gives life to actionable alternatives.

**Cornering** – controlling a debate by representing diverse sources of authority and maintaining distinct identities rather than the face of one organization.

**Templating** – providing clear recommendations and treatments for complex issues to directly inform policy design and implementation.

These strategies for professional mobilization rely on identity switching between the activist, scientific, policy, and corporate network domains. They also rely on tactics that we call 'access' and 'activation' points. Access points are point of entry for issue entrepreneurs into particular arenas, often based on recognized expertise and past or present professional networks. Activation points are moments where actions are made for a particular audience in an attempt to create momentum on the issue.

**Table 1: Access and Activation Points: Access Point = 0 Activation Point = X**

|                   | Activist | Scientific | Policy   | Corporate |
|-------------------|----------|------------|----------|-----------|
| <b>Berserking</b> | <b>X</b> |            | <b>0</b> | <b>0</b>  |
| <b>Narrating</b>  | <b>X</b> | <b>0</b>   | <b>X</b> | <b>0</b>  |
| <b>Cornering</b>  | <b>0</b> | <b>0</b>   | <b>X</b> | <b>0</b>  |
| <b>Templating</b> | <b>X</b> | <b>0</b>   | <b>X</b> | <b>0</b>  |

Table 1 outlines how these tactics are deployed according to access and activation points. The members of TJN draw on expertise and authority in one network domain to get action in another. In Table 1 0 denotes an access point and X an activation point. To walk through the examples, in the Berserking line past experience and professionals networks in the policy and corporate network domains permit access to events and forums where TJN members can loudly complain about the lack of attention given to tax justice issues. The Narrating line shows an access point in the scientific domain, where key members of TJN receive esteem for their knowledge of accounting, law, and economics, permitting them to articulate a clear narrative and storyline as the people who know best on how reforms on tax justice should proceed to the activist and policy domains.

In the Cornering line we can see three access points in the activist, scientific, and corporate domains and an activation point in the policy domain. Here TJN members represent themselves as different professionals from different backgrounds to corner the issue in the media and provide a coherent position on what reforms are required that is aimed at a policy audience. Or, in contrast, Templating, where the access point is from the scientific and corporate network domains where particular skills, expertise, and credibility in forensic accounting lead to the creation of policy templates that are disseminated to the activist and policy network domains in an attempt to build greater support.

For sake of brevity we provide two concrete examples. The term ‘berserk’, derived from Old Norse, denotes members of warrior gangs who served as bodyguards in the courts and were deployed as shock troops in battle. Here, it describes accessing a corporate or policy domain on the basis of professional identity and expertise and then switching identity to the impassioned activist. The Director of TJN reports the deployment of this tactic in 2004 at Chatham House during a forum on Corporate Social Responsibility. Invited to the forum because of his professional history at the end of the meeting he loudly demanded that addressing tax avoidance should be included as a core principle for Corporate Social Responsibility. His intention was to redirect the debate, at the cost of transforming a ‘love in to a hate in’ and embarrassing a range of issue entrepreneurs for failing to address the key socioeconomic issue to do with multinational firms. A second example is the creation of treatments for complex technical issues about global tax reform. This tactic relies on access points in the scientific and corporate domains, especially professional networks and experience that assist in understanding technically complex issues. Activation points then follow in the policy and activist network domains where templates are released to guide policy thinking, design, and implementation.

## Activating Networks on Taxation: Issue Entrepreneurs and Policy Catalyzation

24

Prominent here is the development of 'Country-By-Country Reporting' (CBCR), which was designed by a core member of TJN, and is now part of EU legislation and further active policy discussion at the OECD, IMF and EU. Multinational and transnational firms produce accounts on a worldwide basis, but are not obliged to provide separate accounts for each jurisdiction where they have a presence. This means profits, losses, costs, liabilities and assets can be distributed so as to minimise a tax exposure. CBCR promises to resolve this by demanding financial reports for each jurisdiction where a firm has economic activity.

TJN produced a template for CBCR in 2003. A large TAN, Publish What You Pay (PWYP), campaigning on transparency in the extractives industries picked up the concept in 2005. By 2005, PWYP were campaigning for CBCR to be introduced in International Financial Reporting Standard 6 for the extractive sectors, and subsequently pushed for its inclusion in International Financial Reporting Standard 8. While setting up a sub-group on the topic, the private standard-setting body the International Accounting Standards Board (IASB) took a largely obstructive stance with regard to the demands of PWYP. In 2013, issuing a statement that its constituency had provided consistent feedback that CBCR was not in its interest to develop. However, by providing a template TJN was able to ally itself with PWYP and make the argument that CBCR could provide important data. The CBCR template then sparked interest from the European Commission and in 2010 a Directive was put forward to apply the financial reporting standard either to all companies or to extractives. TJN played a critical consulting role in providing the template for applying CBCR to the extractives industry, with a key member of TJN noting that 'NGOs just don't get accounting'. Since, CBCR has been incorporated in CRD IV, Europe's legislative package covering prudential rules for banks, and is a key parameter in on-going debates at the OECD as part of the BEPS process.

### Policy Implications

**Networks and Organizing** - We stress the implications of our analysis for understanding how issue entrepreneurs operate within their professional and organizational networks. TJN has a short but amazingly successful history in advocating global tax justice. This group is best characterised by their form of organizing advocacy (identity switching) rather than as a form of organization, the typical NGO. They have made significant inroads in producing a new financial reporting standard, CBCR, in addressing tax avoidance and evasion through the provision of new metrics, by fostering political salience to address corporate transfer pricing, and placing unitary taxation on the global policy agenda.

**Unblocking Policy Pipelines** - We also stress that in areas where established and well-resourced actors are positioned to uphold a status quo and inter-state consensus hard to come by, impetus can come from a policy 'Darwinian devil'. Sedimented policy systems can be unlocked where actors maintain organizational flexibility and are able to introduce novel ideational elements to the ecosystem. Issue control can become fluid if policy processes provide space for radical elements. This not only promises higher levels of policy innovation but greater legitimacy for the European polity.

### Responding to Crises: Perspectives on the European Union



Luk Van Langenhove, Ewout Ramon, Josh Gartland, Paula Retzl and Anna Selzer  
(United Nations University Institute on Comparative Regional Integration Studies)

## Executive Summary

It is often said that we are evolving towards a borderless world. But ever since the end of World War II, the number of borders has been increasing. Not only are there now more states, there are also more internal borders as well as more groupings of states (with their own external borders) than ever before. Multiple layers of governance are becoming the norm in democratic societies. This situation, however, poses a number of challenges, both for sovereign states and for regions below and above the state-level. These challenges include questions concerning solidarity, efficiency and legitimacy. There are ample opportunities in dealing with these challenges, but the bottom-line remains: they demand a dramatic re-thinking of how to organise governance.

## Introduction

We are living in a paradoxical era. It is, at the same time, one of globalisation and one of regionalisation. Everything around the globe is becoming more and more connected, and co-operation at the world level is required to tackle many complex problems. Capital flows globally and communication technologies are dissolving borders. Yet we are witnessing a rise in the number of sovereign borders as the number of states increases. Borders are emerging within and above states too, as they embark on decentralisation on the one hand and regional integration projects on the other. Reallocation of authority is indeed occurring not only downwards to the subnational level, but also upwards to supranational levels. One might say that the era of centralisation has been followed by an era of decentralisation. The result is that today's "borderless" world has more borders than ever.

Sovereign authority has become divisible and shared among various loci of governance. In practice, the state's sovereign rights, entitlements and obligations have also been conferred to and endorsed by entities other than states. It is herein argued that the state voluntarily hands over part of its sovereign powers to local, sub-national, regional and supranational units, but also to private entities, as part of a strategy designed to govern efficiently in an era of intensified globalisation. Sovereignty is not fully retained by the state, nor is it entirely transferred to new loci of power in response to the changing patterns of governance. Instead, it has to be conceived of as divisible, divided among various sites at the local, regional, national and international levels and in the public and private spheres. While before, state sovereignty entitled states to recognise new states, negotiate treaties, sign agreements, declare war and conclude peace, protect national citizens abroad and cast votes in international organisations, we now see some of these entitlements and obligations conferred to entities other than states. As a result, governance is now a matter for states and quasi states.

26 Globalisation has encouraged a spectrum of adjustment techniques and strategies and, in certain respects, a more activist state. States have not only delegated sovereign powers to supranational regional and global organisations, they have also devolved authority to sub-national entities at the (micro-)regional and local levels. Decentralisation and devolution of powers are driven mainly by a concern for efficient allocation and delivery of public goods, and have resulted in a system of multi-level governance.

Within this framework of multi-level governance, a parallel can be drawn between the 'Brexit' (UK-EU) and 'Scoxit' (Scotland-UK) debate. They both concern national identity and self-determination, and both reflect a certain disillusionment with established political elites and institutions. Multi-level governance can be explained by three logics: efficiency, distribution, and identity. These three logics are related to distinct conceptions of the purpose of government. First, government is there to provide public goods such as security, clean air, etc., which would not be provided by the market or by rational individuals. The structure of this government should then reflect the efficient provision of public goods given their economies of scale and externalities. Pressure to reform arises in the tension between actual government structures and the most efficient ones. Second, government is there to enforce distributional outcomes. The government structures will then reflect the power in society. Pressure for regional reform will respond to changes in power structures or changes in how rulers are selected. Third, government is an expression of community and the demand for self-determination on the part of normatively distinct, territorially based groups. The structure of government should then reflect the pattern of community. Sometimes these logics reinforce each other, but sometimes they clash.

It comes down to finding ways of staying together for the mutual benefits, while also allowing all units of governance to be apart. The main caveat of the shared sovereignty model is however the risk of demands for greater autonomy and self-determination by these partly autonomous entities. It is a phenomenon that can be described as the 'Frankenstein scenario', when creations turn against their creator. Research indicates that the more autonomy a region receives, the louder the calls for more self-determination become. In 86 per cent of the cases where a new state has arisen through secession, the region already possessed statehood characteristics in the period immediately before its independence. These secessions, together with a period of decolonisation, have caused the number of states in the world to rise sharply over the last decades. In 1948, only 74 states were members of the UN, today there are 193.

Despite voters' "no" to separation, the issue of Scottish independence is not off the table. In a way, Scotland has established for itself a position of regional leadership. The Scottish nationalists have demonstrated a persistent willingness to acquire additional political and economic independence. The partial acceptance of their demands has been demonstrated by the Prime Minister's promise to devolve additional powers, including taxes and welfare, in an equal manner to all four constituent parts of the UK. In addition, the capacity of Scotland to lead has been assured by its role as chief *demandeur* for autonomy. It remains to be seen how far Scotland will want to push its regional leadership role. Either devo-max will generate a more federal state; or the Union's separation will be sealed by a new referendum.

### Challenges

Governance of societies occurs at different levels. Next to the classical sovereign states, there is a growing number of quasi-states: units of governance that are not states but that have some statehood properties. States will have to search for a *modus vivendi* with these quasi-states, but they will face a number of challenges in the process.

#### 1. Solidarity

With the proliferation of borders there has been a shrinking of the scale of solidarity. The last European elections, with the significant gains enjoyed by nationalist parties, represent one example, as do the numerous secessionist movements around the world, such as the Scottish independence campaign. Between the Scottish and the rest of the British people, but especially with regards to English nationals, solidarity has been weakened. This lack of solidarity can be observed in the “yes” campaign’s discourse that public services and especially resources should be shared among Scottish people rather than with the rest of the UK. The distinction drawn between the Scots and other British citizens is based on the argument that the two groups have different historical, political, and cultural characteristics and therefore do not share enough similarities for feelings and practices of solidarity to flourish among them. According to this argument, there is a lack of “mechanic solidarity”, in Durkheim’s terms, between Scottish people and the rest of the UK.

Although Scottish citizens do share more among themselves than with the rest of the UK, there are indeed British-wide identity elements, such as common values, history and culture. Most importantly, these shared elements are conceived of by most Scots as not opposed but rather complementary to their Scottish identity. Nevertheless, this was not the message promoted by the “yes” campaign. With the referendum campaign, the feeling of British and Scottish identities as opposed has been much reinforced. This situation represents a challenge of reconstructing a multi-faceted feeling of identity, in a way that being Scottish, English, Northern Irish or Welsh can again coexist peacefully with Britishness. The question is therefore how to engender a multi-layer system of mechanic solidarity.

However, similarities are not the only basis for solidarity. Divisions of labour, by engendering interdependence, can create another form of solidarity. This is what Durkheim termed “organic solidarity”, based on difference. This kind of solidarity admits much more diversity than the latter and therefore is perhaps more suited to contemporary societies given societal trends towards differentiation, individualisation, and specialisation.

These two kinds of solidarity are always intertwined, but perhaps even more so in the case of the UK. The challenge is to identify which kind of policies and competency divisions between different levels serves best to balance these two kinds of solidarity in order to maintain on the one hand local identities and on the other hand enough solidarity among different peoples.

### 28 2. Efficiency

Organic solidarity, by promoting social cohesion through division of labour, can also contribute to efficiency thanks to specialisation.

Assuring the efficiency of policy making remains another challenge for a devolved UK. The motives for devolutionary initiatives, which in the past relied almost solely on mechanic solidarity for justification, have broadened to encompass a desire for greater efficiency in a globalised world. However, further devolution does not necessarily increase the economic efficiency of government.

From an economic efficiency point of view, the separation of already small states is not desirable. Unified states prove to be more efficient, since duplication costs in law enforcement and defence are avoided, free trade is assured, and the provision of local public goods is granted. The benefits of decentralisation (such as increased participation in decision-making and greater local accountability) may be attained through implementing the appropriate degree of decentralisation of authority among regions. That being said, the benefits of a unified state cannot be equally distributed among all citizens. There are three factors that can influence a region's decision to secede: political factors arising from the differences in regional preferences over fiscal policy; the efficiency losses from separation; and tax-related factors, emerging when per capita incomes vary across regions. Scottish voters decided that the efficiency benefits associated with remaining part of the UK were worth a lesser degree of control over political decisions when compared to independence. Nevertheless, the possibility exists that poorer regions may prefer independence despite both efficiency losses and losses of income in the form of fiscal transfers from richer regions. One way of avoiding a full separation is to allow regions to determine their own redistribution policy independently within a federal state. Inequality between regions resulting in redistribution is a major source of conflict between sub-national entities. The challenges Scotland is facing in terms of efficiency and legitimacy are closely interrelated. In the long term, a government's survival can only be guaranteed through the acceptance of its authority and the assurance of its political institutions' efficiency.

### 3. Legitimacy

This brings us onto the challenge of legitimacy. Political legitimacy is inherently subjective. For Locke, it is the acceptance by a community of a governmental body's claim to authority. The changing nature of identity and solidarity has caused many Scots to question Westminster's representativeness, a key source of democratic legitimacy, leading one and a half million of them to reject its claim to authority by voting for independence. Westminster's legitimacy may also suffer among English voters. Although the government plans to resolve the West Lothian question by barring Scottish MPs from voting on acts affecting England alone, 'devo-max' may well increase pressure for a separate, English parliament. Indeed, the question mark over Westminster's legitimacy to govern has not been resolved with the Scottish referendum. In time, Wales and Northern Ireland may demand independence for themselves.

Compounding the changing nature of identity however, the legitimacy of Westminster has been undermined by some of the adverse effects of globalisation (and liberalisation), from which the Scots have perhaps suffered disproportionately in relation to the rest of the UK. Efficient policy making is a crucial source of legitimacy. Yet here Westminster's powers are being sapped by globalisation trends,

which are eroding the number of policy areas under its control. The paradox is that as more powers are drained by globalisation and devolved by governments, the capacity of Westminster to lead in the UK, and hence its legitimacy to govern at all, is called into question.

### Policy Recommendations for Dealing with the Challenges

There are however, ample opportunities for sovereign states in dealing with these challenges.

#### 1. From Mechanic to Organic Solidarity

Recognising that solidarity does not necessarily depend on similarities represents an opportunity for diverse societies such as the United Kingdom. In order to cement solidarity among the different parts that compose the Union, it is necessary to make policies aiming to specialise each country in different economic and scientific functions, functions that would be complementary to each other and necessary for the economy and science of each of them individually. Furthermore, the same reasoning might be used in terms of policy and decision making by splitting different functions of the same policies areas among different government levels. Additionally, higher specialisation can contribute to increase efficiency and productivity.

Certainly, material issues play an important role. As we have seen during the campaign for the Scottish referendum, one of the arguments defended by those wanting independence concerns welfare policies, which are decided upon in the Scottish parliament but depend on taxes collected by Westminster. In this case it is clear that not all policy areas can be used to create organic solidarity or at least that some kinds of policies are more sensitive and require a careful division of functions. Ultimately, however, it is often possible to create organic solidarity by dividing functions of the same policy between different levels of governance. Indeed, sometimes such multilateral organisation of policy making and implementation can boost efficiency and effectiveness too.

#### 2. From Subsidiarity to Mutuality

The independence referendum has been a chance for the United Kingdom and Scotland to reflect on and reform their union. In a world moving from unipolarity towards a networked form of multipolarity, non-state actors that compete and cooperate become more important. The radically changing multilateral system could increase both efficiency and legitimacy. In a federal UK, each region could prove its usefulness to the others. Agreements could be reached on the basis of the principle of mutuality instead of subsidiarity. The principle of subsidiarity argues that all levels of governance in a stratified space of layers of governance from local to global, should be done at the lowest level possible. This classical notion of subsidiarity is no longer the best normative principle applied to multilevel governance. Given the increasing complexity of multilateralism, the principle of mutuality could be used to organize the “web” of governance. Mutuality is where each level of governance, participating in joint-decision-making, fosters the legitimacy and capacity of the others. Instead of quarrelling over the best distribution of competences between levels of governance, the focus should shift to how both

30 regions and states can mutually contribute to manage governance issues. Regions and state should stop competing and reinforce each other. Regions will endure challenging their place in the global governance system, whereas states will lose their capacity and sovereignty in dealing with global challenges as well as managing internal affairs.

The Scottish case illustrates that the region building process is not only about acquiring statehood properties but is also driven by a nationalist component aiming at the transformation of a region into a full-fledged state. Nonetheless, regionalism is possible without a nationalist component and could contribute to moving away from nationalism. On a sub-national level, regions which are partly driven by efficiency motives could remain within an existing state, where they can contribute to optimal governance. In a multipolar world, states are increasingly confronted with the sharing of policy competences within networks comprised of formal governmental institutions and other actors, such as regions, private sector actors and lobbyists. The interaction between these interdependent actors, structured around negotiation and the defence of interests in policy making and implementation, exemplifies an opportunity to boost organic solidarity and legitimacy within the UK. Both the central government and regional governments should better engage with these policy networks in order to increase the solidarity, efficiency and legitimacy of the system.

### 3. Increasing Legitimacy

The *even* devolution of powers to the constituent parts of the United Kingdom might actually strengthen the legitimacy of Westminster. The majority of Scots have always been more in favour of devolution than independence. Relieving the UK government of those policy areas where its authority is in question might strengthen its claim to govern those areas left under its control, areas where devolution is not possible, such as defence and monetary policy. In addition, regional governments endowed with more powers may be better placed to find solutions to pressing policy problems affecting their communities. Here, the legitimacy of the system as a whole might be strengthened by more efficient policy-making at the regional level. Moreover, by bringing policy making to the lower levels, popular participation in, and therefore the representativeness of, policy making is enhanced, increasing the legitimacy of the system. Finally, equalising the powers of the parliaments and assemblies of the constituent parts of the UK, by increasing the representation of regional communities vis-a-vis Westminster, might enhance the legitimacy of the British system as a whole.

Of course, should regional governments be seen as more legitimate than Westminster, independence claims may again rise to the surface. It is therefore up to the central government in Westminster to put forward a coherent, convincing and, vitally, positive narrative as to why the four parts of the UK are indeed “better together”, one that emphasises the UK’s common history and pluralistic national identity, and the common institutions such as the pound, the BBC and the Foreign and Commonwealth Office which benefit from British economies of scale. Such a story has to draw on the UK’s mechanic solidarity which, while damaged, still resonates with 55 per cent of Scots. But it has to build on organic solidarity too, highlighting the differences between the constituent parts of the UK that have enabled the Union to function as a single whole for so long.

### Conclusion

The sovereign state is confronted with multiple challenges in the contemporary era. Increasingly, policy making is occurring at levels both above and below the state. Even though states are losing power in relation to regions at the national and supranational level, the number of sovereign states in the world is increasing. Furthermore, there is strong evidence that the more statehood powers a region has, the more likely it is to demand independence and the more likely it is to get it.

How Westminster deals with the challenge of Scotland's regional leadership will be instructive for other European states, such as Spain and Belgium. From the defence of the Union by all three major parties during the referendum, the willingness of Westminster to remain a leader in the UK seems assured. However, Westminster must work to retain the acceptance of its leadership among the constituent parts of the UK, while retaining its capacity to lead. Acceptance of Westminster's leadership will be determined by the extent to which it is able to promote organic solidarity and balance it with mechanic solidarity among the peoples of the UK. The acceptance of Westminster's leadership in the UK, i.e. its legitimacy, will depend on the extent to which 'even' devolution can increase participation, representation and efficiency, as well as the justification its politicians are able to furnish as to why the UK should stay together. Finally, Westminster's capacity to lead will depend on its effective use of policy networks and the progress it is able to make towards a system of mutuality.

## Further Information

- 32 The GR:EEN project is a global integrative research project involving 16 institutions around the world which has sought to address and define the European Union's role in a changing global order. This report reflects just a snap-shot of the academic research that has been generated by GR:EEN over the past four years.

For more information about GR:EEN and its work please visit our website at [www.greenfp7.eu](http://www.greenfp7.eu).

### Project Identity

**Project name** Global Re-ordering: Evolution through European Networks (GR:EEN).

**Coordinator** Professor Shaun Breslin, The University of Warwick, Coventry, United Kingdom. E: [shaun.breslin@warwick.ac.uk](mailto:shaun.breslin@warwick.ac.uk)

#### CONSORTIUM

*Universiteit van Amsterdam*  
Amsterdam, Netherlands

*Boston University*  
Boston, United States of America

*Université Libre de Bruxelles*  
Brussels, Belgium

*University of Cape Town*  
Cape Town, South Africa

*Copenhagen Business School*  
Copenhagen, Denmark

*Central European University*  
Budapest, Hungary

*Facultad Latinoamericana de Ciencias Sociales*  
Buenos Aires, Argentina

*FRIDE*  
Madrid, Spain

*Istituto per gli Studi di Politica Internazionale*  
Milan, Italy

*Nanyang Technological University*  
Singapore, Singapore

### Responding to Crises: Perspectives on the European Union



|                                 |                                                                                                                                                                                                                                                                                                                                       |
|---------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>CONSORTIUM<br/>Continued</b> | <i>Norwegian Institute of International Affairs</i><br>Oslo, Norway<br><br>Peking University<br>Beijing, People's Republic of China<br><br>United Nations University- Comparative Regional Integration Studies<br>Bruges, Belgium<br><br>University of Western Australia<br>Perth, Australia<br><br>Waseda University<br>Tokyo, Japan |
| <b>FUNDING<br/>SCHEME</b>       | FP7 Framework Programme, Collaborative Project, SSH – Europe facing a rising multi-polar world                                                                                                                                                                                                                                        |
| <b>DURATION</b>                 | March 2011- February 2015 (48 months)                                                                                                                                                                                                                                                                                                 |
| <b>BUDGET</b>                   | EU contribution: 7 944 718 €.                                                                                                                                                                                                                                                                                                         |
| <b>WEBSITE</b>                  | <a href="http://www.greenfp7.eu">www.greenfp7.eu</a>                                                                                                                                                                                                                                                                                  |
| <b>FURTHER<br/>INFORMATION</b>  | Contact: General queries to <a href="mailto:green@warwick.ac.uk">green@warwick.ac.uk</a><br>Project management matters to Laura Downey, <a href="mailto:L.Downey@warwick.ac.uk">L.Downey@warwick.ac.uk</a>                                                                                                                            |
| <b>FURTHER<br/>READING</b>      | All working papers, policy briefing papers and other publications are available on our website: <a href="http://www.greenfp7.eu/papers">www.greenfp7.eu/papers</a>                                                                                                                                                                    |





**Responding to Crises: Perspectives on the European Union**



# GR:REEN

We acknowledge the support of the European Commission's  
FP7 framework funding (European Commission Project Number: 2666809)