Applying Securitisation Theory to EU Competition Policy

George Anglițoiu[1]

Abstract: *Is the competition policy connected and relevant to security? Is a non-juridical and non-economic theory capable to cover the dynamics of EU competition issues? The answers included in this article will focus on the unconventional dimensions of security as interconnections between social and economic layers of individual, business and public interests. The final outcome would be alternative scenarios and solutions for a better understanding of the overall human security in relationship with the deepening of EU Competition Policy.*

Keywords: *EU Competition Policy, Securitisation, Copenhagen School, Cartel Alliance, Balance of Power, Interests and Threats, Human Security.*

1. Background

Securitisation does not have the same meaning as in the field of corporate financial services (e.g. securities), but is a concept of *Constructivism*, a post-Cold War International Relations theory, which redefined security as larger than political and military by the inclusion of economic, environmental and societal dimensions[2]. The main focus of this theory has not been placed on states (as in Realism), but on individuals as prime actors in the (Western) post-modern, globalised and interdependent world. The key statement of Constructivism is claiming that social constructs (based on democracy) determine a higher level of good governance, by better addressing the individual and group insecurities. These individual and group insecurities are basically social and economic, rather than classic military.

Securitisation of competition could have many meanings, but should also not be seen as the "mother" of all reasons and explanations pertaining to this policy. Securitisation starts with specific words and ends with actions and counter-actions meant to make safe something more *important* than other things.

But what does it mean important: is the *must-have* of certain public services, *majority* of the other market shares (but as fragmented and many as possible), *between* of commerce among member states, *data* of research and development of creative business or *facts and figures* of regional aid? Or, is the overall *competition* a general concept with various applications, used, at least since modern times, to describe the focal topic of interest for security studies since the beginning of political and military history?

Conceptual securitisation applied to competition reflects a propensity of relevant theorists for using classic notions taken from the field of IR and security studies like *deterrence* and *preemption*[3] when dealing, for instance, with the core issue of optimising

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This article is dedicated to **Mrs. Daniela Victoria Bădilă** – the Romanian top expert in the field of Competition.

[2] When talking about the security studies facets of Constructivism, the most illustrious contributors belong to the so-called Copenhagen School. See, as primary example, Barry Buzan, Ole Wæver and Jaap de Wilde, *Security: A New Framework for Analysis*, Lynner Rienner Publishers, Boulder, 1998.

[3] Catarina Marvao and Giancarlo Spagnolo, *Effectiveness of Leniency Policies: A Survey*, in Caron Beaton-Wells, Christopher Tran, (eds.), *Anti-Cartel Enforcement in a Contemporary Age: Leniency Religion*, Hart Studies in Competition Law, Hart Publishing, Oxford, 2015, p. 72.

coercion by compliance, leniency, dawn raids, whistle-blowing and harsh, discouraging sanctions. Nevertheless, the competition culture could serve as security remedies both at national and EU levels, and here we have to discuss the use of *Prevention* (tracks A 1-2) versus *Preemption* (tracks B 1-2). A1 underlines the need for prevention by advocacy[4] and education[5], while A2 the function of compliance programs as tools for internal enterprise securitisation. By comparison, B1 is represented by leniency as anticipatory action against other cartel members, and B2 by settlement with the authorities, in order to remove or reduce threat of legal sanctions.

The EU social and economic policies represent core instruments for deepening the integration process, based on the implementation of the four primary freedoms (of individuals, capital, goods, services) of the Rome Treaty, plus the European citizenship created by the Maastricht Treaty.

Competition is a EU fundamental policy as vector for the creation of Common, and, later on, Single/Internal Market. It is an expression of the EU integration process, which granted large competencies to the EU decision-making system. Competition proved to be a big stumbling block for the Central and Eastern European countries' accession (e.g. for Romania it was the last closed chapter[6]). In the case of the current most important candidate country, Turkey, it is still not opened, 16 years after the start of negotiations with the European Commission, whose initial assessment has been "very hard to adopt". The domestic political resistance to full acceptance of the competition acquis could be summarised in statements like "But *we will not put our economy at risk* just to open the competition chapter"[7]. Such vision represents the very embodiment of paternalistic state committed to economic nationalism that finds itself at odds with true competition on the EU Internal Market. Public tenders and state aid are very much politically connected in Turkey, a G20 member and re-emerging country with ambitions for regional preeminence. The EU legal limits to state intervention do not fit into the neo-Ottomanist drive of Erdogan's regime, and this is a pattern similar to all autocracies unable to cope with the loss, real or perceived, of sovereignty for European Commission's decision-making benefit.

State monopoly has long been an attribute of sovereignty and cause of conflicts both domestically and internationally[8]. But the European integration process has successfully contributed to the reduction of such potential for war through the inclusion of competition rules into the fabric of policy-making and enforcement.

Securitisation of Competition has to take into consideration the fact that, in the modern world, and especially in the West, citizens equal consumers. Therefore, purchasing power becomes the main tool (individually, or collectively as a family) to secure the balance of power, threats and interests. Also, price should be seen as *the X Factor* for the related security dilemma (higher: better product, thus reliable and durable, but expensive; lower: opportunity for savings, but prone to defects).

Enterprises act as drivers for anarchy in the economic environment due to the fact that globalisation is a process of maximising power at transnational scale. The

[4] Frédéric Jenny, *Competition Authorities: Independence and Advocacy*, in Ioannis Lianos and D. Daniel Sokol, *The Global Limits of Competition Law*, Stanford University Press, Stanford, 2012, pp. 158-176.
[5] Thomas K. Cheng, *How Culture May Change Assumptions in Antitrust Policy*, in Ioannis Lianos and D. Daniel Sokol, *op.cit.*, pp. 205-220.
[6] Together with the Justice and Home Affairs chapter, both being subject to safeguard clauses.
[7] Turkish Chief negotiator Egemen Bağış, apud ***, *Turkey tells EU it may postpone competition chapter if needed*, Today's Zaman, January 15, 2011, http://www.todayszaman.com/diplomacy_turkey-tells-eu-it-may-postpone-competition-chapter-if-needed_232531.html.
[8] Both inside and outside the European continent, but based on similar power aggregation and projection patterns: e.g. the commercial monopoly of the East India Company, its ensuing conflict with the Mughal Empire and rule over the Indian subcontinent (1757-1858); the quest for monopoly of the Peruan government on the market of guano and nitrate extraction and distribution as main reason behind the outbreak of the ruinous *War of the Pacific* with Chile (1879-1883).

European integration could be seen as the creation of the world's largest integrated market with EU registered undertakings as power players. Hence, EU Competition Policy is a public policy preventing anarchy on the basis of TFEU norms (articles 101 and 102, mainly). Thus, EU Competition Policy's key security question has become *surveillance and punishment*[9] or *prevention and remedy*[10]? Currently, DG Comp's stated mission is the enforcement of social and economic balance of power ("to make EU markets work better, by ensuring that *all* companies *compete equally* and *fairly* on their merits. This benefits *consumers*, *businesses* and the *European economy* as a whole."[11]).

Reading the literature is instructive for the "forensic" of security in understanding legal and economic approaches to competition. Thus, many authors define and reiterate EU Competition Policy as *essential*[12] for the creation and preservation of the Internal Market, which is to say the *core* of Securitisation by other means, because this should be understood as the establishment for the EU Industry of the legal framework and economic conditions leading to development and modernisation in order to cope with... international competition.

The general thought about the European Commission seen as the answer to the need for a neutral and respected referee, positioned above the bulk of competing national interests, is optimistic and generous, but reflects a rather technocratic and idealistic viewpoint, which should be circumstantiated. In fact, the executive branch of EU power is a political compromise which aspires to the enduring levels of rationalistic / "Confucianistic" meritocracy, but has *ante-* and *post-* political dependencies: present time – EU, past and future times – national. The European Commission enjoys extensive, federalist powers in the field of competition as regulator, preacher and inquisitor, and EU Competition Policy has a strategic drive over the other major policies (industrial, regional, energy, transport, agriculture etc.). Talking about either the creation or prevention of European economic champions, development and cohesion aid for poorer regions, efficient implementation of services of general economic interest, and balancing of agri-business[13] between retail chains and traditional commerce, human security is impacted positively or negatively, directly or through conditionalities.

By managing competition, the European Commission has shown both authority and relativism if we take into consideration two pioneering decisions on merger authorisation, involving the same buyer: *Aerospatiale-Alenia/de Havilland* "versus" *Aerospatiale/MBB*. Therefore, if in the case of de Havilland the merger did not get through on grounds of preventing dominance, the opposite happened for the latter, regardless of the impending harm on competitors[14]. In fact, all was about a *rivalry of securitisations* by decisional assertiveness of the commissioners in charge

[9] For the multi-layered development in modern times of discipline and subjection, see Michel Foucault, *Surveiller et punir: Naissance de la prison [Discipline and Punish: The Birth of the Prison]*, Éditions Gallimard, Paris, 1975.
[10] For an overview on competition as more than the arithmetic of law and economy, see Stephen Wilks, *Competition Policy: Towards an Economic Constitution*, in Helen Wallace, Mark. A. Pollack, and Allasdair Young (eds.), *Policy-Making in the European Union*, 6th edition, Oxford University Press, New York, 2010, pp. 133-156.
[11] https://ec.europa.eu/dgs/competition/index_en.htm. A slightly modified, but interesting revision of this creed is to be found on DG Comp's newest factsheet with the addition of "national courts" to "national authorities" as partner enforcers of the European Commission, plus a higher accent on consumers than (*laissez-faire*) markets. See ***, *Competition*, European Commission, Luxembourg, Publications Office of the European Union, 2020, p. 1.
[12] See, for instance, Nicholas Moussis, *Access to European Union: Law, Economics, Policies*, European Study Service, Rixensart, 11th revised edition, 2002, p. 267.
[13] For a pioneering research on the matter, see Myriam Vander Stichele and Bob Young, *The Abuse of Supermarket Buyer Power in the EU Food Retail Sector. Preliminary Survey of Evidence*, Agribusiness Action Initiatives / SOMO, March 2009, https://www.somo.nl/wp-content/uploads/2009/03/The-Abuse-of-Supermarket-Buyers-Power-in-the-EU-Food-Sector.pdf.
[14] For an in-depth analysis, see Giorgio Monti, *Competition Law*, Cambridge University Press, Cambridge, 2007, pp. 6-19. While pedagogical, the strategic dilemma seen by the author between „Type 1 and 2 errors" (over- versus under-enforcement) does not get a proper solution when the securitising concept is may, meaning some degree of chance for consumers/purchasers to "try and find" other sellers (with non-monopolistic prices) which would enter the market sometime in the uncertain future.

of Competition and Internal Market[15], respectively: pro-consumer literalistic denial (hypothetical) and anti-conglomerate industrial policy (real).
Four courses of action for competition decision-makers arise from such dilemma:

a. to go by the book and set precedent;
b. to satisfy (indirectly, but surely) non-economic public interests;[16]
c. to allow anti-competitive harm, but only to a certain strategic level, dictated by the higher need of securing competitiveness;
d. to cherish more the advantages of a strategic alliance, than the merits of your own competition *aquis* and market, and to make flexible the approach.[17]

2. Security steps in

In order to understand the risks and threats to such a social and economic order, it should be outlined the character of anti-competitive practices as security issues. As a consequence, cartel and concentration (with a view to dominance) could be described as alliances based on the *Musketeers principle*[18], with offensive and defensive goals. But to whose benefit, loss and legal care?

a. Maximisation of profits, leading to insecurity and aggression of consumers: offensive[19]

This is when the players on a given market decide to aggregate their power, by coordinating and weaponising their pricing policy or mutually guaranteeing the territorial status-quo, therefore keeping customers captive and abused, at higher costs of daily life or procurement of goods and tools for downstream business. The enforcer of competition usually behaves as protector of customers and aims to restore competition by coercive sanctions and other measures, similarly to the management of acts of aggression, as defined by the cornerstone of collective security, the United Nations Charter.

b. Better productivity and/or protection of environment by R&D: defensive

Such a case is an escape route for cartel members when a higher benefit in the eyes of the regulator/enforcer is at stake. This type of cartel could be tolerated or sanctioned less, on the basis of *prioritisation of adversity*, meaning a greater and far more dangerous enemy to choose from: less competitiveness, climate change or plain competition law breaking?

c. EU economy (versus non-EU economic powerhouses): defensive and offensive

This is the showcase of constant conflict between economic efficiency of EU champions and juridical rigour, translated in the balance of power and interest in the European Commission between the commissioners for Internal Market and Competition[20].

[15] See *infra*, note 19.
[16] See, for instance, the *Wouters* case of 2002.
[17] For details of a noteworthy case of Transatlantic rift on competition with significant political consequences, and the way the European Commission negotiated an alternative remedial solution with the buyer, beyond French stern diplomatic opposition, see *Boeing/McDonnell Douglas* merger of 1997 – Eleonor M. Fox and Damien Gerard, *EU Competition Law. Cases, Texts and Context*, Eduard Elgar Publishing, Cheltenham, Northampton, 2017, pp. 246-251.
[18] E.g. Article 5 of the NATO Treaty.
[19] For some high-profile global cartel cases in one of the most impactful sectors to human security, agri-business, see John M. Connor, *Global Price Fixing: Our Customers are the Enemy*, Studies in Industrial Organization, Volume 24, Kluwer Academic Publishers, Boston, Dordrecht, London, 2001.
[20] For an assessment of the "paradoxes" of EU Competition Policy, seen as an expression of federal power with Euro-cratic and national restraints, see Sir William Nicol and Trevor C. Salmon, *Understanding the European Union*, Longman, Harlow, 2001, pp. 235-242.

d. Defence against predatory behaviour of larger enterprises: defensive

Here we have the tricky case of usually informal pacts of "non-aggression" between small firms or authorised practitioners in order to cope with the market pressure of new, alternative and/or big players. Such behaviour, seen, for instance, in the fresh and traditional agri-food market, could trigger support from politicians eager to play a national or populist card, in opposition to the rigid competition law provisions of the Internal Market. Complementary, mom-and-pop stores cannot compete on equal footing with the establishments of modern retail, therefore, being subject to constant political and administrative tension between promoters of economic modernity and social traditionalism, with employment as main driver, besides consumer access to larger and better supplied markets[21].

Enterprise Taxonomy

In the arena of economic adversity, the legal institution of undertaking becomes blurred and often is replaced by alternate types of security constructions based on power projection, preservation, limitation, sharing, termination.

On the basis of Schweller's taxonomy[22], the economic agents could be enlisted in four categories, in accordance with their market status, strategic objectives, and fear of loss factor.

Lions represent the market leaders, aiming to preserve the *status quo*. For them, both states and other enterprises should be contained from devising and implementing plans for the radical reformation of economies and transformation of the market structures, based especially on fluctuant domestic priorities, or ever-modern, but costly research and development. Lions could act alone, but the very sense of dominance could trigger them to promote a sort of coalition of the able and willing, in order to subdue resistance and challenge in the market.

Wolves are the big players challenging the status quo. This category is the main driver for change either for good (progress) or for bad (disruption and decline). The desired outcome is not necessarily sophisticated, but stems from the competition itself for the same markets and sectors. Each and every profit gains are based ultimately on sales covering a non-infinite number of potential commercial orders. Markets do shrink or expand, but lions are already there on more advantageous positions, which have to be at least partially diminished for more substantial gains, thus the per se implacable competition… for consumers.

Jackals signify emerging players eager to align with the presumable victor. They are medium to upper size companies, very keen on the spoils of commercial "wars" between lions and wolves. Their alliance strategy is placing more emphasis on opportunity than on advance by innovation, and therefore their tactics could be erratic and subject to cartel-betrayal, and even whistle-blowing.

Sheep represent minor players captive in the dynamics of power struggle between key players. Usually small to midsize companies, they are very much exposed to disadvantageous vertical agreements, for instance.

In such a context, the abuse of dominant position could be seen as unilateral enterprise behaviour in search of market hegemony that is mirrored by the need for balance of power, thus leading to the overall imperative of competition regulation and enforcement.

[21] For an opposite view, based mainly on the idea that SMEs should be resilient by themselves and not affect economic welfare objectives or distort the mission of competition policy, see Massimo Motta, *Competition Policy: Theory and Practice*, Cambridge University Press, Cambridge, 2009, pp. 17-30. Despite using extensive econometric examples, and acknowledging multiple facets of democratic transformation and their impact on Western welfare policies, including competition, the author fails to encompass the fact that decision-making is more security-related and less pure mathematics of capitalism of gains.

[22] See Randall L. Schweller, *Bandwagoning for Profit: Bringing the Revisionist State Back In*, International Security, MIT Press, Vol. 19, No. 1 (Summer, 1994), pp. 72-107.

3. Weak spots of the competition regime

The EU regulation[23] seeks prevention or containment of anarchy between economic competitors. The key stake is to strike a balance between economic security (profits, competitiveness, exports) and social security (daily life subsistence, jobs, better prospects for multiculturalism). But from a decision-making viewpoint, EU Competition Policy is still pertaining to the shrinking *consultation legislative procedure*[24], alongside internal market exemptions, which means that the state remains the prevalent agent, not the EU and European citizens' interests. On the other hand, enforcement is a sort of market prosecution but with a penchant for behavioural self-moderation on the part of economic players with vested interests.

A. The competition policy at state level should be autonomous but especially in the Eastern member states it lags behind in this regard. The European Commission tried to fix this in 2019, by promoting a directive[25] in order to enhance the resilience of competition enforcement in member states, taking into account worrying developments. As with any enforcement gone weak, a lower level of identification and investigation of legal breaches becomes insecurity by itself. Even the fact that the European Commission did not manage to promote a regulation, but a less coercive directive speaks for the difficulty of reaching a higher common ground.

The foremost issues about successfully enforcing competition are the decision-making setup and financial autonomy. Therefore, a higher degree of illiberalism leads to politicisation, economic nationalism, biased investigations, and financial conditionality.

While the real number of undetected cartels is a constant topic of debate, OECD estimates the minimum average overcharge for goods and services due to identified cartel practices at 20%[26] and recommends that financial punishment should be three times higher than the actual anti-competitive profit in order for such deterrent to matter[27]. But in less developed national markets, to secure by political pressure and corruption a bigger or even dominant share of the market is paramount, while the risk of fines is discarded.

A simple calculation could show that for politically connected enterprises, an increase from 20 to 40% in a market of €10 mln for services regulated by state, during

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[23] For various perspectives on the need for economic rationale and institutionalisation of regulation in Competition affairs, see Cento Veljanovski, *Economic Approaches to Regulation*, pp. 17-38 in Robert Baldwin, Martin Cave, Martin Lodge (eds.), *The Oxford Handbook of Regulation*, Oxford University Press, Oxford, 2013, and Peter Alexiades and Martin Cave, *Regulation and Competition Law in Telecommunications and Other Network Industries*, pp. 500-522, in Robert Baldwin, Martin Cave, Martin Lodge (eds.), op.cit.

[24] For European Parliament's more positive outlook over the use of this procedure, including recent examples of co-decision for the adoption of *the actions for damages*, and *ECN+* directives, see Radostina Parenti, *Competition Policy. Facts Sheets on the European Union*, European Parliament, 05-2021, https://www.europarl.europa.eu/factsheets/en/sheet/82/competition-policy.

[25] "ECN+" (collocquially called after the *European Competition Network* of national authorities), on the basis of a previous, more binding document – Regulation (EC) No. 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in the core articles 101 and 102 of TFEU.
See ***, *Directive (EU) 2019/1 of the European Parliament and of the Council of 11 December 2018 to empower the competition authorities of the Member States to be more effective enforcers and to ensure the proper functioning of the internal market*, Official Journal of the European Union, 14.1.2019, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32019L0001.

[26] For a comprehensive survey on median cartel overcharge in different jurisdictions and economic sectors, quoted also by OECD reports on hard cartels, see John M. Connor, *Price-Fixing Overcharges: Legal and Economic Evidence*, American Antitrust Institute Working Paper No. 04-05, November 2004, http://dx.doi.org/10.2139/ssrn.1103516. The author is indicating a global overcharge of 25%, higher for international than domestic cartels, and shares the conclusion of this paper that anti-cartel regimes, including the EU, are not effective deterrents.
For the post-Cold War Era (from a security perspective), which should have been, in principle, characterised by at least better containment, due to higher awareness and international cooperation, estimates by the same author show no sign of decline, with an average of new 75 international cartels discovered yearly – see Idem, *The Private International Cartels (PIC) Data Set: Guide and Summary Statistics, 1990-July 2016*, August 9, 2016, Revised 2nd edition, http://dx.doi.org/10.2139/ssrn.2821254.

[27] OECD, *Implementation of the Council Recommendation Concerning Effective Action against Hard Core Cartels: Second Report by the Competition Committee*, 2002, p. 9.

an electoral cycle of 5 years, could generate a turnover of €20 mln. A potential fine for cartel or abuse of dominant position, if the case is well documented and defended, could mean a maximum of 10% (very less likely) of the turnover for the last fiscal year prior to decision, meaning €400,000. Thus, the 'real', very profitable turnover is €19.6 mln as compared to €10 mln if the enterprise had been compliant with competition rules. And the best anti-competitive behaviour is to fly under the radar of competition screening which usually starts 'beeping' at 40% market share, the economically defined threshold for market dominance. Moreover, even the added pressure of reputational loss (including fall of stocks index, if listed) and potential consumer individual or class-action for damage repairs could be negligible for such players.

Standard political and legal theories[28] classify competition as a policy where the EU (still) has exclusive competence, "by virtue of Article 3(1)(b) TFEU"[29]. Accepting the need for efficiency and acknowledging the impact of self-driven interest in the complex array of EU system, such authors try to offer a hybrid perspective where the European Commission is nonetheless doing decentralisation and delegation, and member states implementation under the institutional scrutiny of DG Comp[30] and judicial review done by the European Court of Justice. But this view is (partly) invalided by the very existence of national authorities and markets with their vested interests, firstly in the national political decision-making, and only secondly in the EU Law asking for loyal and effective cooperation with the European Commission.

B. The pressure groups also deserve a closer attention when analysing legislative process shifts (to keep or change norms) and the implicit need for lobby. The main lobbyists are associations of enterprises, and their interaction with decision-makers could mainly be circumscribed to a focal cost for politicians: to loose neither the business backing, nor the consumer individual support.

A newer player in the field of lobbying is made of consumer associations, and the EU has taken substantial steps to bridge the democratic deficit in this regard, by multilateral financial stimulus for selected consumer associations (especially in the aftermath of the Lisbon Treaty). This is particularly important to the Central and Eastern European countries, where the Communist regimes have systematically perverted the sense and practice of citizen associations. In the case of Romania, where the legacy of Communist dictatorship still has overall negative effects, the existence of consumer protection associations[31] is an institutional achievement by itself, but one which needs top-down help. Since 2012, the year of creation of the Consultative Council of the Romanian Competition Council, the Consumers Protection Association (APC) representative has been a member. Such a position is relevant both in terms of voting powers (for the nomination of candidates for the Board of the Romanian competition authority), opinion (on market inquiries) and initiative (e.g. the Price Monitor project). A good practice was the joint financial support that both the Government and the European Commission had offered to APC, but only under the mandatory setup of a European Centre within it. The European Centre is part of a EU-wide network of consumer protection centres aiming to forge an extended counterbalance to the influence of corporate pressure groups. The securitisation by structuralisation is thus, in principle, being served,. But the over-politicisation of consumer protection led,

[28] See for instance, Pablo Ibáñez Colomo, *The Shaping of EU Competition Law*, Cambridge University Press, Cambridge, 2018 and Pieter van Cleynenbreugel, *Sharing Powers Within Exclusive Competences: Rethinking EU Antitrust Law Enforcement*, Croatian Yearbook of European Law and Polity, Vol 12 (2016), 2016-12-29, https://www.cyelp.com/index.php/cyelp/article/view/245.

[29] Case C-550/07 P, AKZO Nobel Chemicals Ltd v Commission.

[30] For a diachronic take on DG Comp's role within the European Commission and the overall neo-liberalism versus ordo-liberalism in shaping up competition strategy, see Mark Thatcher, *Competition Policy: The Politics of Competence Expansion*, in Helen Wallace, Mark A. Pollack, Christilla Roederer-Rynning, Alasdair R. Young (eds.), *Policy-Making in the European Union*, 8th edition, Oxford University Press, Oxford, 2020, pp. 130-151.

[31] E.g. The Consumer Protection Association of Romania (APC), established in 1990.

in the end, to the transfer of the European Centre inside the governmental agency in charge of this troublesome field. Therefore, the frequent change of leadership and territorial ineffectiveness of this agency represent markers of instability and lack of trust, taking into account the need for a thorough reform, including a high-level of financial autonomy for the consumer protection representative bodies.

Last but not least, when talking about consumers, both companies and individuals, the EU institutions have managed, by adopting the Antitrust Damages Directive in 2014[32], to bridge the gap between fines and remedies for anti-competitive practices. It remains to be seen how this will work in practice and which kind of behavioural consequences will trigger[33]. Nonetheless, the very existence of such norms reflects an increased level of care at EU levels for the potential victim of such harmful practices, beyond the initial concern of securing the good functioning of their market.

C. *Bolkenstein Directive*[34] (2004) was a failed attempt by the European Commission to liberalise the services sector in accordance with the ambitious competitive goals set forth by the Lisbon Strategy of 2000. The rationale[35] behind such initiative was the fulfilment of the last freedom (of movement of services) established by the Rome Treaty, but not yet completely implemented in accordance with the very existence of an economic and monetary *union*. Due to extensive lobby by the Western trade union[36] and corporatist pressure groups, the initial *country of origin* principle was dropped in the final version of 2006[37], and *de facto* replaced by the *country of destination* rule, blocking by way of administrative consequence the effective, unrestricted access of Eastern entities willing to compete in services markets of the Western half of the European Union. Named *freedom to provide services*, the economic liberty to operate was in fact crippled by securitisation tools under the legislative category of *overriding reasons relating to the public interest*.

The *Polish Plumber Myth* still represents a case study for the role of official, syndicate and corporate propaganda to the undermining of services liberalisation in the context of dual rhetoric. In this regard, France, under the Chirac presidency, was pro Constitutional Treaty Draft (as general driver for EU integration deepening), but

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32 ***, *Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union Text with EEA relevance*, EUR-Lex, OJ L 349, 5.12.2014, p. 1–19, https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX%3A32014L0104.

33 In its own words, "there is insufficient experience with the new Directive to properly evaluate its application" – ***, *Commission Staff Working Document on the implementation of Directive 2014/104/EU of the European Parliament and of the Council of 26 November 2014 on certain rules governing actions for damages under national law for infringements of the competition law provisions of the Member States and of the European Union*, European Commission, Brussels, 14.12.2020 SWD(2020) 338 final, https://ec.europa.eu/competition/antitrust/actionsdamages/report_on_damages_directive_implementation.pdf.
But if the European Commission can fine a cartel like the one of truck makers, with a record penalty of €2.93 bln, there could be hope that at least some of the illicit gains on such a vectoral product for so many other price formations (e.g. of products bought daily in supermarkets) could be reversed to the compensation of categories of consumers. See ***, *Antitrust: Commission fines truck producers € 2.93 billion for participating in a cartel*, European Commission, Press release, Brussels, 19 July 2016, https://ec.europa.eu/commission/presscorner/detail/en/IP_16_2582.

34 Colloquially named after the Internal Market commissioner of that time – Dutch liberal politician Frits Bolkenstein.

35 Caused by the problems of the „front line" application of the Internal Market aquis, as outlined by the constant unsatisfactory grades of evaluation made by the Commission in its *Scoreboard* – for details, see Neill Nugent, *The Government and Policies of the European Union*, Palgrave Macmillan, Houndmills, Basingstoke, Hampshire, 7th edition, 2010, pp. 328-330.

36 For details on syndicate successful lobbying impact over EU parliamentary proceedings, see Jon Erik Dølvik and Anne Mette Ødegård, *The struggle over the services directive: the role of the European Parliament and the ETUC*, Labor History, Volume 53, Issue 1, 2012, pp. 69-89, https://doi.org/10.1080/0023656X.2012.650433

37 See ***, *Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market*, OJ L 376, 27.12.2006, p. 36–68, EUR-Lex, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006L0123.

against Bolkenstein Directive (citing social dumping risks)[38]. EU Competition Policy by national securitisation is being therefore un-served in such cases. Rival securitisation processes done by political factors could affect the dynamics of integration (with its potential higher benefits for consumers due to a better functioning of the Internal Market), pursued at the expense of preserving obsolete and uncompetitive national socio-economic models (seen through *Realpolitik* as *public*[39], meaning security, interests).

D. The Eastern member states have also several complaints regarding the way the European Commission functions in terms of competition codification, with transport[40] as one of the most sensitive sectors.

The competitive edge that the Eastern cargo carriers hold, especially on land transport, due to their hard-working, but lesser-paid drivers, has been constantly dented by rules and regulations. Limitations of working hours, but mainly cabotage, have been justified by reasons of social dumping prevention, but have also signified imposition of barriers on the Western, more lucrative, side of the Internal Market[41]. Moreover, such restrictive measures contradict the Green Deal's goals of reducing carbon emissions, lengthier and off-cargo routes meaning higher pollution, despite claiming otherwise.

Therefore, in the end, it all comes down to which dimension of security is prevalent: economic, social, or environmental?

4. Competition Policy as tool for EU energy securitisation

Developments of the last decade have outlined another scenario for the future, based on use of competition rules for EU security gains. Thus, it is relevant the case brought forth by the European Commission in 2012 against the Russian oil giant Gazprom. In such context, should this be analysed from the viewpoint of impact of *almost new Cold War* between the West and Russia[42] or is it just a coincidental legal affair with the political-military crisis of Ukraine break-up by Kremlin-backed separatists?

[38] For a perspective based on discursive institutionalism, accentuating the role of French political left, see Amandine Crespy, *When 'Bolkestein' is trapped by the French anti-liberal discourse: a discursive-institutionalist account of preference formation in the realm of European Union multi-level politics*, Journal of European Public Policy, Volume 17, 2010, Issue 8, pp. 1253-1270, https://doi.org/10.1080/13501763.2010.513584. However, the article reflects the shortcomings of this theory in catching the overall focus or shift in decision-making based on discourse and politicisation of EU law initiatives. By applying such a theoretical view, Chirac should have never promoted a very risky referendum on the EU Draft Constitutional Treaty, which failed due to the same biased anti-EU street rhetoric.
For a positive assessment of the limited added value of this directive, see Peter Timmerman, *Legislating amidst public controversy: the Services Directive*, Egmont Papers 32, The Royal Institute for International Relations, Academia Press, Gent, October 2009, pp. 43-45, https://www.egmontinstitute.be/content/uploads/2013/09/ep32.pdf?type=pdf.

[39] It is not by chance that one of the most contentious issues became that of access to perform general public services, restrictions to potential "plumbers" from the Eastern EU being raised under reasons of security. For my whole viewpoint, see George Anglițoiu, *The Free Movement of Services and the Cross-Border Security*, in Adrian-Claudiu Popoviciu, Dana Cigan (eds.), *The Frontier Worker – New Perspectives on the Labor Market in the Border Regions*, C.H. Beck, Bucharest, 2013, pp. 173-178.

[40] See *Mobility Package I* (adopted by the European Commission in May 2017 and by the Council and European Parliament in July 2020, with a prospective date of entering into force in February 2022) and all the defending pieces of official propaganda on ***, *Europe on the Move: Commission takes action for clean, competitive and connected mobility*, European Commission, 31/05/2017, https://ec.europa.eu/transport/modes/road/news/2017-05-31-europe-on-the-move_en.

[41] For a qualitative analysis of the legal framework, lobbying interests, restrictive measures and paradoxical effects of Covid-19 on liberalising the market, see Matthias Bauer, *Discrimination, Exclusion and Environmental Harm: Why EU Lawmakers Need to Ban Freight Transport Restrictions to Save the Single Market*, ECIPE Policy Brief No. 3/2020, European Centre for International Political Economy, https://ecipe.org/wp-content/uploads/2020/06/ECI_20_PolicyBrief_03_2020_LY05.pdf. For a quantitative sectoral approach (with the significant "minus" not to include in its main analysis Romania – a major haulage player and one of the countries which have challenged provisions of the Mobility Package I in court), see Lynn de Smedt and Frederic de Wispelaere, *Road Freight Transport in the EU. In Search of a Balance Between the Economic and Social Dimension of the Internal Market*, KU Leuven / Research Institute for Work and Society / TransFair, Leuven, 2020, https://transfair-project.eu/wp-content/uploads/2020/12/1st-TransFair-Report-deSmedt_deWispelaere.pdf.

[42] For my view on the matter, see George Anglițoiu, *Putinization and Neo-Containment*, Europolity, No. 2, 2018, pp. 179-190, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3461881.

Gazprom, the world's largest oil and gas extractor and distributor, is still benefiting from the majority stake the Russian state has in it, in the sense that everything from discretionary price formation to access to pipelines serve as diplomatic tools in the service of Kremlin[43]. The energy lever used by Russia in its relations with both EU and non-EU member states has proved successful especially since President Putin's accession to power. Either used to stop gas supplies to Ukraine during harsh winters after the Orange Revolution of 2004, or to secure pipeline monopoly, or dominance in the more energy-dependant Eastern EU member states, this geostrategic tool remained largely unscathed until European Commission's decision to start the investigation against its most important vector.

For a better understanding, it should be emphasized that Lithuania[44], one of the captive states of Russian imports and the first to implement the EU Directive on Gas calling for full unbundling, acted as whistle-blower to the European Commission. Upon announcement, a complex debate began and heated up, with high expectations at state and expert levels for a major fine against Gazprom, given the facts. Without going into details, it all ended up with a decision that imposed on Gazprom pro-market and consumer behavioural changes, but no fine[45]. Of course, it is debatable whether the European Commission had enough proof to justify a fine. But the very fact that two years later the Polish competition authority[46] decided a €6.5 bln record fine against Gazprom, shows the quicksand nature of enforcement decision-making, on comparable charges.

Therefore, **it is this author's view** that security dilemmas are embedded in most sensitive cases, the interconnections running deep while the application of norms varies explicitly, although EU securitisation is not a finished item of strategic policy, but an ongoing process in which the centre and the peripheries balance and counter-balance using Brussels and national set-ups, including competition. The fact that Gazprom means Russia, more than Apple or Google[47] signify United States, proves to be a very sensitive X Factor to be used in a European union of states with conflicting vested interests.

If we pay attention to the general regime of sanctions applied by the EU to Russia since the outbreak of Ukrainian civil war, there are many question marks why, in order to restore the rule of International Law to the region, as any proclaimed democratic guardian should do, the West has not been consistent on putting decisive

[43] The almost institutionalisation of Kremlin's position of power inside Gazprom is reflected, for instance, by the list of general managers serving as key decision-makers (its first chairman Viktor Chernomyrdin becoming prime-minister in 1992) or important aides of the Russian President becoming heads of the company (former president and prime minister Dmitri Medvedev).

[44] See the interview of Marius Juonys with Euronews, *Gazprom should comply with EU competition rules*, 22/05/2015, produced by Hans von der Brelie, http://www.euronews.com/2015/05/22/gazprom-should-comply-with-eu-competition-rules/.

[45] The so-called *commitments* cover an extensive area of issues from supply to prices, all designed, in principle, to serve EU energy security. Their mandatory character is linked with possible activation, without new investigation, of a maximum 10% fine of Gazprom's (and any other partner enterprise) global turnover. While the step-by-step escalation could be diplomatically doable, the weak point nonetheless is the perception of immunity that Kremlin gets when being able in the end to continue, in partnership with Germany, the Nord Stream 2 gas pipeline project, one of the tools of Gazprom's dominance and conditionality-based approach. For Margrethe Vestager's (EU competition commissioner) rhetoric and list of measures, see ***, *Antitrust: Commission imposes binding obligations on Gazprom to enable free flow of gas at competitive prices in Central and East European gas markets*, European Commission, 24 May 2018, https://ec.europa.eu/commission/presscorner/detail/en/IP_18_3921.

[46] For details, including novel reasoning, feasibility to collect the fine, and the lack of communication between Brussels and Warsaw (in the larger context of colder relations between the EU institutions and the Polish regime accused of illiberalism), see America Hernandez and Thibault Larger, *Poland hits Gazprom with the world's largest competition fine*, Politico, October 7, 2020, https://www.politico.eu/article/poland-hits-gazprom-with-world-largest-competition-fine/.

[47] Two of the companies most sanctioned by the European Commission for competition infringements. For Washington's pressure effects against EU's proposed plans to collect digital taxes from US big tech by innovative competition regulation, see, for instance, Sam Fleming, Javier Spinoza and Miles Johnson, *Brussels set to delay digital levy plan after G20 backs tax deal*, Financial Times, July 11, 2021, https://www.ft.com/content/1613a3bd-cf4c-4ce9-b427-e7dc0a15382f.

pressure on Kremlin. Generally, the middle choice of some sticks mixed with some carrots was preferred, European Commission's decision being no different.

5. Securitisation of Foreign Investment on the Internal Market

This chapter should be started with a disclaimer: any investment is potentially troublesome for national or international security if connected to asymmetric risks and threats, meaning terrorism and organised crime. Such an investment could come clean prima facie, at least from a competition viewpoint which, in principle, welcomes any new impetus to market dynamics. But there is more to it than an opportunity to increase GDP and rates of employment, diversify and improve goods and services on offer, rehabilitate destitute facilities or open brand new premises. A functional market is an attractive one and could bring many benefits to local and state-level communities. Thus, any market entry barrier should be carefully imposed and revised constantly.

The highest and hardest barrier that could be imposed on a market with direct effects on competition bears the name of security, an abstract concept, which could mean anything, in the end. From terrorism and organised crime to world powerplay, security has come to the forefront of anything economic that could help your adversary gain the upper hand. In terms of national security of the EU member states, we could once again come back to Romania, a border country to the problematic East, where developments look increasingly similar to the patterns of Cold War.

As history shows states do not cooperate easily, not even when faced with similarly acknowledged enemies, like terrorist cells or trafficking networks. A designated terrorist for one country could be the freedom fighter of choice for another. All the more important is to have functional mechanisms in place, at least among states that share same principles and norms.

We cannot enter into the inner political mechanics of cooperation between the EU and USA with NATO as middle ground. But best practices have at least been taken as reference by the new members of the EU and NATO, including cooperation and share of information in the context of the global war on terror pursued by Washington since the infamous terrorist attacks of September 11, 2001.

As stated in the Romanian Competition Law[48], a framework of cooperation is in place between the Competition Council and the national security sector represented by the Supreme Council for Defence of the Country. Any merger or acquisition notified for authorisation to the national competition authority could end up being banned if risks or threats are identified. Moreover, in case of suspicions, the national competition authority could use similar powers to cartel enforcement in order to get the most accurate data about the concentration at stake, including security concerns. **It is this author's view** that such pattern signifies that the national competition authority of a EU member state has *indirect* security prerogatives. But we will return to this aspect when talking about setting up procurement and authorising state aid to defence industry.
The return from one dominant/hegemonic player to multi-power-rivalry is shown by the tensions between USA, China and Russia, which reverberate globally, including in the field of competition[49].

Foreign Direct Investment has two main components: Greenfield and Brownfield. A national competition authority in the EU has direct competence over brownfields (meaning mergers and acquisitions) and the power of avis for brownfields and greenfields (regarding potential state aid). Moreover, the European Commission has decision-making powers over both greenfields and brownfields, in accordance with the pro-market provisions of the EU Treaty and other pieces of secondary legislation.

[48] Article 47, par. 9-12, of Law No. 21/1996.
[49] See, for instance, Foreign Affairs' dossier on *Trade Wars*, in its May/June 2021 issue.

But recent developments in the field of securitisation of competition have led to the inception of two powerful pieces of direct legislation covering the screening of non-EU FDI in the EU[50], and the regime of subsidies received by non-EU enterprises active on the Internal Market[51]. Complemented by goodwill charters as the bilateral agreement between the EU and China for a transparent and competitive environment for reciprocal investments[52], such tools depict both the opportunities and challenges of interconnecting big markets by new "silk roads" in an age when more and more traits of the violent '30s but not the *roaring '20s* are taking place, especially in the Sino-Pacific. Thus, as another expression of leverage for human security in global economic affairs, after the conclusion of technical negotiations between the two parties, the strategic document was blocked by the European Parliament[53], under the strong suspicions regarding human rights violations in Hong Kong, and forced labour imposed by the Chinese Communist regime against the Uyghurs in the Autonomous Region of Xinjiang. Adding up to the overwhelming vote in favour of "freezing" were the Chinese previous retaliations on several EU officials involved in initiating sanctions against Beijing.

The dependencies of EU industry on imports of sensitive products and raw materials from third (troublesome) parties represent another set of issues which could be listed as securitisation when talking about the resilience of supply chains in times of global crisis like the Covid-19 pandemic. Defining and updating industrial sectoral strategies and action plans[54] set the tone for new approaches in order to prevent disruptions and achieve the desired levelling of the playing field for securing both EU competitiveness worldwide and customer/citizen well-being at home.

But the front pages of global news were fuelled by the high-tech scandal of Huawei, which also involved EU member states. Without going into details, it should be underlined the anti-competitive effect of such a security act to remove the Chinese enterprise, the lion of the market of 5G network providers[55], from the eligible list of

[50] ***, *Consolidated text: Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union*, EUR-LEX, 19.09.2020, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02019R0452-20200919.

[51] While not yet a regulation in full force, the draft text shows clearly the interdependence between global power dynamics of friends and rivals/foes, with implications on the regime of competition on the Internal Market. See ***, *Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the Internal Market*, European Commission, Brussels, 5.5.2021 COM(2021) 223 final, 2021/0114 (COD), https://ec.europa.eu/competition/international/overview/proposal_for_regulation.pdf.

For a negative take which emphasizes the need for level-playing field on the Chinese market (in the making to overcome the EU one as the largest in the world), and the difficulty of identifying the types, forms and levels of support by Beijing to Chinese registered and owned enterprises (meaning everyone potentially), see Alicia Garcia Herrero, *Europe's crusade to fend off Chinese interference falls short*, Bruegel, May 10, 2021, https://www.bruegel.org/2021/05/europes-crusade-to-fend-off-chinese-interference-falls-short/.

[52] For its draft version see ***, *EU-China Comprehensive Agreement on Investment. The Agreement in Principle*, 30 December 2020, European Commission, https://trade.ec.europa.eu/doclib/docs/2020/december/tradoc_159242.pdf.

[53] For the positions of the two parties involved in the diplomatic rift, see, for instance, Robin Emmott, *EU parliament freezes China deal ratification until Beijing lifts sanctions*, Reuters, May 20, 2021, https://www.reuters.com/world/china/eu-parliament-freezes-china-deal-ratification-until-beijing-lifts-sanctions-2021-05-20/.

[54] For a review of information about supply-chain resilience in essential industries for human security, including the supply of active pharmaceutical ingredients on the Internal Market, see ***, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Updating the 2020 New Industrial Strategy: Building a Stronger Single Market for Europe's recovery*, European Commission, Brussels, 5.5.2021 COM(2021) 350 final.

[55] For an analysis of Huawei's lead over the telecom sector at the beginning of the espionage scandal, see, for instance, Daniel Araya, *Huawei's 5G Dominance In The Post-American World*, The Forbes, April 5, 2019, https://www.forbes.com/sites/danielaraya/2019/04/05/huaweis-5g-dominance-in-the-post-american-world/?sh=1515f67d48f7.

For Chinese corporate and political counter-reactions alleging Western hegemonic bias, see, for instance, Karl Song, *No, Huawei isn't built on Chinese state funding*, Huawei, https://www.huawei.com/en/facts/voices-of-huawei/no-huawei-isnt-built-on-chinese-state-funding, and ***, US government's assault on Huawei, other tech firms, is a move to back up its hegemony: FM, Global Times, May 13, 2021, https://www.globaltimes.cn/page/202105/1223398.shtml.

For the American perspective based on US funding to Huawei rivals and need for pressure on its European allies, see David Sacks, *China's Huawei is Winning the 5G Race. Here's What the United States Should Do To Respond*, The Council on Foreign Relations, March 29, 2021, https://www.cfr.org/blog/china-huawei-5g.

competitors. Spy charges were levelled against Huawei, to the detriment of Communist China and its ambitious plans to compete globally. When implemented, such security-driven decisions become market barriers for entering or maintaining[56] on a given market, triggering a booster for the wolves to conquer the remaining share of the market.

6. Securitisation of Procurement, State Aid for Defence Industry, and Beyond

As presented previously, security seems impervious to challenges from competition rules, but up to a point, as seen in the *Agusta case* of 2008, which meant the acquisition of dual-use helicopters by Italy.

Taking note of the fact that Italy bought capabilities from a national producer without using a competitive procedure, the European Commission brought the case in front of the European Court of Justice, which saw no merit to Italy's argument that it was all legal and done under the provisions of article 346 of TFEU.

Now, the wording in that legal text is troublesome due to the fact that between the adverb "specifically" and the adjective "specific", one might think that everything falls under the aegis of security just by claiming so. But as shown by the court, the correct reading should be done according to the (updated) list of 1958 and taking into consideration the difference between *non-military* (meaning "civilian") and ***not-only-military*** use, which was the case for the Agusta procurement. Another noteworthy anti-competitive reason was the lack of transparency due to no publication of a notice concerning such procurement opportunity.

Making competitive the fragmented EU defence sector of at least 28 markets[57] is not an easy task, taking into account many factors: the prime goal of *strategic autonomy*[58], the heavy interest and involvement of American defence enterprises in the ownership structure of some European counterparts, the challenges of bidding and securing deals with states with vested interests (but poor records on EU critical standards that make such potential contracts revocable when scrutinised by public opinion), the very fact that the defence industry is less prone to relocation due to secrecy issues, or the practices of off-setting and sub-contracting parts of production.

Therefore, the national decision-makers are confronted with the need to protect jobs in very specialised fields of know-how, to manage to get profitable export deals in arms and other categories of war material, to invest, research and develop new areas in the ever-changing *Revolution in Military Affairs*, and to care for the civilian or dual-use production of those companies, regardless of the fact that they have state ownership or not. Many of the current civilian technologies have military precedents in terms of R&D, which is one of the triggers to justify co-existence between military and civilian divisions of the same defence enterprises.

[56] An even more complicated scenario from a legal point of view.
[57] For aggregate data on government expenditure on defence, market structure and dominant preference of avoiding EU rules for the sake of "essential security interest", see Martin Trybus, *Buying Defence and Security in Europe*, Cambridge University Press, Cambridge, 2014.
[58] As set out by the *EU Global Strategy* on Foreign and Security Policy of 2016, and based on a powerful "defence technological and industrial base" (EDTIB) – see ***, *The EU's Defence Technological and Industrial Base*, In-Depth Analysis Requested by the Sub-Committee on Security and Defence, European Parliament, Policy Department for External Relations Directorate General for External Policies of the Union, January 2020, https://www.europarl.europa.eu/RegData/etudes/IDAN/2020/603483/EXPO_IDA(2020)603483_EN.pdf.

On the other hand, the EU[59] is trying to matter more in world affairs while speaking with a single voice. The High Representative for Foreign Affairs and Security Policy is both head of the European Defence Agency[60] and vice-president of the European Commission. Having "European champions" in the field of defence industry is advisable in terms of standardisation and protection of borders, for instance, but similarly to other high-tech industries, is counter-productive when talking about having a competitive market, based not on outside-of-EU-no-matter-what kind of rivalry, but on EU competition norms.

7. Conclusions

The political, economic and social security concerns act as prime movers for the decision-making of EU Competition Policy *outside the box*.

The quest for supremacy on world markets should be seen as the main challenge for maintaining balance of power and implementing anarchy containment. The issue of national and EU champions is a paradox, in between the rule of functional internal market with all its limitations to market power aggregations, and the imperative to be competitive in the world markets, where no global competition law is guaranteed or functional in a comparable way to the EU or other Western jurisdictions.

The state interests represent the main limits for EU deepening process, and the competition policy makes no exception. The relativism of public, national, European causes and priorities versus juridical rule of reason affects EU competition policy deeply, but also generates the opportunity for strategic and tactical flexibility in the face of the great and dangerous *unknown*, as shown by the global financial crisis of 2008 and the Covid-19 pandemic of 2020.

A positive development is the increased focus on consumer rights protection and support of their associations. Also, the perspective for anti-competitive damage actions by consumers against harmful big players could represent a potent deterrent for at least similar practices on a given or similar market.

Competition and security act as a power duopoly in the market economies. Western Europe's peace has been built on sharing the benefits of a joint market where rivalry is encouraged and contained simultaneously. Expanding it to the East is still an ongoing story, but incrementalism has shown that even the most difficult issues of

[59] For the latest evaluation of the relative progress made on the implementation of Directive 2009/81/EC (on the coordination of procedures for the award of certain works contracts, supply contracts and service contracts by contracting authorities or entities in the fields of defence and security) and of Directive 2009/43/EC (concerning simplifying terms and conditions of transfers of defence-related products within the Community), see Isabelle Ioannides (ed.), *EU Defence Package: Defence Procurement and Intra-Community Tranfer Directives. European Implementation Assessment*, European Parliamentary Research Service, Ex-Post Evaluation Unit PE 654.171, October 2020, https://www.europarl.europa.eu/RegData/etudes/STUD/2020/654171/EPRS_STU(2020)654171_EN.pdf.

[60] For the role played by this institution in promoting competition-like norms and practice in the field of defence procurement with a view to create a stronger and more reliable EDTIB, see Simion-Adrian Purza, *Setting the Scene for Defence Procurement Integration in the EU: The Intergovernmental Mechanisms*, European Procurement & Public Private Partnership Law Review, Vol. 13, No. 4 (2018), Lexxion Verlagsgesellschaft mbH, pp. 257-269, https://www.jstor.org/stable/26695293?read-now=1&refreqid=excelsior%3A4a9f4e0bd2bd7c2bf8e2742022984546&seq=13#page_scan_tab_contents.

But it should be pointed out the fact that the liberal institutionalist perspective used in the aforementioned article is only partially explaining the intergovernmental meaning of EDA. When taking into account the very supra-governmental setup of its leadership, it becomes obvious the slow transition of the whole field of Foreign Affairs and Security Policy from the initial intergovernmental levels of the Maastricht Treaty to the evolving degrees of deepening aimed and partly achieved on the basis of subsequent treaties. The federalisation by **"EU-rally-sation"** of this most sensitive field of national sovereignty of the member states is ongoing, and the use of the paramount powers of art. 346 TFEU harder and harder to prefer when striving for regional/global relevance and competence. Thus, a stronger case for competition as useful [with its core principles of economic efficiency, transparency of information, fair treatment of tenderers, or diversification of (secure) supply chains] is being made.

NB. In 2014, the author coined this „barbarism" in order to outline the need for a "rally" in order to achieve the desired state of a complete, functional and secure union at European level. The difference with the well-known "EU-ization" lies in the need for dynamism, convergence, level-playing field of power play and will to succeed as partners in union and competitors on the Internal Market.

sovereign transfer of powers can be tackled upwardly. The *Unitable States of Europe* have, of course, in the aftermath of Brexit, the choice to go back to the times of world wars, regional powder kegs and irrelevance of ordinary human life. But Competition Securitisation has already proven that the Kantian sense of moral justice could be reached when rules, even incomplete ones, are drafted, implemented and safeguarded by democratic means seeking to strike the right balance between *gains* and *care*.

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