

Beyond Confederation: a wider and deeper Union

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Table of contents

Executive summary	3
Introduction	4
Still they come	4
The gathering storm	5
Pioneer groups	6
Tiers of engagement	7
Getting there	7
Endnotes	10

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Executive summary

Fast-track entry into the EU for Ukraine will break the logjam over enlargement and force the pace of internal reform. For this to happen, the Commission and Council must decide to ditch the recently adopted accession process that gives any member state a unilateral veto. At least four other candidates can be brought in swiftly in the wake of Ukraine, with future reform programmes agreed post-accession. A more federal approach will give

the Union the flexibility it needs to cope with increased diversity. Although a larger rewrite of the constitution would be preferable, only a few treaty amendments are required to allow a federal tier to step forward while eurosceptic members choose to stay back. An independent group of experts should be commissioned to draft these treaty changes.

Introduction

The European Union has fallen into one of its habitual troughs. Throughout its 75-year history the EU has had periods of political stagnation when the leaders of the EU institutions lose their way. Member states divide between those who think European integration has gone too far and those who want to go farther. The Brussels in-crowd cannot agree about whether to deepen the Union or widen it first; and in the end does neither.

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This is one of those troubled times. The EU Treaties were last revised by the Treaty of Lisbon in 2007. While it is widely accepted that Lisbon is past its best, nobody seems to have the wit or wherewithal to open it up for amendment. Eurosceptics opposing deeper integration block constitutional reform under the prescribed routes (Article 48 TEU). Their federalist opponents are nervous that opening the treaties to renegotiation may lead to regression.

The prevalence of the national veto in key areas of the operation of the EU—budgetary revenue and expenditure, fiscal policy, foreign and security policy, extension of powers, democratic reform, enlargement—defines and confines the Union unequivocally as a confederacy of member states. Although ministers in the Council of the EU take decisions by qualified majority vote (QMV) when they pass laws along with the European Parliament, the scope of such democratic practice is limited. There is no federal government.

Still they come

In spite of these known risks, as laid down in Article 49 TEU, the EU still extends a formal membership invitation to any European state that respects the values of the Union. The same welcome was first inscribed in the Treaty of Paris (1951) in an (unsuccessful) attempt to entice the British to join the six founding members. Over the intervening years, the EU has developed quite an imperial itch to expand; spreading its relative prosperity and security eastwards and southwards seems a sensible and honourable objective. An elaborate ‘merit-based’ process has been put in place to manage the candidacy of a new state, involving screening, roadmaps, benchmarks,

Executive authority is shared awkwardly between the supranational Commission and the intergovernmental Council. The European Court of Justice is not a federal supreme court. Nor is the European Central Bank a lender of last resort. In constitutional terms, the EU is stuck as a dysfunctional confederation with aspirations to become a federal union frustrated.

Repeated declarations by Europe’s leaders that enlargement is an urgent geopolitical necessity ring hollow. Although the European Commission and the European Council pay lip service to the idea that enlargement and political reform must proceed ‘in parallel’, that happy conjunction of widening and deepening is not happening. Nobody has joined the EU since Croatia in 2013; one country has left. The realisation that enlargement has stalled blunts the drive for reform. Conversely, the lack of reform is a good excuse to block further enlargement. Since September 2023, Ursula von der Leyen, President of the European Commission, has been promising ‘pre-enlargement reviews’ of key policies, but nothing comes.

Who loses from this stand-off are those states currently negotiating their accession. Enlargement may eventually take place, but the new member states will be joining a Union that is already not working well. As with any enlargement, the new entrant will disrupt the balance of power among existing member states and create new border issues. This time, however, a newly enlarged EU looks to be more than usually ill-prepared to cope with the extra pressures put on its budget and institutions. It is ominous that some member states are already backsliding from commitments they made at the time of their own, fairly recent accession. The assimilation of a new clutch of candidates, most of them relatively poor and fairly young to liberal democracy, may not be smooth. As the recent presidential election in Poland shows, there can well be a popular reaction against newcomers.

transition agreements and verification before the final ratification of an accession treaty by both the incoming state and all 27 current member states—all according to their own whims and constitutional requirements.¹

Despite these hurdles, candidates are still lining up. At present, the EU 27 has deemed nine countries as being eligible for membership: Albania, Bosnia & Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Turkey, and Ukraine. There are more out there, not least Kosovo. The European Political Community (EPC)—a wider grouping of European leaders—sends out 47 invitations

to its biannual conference (though not all turn up).² Seen from the neighbourhood, there seems to be plenty riding on the prospect of EU membership, however faint.

Realistically, however, as things stand, the nine countries with formal EU candidate status can be whittled down to five: Bosnia & Herzegovina does not yet have the capacity of a modern state to administer EU law; Serbia is not sufficiently aligned with western security strategy or liberal democratic values; Georgia has turned back to Moscow; and Turkey's long-standing candidature is impossible while its strongman Recep Tayyip Erdogan locks up his political opponents and suppresses freedom of speech. Governments change, and we may hope they do. But the immediate prospect is possible enlargement from EU 27 to EU 32.

A more determined effort by the EU to advance the membership of these five eastern and southern states would inevitably provoke further thought among those western hesitators, Iceland, Norway, Switzerland, and the UK. The former three countries, members of the European Free Trade Association (EFTA), have all at one time or another toyed with joining the EU: Norway even negotiated its accession treaty, alongside the UK, Ireland and Denmark, in 1972. All three, along with EFTA's fourth member Liechtenstein, have a close, structured relationship with the EU and are members of the Schengen Area. But their EU relations lack a certain democratic legitimacy and are legally complicated, especially that of neutral Switzerland. Reviving their bids for full membership would, at the very least, promise long-term stability and would empower them with legitimate authority within the EU polity.

Britain, as we know, is a curious case. The Conservative party which took the UK into the European Community in 1973 took it out again in 2020. The present Labour government under Prime Minister Keir Starmer is tinkering at the edges of a minimalistic trade and

cooperation agreement in the hope of improving EU ties. Economic, political and security logic lies with full British re-entry, but constitutional issues and populist prejudice seem to preclude the rational choice.

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As the EU tussles with its own internal reform, it would do well to ask itself if the way it is governed bears some responsibility for the disaffection of the British and the hesitancy of the EFTA trio. Would an EU that was less democratically opaque, with a softer regulatory regime, quicker to take decisions and more certain in foreign affairs, be a more attractive proposition for its rich, western liberal democratic neighbours?

Europe has been left unsettled by the destabilising impact of Brexit, now compounded by Russia's violent behaviour and the second coming of US President Donald J. Trump. NATO is no longer the security guarantee we believed it to be. As several of the EU's neighbours knock loudly on its door, Brussels stalls on reform and stumbles on enlargement. The merit-based approach has achieved logjam.³ **Those in the Council who continue to spout the 'in parallel' trope are looking insincere or fallacious.** Yet the Commission labours on with the slow, technocratic accession process and prays that a fair breeze will someday turn up to waft a regatta of candidate countries across the finishing line.

The gathering storm

The storm clouds forming over Europe, however, are not balmy breezes. It is highly likely that Ukraine will have to be ushered into the Union in a great hurry as an integral part of an imperfect 'peace deal' imposed on Kyiv by Presidents Putin and Trump. Unlike its membership of NATO, neither the White House nor the Kremlin can block Ukraine's entry to the EU. Even in wartime, Ukraine is making progress under the terms of its 2014 Association Agreement with the EU to adapt to the *acquis communautaire*.⁴ Fighting off the Russian invasion for three years has turned Ukraine into Europe's foremost military power. The EU has already donated large sums towards Ukraine's economic survival and has promised much more for its eventual economic recovery. **Granting speedy membership to the EU will secure Ukraine's sovereign statehood even if it proves impossible to regain its territorial integrity.**

As things stand, Hungary's Prime Minister Viktor Orbán opposes Ukraine's accession to the EU and is trying to gather right-wing, pro-Kremlin, nationalist forces in his own and other member states to undermine the whole enlargement process. Under the terms of the EU's recently revised enlargement methodology, initiated in 2019 by French President Emmanuel Macron, any member state can block the opening of any of the chapters that comprise the accession portfolio. Erecting such hurdles, however, is contrary to the meaning of Article 49, which stipulates that unanimity shall prevail only at the beginning and end of the membership negotiations. It is of the utmost importance that the Union now returns to upholding the letter of Article 49 in respect of the Ukrainian bid.

Von der Leyen and European Council President António Costa should call Orbán's bluff and insist on a streamlined revision of the enlargement procedure. The chapters of the *acquis* should be opened and closed on the initiative of the Commission unless the Council votes to negate the Commission's decision by reverse QMV. This procedure would expose the opponents of enlargement, ending their concealment behind diplomatic niceties. It would also reduce the temptation to elevate irrelevant bilateral spats, such as Bulgaria's dispute over Macedonian culture, into a veto. The European

Parliament, for its part, should stop parroting the lame 'in parallel' narrative and act urgently to fast-track Ukraine's accession.⁵ The arrival in office of German Chancellor Friedrich Merz, the change of tack by President Macron, and the support of Poland's Prime Minister Donald Tusk, should be sufficient to silence Orbán and his fellow travellers at the level of the European Council. Why not set a deadline for the signing of the Ukraine accession treaty in twelve months? Ukrainian ministers should then be admitted to the Council chamber while ratification of the treaty proceeds.

Pioneer groups

Russia's invasion of Ukraine has spawned a rash of *ad hoc* initiatives among Ukraine's European supporters. It is notable that the United Kingdom has played a leading part in trying to construct a 'coalition of the willing' to bolster Kyiv's security. One may doubt, however, that such non-binding pragmatic measures can create the strong centripetal forces necessary to underpin integration in the longer term. Indeed, coalitions of the willing can provoke unhelpful reactions among the unwilling. Smaller EU states in particular fear the emergence of a hegemonic directorate made up only of the larger states. The concept of a *directoire* has been a particular favourite of French presidents, and it hovers again over current discussions about enhancing the security and defence dimension of the Union. It is sometimes necessary to recall that the EU's constitution rests on the legal equality of all member states (Article 4(2) TEU).

If the European road is blocked for Ukraine and EU political reform impossible, some argue plausibly that a number of member states should form a 'supra-governmental avantgarde' and take an excursion outside the EU treaty framework.⁶ Intergovernmental methods can indeed be used to strengthen political cooperation in some fields: defence is the obvious example. But any such group of pioneers must be open conditionally to all member states, as well as to candidates for EU membership and key non-EU partners, such as the UK. The advance guard must not create permanent new bodies to compete with the EU institutions. Multi-speed experiments outside the formal treaty work only when there is broad acceptance that the vanguard initiative will, in the end, be incorporated within the EU structure. That is why, for example, it was imperative for the Treaty of Amsterdam (1997) to absorb the experimental Schengen Agreement within the EU proper as soon as political conditions allowed.⁷

There is really no good alternative to advancing the European Union as the basis for securing Western interests when faced by Putin's aggression and Trump's delinquency. Prime Minister Starmer may one day reach that same conclusion. It is fortunate

that Article 42(6) TEU provides for the formation of a core group of politically willing and militarily capable member states to form a permanent structure in defence cooperation (PESCO), hopefully leading to common defence. President Zelenskyy's Ukraine, as a member state, would immediately be welcomed into that advanced group.

There is also untapped potential under the enhanced cooperation clauses of the Treaties for core groups of integration-minded states to act, in the 'last resort', as a vanguard in other domestic policy fields (Article 20 TEU).⁸ **Nevertheless, piecemeal recourse to differentiated integration among certain member states on relatively minor matters will not resolve the EU's fundamental dilemma, which is that, while some want more Europe, others want less.** A more radical approach is needed if the interests of both federalists and nationalists are to be accommodated coherently in an enlarged Union. Among other things, this means revising the Treaties to demarcate more clearly between the different tiers of integration. It is certainly worth analysing in more depth what distinguishes in contemporary Europe a federal union from a confederation. Rethinking the European project requires the courage to innovate in constitutional terms and make a fresh start for EU governance while, at the same time, conserving judiciously the best of the *acquis*.

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Tiers of engagement

Let us imagine three tiers. The outer tier of European cooperation is neatly represented by the **European Political Community**. This conference embraces all European states except Russia and Belarus. It is a forum for discussion about global affairs as well as regional matters, and a media platform for European values. The Political Community, which is run loosely by the European Council, could play a role in coordinating responses to a serious crisis in European security or in launching initiatives in international institutions, such as the UN.

The second tier consists essentially of the **European economic community** which lies at the heart of the present Union. The EU's central feature is the maintenance of a large single market and Customs Union in which goods, services and capital circulate tariff-free. Non-tariff barriers are continually reduced, labour mobility is facilitated, and a common commercial policy is developed with the rest of the world. Flanking policies to the internal market are developed in the fields of social policy, transport policy, energy policy, and environmental and consumer protection. State aid policies, competition policy, and public procurement measures are applied strictly, as are food and animal health standards. Common programmes evolve to incentivise R&D and regional development. The EU is engaged in efforts to streamline its internal market in the hope of greater investment and productivity as advanced, for example, in the recent reports of Enrico Letta and Mario Draghi.⁹

In the case of the poorer candidates, the question arises whether a transitional phase of partial or affiliate membership of the EU would suit their adaptation to the full *acquis*. Admitting them into the decision-making processes of the EU before their accession treaties are fully ratified would help shape their post-accession reforms. The economic imperative of making the single market work should in any case have priority over the assimilation of the full corpus of law in justice and home affairs, an iterative process which, in the case of Albania for instance, will take time.

The top inner tier would be the more tightly integrated **European federal union**. Here, member states, led by the original six founders, will reaffirm commitment to the pooling of sovereignty and the historic mission of ever closer union (Article 1 TEU). They will promote the Charter of Fundamental Rights and the concept of EU citizenship. Principal objectives will include a fair

common immigration policy, a cogent common foreign and security policy, and a common defence policy with robust military capacity.

A major task of this first tier of states is to complete the project of economic and monetary union by fiscal union. The introduction of federal revenue streams will consolidate the euro and allow the development of a supranational level of spending above and beyond the constraints of the current EU budget. A Treasury Secretary will sit in a Commission that assumes the centralised functions of a federal government. The European Central Bank becomes the backstop of the monetary union and acquires supervisory powers over the whole financial sector. The Court of Justice evolves quickly into the EU's supreme court.

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As the federal character of the EU advances, the European Parliament will have to establish a second law-making chamber composed only of MEPs elected in the core member states. Political parties with federalist intentions can be expected to develop rapidly, providing that critically missing democratic sinew between the European Parliament and the rungs of politics at national, regional and local level.

Such a multi-tiered system of transnational government needs efficient coordination between its different levels. While some competences will be exclusive to the federal union, others are responsibilities shared between all members of the internal market. The overall objective must be to enhance Europe's collective capacity to act effectively on behalf of all its citizens in open, accountable and democratic ways. **Whereas the current EU Treaties tend to constrain what the Union can do, the revised treaties must be more permissive, enabling effective policy initiatives to be taken consistent with the overall aims of the Union.**

Getting there

The reconfiguration of the European Union as suggested here will challenge member states to review their national interest in pursuing European unification. Both veteran members and aspirant members will have to

make a choice between joining the more demanding federal tier or sticking with the less demanding economic tier of the Union. None should be complacent. After Brexit, continued EU membership cannot be assumed.

Faced with Russian revanchism and American neglect, the future of all Europe has become suddenly uncertain.

The EU is already in danger of a loss of legitimacy at home and abroad. Not to enlarge the membership of the Union will amount to a dereliction of duty. Not to reform the governance of the Union will render it dysfunctional and impotent. In those circumstances, the Union would probably survive but remain in form only as a historic relic like the Holy Roman Empire, with its functions repatriated to its national capitals; or worse, outsourced entirely to more powerful state and corporate actors.

So, how do we go forwards not backwards? The first step is to accelerate the procedure to complete the accession negotiation with Ukraine, as suggested above. But then what? To leave the other candidates in the lurch would provoke confusion and resentment, as if being invaded by Putin were a necessary precondition of EU membership. In the wake of Ukraine's speedy accession, it should be possible to bring in Moldova and the three most prepared Western Balkan states: Albania, Montenegro, and North Macedonia. Accelerated entry for these five countries will require their accession treaties to include provisions for transitional periods that are more substantive than usual, involving agreed packages of continued domestic reform. Implementation of these reforms, plus fidelity to the rule of law and the values of the Union, will be closely monitored by the Commission.

Fast-track entry for these countries in the wake of Ukraine's accession is also bound to reinvigorate the debate about membership prospects among the four western neighbours. The most desirable scenario is for another 'Big Bang' enlargement to EU 36+, bringing everyone in together, comparable to that of 2004-07.¹⁰ All candidates would be invited to participate in a Convention established on the basis both of Article 48 and Article 49 with the mandate to re-cast a larger, modernised European Union. This process should be well prepared by an independent expert group mandated by the European Council to think about the governance and budgetary problems of the enlarged Union. The constitutional agenda of such a Convention would be broad enough to allow for the inevitable trade-offs between federalists and Eurosceptics. The consequent treaty amendments would be numerous, requiring adjustments all round with no institution left untouched.¹¹ The whole constitutive process might aim to be concluded in time for the next elections to the European Parliament in 2029.

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More likely than a 'Big Bang', of course, is an agreement merely to quicken the progress of the candidates' flotilla and restrict the treaty changes to a bare minimum.¹² But even key-hole surgery can transform the Treaty of Lisbon for the better. The European Council, made up as it is of both federalists and confederalists, should be able to agree on two surgical interventions, in particular; if the Parliament is complicit, a Convention can be avoided.¹³

First, Article 48(7)—the general *passerelle* clause—must be revised to allow for the modification of the rules concerning voting procedures in the Council. The *passerelle* enables the Union to shift a unanimous Council decision to QMV or to transform abnormal 'laws of the Council' into the ordinary legislative procedure whereby the Council votes by QMV and the Parliament has powers of co-decision.¹⁴ The *passerelle* was included in the Lisbon treaty with the intention that it would be used to streamline decision making when political circumstances permitted. At present, however, unanimity in the European Council is required to deploy the *passerelle*. So, it has never been used. Lacklustre Council presidencies plus feeble Commissioners have failed to trigger the *passerelle* even once in the 15 years since the Lisbon treaty came into force. Unless the unanimity rule in Article 48(7) is replaced by QMV, the *passerelle* will remain useless. In an enlarged Union the Council needs liberating from the jeopardy of multiple national vetoes; and the European Parliament requires full powers of co-decision.

Second, Article 353 TFEU must be suppressed. This clause was included, at the behest no less of the British, to prevent the *passerelle* from ever being applied to four cardinal clauses of the treaty. These are:

- ▶ Article 311 TFEU which prescribes how the EU shall decide to raise revenue ('own resources');
- ▶ Article 312(2) TFEU which lays down how the EU shall decide its expenditure within a multiannual financial framework;
- ▶ Article 352 TFEU, the 'flexibility clause', that permits the EU to take on new powers in pursuit of its legitimate objectives where the treaty has not provided;
- ▶ Article 354 TFEU which sets out the voting procedure for the deployment of Article 7 TEU, the clause that allows for the penalisation of member states in serious and persistent breach of the values of the Union.

Extending the use of QMV by way of the *passerelle* will immediately turbocharge the practice of enhanced cooperation among integration-minded states. Allowing a federal core group to emerge, like a chrysalis, will ease the pressure on Eurosceptic governments which resent being obliged to conform against their will to the strictures of ever closer union. Hungary and the UK, for example, in hock to national sovereignty, would be at liberty to stick with the internal market, while Ukraine chooses the path of federal union.

The possibility would remain open for all member states to catch up later with the pioneers of integration.

Any path to reform demands good preparation. If Commission President von der Leyen will not, and European Council President Costa cannot prepare the ground for a wider and deeper Union, the least the European Council can do is to commission a group of experts to reflect on the larger Union's constitutional problems and report back with specific options for treaty change. The group should be truly independent and not just another inter-institutional talking shop. It could begin by inquiring into what works in terms of EU governance and what doesn't, taking widespread evidence including from the EU's Court of Justice, Central Bank, Court of Auditors and Ombudsman.

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Such a reflection group might propose a phased programme of reform while emphasising what must be done first and promptly if the European Union is to deepen in time for its membership to grow. **No priority reform agenda can avoid the *passerelle* hurdles of Article 48(7) and Article 353.** Nor can the chance be missed to implement two simplification measures already foreseen by the Lisbon treaty—namely, to reduce the number of Commissioners, and to agree on an arithmetical formula for seat apportionment in the European Parliament.¹⁵ Armed with convincing arguments for streamlining and democratisation, the Union could reach out through social media and civic organisations, as well as to national parliaments, arguing afresh the case against chauvinism and for European solidarity.

A balanced constitutional settlement will not be reached unless those who want more Europe are permitted to build it by those who want less. The governance of a reformed and enlarged EU must be flexible enough to allow member states a certain latitude to agree to disagree. Better political leadership and a more robust executive will be required to manage a Union where greater differentiation is the order of the day. Crafting just such a federal system is today's urgent challenge for a large and diverse Europe, united in adversity.

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- ¹ Involving also a vote of approval by an absolute majority of the European Parliament.
- ² Including the microstates of Andorra, Liechtenstein, Monaco and San Marino.
- ³ Marta Kos, Commissioner in charge of the enlargement dossier, aims to break the logjam by bringing Albania and Montenegro into the Union by 2029.
- ⁴ Ukraine Report 2024, https://enlargement.ec.europa.eu/ukraine-report-2024_en.
- ⁵ https://www.europarl.europa.eu/doceo/document/TA-9-2024-0120_EN.html.
- ⁶ See Janis Emmanouilidis, Corina Stratulat, Johannes Greubel, Berta Lopez Domenech, *A Test of Times: Permacchange through enlargement and EU reform*, European Policy Centre, 24 April 2025, pp.60-63.
- ⁷ Other hybrid arrangements have been tried from time to time, including the first European Monetary System in 1978. The Unified Patent Court was set up under international not EU law when unity failed within the Council. The Fiscal Compact treaty, now redundant, was drawn up in 2012 by 25 of the 27 states outside the EU treaties but deploying the services of the EU institutions. At present, formal enhanced cooperation within the EU is practised in the field of family law and some aspects of criminal justice.
- ⁸ Non-exclusive competences only. See also Articles 326-334 TFEU.
- ⁹ Respectively, <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf> and https://commission.europa.eu/topics/eu-competitiveness/draghi-report_en.
- ¹⁰ As envisaged in Strategic Option Speedy Big Bang in *A Test of Times*, op cit.
- ¹¹ On which I have written much before. See, for example, *Constitutional Change in the European Union: Towards a Federal Europe*, Palgrave Macmillan (Open Access), 2022.
- ¹² As envisaged in Strategic Option Strategic Regatta in *A Test of Times*, op cit.
- ¹³ Article 48(3) TEU.
- ¹⁴ The operation of the controversial Article 122 TFEU, for example, could be normalised by deploying the *passerelle*. The *passerelle* does not apply to constitutional issues, including treaty change or enlargement.
- ¹⁵ Respectively, Article 17(5) and Article 14(2) TEU. See Andrew Duff, *Keeping the Promise: Reform of governance in the enlarged European Union*, European Policy Centre Discussion Paper, 2 September 2024.

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