

The constitutional principles of the EU and Hungarian particularism in times of crisis

Written by **Veronika CZINA**

Hungarian Academy of Sciences - Centre for Social Sciences
Lendület-HPOPs Research Group,

University of Debrecen – Géza Marton Doctoral School of Legal Studies

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Abstract

This paper analyses the basic constitutional principles of the European Union in contrast with the autonomous policy-making activity of Member States in light of the global economic crisis. The foundational principles of the EU are responsible for coordinating European integration and the behaviour of Member States. However, when Member States face such unprecedented economic or political challenges as they did in the past years, they might act differently in European policy-making than they usually do. This can easily lead to situations when they disregard the guiding values of the EU and choose to conduct an autonomous, or particularist behaviour. This paper examines, through the example of Hungary's policy-making in the Union, the relationship between the constitutional principles of the EU, more precisely equality, solidarity and loyalty, and particularist Member State behaviour. It argues that although there is room for diversity and decentralization in the EU, as follows from the principle of subsidiarity, a difference should be made between legitimate individual Member State action and illegitimate particularism. This study also states that the locally engineered Member State responses to the crisis cannot avoid taking into account the collective EU interests and it projects that the crisis might help finding the dividing line between legitimate and illegitimate Member State conduct.

Introduction

Besides laws, directives and regulations, the functioning of the European Union and the behaviour of its Member States are also determined by constitutional principles outlined in the Treaty on European Union (TEU). These principles are for example, freedom, democracy, equality, rule of law, pluralism, non-discrimination, tolerance, justice and solidarity (Article 2 and 3 TEU)¹ or mutual respect (Article 4(3) TEU).² These foundational principles are responsible for coordinating European integration and the behaviour of Member States with the purpose of creating an inner cohesion and achieving the common, long-term goals of the European Union. They outline a certain type of behavioural pattern to which all Member States “subscribed” when they joined the EU. However, the everyday practice of European and national policy-making shows that these principles do not always prevail in the political reality, but in some situations Member States disregard them and choose to conduct an autonomous, or in other words, particularist behaviour. Particularism, from the perspective of this study, refers to the behaviour or strategy of a Member State that is based on acting individually and focusing on the country’s own interests instead of EU goals. Among the constitutional principles mentioned above this paper will focus on equality, solidarity and mutual respect (which refers to loyalty among Member States) because these are the most important ones limiting Member States’ ability to pursue policies that could compromise common EU goals. *This study examines, through the example of Hungary’s policy-making in the Union, the relationship between the constitutional principles of the EU and particularist Member State behaviour, which relationship is mostly determined by the coexistence (or overlap) of different national and EU commitments.*

Keeping these national and EU commitments became even harder for Member States in the past years due to the world economic crisis and the Eurozone crisis. Having difficulties with abiding the laws and guiding principles of the EU and at the same time trying to conduct effective national strategies has made Member States’ life harder in the EU and often resulted in a rule-breaking or particularist behaviour from them. Coping with the unusual economic circumstances sometimes forced Member States to introduce extreme measures on the national level of policy-making. Examining Member States from this angle is particularly challenging because it is often difficult to decide whether what we see in Member State practice can be considered legitimate diversity or illegitimate particularism.

This analysis seeks the answer to the following question: *how does the crisis change the way EU Member States have to comply with constitutional principles?* At first, observers could propose that the crisis might have increased the Member States’ room for individual manoeuvring within the EU. This study argues that the constitutional principles examined do not impose standardization or centralization on Member States; on the contrary, there is room for diversity and decentralization, as follows from the principle of subsidiarity. However, as it will be shown by the case study and European Court of Justice (ECJ) jurisprudence examples,

¹ “Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union” (Official Journal of the European Union, March 30, 2010), 83/17.

² *Ibid.*, 83/18.

individual Member State actions must have legitimate causes and the elbow-room for Member State action should be found within the EU constitutional framework. Consequently, *the locally managed Member State responses to the crisis cannot avoid respecting the EU constitutional values and taking into account the collective EU interests.*

The outline of the paper is as follows. First, the theoretical background necessary for examining the Hungarian case is presented. This includes a brief outline of small state studies and academic literature on preference formation. Secondly, the constitutional values are analysed which will be followed by a brief assessment of ECJ jurisprudence on crisis-related cases. This short outline on some Court rulings is useful in order to depict the legal obligations Member States have to follow in the EU framework. Thirdly, the Hungarian case will be demonstrated, and then the paper will conclude by summarizing the main findings. After examining their individual policy-making attempts and the legal obligations Member States have to comply with, *the study will conclude by arguing that the EU institutional system prefers collective institutional solutions to unilateral Member State action in cases aiming at coping with the crisis.*

Theoretical framework for Member State behaviour in the EU

The Hungarian particularism, as mentioned above, is analysed from the perspective of the constitutional principles of the European Union. However, there are some theoretical angles which are indispensable to comprehend for understanding the main puzzle, which is: how can small and vulnerable Member States conduct effective national strategies in times of crisis without violating EU constitutional principles and legal obligations? These theoretical angles to be assessed are, small state studies in European integration literature and the scholarly literature focusing on the preference formation of states.

Small state studies

Hungary, a member of the “state group” within the EU has been conducting a quite non-conventional, particularist behaviour within the Union in the past few years. The government’s radical changes to the country’s constitution, the reorganization of the taxing system, significantly closer ties with Russia than even before in the past 20 years, and openly renouncing some of the basic democratic values of the EU are the most important indicators of the rule-abandoning behaviour of Hungary. Since its accession to the European bloc, Hungary has always been seen as a small Member State within the EU, even if it is not among the smallest countries. It has been considered small both from the point of view of its international partners, as well as from the perception of its political elite and citizens. Since the government change of 2010 this view has changed, at least from the point of view of the governing elite. The Hungarian government’s focus on keeping the country’s sovereignty and putting its alleged national interests ahead of its common European interests and obligations indicate that the leaders of the Central Eastern European Member State do not see Hungary as

a small or insignificant country anymore. This subchapter introduces and reveals the most important characteristics of the small state literature which hopefully will help better understand the Hungarian behaviour.

The reason behind the choice for small state studies as a framework for analysis is that this particular discipline of European studies gives the researcher valuable insight into the behaviour of states. Some researchers are doubtful about this argument and ask whether the concept of smallness is a useful analytical tool at all.³ In my view, the researcher gains a lot from turning towards small state studies because they provide a useful analytical tool or conceptual framework for analysing certain types of country strategies both individually in the international arena and in international organizations. I argue that small state studies are a good starting point for analysis because the small state concept can facilitate understanding the behaviour of the examined state.

Definitions of size

The general starting point of researchers working on small states is the definition of what qualifies as “small” in their understanding. Due to empirical difficulties, there is no single definition to small states; in fact, there are many different definitions to the concept: some researchers prefer objective or quantitative definitions, while others opt for qualitative, or mixed definitions. Quantitative definitions are those which take concrete, measurable criteria into account when defining smallness. We could also call this an absolute or objective approach. The most prominent objective criteria in defining size usually are population, territory, GDP and military capacity.⁴ Although these objective definitions seem simple enough, some more complex indicators can be generated from them (see Panke mentioned later). The qualitative category of definitions includes those that define the size of states “in relation to their wider environment.”⁵ These more subjective or relative definitions often argue that size is not an objectively measurable fact but a social construction.⁶ The third, mixed approach is based on the combination of objective and subjective factors, which we could also call the multilateral dimension of size. Thorhallsson differentiates between six categories of size (fixed size, sovereignty size, political size, economic size, perceptual size and preference size) and argues that the researcher has to decide which category he/she focuses on, but it is always better to combine the different criteria, take perceptual and objective aspects into consideration, and not to look at only one aspect.⁷ The definition of size

³ Peter R. Baehr, “Review: Small States: A Tool for Analysis,” *World Politics* 27, no. 3 (April 1975): 456–66.

⁴ See for example: Iver B. Neumann and Sieglinde Gstöhl, “Lilliputians in Gulliver’s World? Small States in International Relations” (Centre for Small State Studies, University of Iceland, May 2004).

⁵ Tiia Lehtonen, “Small States - Big Negotiations Decision-Making Rules and Small State Influence in EU Treaty Negotiations” (European Policy Institute, Florence, March 2009), 11.

⁶ Baldur Thorhallsson, “The Size of States in the European Union: Theoretical and Conceptual Perspectives,” *Journal of European Integration* 28, no. 1 (March 2006): 7–31, doi:10.1080/07036330500480490.

⁷ Ibid.

depends on the specific condition it is examined in: a Member State may be weak in one relation, but simultaneously powerful in another.⁸

In my research I rely on Diana Panke's objective/quantitative understanding of smallness, determined by the votes Member States possess in the Council. Based on the allocation of votes among the states in qualified majority voting in the Council, those Member States can be considered small that have fewer votes than the EU-average (12,5).⁹ Taking this categorization into account, currently there are twenty small Member States in the EU, and the remaining eight (Germany, France, Italy, the United Kingdom, Spain, Poland, Romania and the Netherlands) are considered large. This research adopts this approach to smallness because the distribution of votes in the Council already reflects size and population of the Member States, so it is a clear and comprehensive categorization. Based on these terms, Hungary can be identified as a small Member State in the EU.

The question might arise here: why is the category of medium sized Member States missing? In EU-related research some authors use the category of medium-size Member States¹⁰ and others distinguish even more categories, while there are scholars who argue that EU Member States can be divided into either two (large and small) or three (large, medium and small) categories depending on the context of the research.¹¹ Nevertheless, I do not find the introduction of a third category of size useful when analysing Member State strategies in the EU. I argue that the dividing line between small-medium and medium-large Member States in the EU would be too blurry to make a clear division. Moreover, in terms of power and influence in the Union, the biggest dividing line stretches between the big ones, and the "others", so introducing a third category would not influence the course of this analysis.

The main arguments of small state studies

Authors dealing with small states usually identify the main characteristics of small countries that put them in a special, usually more difficult situation in the international arena than their peers. These characteristics are, for example, vulnerability,¹² openness,¹³ and the lack of resources.¹⁴ One of the most prominent researchers of small EU Member States, Diana Panke, derives all her arguments from the presumption that small EU Member States face structural

⁸ Anders Wivel, "The Security Challenge of Small States: Interests, Identity and the Development of the EU as a Security Actor," *JCMS: Journal of Common Market Studies* 43, no. 2 (2005): 393–412.

⁹ Diana Panke, "Small States in the European Union: Structural Disadvantages in EU Policy-Making and Counter-Strategies," *Journal of European Public Policy* 17, no. 6 (September 2010): 801, doi:10.1080/13501763.2010.486980.

¹⁰ See for example: Amy Verdun, "Small States and the Global Economic Crisis: An Assessment," *European Political Science* 12, no. 3 (September 2013): 276–93, doi:10.1057/eps.2012.34.

¹¹ P. Schure and A. Verdun, "Legislative Bargaining in the European Union: The Divide between Large and Small Member States," *European Union Politics* 9, no. 4 (December 1, 2008): 459–86, doi:10.1177/1465116508095146.

¹² Baldur Thorhallsson and Rainer Kattel, "Neo-Liberal Small States and Economic Crisis: Lessons for Democratic Corporatism," *Journal of Baltic Studies* 44, no. 1 (March 2013): 89, doi:10.1080/01629778.2012.719306.

¹³ Peter J. Katzenstein, "Small States and Small States Revisited," *New Political Economy* 8, no. 1 (March 2003): 11, doi:10.1080/1356346032000078705.

¹⁴ Panke, "Small States in the European Union," 801.

disadvantages in exerting influence in EU policy-making.¹⁵ The main components of the small ones' disadvantage, thus the most important characteristics of small states, are their lack of political power, the insufficient resources to develop policy expertise, the fact that they joined the EU recently and their lack of expertise and proficiency to operate as policy forerunners.¹⁶

Despite this disadvantage, there are certain conditions under which small states can successfully pursue their objectives in the EU. The main researchers of the topic outline strategies for small Member States and circumstances under which they can exercise influence despite these disadvantages in the EU. These are, in particular, being an old Member State,¹⁷ possessing policy expertise,¹⁸ having good economic, institutional or administrative capacities,¹⁹ creating coalitions or partnerships,²⁰ and having a unified national position²¹ etc. Some researchers consider institutional aspects, such as holding important positions in the EU (e.g. the Council Presidency),²² having close ties with the European Commission²³ or applying the "community method" in decision-making²⁴ to be important. The political elites, their ideas and preferences can also play a huge part in defining the strategies of small states.²⁵ A distinct type of small state behaviour discovered in the 1990s-2000s within small state studies is the smart state strategy.²⁶ Scholars argue that smart states are able to exploit the weakness of small states as resource for influence by having well-

¹⁵ Diana Panke, "The Influence of Small States in the EU: Structural Disadvantages and Counterstrategies" (UCD Dublin European Institute Working Paper 08-3, May 2008).

¹⁶ See for example: Gunta Pastore, "Small New Member States in the EU Foreign Policy: Toward 'Small State Smart Strategy,'" *Baltic Journal of Political Science*, no. 2 (December 2013).

¹⁷ See for example: Panke, "Small States in the European Union," 813.

¹⁸ See for example: Peter Viggo Jakobsen, "Small States, Big Influence: The Overlooked Nordic Influence on the Civilian ESDP," *JCMS: Journal of Common Market Studies* 47, no. 1 (2008): 86.

¹⁹ See for example: Ivo Maes and Amy Verdun, "Small States and the Creation of EMU: Belgium and the Netherlands, Pace-Setters and Gate-Keepers," *JCMS: Journal of Common Market Studies* 43, no. 2 (2005): 327–48.

²⁰ See for example: M. Keating and M. Harvey, "The Political Economy of Small European States: And Lessons for Scotland," *National Institute Economic Review* 227, no. 1 (February 1, 2014): R59, doi:10.1177/002795011422700107.

²¹ Annica Kronsell, "Can Small States Influence EU Norms?: Insights From Sweden's Participation in the Field of Environmental Politics," *Scandinavian Studies* 74 (2002): 299.

²² See for example: Jonas Tallberg, "The Power of the Presidency: Brokerage, Efficiency and Distribution in EU Negotiations," *JCMS: Journal of Common Market Studies* 42, no. 5 (2004): 999–1022.

²³ Simone Bunse et al., *Is the Commission the Small Member States' Best Friend?* (Stockholm: Swedish Institute for European Policy Studies (SIEPS), 2005).

²⁴ Viljar Veebel, "The EU Institutional Reform Model and the Preferences of the Small Member States," *Managing Global Transitions* 12, no. 2 (2014): 172.

²⁵ John L. Campbell and John A. Hall, "National Identity and the Political Economy of Small States," *Review of International Political Economy* 16, no. 4 (October 22, 2009): 557, doi:10.1080/09692290802620378.

²⁶ Pertti Joenniemi, "From Small to Smart: Reflections on the Concept of Small States.," *Irish Studies in International Affairs*, no. 9 (1998): 61–62.

developed preferences, being able to present their initiatives as interests of the whole EU, and being able to mediate.²⁷

Critics and suggestions for small state studies

Despite emphasizing the usefulness of these studies, some critical remarks for small state studies should be made. Small state studies in general pay too much attention to objective characteristics, such as the size or the administrative capacities of a state, instead of looking at more subjective circumstances of states, like political capacities or constraints. What is even more important is that they assume a rule-abiding behaviour from the examined actors which stays within the EU's constitutional and political settlements instead of analysing rule-breaker or non-conventional behaviour as well. Moreover, researchers focus too much on how these states can influence EU policy-making, and they neglect the overall behaviour and general actions of these Member States towards the EU.

I argue that small state studies are a useful analytical tool; this is why Hungary's particularism is analysed from their perspectives in this study, but focusing on the above mentioned neglected points is essential. Moreover, I agree with Christian Lequesne who states that the relevant analytical unit in the EU should be the single Member State, so comparisons should not be made between groups of states, but individual Member States.²⁸ Thus, Hungary's particularist behaviour within the EU in light of the constitutional values is examined through the lenses of small state studies because they give a deep insight into the circumstances in which Hungary operates and the options it has in exerting its national interest. Moreover, this analysis can also contribute to the field of small state studies by showing that examining the domestic level and the national political arena of Member States can be as useful as analysing its foreign policy. In addition, I argue that small state studies would benefit from putting the small-large dichotomy aside, and analysing small states alone, through evaluating their own preferences. In domestic politics, which is highly affecting the foreign policy of a country, being small or large does not count: what matters the most is the actions of the political elite in order to exert the national interest of the country.

Preference formation

The literature focusing on the national preference formation of states is indispensable to assess for this research because it describes the motives and methods along which the strategic preferences of the states are created under certain circumstances. These features of preference formation help the researcher explain why governments and other policy-makers opt for a certain type of behaviour over another, thus they facilitate defining what we mean by Member State strategies. In addition, examining preference formation is also useful in relation to small state studies because one can easily agree with the assumption that as small states

²⁷ Caroline Howard Grøn and Anders Wivel, "Maximizing Influence in the European Union after the Lisbon Treaty: From Small State Policy to Smart State Strategy," *Journal of European Integration* 33, no. 5 (September 2011): 530, doi:10.1080/07036337.2010.546846.

²⁸ Christian Lequesne, "Old vs. New," in *The Oxford Handbook of the European Union* (Oxford: Oxford University Press, 2012), 893.

possess different capacities and features than the large ones in the EU, their preference formation tactics might also be different. Moreover, some of the small state features outlined previously in the literature review (e.g. vulnerability) and conditions under which small states can successfully pursue their interests in the EU (such as policy expertise, coalitions, institutional and administrative capacities, or the behaviour of the political elites) might also overlap with the factors explaining preference formation. Last but not least, for some researchers, size itself is seen as an explanatory factor for the preference formation of EU Member States.²⁹

The reasons for examining preference formation

Justifying the need for examining the (European) preference formation of Hungary as a small and relatively new Member State is not hard. In his studies written about the preference formation of “new Member States” Tim Haughton³⁰ argues that the shaping of European preferences from the perspective of these Member States is worth examining because even though they brought their own sets of preferences with them in the EU, scholarly literature mainly focused on the preference formation of Western European countries. Moreover, as Member States participate in all levels of EU decision-making, explaining how they reach their preferences can bring important insights into the future dynamics of the EU. Last but not least Haughton justifies his interest in preference formation by the fact that this area of research feeds into larger debates about the nature of the EU and also about the usefulness of different explanatory theoretical frameworks.

European integration theories about preference formation

Some scholars define preferences in economic terms. Etzioni,³¹ for instance, defines preferences as the “ranking of possible choices prior to any consideration of resource constraints.” This is a definition widely used among economists. Andrew Moravcsik, on the other hand, sees preferences as “an ordered and weighted set of values placed on future substantive outcomes ... that might result from international political interaction.”³² Some parts of this definition are broadly accepted by political scientists, however there is an intense debate going on about what are those values and interactions that determine preferences.

The central tenet of the research focusing on preference formation provides different explanations or features affecting the preference formation of states. We can distinguish several different views on preference formation, and the easiest way to separate one approach from another is to divide them along European integration theories and their take on state

²⁹ See for example: Tim Haughton and Darina Malová, “Open for Business: Slovakia as a New Member State,” *International Issues & Slovak Foreign Policy Affairs* 16, no. 2 (2007): 3–22.

³⁰ Tim Haughton, “Preference Formation in the New EU Member States: The Cases of Slovenia, Slovakia and the Czech Republic: Full Research Report,” *ESRC End of Award Report, RES-000-22-2786*. Swindon: ESRC, 2009, 15–16.

³¹ Amitai Etzioni, “Crossing the Rubicon: Including Preference Formation in Theories of Choice Behavior,” *Challenge* 57, no. 2 (March 1, 2014): 66, doi:10.2753/0577-5132570205.

³² Andrew Moravcsik, *The Choice for Europe: Social Purpose and State Power from Messina to Maastricht* (Ithaca, New York: Cornell University, 1998), 24.

preferences. In this regard liberal intergovernmentalism (LIG) can be considered to be the dominant theory in the studies of national preference formation. Andrew Moravcsik provides an exhaustive analysis on how the domestic level matters in the states' attempts to exert national interest and influence.³³ For Moravcsik, state behaviour reflects the rational actions of governments constrained at home by domestic societal pressures and abroad by their strategic environment.³⁴ Domestic economic lobbying organizations are crucial for the process of national preference formation and they help explain Member State positions. This theory argues that the primary determinants of national preferences are the costs and benefits of economic interdependence.³⁵ The personal commitments and ideologies of the leading politicians also have a defining role in national preference formation.³⁶ Last but not least, LIG argues that the EU institutions actually strengthen the power of national governments because they increase the efficiency of their interstate bargaining, and they also strengthen the autonomy of the national political leaders.³⁷ This can be seen as the two-level game which enhances the initiative and autonomy of national political leaders

The most popular alternatives to LIG are the different threads of institutionalism. Closa,³⁸ for instance, rejects the claim of LIG that national governments aggregate the preferences formed in civil society through a pluralist process, and argues that the institutional environment in which the preferences are shaped may actually act as feeder of these preferences or as modeller of them. Others introduce even more nuanced threads of theories, such as rational choice institutionalism or sociological institutionalism to provide alternatives for LIG. When analysing the institution of the Council Presidency, Verhoeff and Neimann argue that rational choice institutionalism focuses on cost-benefit calculations in fulfilling national interests, while sociological institutionalism emphasizes the importance of norms and claims that the chair is unlikely to pursue national interests where these are different from the EU mainstream.³⁹ Slapin also chooses institutionalism over intergovernmentalism in his analysis of intergovernmental conferences and argues that "institutionalism contrasts with intergovernmentalism because it suggests that small states can affect IGC outcomes through veto power."⁴⁰

³³ Andrew Moravcsik, "Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach," *JCMS: Journal of Common Market Studies* 31, no. 4 (1993): 473–524.

³⁴ *Ibid.*, 474.

³⁵ *Ibid.*, 480.

³⁶ *Ibid.*, 488.

³⁷ *Ibid.*, 508.

³⁸ Carlos Closa, "The Formation of Domestic Preferences on the EU Constitution in Spain," *Comparative European Politics* 2, no. 3 (December 2004): 320, doi:10.1057/palgrave.cep.6110041.

³⁹ Emma C. Verhoeff and Arne Niemann, "National Preferences and the European Union Presidency: The Case of German Energy Policy towards Russia," *JCMS: Journal of Common Market Studies* 49, no. 6 (November 2011): 1276–1277, doi:10.1111/j.1468-5965.2011.02198.x.

⁴⁰ Jonathan B. Slapin, "Bargaining Power at Europe's Intergovernmental Conferences: Testing Institutional and Intergovernmental Theories," *International Organization* 62, no. 01 (January 2008): 132, doi:10.1017/S0020818308080053.

Factors explaining national preference formation

Some researchers do not necessarily make their arguments about national preference formation strictly in line with theories. Instead, they make a specific list of factors that influence certain Member States' preference formation process based on specific country characteristics and political circumstances. Copsey and Haughton have refurbished Moravcsik's theory and created a synthetic framework to examine the nature of preference formation in the new Member States of the EU.⁴¹ They did so because they claim that "there is no silver bullet" which provides an explanation for the preference formation of all countries and all policy areas.⁴² Copsey and Haughton think that there is a difference between the preference formation techniques of "old" and "new" Member States, this is why they have created their special framework which accounts for the preference formation of the new ones. Their framework explaining the preference formation of new EU Member States consists of the following variables: unique historical experiences, size, dependency, ideology and powerful societal groups. The situation of these countries is different because they are weaker and more vulnerable than their counterparts. Their vulnerability consists of two elements: economic dependency and the country's perceived place in the world.⁴³

The most important units of analysis in the examined literature are the main actors and tools of preference formation. Several different conditions of preference formation are presented by scholars, such as the behaviour of governments on intergovernmental conferences,⁴⁴ the Council presidency,⁴⁵ or the Convention method as a tool for treaty reform.⁴⁶ To put it in a nutshell, the most important determining factors of national preference formation outlined by scholars are: history, dependency on the EU, size, ideology and societal groups;⁴⁷ vulnerability and weakness;⁴⁸ party positions, the consistency of domestic efforts and European demands;⁴⁹ the degree of foreign ownership in a state's financial sector;⁵⁰ powerful

⁴¹ Nathaniel Copsey and Tim Haughton, "The Choices for Europe: National Preferences in New and Old Member States," *JCMS: Journal of Common Market Studies* 47, no. 2 (2009): 263–86.

⁴² *Ibid.*, 269.

⁴³ Tim Haughton, "Vulnerabilities, Accession Hangovers and the Presidency Role: Explaining New EU Member States' Choices for Europe," *Center for European Studies Central and Eastern Europe Working Paper Series* 68, February 2010.

⁴⁴ Mark Aspinwall, "Government Preferences on European Integration: An Empirical Test of Five Theories," *British Journal of Political Science* 37, no. 01 (January 2007): 89, doi:10.1017/S0007123407000051.

⁴⁵ See for example: David Hine, "Explaining Italian Preferences at the Constitutional Convention," *Comparative European Politics* 2, no. 3 (December 2004): 302–19, doi:10.1057/palgrave.cep.6110037.

⁴⁶ See for example: Dionyssi G. Dimitrakopoulos and Hussein Kassim, "Deciding the Future of the European Union: Preference Formation and Treaty Reform," *Comparative European Politics* 2, no. 3 (December 2004): 241–60, doi:10.1057/palgrave.cep.6110042.

⁴⁷ Copsey and Haughton, "The Choices for Europe: National Preferences in New and Old Member States," 269.

⁴⁸ See for example: Haughton, "Vulnerabilities, Accession Hangovers and the Presidency Role: Explaining New EU Member States' Choices for Europe."

⁴⁹ Ramūnas Vilpišauskas, "National Preferences and Bargaining of the New Member States since the Enlargement of the EU: The Baltic States - Still Policy Takers?," *Foreign Policy*, 2011, 9.

⁵⁰ Aneta Spendzharova, "Is More 'Brussels' the Solution? New European Union Member States' Preferences about the European Financial Architecture*: Is More 'Brussels' the Solution?," *JCMS: Journal of Common Market Studies* 50, no. 2 (March 2012): 315, doi:10.1111/j.1468-5965.2011.02208.x.

leaders and societal actors;⁵¹ ideologies;⁵² alliances⁵³ and identity.⁵⁴ I argue that national preference formation does not depend only on the EU agenda but it is shaped by the political interests of the national governments and the relevant actors/societal groups in the domestic political field.

Legal obligations regulating Member State action in the EU

When joining the European Union, European countries agreed to follow common principles that guide their behaviour and policy-making in the EU in order to attain common objectives for their mutual benefit. As the EU can be considered to be a collective enterprise, the core idea of its functioning lies in the understanding that together EU Member States are able to achieve more benefits than separately or benefits that, because of cross-border interdependencies, cannot be achieved alone. This idea stems not only from political but also from economic theories, as the four freedoms, the free movement of people, goods, services and capital, are based on apparent economic reasons. Given the fact that this collective system can only function properly if the members cooperate, individual Member State behaviour which would harm attaining common goals or particularist behaviour is not desired in it. These rules of behaviour within the community must be obeyed, which is ensured by the fact that they are laid down in the Treaties in the forms of constitutional values.

EU constitutional principles

Article 1(1) TEU states that Member States establish among themselves the European Union “on which the Member States confer competences to attain objectives they have in common.”⁵⁵ Moreover Article 3(3) TEU establishes that “... (the Union) shall promote economic, social, and territorial cohesion, and solidarity among Member States.”⁵⁶ Both sentences refer to solidarity, for which to prevail, a common understanding and willingness to cooperate is needed from the Member States themselves as well. The loyalty principle is laid down in Article 4(3) TEU which says that “Pursuant to the principle of sincere cooperation, the Union and the Member States shall, in full mutual respect, assist each other in carrying out tasks which flow from the treaties.”⁵⁷ This obligation establishes a sense of loyalty and mutual cooperation, which in principle should prevent Member States from acting autonomously. Moreover, according to the treaties the EU should respect the equality of Member States

⁵¹ Moravcsik, “Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach.”

⁵² See for example: Aspinwall, “Government Preferences on European Integration,” 37.

⁵³ Nicolas Jabko, “The Importance of Being Nice: An Institutional Analysis of French Preferences on the Future of Europe,” *Comparative European Politics* 2, no. 3 (December 2004): 293, doi:10.1057/palgrave.cep.6110036.

⁵⁴ Liesbet Hooghe and Gary Marks, “A Postfunctional Theory of European Integration: From Permissive Consensus to Constraining Dissensus,” *British Journal of Political Science* 39, no. 01 (January 2009): 1, doi:10.1017/S0007123408000409.

⁵⁵ “Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union,” 83/16.

⁵⁶ *Ibid.*, 83/17.

⁵⁷ *Ibid.*, 83/18.

before the treaties (Article 4(2) TEU),⁵⁸ and also its citizens have to be treated equally no matter which Member States they come from (Article 9 TEU).⁵⁹ The principles of equality, solidarity and loyalty can be considered as the constitutional ramifications of the collective nature of the EU: acting according to them should be self-evident in any kind of political or economic union because they reinforce the success of the collective system.

Against this backdrop, the present study proposes that the constitutional principles described above suggest avoiding particularism because not only particularist Member State behaviour undermines the Union interests, but it also jeopardises the interests of other Member States, and even the interests of the rogue Member State. I argue that particularism and the constant insistence on sovereignty are usually based on the misperception that the collective system exploits and suppresses the members of the given community instead of achieving the most benefits for everyone. Particularism contradicts the rationale for European cooperation and it recreates the problems and conflicts of unilateralism, which the Member States had wanted to avoid by signing up to the Treaties. Due to the high level of interdependence among Member States of the EU, one country's particularist behaviour might lead to another country acting autonomously, which could cause a downward spiral of unilateralism and would endanger achieving common goals, and at the end it would endanger the functioning of the EU as a whole.

However, the above expressed opinion does not entail that there is no room at all for individual Member State action. Sometimes a certain kind of conflict of interest arises between the national and the EU-level of policy-making, which phenomenon is recognised by the Treaties themselves too. These problems are overcome by institutional arrangements such as shared competences between Member States and the EU (e.g. the social policy, internal market and environment – Article 4 TFEU).⁶⁰ Moreover, the principle of subsidiarity is also a crucial constitutional guideline in the functioning of the EU. In EU policy-making subsidiarity means that decisions are taken at the level closest to the citizens and the Union only takes action if it is more effective than a decision would be on the national or other, lower, levels. So, in the political reality, there exists a certain kind of flexibility⁶¹ for Member State action permitted by the Treaties which can be derived from the principle of subsidiarity: the elbow-room in the everyday policy-making might be bigger than how it might seem from the basic constitutional principles outlined in the treaties. At first sight this would suggest that subsidiarity is contradictory to the principles of equality, solidarity and loyalty but that is not the case. Subsidiarity reminds Member States that sometimes the EU is not capable of acting on its own, but EU objectives might be achieved by Member States acting within their respective spheres of competence. However, these individual acts, justified by the principle of subsidiarity, should always serve the benefit of the community and can never go against EU law, as follows from Article 4(3) TEU. To put it in a nutshell, a Member State's particularist behaviour cannot be justified by the principle of subsidiarity because subsidiarity

⁵⁸ Ibid.

⁵⁹ Ibid., 83/20.

⁶⁰ Ibid., 83/52.

⁶¹ It should be noted here that flexibility granted by subsidiarity is only one of the several interpretations of flexibility in the EU.

complements and reinforces equality, solidarity and loyalty instead of contradicting with them.

As shown in the paragraphs above, besides considering the constitutional principles to be guiding forces of European integration, we cannot disregard the phenomenon of diversity in the Union either. Due to the apparent diversity between Member States, everyday policy-making in the EU is quite frequently based on certain groupings or categorizations among them, for example large-small, old-new, net contributor-net receiver etc. The only way Member States can effectively cope with the political reality is adapting to the circumstances and trying to get the best out of their respective features. The situation is particularly difficult for the small Member States, who, despite outnumbering the large ones, might have to face several economic and administrative constraints compared to their peers, which situation can easily result in focusing on the countries' own interests and disregarding EU rules. This entails that the normative principles regulating Member State action are not always followed due to the diverse nature of the countries which practice might bring obstacles into the collective EU action. This is why, although diversity should be recognised, it cannot be used as an excuse for a particularist behaviour either. This duality between particularism and constitutional principles raises the question *whether conducting a particular Member State behaviour and strategy is justified in times of crisis or not when at the same time there is a normative frame bounding the countries to act in a coordinated way.*

ECJ case law

As already stated above, differentiating between acceptable particularism and “bad” particularism is no easy task, but the jurisprudence of the European Court of Justice might provide some examples and insights on what actions can be seen as legitimate Member State strategies to protect their citizens from the negative consequences of the crisis, and what deeds are on the verge of illegitimate particularism. Examining whether the ECJ became more permissive with unilateral Member State action due to the unusual circumstances of the crisis might bring important insights into this puzzle.

One of the most prominent cases before the ECJ induced by the crisis was the landmark *Pringle v Ireland* case in 2012⁶² in which the ECJ was asked to determine whether the establishment of the ESM (European Stability Mechanism) as a permanent euro rescue fund was compatible with the EU Treaties. Although the concerns of the plaintiff seem reasonable enough based on the “no bail-out clause” of TFEU, the Court still found that the ESM did not violate the Treaties. This ECJ ruling indicates that the crisis justifies some unusual institutional means in the EU and solidarity among Member States is a driving principle of EU policy-making. This ruling is a key case in demonstrating the Court's general attitude towards the crisis because it reveals that the Member States are allowed to cooperate in flexible, intergovernmental institutional formations, even outside the framework of the

⁶² “Judgement of the Court on Case C-370/12. *Thomas Pringle v Government of Ireland, Ireland and the Attorney General*” (curia.europa.eu, November 27, 2012), <http://curia.europa.eu/juris/liste.jsf?num=C-370/12>.

Treaties, when there is a larger collective aim to achieve (in this case avoiding Member State default).

Another crisis-related case is *Thesing and Bloomberg v. ECB* in which the ECJ made its key decision in February 2014.⁶³ In 2010 a Bloomberg journalist challenged a decision by the ECB to „refuse access to two documents concerning transactions between 2001 and 2007 by which Greece, with the assistance of the investment bank Goldman Sachs, temporarily removed part of its public debt from the government’s books with ‘off-market currency swaps’.”⁶⁴ The ECJ confirmed that the ECB was entitled not to provide these documents because disclosing them could have led to market instability or would have undermined public confidence in the economic policy of the Union or one of its Member States. To put it simply, preserving market stability in times of crisis was considered more important by the ECJ than transparency or journalistic freedom.

In the *Gauweiler et al. v Deutscher Bundestag* on the ECB’s Outright Monetary Transaction (OMT) case another ECB measure responding to the euro crisis came under scrutiny. The BVerfG wanted to check whether the European Central Bank (ECB) had transgressed the limits of its powers derived from the treaties, moreover it raised the question whether the OMT programme was not violating the prohibition of monetary financing of Member State. AG Pedro Cruz Villalón concluded that the OMT programme was compatible with the TFEU.⁶⁵ The main message of this case, for the purpose of this paper, is that increasing the competences of a European institution, in this case the ECB, which is basically a non-accountable EU agency, was considered legitimate with the purpose of saving the euro itself.

In Case-244/11, *Commission v Greece*⁶⁶ the Court held that the Greek scheme of prior authorization for acquisition of voting rights in strategic public limited companies and of ex post control was contrary to freedom of establishment and the freedom of capital.⁶⁷ In this case the ECJ had to decide on the conformity with these rules of „certain Greek measures for the privatisation of public undertakings, requiring authorisation to be obtained from the Greek Government in respect of strategic public undertakings prior to the acquisition of voting rights in them in excess of 20% of their total share capital, and to the adoption of certain decisions concerning them.”⁶⁸

⁶³ “Judgement of the Court on Case T-590/10 *Thesing and Bloomberg Finance v ECB*” (curia.europa.eu, November 29, 2012), <http://curia.europa.eu/juris/liste.jsf?num=T-590/10>.

⁶⁴ Gunnar Beck, “The Rule of EU Law,” *CAPX Website*, accessed May 27, 2015, <http://www.capx.co/the-rule-of-eu-law/>.

⁶⁵ Daniela Jaros, “The AG’s Opinion on the Outright Monetary Transactions Case,” *European Law Blog*, February 27, 2015, <http://europeanlawblog.eu/?p=2690>.

⁶⁶ “Judgement of the Court on Case C-244/11 *European Commission v Hellenic Republic*” (curia.europa.eu, November 8, 2012), <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-244/11>.

⁶⁷ “Case C- 244/11, *Commission v. Greece.*,” *CourtofJustice.EU*, October 2, 2012, <http://courtofjustice.blogspot.hu/2012/10/case-c24411-commission-v-greece.html>.

⁶⁸ Pedro Caro de Sousa, “Case Comment: Case C-244/11 *Commission v Greece*,” *Eutopialaw*, accessed June 2, 2015, <http://eutopialaw.com/2012/11/20/case-comment-case-c-24411-commission-v-greece/>.

In the Case *Elisabeta Dano v Jobcenter Leipzig* a Romanian citizen was refused the German social assistance for jobseekers on the basis of her being a jobseeker of foreign nationality.⁶⁹ The question whether this refusal was in line with EU law was referred to the Court for a preliminary ruling. The ECJ ruled that the EU Citizenship Directive does not oblige the host Member State to grant social assistance during the first three months of residence.⁷⁰ The Court's ruling comes as a surprise because an EU citizen has been restricted from settling down in Germany despite the fact that she had to leave her country due to unsustainable financial difficulties. This case implies that Member States have to act as usual and the crisis cannot be used as an excuse to diverge from their national and EU legal obligations.

Hungary has also been concerned in some crisis-related ECJ decisions. In its 2014 February ruling in the *Hervis* case⁷¹ the ECJ held that the national tax legislation creating a special tax on the store retail trade sector and the progressive tax calculated on the basis of net turnover result in a greater impact on retail food trade undertakings owned by foreigners than on those owned by nationals. This might lead to indirect discrimination and a breach of EU law and might also be contradictory to the freedom of movement of companies. Although it has not been reported to the ECJ yet, Hungary has also been condemned for its advertisement tax, in which case the European Commission declared that the tax is directed against certain commercial media channels and on the other hand favours others, which can be seen as a state-aid, thus the Commission obliged Hungary to suspend the tax. If the Hungarian government does not fulfil its obligation on the matter, the Commission might refer the case to the ECJ.

Hungarian strategy – a response to the crisis?

Hungary's particularist behaviour as a small Member State within the EU can serve us to demonstrate the difficulties in finding the boundaries of particularism. As indicated by the *Hervis* case mentioned above, in the last few years, Hungary has adopted a particular strategy as a Member State in the EU which is significantly different from its previously pursued strategy and which is also unconventional among Central and Eastern European EU members. Since 2010, Hungary has been in the centre of political attention as it began to embrace a markedly more self-centred and autonomous behaviour which is more conscious about Member State opportunities and not afraid of taking up legal and political conflicts with the EU by claiming more room for manoeuvring and freedom to act individually. Since the victory of the centre-right *Fidesz* party in 2010, there has been an apparent change in the Hungarian attitude and strategy towards the European Union. This change is clearly visible if we compare the current foreign policy strategy of Hungary to that of the 1990's, when a determined commitment towards European values and the trans-Atlantic relationship was

⁶⁹ "Judgement of the Court on Case C-333/13 *Elisabeta Dano, Florin Dano v Jobcenter Leipzig*" (curia.europa.eu, November 11, 2014), <http://curia.europa.eu/juris/documents.jsf?num=C-333/13>.

⁷⁰ Vonk Gijbert, "EU-Freedom of Movement: No Protection for the Stranded Poor," *European Law Blog*, November 25, 2014, <http://europeanlawblog.eu/?p=2606>.

⁷¹ "Judgement of the Court on Case C-385/12 *Hervis Sport- és Divatkereskedelmi Kft. v Nemzeti Adó- és Vámhivatal Közép-dunántúli Regionális Adó Főigazgatósága*." (curia.europa.eu, February 5, 2014), <http://curia.europa.eu/juris/liste.jsf?num=C-385/12>.

present⁷² and the 2000's, when the main goal was to accommodate to EU membership as smoothly as possible.⁷³ In the official foreign policy strategy of the second Orbán-government (2011) a much bigger emphasis is put on achieving the country's national and economic interests than in the previous documents, moreover the document mentions Hungary's sovereignty and territorial integrity as the most important national values of the country's foreign policy.⁷⁴

The most visible aspect of the new Hungarian strategy at the beginning was the determined defence of national positions in the EU. This appeared in many different forms and reached its peak in the conflict with the EU over the country's comprehensive constitutional and legal reforms in 2010. The new government was given the possibility to enact fundamental changes to the country's constitution and legislation as a whole. Many of these changes had generated heated debates in Europe and were considered to endanger the principle of checks and balances and even the democratic values of the EU e.g. the reduction of the retirement age of judges, appointing a new media-supervising authority, or simply the fact of amending the Fundamental Law (previously called Constitution) quite frequently within a short period of time. These acts resulted in a tense relationship and discussions with Brussels.⁷⁵ However, despite the particularist behaviour of Hungary that has led to several conflicts with Brussels a general legal compliance with the agreed commitments was present from the part of Hungary during the course of these events which stands in contrast with the political manoeuvring of the country.

During the autumn of 2014 a new aspect of the Hungarian strategy came to the front, namely a new kind of foreign policy, the main driving force of which was serving the economic interests of the country. The most significant actions of the particularist Hungarian economic policy, for instance, were taxing the banks, nationalizing utility firms or inserting taxes in the 2015 budget which were clearly directed against foreign players present in the Hungarian economy (e.g. the already mentioned advertisement tax). Even if the way of introducing these measures was legal, their aim, explicitly favouring national firms, was clearly against EU rules.

Another major action of the Hungarian government was initiating bilateral trade negotiations with Russia - despite EU sanctions - which was serving the purpose of protecting Hungarian economy through foreign policy and which questions Hungary's loyalty to the European collective enterprise. The country engaged in these negotiations based on economic motives

⁷² János Terényi, "1989-2009: Húsz Év a Magyar Külpolitikában," *Website of the Hungarian Ministry of Foreign Affairs*, January 2009, http://www.mfa.gov.hu/kulkepvisolet/DE/hu/20_eves_jubileum/terenyi.htm.

⁷³ "Magyarország Külkapcsolati Stratégiája" (Hungarian Ministry of Ministry of Foreign Affairs, April 21, 2008), 2, http://ec.europa.eu/ewsi/UDRW/images/items/docl_1476_397538305.pdf.

⁷⁴ "Magyar Külpolitika Az Unió Elnökség Után" (Hungarian Ministry of Ministry of Foreign Affairs, 2011), 4, http://eu.kormany.hu/download/4/c6/20000/kulpolitikai_strategia_20111219.pdf.

⁷⁵ For accounts of the debate between Hungary and EU officials see for example "Viviane Reding's Letter to Tibor Navracsics" (European Commission, December 12, 2011), http://ec.europa.eu/commission_2010-2014/reding/pdf/news/20120109_1_en.pdf; or Rui Tavares, "Report on the Situation of Fundamental Rights: Standards and Practices in Hungary (pursuant to the European Parliament Resolution of 16 February 2012) (2012/2130(INI))" (European Parliament, June 24, 2013), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0229+0+DOC+PDF+V0//EN>.

because as a response to the EU sanctions Russia introduced an import ban on articles coming from the EU which affects Hungarian economy pretty hard. Hungary also issued state measures to support producers in order to improve the situation. As Hungary is also dependent on Russian energy, the country continued getting engaged in the South Stream pipeline project for a while, despite the fact that all related activities were suspended at EU level.⁷⁶ As the motives behind the Hungarian actions are clearly economic, it can be assumed that the Hungarian government disregards the objectives behind the EU sanctions, which could be considered as the violation of the principles of equality, solidarity and loyalty⁷⁷ especially if we look at the declarations of the Treaty in the area of external relations.⁷⁸ This notion was reinforced by the statement of Péter Szijjártó, Minister of Foreign Economy and Foreign Affairs, who said in an interview that Hungary conducts a “Hungarian friendly” policy which is relevant to Hungarian interests. These words clearly imply disregarding the fact that Hungary is a part of a collective system.⁷⁹ However, it should be noted that no sanctions or official measures from Brussels were taken against these actions, either due to the unusual political and legal circumstances, or due to the fact that it was not only Hungary who kept its closer connections with Russia based on serving economic purposes.

Despite the EU’s reluctance to act on this behaviour, is apparent from the events presented above that Hungary was contradicting its own commitments to equality, loyalty and solidarity in the EU with its recent political-economic actions. Recently, in 2015 two quite controversial topics emerged in the Hungarian political scene. As the Charlie Hebdo incident at the beginning of January has brought the topic of migration to the forefront of EU politics, the Hungarian government started to adapt quite a hostile rhetoric towards immigrants. Prime Minister Orbán repeatedly claimed that Hungary belongs to the Hungarians and the country will not welcome everybody who wants to settle down within its territory. Moreover, Hungary is among the harshest critiques of the EU’s new agenda for handling migration as a response to the tragic accidents happening to refugees at the Mediterranean sea. The other controversial issue was also raised by the Prime Minister, when in relation to a violent murder he claimed that the question of re-introducing death penalty should be kept on the table. This announcement was met with severe criticisms arriving from prominent EU politicians such as First Commissioner Vice-President Frans Timmermans and ALDE leader Guy Verhofstadt. These topics are clear indicators of the fact that Hungary is ready to question the EU’s values when the government considers them to be harmful for the alleged national interest. This is

⁷⁶ Balázs Horváthy and Adrienn Nyircsák, “EU-Russia Sanctions War. Part II: Consequences of Restrictive Measures for Hungary - National Interests and Questions of Loyalty,” *HAS CSS Lendület-HPOPs Research Grop*, November 6, 2014, <http://hpops.tk.mta.hu/en/blog/2014/10/eu-russia-sanctions-war-part-ii-consequences-for-hungary>.

⁷⁷ Ibid.

⁷⁸ See Article 24(3) TEU in: “Consolidated Versions of the Treaty on European Union and the Treaty on the Functioning of the European Union,” 83/30.

⁷⁹ “Szijjártó: A Diplomatakat Megilleti a Védettség, de Erről Lemondhat a Küldő Állam | Híradó,” accessed December 17, 2014, <http://www.hirado.hu/2014/12/08/szijjarto-a-diplomatakat-megilleti-a-vedettseg-de-errol-lemondhat-a-kuldo-allam/>.

proven by the fact that Prime Minister Orbán said it outright that solidarity cannot be the main driving force of the consultation about reforming EU migration policy.⁸⁰

These ECJ cases and the different manifestations of the Hungarian behaviour, although showing quite a complex picture and being different from each other in their rulings, prove that whereas the EU's institutional coordinating mechanism (ESM, OTM) are defended by the Court as tools of joint actions to mitigate the eurozone crisis, unilateral, particularist individual or Member State actions are usually not acceptable even if they are justified by the crisis context. *There is a duality between acceptable collective EU measures to handle the crisis, and undesirable individual crisis management attempts.* To put it bluntly, in most cases Member States have to continue with their obligations and EU-related business as usual. ECJ jurisprudence concerning the crisis showed that there is a difference between unilateral crisis management conducted by Member States and collective crisis management coordinated on the EU level. Moreover, the findings suggest that *the reactions and solutions to the crisis cannot reinforce Member State unilateralism but have to strengthen the unity within the EU, the EU citizenship and the Union economy.*

Conclusion

The theoretical aspects discussed above as well as the constitutional values examined make it apparent that small, vulnerable, crisis struck countries in the EU have to face a dilemma in their European Union strategy: how to be an effective small country, which actively tries to exert its national preferences but at the same time being a rule-abiding, value-respecting Member State. This dichotomy also appears in the fact that even though these Member States have to seek a way out of the crisis, they are also bound by their duty to comply with legal commitments and constitutional principles. Consequently, like it was shown by the Hungarian case, what seems to be beneficial from the perspective of governance at the national level (for instance blurry political decisions, over-emphasized flexibility, rule-breaking behaviour) could undermine its opportunities at the EU level of governance. This is especially important because a country's, especially a small country's, effective promotion of national interest largely depends on the opportunities it can grab in the European political arena, and these opportunities lie in the small state strategies and preference formation tactics presented above.

After examining the Hungarian case and the jurisprudence of the EC it became apparent that *the crisis did not particularly change the requirements of individual Member State compliance with the EU constitutional values.* On the other hand, *collective EU action outside the EU framework has been repeatedly justified by circumstances induced by the crisis.* Diverging from EU obligations in reference to the crisis is only possible if the respective Member State actions do not endanger the collective goals and economic or social stability of the EU. A protectionist or discriminative practice cannot be justified by the crisis because the

⁸⁰ "Hungary's PM Orban Calls EU Refugee Quota Plan 'Mad,'" *Euractiv*, May 8, 2015, <http://www.euractiv.com/sections/migrations/hungarys-pm-orban-calls-eu-refugee-quota-plan-mad-314457>.

grand rules of European integration and the constitutional principles governing EU and Member State policy-making have not changed: they should still be the guiding forces of the European Union.

To conclude, national governments should take their participation in the EU framework seriously because being engaged and shaping the common policies of the EU enables them to pursue their interests, as follows from the nature of mutual cooperation, and other constitutional values of the Union. On the other hand, reluctance to cooperate, or disinterest in following the EU constitutional principles can jeopardize the results of the country's national preference formation. One of the most severe consequences of Member State particularism and opportunism is the constant threat that for the sake of realising smaller political gains, the larger, long-term and socially and economically more relevant public and private benefits of collective action will fail to materialise, both on the national and European level.

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