

## EDITORIAL COMMENTS<sup>1</sup>

### *The EU and globalization: Who's afraid of the great white shark?*

In July 1916, three young men and a boy died from unprecedented shark attacks at the New Jersey shore. After a great white shark had been caught in the area, the attacks stopped. But the summer season in the New Jersey beach resorts was ruined. A few months later, in November 1916, Woodrow Wilson was duly punished for these events in the U.S. presidential election. While managing to scrape through his re-election, Wilson significantly under-performed in the “beach counties” of New Jersey, thus losing the State of which he had formerly been governor.<sup>2</sup>

It is tempting to think that this classic example of the follies of democracy bears resemblance to the fate the EU has recently suffered at national or regional ballot boxes. Just like Woodrow Wilson, pro-EU candidates and parties sometimes barely managed to keep their majorities. This trend was at least temporarily reversed by the resounding victories Emmanuel Macron and his party “La République en marche” achieved in the French presidential and parliamentary elections. However, the collective sigh of relief of the pro-European part of the population that their anti-European counterpart comprised “only” one third of the voters in the second round of the French presidential election can only really be understood against the backdrop of various apocalyptic scenarios inspired by the Brexit referendum. There is still a sizeable degree of disenchantment with the EU, and the question remains as to which factors have contributed to this effect. Judging from the public debate on the embattled future of the EU, it is fair to say that globalization is at least near the top of this list. When President Macron drew a direct link between concerns about uncontrolled globalization and the rise of populism, on the occasion of his first meeting with German chancellor Angela Merkel, he thus

1. The Editorial Board wishes to thank the participants of the *Common Market Law Review* workshop held in Berlin on 16 June 2017 for their contributions which inspired some thoughts in these editorial comments.

2. For a full analysis of the effect of the shark attacks on the results of the U.S. presidential election in 1916 see Achen and Bartels, *Democracy for Realists* (Princeton University Press, 2016), pp. 118–128.

confirmed a widely held view.<sup>3</sup> The crucial question is of course whether the analogy between Woodrow Wilson's past and the EU's present woes also extends to the arbitrary nature of their causes. Are the symptoms of crisis and decline that many associate with globalization irrationally attributed to the EU, just as President Wilson was randomly held liable for the sudden appearance of a shark? This may indeed be the case. However, it is submitted here that the real issue is not the existence of widespread delusion among voters, but the search for an effective response by the EU.

*Who is responsible for the downsides of globalization?*

Let us start by making the case in defence of the EU. With regard to the downsides of globalization, it is at least arguable that the EU is not guilty on all counts.

Our first piece of evidence is the global financial crisis. In order to appreciate the impact of this crisis, it is useful to recall happier times. In 2000, the European Council announced the Lisbon Strategy in order to address the "quantum shift resulting from globalization and the challenges of a new knowledge-driven economy".<sup>4</sup> Claiming that "the Union is experiencing its best macro-economic outlook for a generation", the EU set itself the goal "to become the most competitive and dynamic knowledge-based economy in the world" within the next decade. In retrospect, it is hard to digest the technocratic optimism this document exudes. As is well known, while already modified following its mid-term review 2005, the Lisbon Strategy was blown off course by the crisis that started in 2007, when the U.S. housing bubble burst, causing a chain reaction in global financial markets and subsequently an economic downturn as well as fiscal distress in many States. There is more than one way to assess the role of the EU in these developments. From an *ex ante* perspective, the bursting of the housing bubble is a "black swan"<sup>5</sup> or, to stick with the imagery of these comments, a "white shark" event, which fell outside the jurisdiction of the EU. Admittedly, the EU had neither provided sufficiently for the prevention of the systemic risk that materialized in this chain of events nor prepared for dealing with the fallout, but neither had the U.S. nor any other State.

3. See the protocol of the press conference of President Macron and Chancellor Merkel of 15 May 2017, <[www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2017/05/2017-05-15-pk-merkel-macron.html](http://www.bundesregierung.de/Content/DE/Mitschrift/Pressekonferenzen/2017/05/2017-05-15-pk-merkel-macron.html)> (all websites last visited: 25 June 2017).

4. <[www.consilium.europa.eu/en/uedocs/cms\\_data/docs/pressdata/en/ec/00100-r1.en0.htm](http://www.consilium.europa.eu/en/uedocs/cms_data/docs/pressdata/en/ec/00100-r1.en0.htm)>.

5. Cf. Taleb, *The Black Swan: The Impact of the Highly Improbable*, 2<sup>nd</sup> ed. (Random House, 2010).

From an *ex post* perspective that takes account of how successful leading economies were in overcoming the crisis, the picture looks different on first sight. If we merely compare GDP per capita growth in the aftermath of the crisis, economic recovery in the U.S. was swifter than in the EU. One could therefore conclude that, at least in this case, the U.S. was better at managing the economic downsides of globalization than the EU. However, as Kalin Anev Janse, the Secretary General of the European Stability Mechanism, has pointed out,<sup>6</sup> wealth as measured by the GDP is a misleading indicator for wellbeing. A more comprehensive approach that takes account of how wealth is translated into health, education and other factors commonly regarded as prerequisites of a good life reveals that in this regard, the euro area fares significantly better than the U.S.<sup>7</sup> Moreover, even if we focus on wealth, it is important to consider which parts of the population have benefited from wealth creation in the long term. The U.S. undoubtedly outperformed the EU if the share of the top 1 percent income segment is taken as a measure. While the U.S. doubled its share of the top 1 percent of income earners worldwide to 18 percent between 1975 and 2013, the share of EU Member States of this income bracket grew more modestly.<sup>8</sup> But things have turned out very differently for the “bottom” 90 percent. Between 1950 and 2013, the real average wage income of this group merely grew some 70 percent in the U.S. as compared to 250 percent in France and Germany and 150 percent in Italy and in the UK. As Anev Janse concluded: “[I]f you are lucky enough to belong to the top 1% or 10% in the U.S., you are no doubt quite well off. In Europe, life at the top is also not bad, but if you happen to be, like the majority of the population, in the bottom 90%, or one of 450 million people, in Europe you are far better off.” Overall, this has led to a more equal income distribution in the EU, which was not fundamentally affected by the financial crisis. In the EU, income inequality, as measured by an EU-wide Gini coefficient, had significantly narrowed before 2008 and remained broadly stable after 2008, while in the U.S., income inequality rose almost continuously from the late 1970s until 2013 and is now at a much higher level than in the EU.<sup>9</sup>

6. Anev Janse, *Is Europe Outperforming the US?*, <[www.weforum.org/agenda/2015/10/is-europe-outperforming-the-us](http://www.weforum.org/agenda/2015/10/is-europe-outperforming-the-us)>.

7. See Anev Janse, *op. cit. supra* note 6, with reference to a study of the Boston Consulting Group, *Why Well-Being Should Drive Growth Standards: The 2015 Sustainable Economic Development Assessment*, <[www.bcgperspectives.com/Images/BCG-Why-Well-Being-Should-Drive-Growth-Strategies-May-2015.pdf](http://www.bcgperspectives.com/Images/BCG-Why-Well-Being-Should-Drive-Growth-Strategies-May-2015.pdf)>.

8. According to Anev Janse, *supra* note 6, starting from a share between 7 and 9% of the top 1% income earners in 1975, the UK's share grew to 13% by 2013, followed by Germany at 12%, while France and Italy remained below 10%.

9. See Darvas, *Income inequality has been falling in the EU*, <[bruegel.org/2016/11/income-inequality-has-been-falling-in-the-eu](http://bruegel.org/2016/11/income-inequality-has-been-falling-in-the-eu)>.

Our second piece of evidence is the migration crisis. As in the case of the financial crisis, this particular “rendezvous with globalization”<sup>10</sup> started with events beyond the EU’s control when migrants from poor and war-stricken African and Middle Eastern regions embarked on the dangerous journey to reach the Mediterranean shores of the EU, resulting, on the one hand, in a humanitarian disaster with many deaths and, on the other hand, in a largely uncoordinated flow of migrants into the EU and between its Member States. Nobody would claim that, at least in its early stages, this crisis was handled particularly well. But the widespread view that “the EU” (as opposed to its Member States) was at fault in this case seems hard to maintain, to say the least. The European reaction to the migration crisis was at first largely left to an inter-governmental process in which Member States were barely capable of reaching a consensus on technical questions, but – more importantly – refrained from facing the fundamental issue: whether the wish to deter illegal migration implied the willingness to embrace a tough border regime that would potentially lead to many more deaths.<sup>11</sup> As has rightly been observed, out of fear for a xenophobe backlash and in view of the widespread unwillingness to welcome refugees, most Member States were apparently quite happy to accept an institutional arrangement with blurred responsibilities that would remove the humanitarian cost of giving priority to the deterrence of migration as far as possible from the nationally confined angle of view of great parts of their constituents.<sup>12</sup>

So it can reasonably be claimed that in both recent crises associated with globalization, the EU was either not doing as badly as many suggest or was used as a bogeyman in order to dilute or to evade responsibility that primarily lies with Member States and, ultimately, with national voters who support this kind of strategy. Beyond these acute crises, roughly the same argument can be made with regard to job losses and downward social mobility of working or lower middle classes – which many regard as creeping consequences of globalization. Considering the importance of technological change, it is highly questionable to attribute these negative effects to policy choices for which the EU is ultimately responsible. However, here another factor comes into play: a tendency to overestimate the scope of globalization. A recent survey among U.S. students (that is corroborated by a world-wide survey)

10. Wolfgang Schäuble, Interview with *Passauer Neue Presse* of 4 Feb. 2016, <[www.bundesfinanzministerium.de/Content/DE/Interviews/2016/2016-02-04-PNP.html](http://www.bundesfinanzministerium.de/Content/DE/Interviews/2016/2016-02-04-PNP.html)>.

11. However, for a better coordinated European response, cf. the progress made in the implementation of the European Agenda in Migration, COM(2015)240 final of 13 May 2015, e.g. the establishment of a European Border and Coast Guard Agency under Regulation (EU) 2016/24 of 14 Sept. 2016.

12. Möllers, “Krisenzurechnung und Legitimationsproblematik in der Europäischen Union”, 43 *Leviathan* (2015), 339, at 352–4.

revealed that the perceived level of globalization with regard to international trade, the cross-border movement of capital, the world-wide flow of information and the mobility of people (tourists, students and migrants) is much higher than the real level of globalization.<sup>13</sup> We may safely assume that the same bias could be exposed specifically among EU citizens. It goes without saying that this miscalculation contributes to the fear factor of the spectre of globalization, which is simply considered much more potent than it really is.

*The Reflection Paper on Harnessing Globalization: Is better public relations work the right answer?*

If it is true that the public is often led by misconceptions about the performance of the EU in managing globalization, about the attribution of negative effects of globalization and, last but not least, about the real scope of the phenomenon itself, it seems reasonable to believe that more and better information, together with some tweaks in order to optimize a fair distribution of the benefits of globalization, is the key for a solution that helps the EU to be on a friendlier footing with its citizens. The Reflection Paper on Harnessing Globalization the Commission published on 10 May 2017 must be read in this vein.<sup>14</sup>

As often happens with an unfamiliar literary genre, readers of this document may initially feel uncertain about its purpose. In their joint Foreword, First Vice-President Frans Timmermans and Vice-President Jyrki Katainen announce the paper on harnessing globalization as the second in a series of reflection papers that further contribute to the discussion the Commission initiated with its White Paper on the Future of Europe.<sup>15</sup> More specifically, the reflection paper “aims to make a fair and evidence-based assessment of what globalization means for Europe and Europeans”.<sup>16</sup> In the first part of the reflection paper, the Commission takes stock of globalization, characterizing the growth of global interaction as an irreversible, long-term but fast-changing development that is a positive force for change, but also brings challenges such as factory closures, job losses, downward pressure on salaries and, more generally, the perception of many citizens that their ways of

13. Ghemawat and Altman, *DHL Global Connectedness Index 2016* (2016), p. 12, <[www.dhl.com/en/about\\_us/logistics\\_insights/studies\\_research/global\\_connectedness\\_index/global\\_connectedness\\_index.html#.VFff5MkpXuM](http://www.dhl.com/en/about_us/logistics_insights/studies_research/global_connectedness_index/global_connectedness_index.html#.VFff5MkpXuM)>. On average, the respondents of both surveys guessed levels about 5 times as high as the correct ones.

14. COM(2017)240 of 10 May 2017.

15. COM(2017)2025 of 1 March 2017.

16. Paper cited *supra* note 14, p. 3.

living and cultural diversity are threatened. Europe's external response to this process is set out in the second part of the reflection paper, while the third part of the paper is dedicated to Europe's internal response. Both parts list a cornucopia of measures that have already been taken or initiated, and suggested future action, albeit not only at the EU level, but also at the Member State, regional and local levels. For example, when dealing with the challenge to restore a level playing field internationally as part of the external response to globalization, the Commission refers to a number of efforts: a better enforcement of existing agreements and rules in such areas as trade, labour standards, climate and environment protection; a strong enforcement of our own EU rules; further investments in EU customs risk management; the establishment of fair rules for the protection of international investments as envisaged in the Commission's proposal of a Multilateral Investment Court; the overhaul of trade defence instruments to make them faster, more resilient and more effective in tackling dumping and unfair subsidization; the proposal for an International Procurement Instrument; the need for an appropriate response regarding foreign investors taking over European companies with key technologies for strategic reasons; and, last but not least, more action for global tax justice and transparency, in particular the preparation of a common list of non-cooperative jurisdictions. Again, to mention just one further example, when discussing the need for robust social and education policies as key to ensuring resilience and a fair distribution of wealth, the Commission refers to its reflection paper on the social dimension of Europe<sup>17</sup> and to its proposal of a European Pillar of Social Rights.<sup>18</sup> Moreover, in this context, the Commission mentions Member States' efforts to ensure a high standard of basic education and lifelong learning, the improvement of digital skills, assistance for citizens to adapt to an ever-changing workplace and more flexible career paths and a modern and effective labour market that facilitates access for all, as well as, at the EU level, the implementation of the Pillar of Social Rights in the European Semester process and investments to improve infrastructure, innovation, or support the development of human capital and employment, as financed through the European Structural and Investment Funds and the Globalization Adjustment Fund.

If readers are somewhat overwhelmed by this rapid succession of keywords, this captures precisely the impression evoked by the reflection paper. The upshot is that the Commission understands that, while generally beneficial and inevitable, globalization can be tough at times, and that a buzz of activities is generated on all levels to ensure the best possible outcome for all. Impressive as this may be, one is left with the question what purpose this

17. COM(2017)206, 26 April 2017.

18. COM(2017)250, 26 April 2017.

exhibition of eagerness to serve the common good ultimately serves. Firstly, the “reflection” of globalization advertised by the reflection paper is clearly not meant in an academic sense. The paper does not step back from day-to-day business in order to ponder the fundamental choices required by globalization. It does not engage in a dialogue with those who are fundamentally critical of globalization.<sup>19</sup> It also refrains from reflecting on the trade-off between democratic self-determination, economic benefits, and the integrity of nation States we inevitably have to make in the face of globalization, as has aptly been summarized in Dani Rodrik’s globalization trilemma.<sup>20</sup> Rather, on a reflective level, the paper basically leaves out this normative dimension and restricts itself to a summary of empirical facts assembled from some readily available sources. Secondly, on an operational level, the paper is clearly not addressed to policymakers who hope to find a link between the options for the future of Europe set out in the White Paper and the pressing issues of globalization. What would be the impact of Europe’s capacity to harness globalization, and how could efforts at EU, national, regional and local levels develop if we do not simply carry on, but pursue one of the other options set out in the White Paper? The reflection paper does not address any of these options, but relies on a *status quo* that only needs some improvements. Moreover, policymakers and their advisers are hardly among the uninitiated who need long lists of existing and proposed measures in order to grasp what is being done in order to cope with issues of globalization.

Against this background, there is only one meaningful purpose of the reflection paper: to overcome the widespread misconceptions about the EU and globalization by informing EU citizens about what has already been done and will be done in the future to take account of their concerns about globalization. As we have seen, there is reason to believe that these misconceptions exist, and if someone who holds the view that “Europe” is to blame for all evils of globalization happens to read the reflection paper, he or she may pause and reflect and, possibly, see the light. This would be a nice success. However, it must be feared that this is not the most likely outcome. If anything can be learnt from empirical studies of voting behaviour,<sup>21</sup> irrationality and ignorance among voters are persistent features of democratic systems that will hardly be overcome by the public relations work of those who represent them. The noble attempt of the Commission to assure European citizens that decision makers at all levels are honestly doing their best to harness globalization will therefore quite probably fall on deaf ears.

19. See e.g. Stiglitz, *Globalization and its Discontents* (W.W. Norton & Co., 2002).

20. Rodrik, *The Globalization Paradox: Democracy and the Future of the World Economy* (W.W. Norton & Co., 2012).

21. See e.g. Achen and Bartels, *op. cit. supra*, note 2.

*The right to be wrong: Legitimacy depends on contestable policy choices*

If more and better information does not solve the problem, the question remains as to what response could be more effective. The key to a solution can only be found if the EU finds a way to live with poorly informed and irrational voters who overestimate the impact of globalization and who neither understand the complexities of attribution of causes in this process nor appreciate the efforts to prevent or overcome the resulting problems. This problem is not peculiar to the EU. All democratic systems have to develop structures that are resilient enough to survive in the adverse, but ubiquitous, environment of a biased and poorly informed electorate. It seems that one indispensable prerequisite for such a system to succeed is to grant voters the right to be wrong. Voters do not regard policy decisions as legitimate because they are told that these decisions are in their best interest, but because they take ownership of these decisions by recognizing them as reflecting the views of a majority of their equals. Only under this condition are the basic structures of democratic regimes isolated from (just or unjust) disappointment among voters about the outcomes of certain policy choices: public dissatisfaction may then change the composition and direction of government, but does not find its only expression in a revolution or, as the equivalent in the EU, the triggering of the exit option provided by Article 50 TEU. As a consequence, a politicization and democratization of the issues surrounding globalization, either at the European or at the national level, seems called for if the EU is to be less dependent on the whims of a volatile electorate. To a large extent, the way the EU handles globalization is not predetermined by the treaties and should be debated. The General Court's decision in *Efler* to allow the citizens' initiative "Stop TTIP" to go forward is a step in this direction.<sup>22</sup> If this could inspire a deeper reflection among other institutional actors, including the Commission, this would be a brave and welcome discussion.

22. Case T-754/14, *Efler*, ECLI:EU:T:2017:323.