REPORT OF THE FRANCO-GERMAN WORKING GROUP ON EU INSTITUTIONAL REFORM

Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century

Paris-Berlin - 18 September 2023

The opinions expressed are those of the authors only and should not be considered as representative of the French and/or German official position

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Executive Summary

The European Union (EU) faces a critical juncture marked by geopolitical shifts, transnational crises, and internal complexities. For geopolitical reasons, EU enlargement is high on the political agenda, but the EU is not ready yet to welcome new members, neither institutionally nor policy wise. Against this backdrop, a 'working group on EU institutional reforms' was convened by the French and German governments. In September 2023, after several months of deliberation, 'The Group of Twelve' submitted the results of its work with this report.

Recognizing the complexity of aligning diverse Member States' visions for the EU, the report recommends a flexible EU reform and enlargement process. It highlights the need for immediate action to improve the EU's functionality, proposing a list of initial steps before the next European elections. More substantial reforms – including preparations for treaty revisions – should be implemented during the new legislative term (2024 to 2029).

The report's recommendations are aimed at achieving three goals: increasing the EU's capacity to act, getting the EU enlargement ready, and strengthening the rule of law and the EU's democratic legitimacy. The report is structured into three main sections, dealing with the rule of law, institutional reforms, and the process to reform, deepen and enlarge the EU.

I. Protecting the rule of law

The rule of law is a non-negotiable constitutional principle for the EU's functioning and a pre-condition for joining the EU. Ultimately, the EU cannot function without reciprocity, mutual trust and without all its members adhering to its principles. The report makes several recommendations to strengthen the EU's ability to protect and bolster the rule of law - strengthening budgetary conditionality, and refining Article 7 TEU via a treaty revision.

II. Addressing institutional challenges

The report addresses five key areas, all of which are crucial to serve the three defined reform goals. While it acknowledges other subjects in the debate on the future of EU, it focuses on these areas due to their significance and feasibility.

1. The EU's current institutions lack agility and are penalised by complexity and an abundance of players. The report suggests that the number of MEPs should not be increased beyond the current 751, and a new system to allocate seats, as well as modifying the 'trio' system for the rotating presidency of the Council of the EU in favour of 'quintets' and either reducing the size of the Commission's College to two-thirds of Member States or developing a hierarchical model.

2. The report highlights the need to reform the decision-making processes within the Council. Before the next enlargement, all remaining policy decisions should be transferred from unanimity to QMV. Additionally, except for in foreign, security and defence policy, this should be accompanied by full co-decision with the EP (through the OLP) to ensure appropriate democratic legitimacy. If this is not possible, it suggests mainstreaming QMV via three packages grouped by policy areas to allow for a fair balance of concessions between individual Member States. To make QMV more acceptable, three further recommendations are made: the creation

of a ‘sovereignty safety net’ allowing Member States to voice their vital national interests in QMV decisions; a rebalance of voting shares, to address the concerns of smaller to medium-sized Member States; and an opt-out mechanism.

3. The report underscores the significance of democratic legitimacy in EU decision-making and proposes four sets of measures to bolster it. It first recommends the harmonization of electoral laws across Member States for EP elections. It then discusses the ‘lead candidate’ procedure for the appointment of the Commission President and advocates for a political agreement between the EP and the European Council to prevent conflict. Third, it recommends closer ties between existing participatory instruments and EU decision-making and to use them to prepare for enlargement by involving citizens and stakeholders from candidate countries. Finally, the report stresses the importance of probity, transparency, and anti-corruption measures within EU institutions and suggests the establishment of a dedicated new independent office equipped with large competences and the means to undertake them.

4. The report discusses several key aspects related to the powers and competences of the EU. It recommends clarifying EU competences, strengthening provisions for addressing unforeseen developments and better involving the EP. It proposes the creation of a 'Joint Chamber of the Highest Courts and Tribunals of the EU' to enhance judicial dialogue without binding decisions.

5. To address the challenges of reforming EU policies and distribution of funding in the context of enlargement and to equip the EU with the financial means to react quickly to emerging crises, the report recommends increasing the EU budget in size and relation to GDP and to make it more flexible. This includes creating new own resources, moving towards QMV for spending, and enabling common EU debt issuance in the future.

III. Deepening and widening the EU

1. The report discusses six options for Treaty change. The default option is a Convention, followed by an Intergovernmental Conference (IGC). If no agreement for this is reached, the report considers a 'simplified revision procedure’ as being a second-best alternative. It explores three alternative scenarios reforming the EU as part of a package with the accession treaties. In the absence of unanimity on Treaty change, a supplementary treaty among willing Member States would allow for differentiation within the EU.

2. The report recalls that the EU already has various differentiation mechanisms and that they will be needed to accommodate the diverse preferences of over 30 EU Member States. However, differentiation has its limits, especially concerning the rule of law and core values. It should thus be used under the five following conditions: respect the EU's rules and policies, use EU institutions and instruments, ensure openness to all Member States, share decision-making powers and costs among participants, and allow willing Member States to move forward. In Treaty revision, differentiation should respect the following principles: opt-outs should only be granted when deepening integration or extending QMV, and exemptions from core EU values should not be allowed. Differentiation could lead to four tiers of European integration, made of an inner circle (deep integration in areas like the eurozone and Schengen), the EU itself, a larger circle of Associate Members, involving participation in the single market and adherence to common principles, and finally the European Political Community (EPC), as an outer tier for political cooperation without having to be bound to EU law.

3. The report finally discusses how to manage the EU enlargement process. It has already been

restructured, with negotiations organised into six clusters and the possibility for candidate countries to phase into specific EU policies and programmes. It recommends setting a goal for both sides (EU and candidate countries) to be ready for enlargement by 2030. It calls for breaking down accession rounds into smaller groups of countries (*'regatta'*) to ensure a merit-based approach and to manage potential conflicts. It finally highlights nine principles for future enlargement strategies that all aim to make the process more effective, credible, and politically guided.

Main Recommendations

I. Better protect a fundamental principle: the rule of law

Budgetary conditionality

- make the rule of law conditionality mechanism an instrument to sanction breaches of the rule of law and, more generally, systematic breaches of the European values enshrined in Article 2 TEU
- if no agreement: extend the scope of budgetary conditionality to other behaviours detrimental to the EU budget
- introduce conditionality, similar to NGEU, for future funds

Refine the Article 7 TEU procedure

- replace unanimity minus 1 by a majority of four-fifths at the EUCO
- reinforce the automaticity of the response by including time limits to force the Council and the EUCO to take a position when the procedure is triggered
- automatic sanctions five years after a proposal to trigger the procedure

II. Addressing institutional challenges: five key areas of reform

1. Making the EU institutions enlargement-ready

The European Parliament

- sticking with the limit of 751 or fewer MEPs
- adoption of a new system for seat allocation, based on the Cambridge formula

The Council of the EU

- trio format extended to a quintet of presidencies, each spanning half of an institutional cycle

The Commission

- decisions on the size and organisation of the College:
  - option 1: reducing the size of the College (Article 17(5) TEU)
  - option 2: differentiation between 'Lead Commissioners' and 'Commissioners', with potentially only the 'Lead Commissioners' voting in the College

2. Decision-making in the Council

Generalisation of QMV

- before the next enlargement, transfer all remaining 'policy' decisions from unanimity to QMV. Except for foreign, security and defence, Ordinary Legislative Procedure applies
- if no agreement: create of three linked packages forming the basis of a transition towards QMV: 1. Enlargement and the rule of law; 2. Foreign policy and defence; 3. Fiscal and tax policy

Making more QMV acceptable

- creation of a 'sovereignty safety net' inspired by Article 31(2) TUE
- calculation of QMV voting shares rebalanced: 65/55 to 60/60
- opt-out for policy areas transferred to QMV

3. EU-level democracy

The harmonisation of EU electoral laws

- harmonisation of the conditions under which the EP elections take place, at least for 2029

The appointment of the Commission President

- the EUCO and the EP need to agree before the next EP elections on how to appoint the Commission President: interinstitutional agreement (IIA) or, second best, a political agreement

Participatory democracy

- existing participatory instruments need to be tied more closely to EU decision-making
- citizens' panels institutionalised with high visibility to accompany major choices
- participatory instruments employed to prepare for enlargement

Probity, transparency, and the fight against corruption

- new independent Office for Transparency and Probity (OTP) in charge of monitoring the activities of all the actors working within the EU institutions or for them

4. Powers and competences

- strengthen provisions on how to deal with unforeseen developments, competency-wise, and better inclusion of the EP (Article 122 TFEU)
- create a 'Joint Chamber of the Highest Courts and Tribunals of the EU' (non-binding dialogue between European and Member States' courts)

5. EU resources

- increase the EU budget in the coming budgetary period both in nominal size and in relation to GDP
- new own resources to limit tax optimisation, avoidance and competition within the EU
- budget decisions moved towards QMV for spending. If not possible: more enhanced cooperation between smaller groups of Member States to finance policies together
- establish a thorough spending review to reduce the size of some spending areas and to increase others
- enable the EU to issue common debt in the future
- each institutional cycle (EP term) sets a new MFF (five years)

III. How to manage progress: Deepening and widening the EU

1. Six options for Treaty change

- 1: Article 48(1) TEU (Convention and IGC)
- 2: if no agreement: 'simplified revision procedure' (IGC only)
- 3: reform as part of the accession treaties modifying the founding treaties (Art 49 TEU)
- 4: Member States draft a 'framework enlargement and reform treaty' containing all the changes needed for the EU's functioning in the future, decoupled from accession treaties
- 5: involvement of a Convention in the drafting of the 'framework enlargement and reform treaty'
- 6: if deadlock: 'supplementary reform treaty' between willing Member States

2. Differentiation

Principles for differentiation within the EU

- use of existing flexibility instruments under five principles: 1. Respect for the *acquis communautaire* and the integrity of the EU's policies and actions; 2. Use of the EU institutions; 3. Openness to all EU members; 4. Sharing decision-making powers, costs, and benefits; 5. Make sure the willing can move ahead

Use of differentiation in the framework of treaty revisions

- uncooperative/unwilling state(s) offered opt-outs in the new treaty, but no exemptions from the existing *acquis communautaire* or EU core values

United in diversity in Europe

- envision the future of European integration as four distinct tiers:
  1. The inner circle; 2. The EU; 3. Associate members; 4. The EPC

3. Managing the enlargement process

- set the goal for the EU to be ready for enlargement by 2030; candidate countries should work to fulfil all accession criteria by then
- the new political leadership after the EU elections in 2024 should commit to the goal of 2030 and agree how to make the EU enlargement ready by then
- break down the accession rounds into smaller groups of countries ('*regatta*')
- Nine principles that should guide future enlargement strategies:
  - on the qualification for accession: 1. 'Fundamentals first'; 2. Geopolitical; 3. Conflict resolution; 4. Additional technical and financial support; 5. Democratic legitimacy
  - on the dynamic of the accession procedure: 1. Equality; 2. Systematisation; 3. Reversibility; 4. QMV

Introduction

1. The Union and the urgency of change

Fundamental questions are back on Europe's agenda: The European Union (EU) is reconsidering its geography, institutions, competencies, and funding.

Russia's brutal war on Ukraine, rising tensions within and across regions and the weakening of global order structures have shattered the certainties on which the EU was built. Transnational challenges, such as climate change, security threats and food and health crises urgently require cooperative solutions. With Russia's war on Ukraine, the geostrategic role of the EU has dramatically changed through the large-scale military, humanitarian, financial and diplomatic support it provides. The debate about the EU's capacity to act and its overall sovereignty has intensified and the continent's architecture and the EU's relationship with its neighbours in the East and South need to be thoroughly rethought due to the grave threats posed to the European security order.

European leaders have renewed their commitment to enlargement against the backdrop of the increasingly adverse international context. Ukraine and Moldova have recently joined the group of now eight candidate countries, with two more possibly following later[1].

However, the EU itself is not ready to welcome new members. The institutions and decision-making mechanisms were not designed for a group of up to 37 countries and as they are currently constituted, they make it difficult even for the EU27 to manage crises effectively and take strategic decisions. Delivering public goods to citizens has become an increasing challenge for the EU and its Member States' governments and has made democracy vulnerable. Some EU members question the rule of law, the primacy of EU law over national law and the shared values outlined in the EU treaty. The EU needs to work on itself to improve its functioning and to better protect the interests of future generations.

Against this backdrop, the French and German governments invited 12 independent experts[2] to form a 'working group on EU institutional reforms[3]'. We were asked to develop reform proposals that help maintain the EU's capacity to act, protect its fundamental values, strengthen its resilience, and bring it closer to European citizens in preparation for potential future enlargement and as a follow-up to the Conference on the Future of Europe (CoFoE)[4]. Through several exchanges with the two Ministers of State for Europe, Laurence Boone and Anna Lührmann, about the evolving political and security situation in the EU and its neighbourhood, our group's mandate was set as the following: *How can the EU be made enlargement ready while also improving its capacity to act, protecting the rule of law, enhancing democracy and preserving fundamental European values?*

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[1] Albania, Bosnia and Herzegovina, Moldova, Montenegro, North Macedonia, Serbia, Türkiye (negotiations on hold), and Ukraine. Georgia and Kosovo are also potential candidate countries.

[2] The list of experts is in Annex 4. They all worked *pro bono*.

[3] See the joint press release of the German Federal Foreign Office and the French Ministry for Europe and Foreign Affairs in Annex 1.

[4] Ibid.

The *Group of Twelve*, as we call ourselves, has worked through at least biweekly digital two-hour sessions and several in-person meetings over the past seven months. While the working group was Franco-German in composition, our approach was trans-European. We invited experts, former and active decision-makers as well as advisors from other EU and candidate countries to numerous confidential exchanges, considering that new energy for the European project is also emanating from our neighbours. Throughout our work, officials, policymakers, and experts also pro-actively offered to engage with us or sent us their own valuable input, which we are extremely grateful for.

We are fully aware that progress will not be easy to achieve. Governments and citizens have different visions of what the EU should be, and the political situation within the EU and within some Member States is anything but simple.

In the past, major progress on integration was achieved thanks to packages that balanced different political interests. Today, this has become more difficult, both for deepening the EU and for increasing the number of its members. Not all governments agree that expanding the EU to the Western Balkans, Ukraine and Moldova is really a geopolitical necessity. Likewise, improving the EU's capacity to act or to protect the EU's fundamental principles do not necessarily garner support across the EU.

Given the varying sensitivities across Member States and the manifest difficulty of reaching a compromise among the 27, we suggest a reform and enlargement process that comes with flexibility. We show how progress can be made, without pressuring any Member State to be part of an EU that it dislikes. Conversely, no single country or a small minority of countries should be able to hold up progress if others want to move ahead.

The EU may face its own moment of truth: if progress for 27 members is not possible, it may be mutually beneficial for all to design a path towards different levels of integration or some form of looser association for new or current Member States. In any case, work on improving the EU's functioning should start immediately: We suggest a list of steps that can be implemented before the next European elections. Further reforms, part of which require treaty revisions, should be tackled during the new European legislative term. The gradual 'phasing in' of current candidate countries into selected EU policies should likewise be set out in the EU's Strategic Agenda for 2024-2029 and feed into the negotiations over the new Multiannual Financial Framework (MFF) in 2028.

2. Approach and principles of institutional reform

Today's situation differs decisively from that of the early 2000s, when 12 countries were negotiating their accession to the EU. While the geopolitical pressure to move ahead is much higher, governments have acknowledged that further enlargement without proper institutional reforms would make it even harder – if not impossible – for the EU to take decisions.

Indeed, increasing divergence and polarisation between EU governments render forward-looking and rapid decision-making more and more difficult. The extension of veto rights to up to 10 new Member States over time could cripple the EU into paralysis. Additionally, there is a risk that its core values and the protection of democracy and the rule of law will erode further if states with weak institutions are allowed to join expeditiously.

The basic assumption of this report, in line with the group's mandate, is that while EU enlargement has become a top priority, it needs to go hand in hand with reforms that increase its

efficiency, its capacity to act and its democratic legitimacy, as well as empowering the rule of law. Concrete steps should be adopted before or when new countries join the EU.

Although many things have changed profoundly in the past two decades, we see a lasting value in the EU legal framework, its institutional system, and its procedures, which have allowed for joint progress and inclusive decision-making that serve EU citizens' and countries' interests. This is why our report does not rethink European integration 'from scratch' but proposes adjustments to fit the new realities, both in terms of deepening and in terms of flexibility.

• *A hybrid political system*

We assume that institutional reform proposals, of which many are being discussed, should be consistent with a chosen model of the EU as a decision-making system. If the axioms are not made explicit, proposals cannot be coherently evaluated, and debates could become confused. Controversies about reform proposals in the political and academic debates are usually anchored in disagreements over the nature and future of the EU as a political system.

Some critics thus see the EU as just another international organisation and argue that it has extended its competencies too far. The EU should not further encroach on national sovereignty and should not directly involve its citizens since preconditions for a classical democracy (a *demos*, a public sphere and a common language) are missing. From this perspective, Member State representatives remain central in EU decision-making – via the Council, the European Council (EUCO), and national parliaments.

Others see the EU as a parliamentary democracy evolving towards a federal state, a perspective embraced for instance by the CoFoE. The European Parliament (EP) should thus be further empowered, the Commission should become the EU's politicised executive and the Council a high chamber. From this perspective, politicisation of the EU is considered a good thing, democratic decision-making should replace technocracy, and a European public sphere should be fostered.

Our group sees the EU as a hybrid system in which the European general interest is put forward in three ways: by the European Commission, by citizens' representatives in the EP, and by government representatives in the European Council and Council. These three sources of legitimacy correspond to different modes of European action. The 'Community method' applies to the definition and management of the most integrated policies in which the European Commission still plays a central role[5]. The EP commands major policy decisions and ensures democratic control. Choices that remain very important for national sovereignty are made in an intergovernmental way.

We think that, given the political realities in Europe today, this threefold and hybrid logic should continue to provide the EU with a stable and effective political system. While our report seeks to help overcome shortcomings in decision-making and to further clarify the rules of the game, it does not include proposals that would shift the EU away from this balance.

[5] In the European Communities' original design, the European Commission was given a central role as a neutral arbiter and in proposing legislation. Policymaking was supposed to follow an evidence-based and technocratic approach. The 'Community method' reconciled preferences expressed by the different Community institutions and Member States. This model has developed further over the decades.

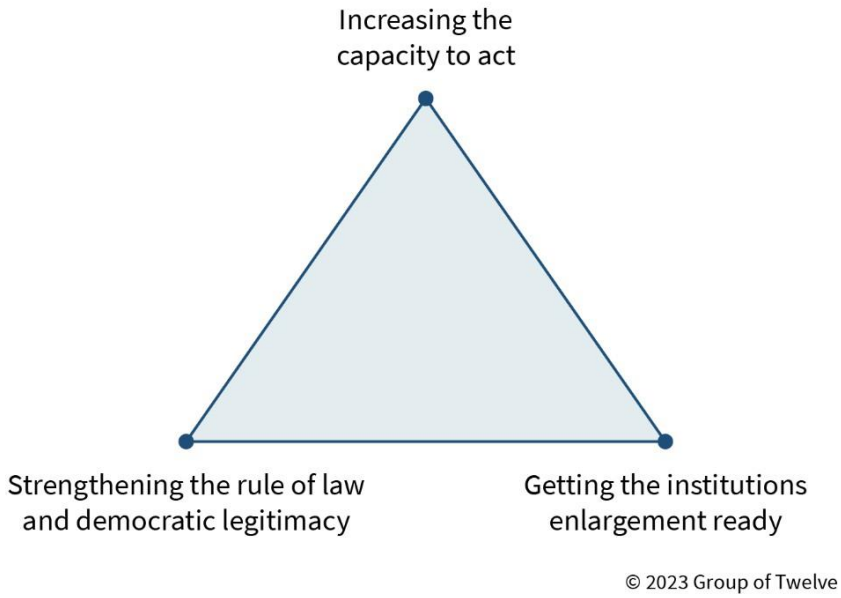
The three goals of reforms

The EU's internal functioning and its capacity to act should not only be improved because enlargement is back on the agenda. Given new challenges, it should be improved to deliver better results for its citizens. Its responses to the various crises have stretched the EU's competences to their limits. Whether in health, energy, migration or financial crisis management, the EU has acted by invoking emergency powers or has resorted to intergovernmental arrangements as European instruments were lacking. While *ad hoc* approaches were justified by time pressure, the EU should learn from the multiple crises to refine its set up so it can take effective measures within the EU framework, ultimately allowing for more democratic deliberation and control.

So, against the backdrop of the geopolitical and internal challenges outlined above, and in view of preparing for enlargement, the EU should improve its functioning and achieve a triangle of three core aims, as visualised below.

Figure 1

The triangle of aims for EU institutional reform



The first goal is to strengthen the EU's capacity to take and implement decisions across all policy areas based on EU primary law, including those areas of cooperation which – because of the various crises – have *de facto* become EU powers. Given external and internal challenges, speedy decisions are of the essence.

The second is to strengthen the protection of the rule of law, its fundamental values and democratic legitimacy in the EU.

The third is to make the EU's institutions 'enlargement ready'. While this third goal is central to this report, the Group of Twelve is convinced that reforms aiming to strengthen the EU's capacity to act, the rule of law and fundamental values and democratic legitimacy should be pursued even if enlargement was substantially delayed.

I. Protecting a fundamental principle: the rule of law

The rule of law is not just one of the values on which the EU was founded, mentioned in Article 2 of the Treaty on European Union (TEU). It is a non-negotiable constitutional principle for the EU's functioning. Most of the EU's policies, including all those related to the internal market, judicial cooperation and the recognition of judgments in civil and commercial matters, are based on the premise that national courts are independent. Similarly, the use of the European budget and funds presupposes that national administrations are not subverted by corruption. And lastly, respect for the rule of law is a prerequisite for a functioning democracy.

Applying the principles of the rule of law is thus a precondition for joining the EU. And, as it is a non-negotiable principle in the EU, disagreement overrule of law standards cannot be solved by differentiation within the EU. A country that does not respect the rule of law ultimately cannot be part of the Single Market and cannot receive EU funding.

However, respecting the rule of law and what this actually entails and means is not universally agreed upon by the Member States. European instruments did not prevent backsliding in several Member States. Article 7 TEU, which allows for the suspension of rights deriving from the Treaties in the event of a serious and persistent breach of the Union's values, was drafted at a time when nobody thought that it would have to be used. The Treaties in particular mention the suspension of voting rights in the Council, but in line with the treaty, penalties could also include precluding a Member State from taking over the presidency of the Council. Other instruments at the EU's disposal have had little tangible impact, such as the European Commission's Rule of Law Framework. The Annual Rule of Law Reports and Dialogue create transparency but have not changed incentives for governments to correct breaches of rule of law standards. Finally, we note the absence of a Member State exclusion clause in the Treaties. This limits the EU's ability to enforce the rule of law and other values under Article 2 TEU if all other instruments fail.

Meanwhile, the increasing use of budgetary conditionality has had some impact. Likewise, the Court of Justice of the EU (CJEU) rulings provide an effective base to defend the rule of law. The CJEU has ruled that it is an integral part of the EU's very identity as a common legal order and is given concrete expression in principles containing legally binding obligations for the Member States. As a result, if a Member State does not respect it, this is considered an infringement of treaty obligations which can be brought before the CJEU and result in financial penalties.

Moreover, the CJEU's case law has offered some palliatives that allow Member States to protect themselves against other EU countries' infringements. It permits Member States, under certain strict conditions, not to apply instruments based on the principle of mutual trust with a Member State that does not respect EU values, in particular the rule of law. This is the case, for example, with the European Arrest Warrant, where Member States may refuse to execute a warrant issued by a Member State in which there are systemic or generalised deficiencies concerning the independence of the judiciary. The CJEU could extend this to other policies based on mutual trust and mutual recognition, in particular those around the internal market. But deciding individual cases is not the same as enforcing general standards on infringing governments. It may still lead to *de facto* excluding infringing countries from EU policies and limit their access to

the internal market, but this will of course also have adverse effects on its general functioning.

In sum, there are limits to the EU's ability to enforce the rule of law. In the current setup, the conditions required of candidate countries cannot be effectively imposed on Member States once they have joined (the so-called 'Copenhagen dilemma'). This situation undermines the Union's credibility *vis-à-vis* its citizens, national governments and internationally. It endangers the legitimacy of its decisions, the effectiveness of EU policies and ultimately threatens its foundations. Credibility is also at stake *vis-à-vis* accession countries – if the EU cannot uphold rule of law standards among its own Member States, then this disincentivises candidate countries to transform themselves.

This is one of the key dilemmas of the EU today: while the geopolitical situation provides strong arguments for rapid enlargement, both Member States and the EU need to be fully prepared for this. This is especially true since external intervention by hybrid means, including the spread of corruption, aims to destroy the effective functioning of the rule of law. Improving ways to enforce EU principles and to staunchly support governments and civil society in candidate countries to ensure a deep transformation leading to the respect of rule of law principles should hence be a priority.

Recommendations

We recommend strengthening the EU's instruments to protect the rule of law in two areas: budgetary conditionality and Article 7 TEU.

- *Budgetary conditionality*

The scope of the Budgetary Conditionality Regulation, drafted as an instrument for protecting the EU budget rather than the rule of law, is limited by the need to prove a sufficiently direct link between the violation of the rule of law and the EU budget. We recommend **making this regulation an instrument to sanction breaches of the rule of law** and, more generally, systematic breaches of the European values enshrined in Article 2 TEU (such as democracy, free and fair elections, freedom of the media), or the systematic abuse of fundamental rights, as expressed in the Charter of Fundamental Rights. This will broaden its scope of application and sharpen its teeth by lifting the strict requirement of proof with a link to the budget. Such a modification would require another legal basis, though[6]. Article 352 TFEU may provide one, but it requires unanimity in the Council. It would be better to amend Article 7 TEU to add a new Article 7(6) that authorises the Council and the EP, acting in accordance with the Ordinary Legislative Procedure (OLP), to adopt regulations aimed at protecting the EU's founding values.

Alternatively, if no agreement can be found to use Article 352 TFEU or amend Article 7, we recommend **extending the scope of budgetary conditionality to other behaviours that are detrimental to the sound financial management of the European budget**. This should include, for example, the fight against money laundering. It would not require a treaty change since the current legal basis – Article 322 TFEU – could be used. Only Regulation 2020/2092 establishing a conditionality mechanism would have to be modified through the OLP.

Until such changes have been made, the Budgetary Conditionality Regulation should be used more effectively as a preventative and automatic tool. It should be activated as early as possible to ensure that the mechanism does not become a tool of last resort. To make sure that citizens do not pay the price for their governments' undermining of the rule of law, the Commission should ensure that any amount due by government entities is effectively paid to final recipients.

[6] cf. CJEU, 16 February 2022, C-156/21 and C-157/21.

To this effect, it should be allowed to recover payments made to an intermediary public entity to transfer them back to the EU budget and to re-programme them for the direct benefit, to the furthest possible extent, of the final recipients or beneficiaries.

Making the release of NextGenerationEU funds conditional upon compliance with the rule of law has proven effective, especially due to the scale of the funds being distributed. We recommend that **all future EU funds, whether inside or outside the MFF, should be designed with a similar model of conditionality**. The Commission should have the power to withhold the approval of EU funds (rather than suspending them) if rule of law standards are not met. Moving to rule of law conditionality does not only serve to enforce this principle, it is also a prerequisite for EU spending to be considered legitimate and in line with the EU's basic principles.

- *Refining the Article 7 TEU procedure*

The inefficiency of Article 7 TEU stems not only from its excessively high threshold to be activated (unanimity minus one) but also from the fact that the Council has no obligation to act, even if the procedure is initiated by the EP or the Commission. We recommend correcting these limitations in two ways.

First, **Article 7(2) TEU should be modified to replace unanimity -1 by a majority of four-fifths at the European Council**. Second, **the principle of an automatic response in the event of a serious and persistent breach or risk of breach of EU values by a Member State should be reinforced**. Article 7(1) and (2) TEU could be amended to include time limits of six months to force the Council and the European Council to take a position. Moreover, **Article 7 TEU should include automatic sanctions five years after a proposal to trigger the procedure**, in the event of inaction by the Council and where breaches of Article 2 values continue to exist. Sanctions would be automatically increased after 10 years under the same conditions. In the case of a dispute over the persistence of the breaches, the CJEU would be the final arbiter.

Ultimately, the EU cannot function without reciprocity, mutual trust and without all its members adhering to the principles of the rule of law. This implies that **at a certain level of persistency and gravity of violations, countries can no longer remain an EU Member State**. The goal of EU instruments is first and foremost to incentivise recalcitrant governments to abide by the jointly agreed rule of law principles. However, without access to funds and voting rights in the Council and limited participation in single market policies, full EU membership may become less attractive for Member States in breach of EU principles, and they may seek a lesser integrated form of association (see section III.2).

II. Addressing institutional challenges: five key areas of reform

This report focuses on five areas of institutional reform. We consider each of them crucial to achieve the three goals for reform which we have defined in line with our mandate. The current political and academic debate on the future of Europe includes subjects that our report does not cover. We discussed many more points at length, but set them aside, either because they do not fall within the scope of our mandate, are incompatible with our understanding of the EU as a hybrid political system and thus would negatively affect the balance that underpins its stability and legitimacy, or because they for now seem politically too unrealistic.

1. Making the EU institutions enlargement-ready

Since the negotiations on the Maastricht Treaty, the political leaders of the Member States have been trying to reform the European institutions in response to concerns about the democratic deficit and to prepare the Union for further enlargements. Revisions have been carried out, but the EU still functions with institutions whose internal organisation has not been fundamentally revised since the 1950s. Consequently, they suffer from a lack of agility, too many players and excessive complexity.

The entry of up to 10 new Member States[7] will massively change the composition, the make-up, and the decision-making processes in all institutions. Every negotiation in an intergovernmental setting would become more complex and the functioning of the supranational institutions would be impaired. Institutional reforms to make the EU enlargement ready will have to find a delicate balance between the increased capacity to act, the power and influence of small, medium, and large Member States, the democratic legitimacy of decision-making, and the protection of legitimate national interests.

Recommendations

- *The European Parliament: Number and allocation of seats*

The EP is already one of the largest parliamentary assemblies in the world, which implies more difficult deliberation and reduced individual rights for members. As with previous enlargements, their number is likely to grow further with any new enlargements. Alongside this, the current system of politically negotiating the number of seats between Member States is problematic – it incentivises them to add rather than adapt seats wherever possible, while distorting citizens' representation between different Member States.

To retain a workable EP, **we recommend sticking with the limit of 751 or fewer Members of**

[7] In terms of scale, the current candidate countries provide challenges on both sides of the spectrum. Ukraine would be the EU's fifth largest member and the largest new country since the UK joined in 1973. The other candidate countries would rank amongst the smallest Member States. Both would affect the EU's institutions in their own way.

the EP (MEPs). According to Article 14(2) TEU, the decision on the EP's size and composition requires a proposal from the EP and a unanimous decision by the EUCO, which allows for a reform without modifying the treaties.

We also recommend the adoption of a new system for seat allocation, based on a mathematical formula balancing the right for each Member State to be represented and the necessity to reduce demographic distortions. The EP has proposed such a system, the 'Cambridge formula', that would also ease the negotiations on limiting the overall number of seats.

- *The Council of the EU: The semestrial presidency*

Despite the reforms contained in the Treaty of Lisbon, presiding over the Council of the EU retains an important function for Member State engagement with the EU. However, the enlargement to potentially 35+ Member States poses several challenges. The chance to hold the rotating presidency will become both rarer and more demanding, thus decreasing the use of the presidency as an instrument for engaging the EU with its citizens, politicians, and administrations. On top of this, the institutional memory retained from one presidency to the next will become even more limited. Conducting negotiations with 30+ counterparts and finding the necessary majorities will become more and more difficult for the presidency and the national administration in charge. Also, differences in style and the objectives between presidencies need to be reduced, to ensure that the decision-making process does not depend on a country's ability to manage the role effectively.

The presidency of the Council should be reformed in two ways. First, **the trio format should be extended to a quintet of five presidencies, each spanning half of an institutional cycle**. This would allow for longer-term agenda setting and coordinating across decision-making cycles. In an enlarged EU, it would also ensure that each quintet has at least one larger Member State with greater administrative capacity and experience as this would enhance horizontal relations between Member States. Within each quintet, Member States could divide responsibilities for chairing individual Council configurations and working groups for longer than six months, or switch responsibilities in the case of national elections. Second, efficient decision-making and the prospects of further enlargement would also require **a reform of the voting rules in the Council**, which will be discussed in detail in section II.2.

- *The Commission: The size and organisation of the College of Commissioners*

In view of future enlargement, but also of current coordination problems, decisions on the size and organisation of the College of the European Commission must be taken. The rotational system enshrined in the Lisbon Treaty (Article 17(5) TEU) that would reduce the number of Commissioners was never implemented. Commission Presidents have found other ways to keep the Commission operational.

We do not see it as an option to retain the 'one-Member-State-one-Commissioner' logic without a formal hierarchy in an enlarged EU. While Vice-Presidents that coordinate the work of Commissioners have kept the College afloat in the past, this does not seem viable for a College with potentially 35 members. Operational efficiency would be compromised, and a significant imbalance between substance-heavy and relatively light portfolios would be created. Two options should be considered:

Option 1: Reducing the size of the College

As Article 17(5) TEU has not been amended, a simple decision by the EUCO would allow for a transfer to the system provided for by the Lisbon Treaty and reduce the size of the College to a

number corresponding to two-thirds of Member States[8].

We are aware that the political will for this solution has declined even further in the intervening years. Despite the Commission being a supranational institution, Member States are very attached to the principle of national representation. The representation of all of them is, however, not only a matter of symbolism or influence, but it also serves to increase acceptance and legitimacy of EU action *vis-à-vis* the respective Member States (i.e., government, legislature and the wider public). Nonetheless, a smaller College would obviously meet operational efficiency and internal coherence needs and would also ensure that all Commissioners are given meaningful and substantial portfolios. It would preserve the principle of collegiality, which implies collective decision-making and responsibility-taking.

Option 2: Introducing hierarchy inside the College

Since it is unlikely that the EUCO will agree to implement the rotation system, the Commission will have to operate with 30 or 35 members in an enlarged EU. With this in mind, they should no longer remain equal. We thus recommend **the establishment of a clear hierarchical differentiation between 'Lead Commissioners' and 'Commissioners'**. In short, half the College would be given the role of a Lead Commissioner, the other half as a corresponding Commissioner. One Lead Commissioner and one Commissioner would build one team and work on the same portfolio. Either only the Lead Commissioner would have the right to attend the formal College and vote, or they both participate in College meetings, including equal voting rights. Both the Lead Commissioners and the Commissioner should be given access to the portfolio-corresponding DG. Ideally, the two Commissioners should not belong to the same political family.

An option would be **to switch roles at the midterm mark** (i.e., after 2.5 years). While this may complicate institutional relations and disturb procedural continuity, it could soothe those Member States that cannot accept not having a Commissioner role for a whole term. Either way, Member States would have to accept that they would only be given the leading role for half a term or every other term. In exchange, they will be physically represented in every Commission term. This design would facilitate meaningful portfolio allocation, efficiency, and coherence, and potentially revive the debate in a (half-sized) College meeting. Treaty change would be necessary if some Commissioners were to be deprived of their voting right in the College.

2. Decision-making in the Council

Today, most decisions are taken by qualified majority voting (QMV) in the Council, especially when utilising the OLP. This is one of the prerequisites for a strong EU – not because Member States are continuously outvoted, but because the use of QMV gears negotiation dynamics towards compromise and coalition-making. Indeed, on average over 80 % of decisions taken by QMV in the Council are still taken by consensus, with no vote, and thus no loser. By contrast, acting in policy areas decided by unanimity has become more and more difficult. Some decisions are blocked by vetoes unconnected to the policy decision at hand and linked to other negotiations. Every accession to the EU adds more potential veto players, making unanimity exponentially harder to reach.

[8] Article 17(5) TEU: '*As from 1 November 2014, the Commission shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.*'

The use of QMV has always been seen as the most obvious solution for overcoming blockages in the Council. Its extension should be pursued. Yet it should be regarded as a contribution, but not as a panacea to solving the EU's challenges in terms of its capacity to act. Indeed, it can change the negotiation dynamics towards compromise, but it is no solution to political challenges if the Union is split into two or more larger (and opposing) groups of Member States. It should also be stressed that QMV is an instrument best used sparingly; for common foreign and security policy (CFSP) in particular, striving for consensus should still be the main goal and QMV only used as a last resort.

Finally, the EU needs to find a balance between increasing its capacity to act and protecting legitimate national interests – every Member State has a set of issues over which it would prefer to preserve a veto right. The policy areas still decided by unanimity also generally touch more critical parts of national sovereignty – such as foreign policy, defence, tax or the EU budget. There is therefore a need to find a trade-off here.

Recommendations

- *The generalisation of QMV*

Before the next enlargement, all remaining *policy* decisions should be transferred from unanimity to QMV. Additionally, except for in CFSP, this should be accompanied by full co-decision with the EP (through the OLP) to ensure appropriate democratic legitimacy. Constitutional decisions, such as changing the EU treaties, accepting new members or adapting the EU institutions, should continue to be taken through unanimity.

At best, the decision towards a generalisation of QMV should be taken through the *passerelle clause* before enlargement, as currently discussed in CFSP. If an agreement on a generalisation of QMV is not possible, we recommend creating three distinct packages grouped by policy areas coming together and forming the basis of a gradual transition towards QMV. Negotiations must cover all three packages simultaneously and avoid making progress on just one policy area. They should achieve both a transition that is coherent within each policy area and a fair balance of concessions between individual Member States.

1. Enlargement and the rule of law: Validating each negotiation chapter should be moved to QMV to streamline the enlargement process but the final ratification of an accession treaty would remain under unanimity. At the same time, Member States should accept the stricter enforcement of the rule of law by launching sanctions against any violation with a majority of four-fifths in the EUCO, as outlined in the above section on the rule of law.

2. Foreign policy and defence: While a group of Member States is indeed currently pushing for more QMV in CFSP, the treaty excludes decisions with defence or military implications. However, foreign and security policy cannot be completely separated from defence. Potentially with the use of super-majorities (see below), EU decisions on defence initiatives (such as the use of the European Peace Facility or the European Defence Fund) should be transferred to QMV as part of CFSP. This would require an ordinary treaty change. This move to majority voting would not breach national sovereignty over the use of military force in the form of whether to contribute to EU military operations as this should remain a sovereign national decision[9].

3. Fiscal and tax policy: The current treaty gives Member States veto rights for both policy

[9] QMV in CFSP will however not solve the problem that the EU often does not produce consolidated positions across policy areas which makes managing its external relations difficult, including for the European External Action Service. This issue needs to be tackled within the Commission across DGs and the EAD.

decisions on tax harmonisation and EU fiscal decisions. This contributes to the inflexibility of the EU budget as well as difficulties in reaching any decision on tax policy. The EU should create the basis for both greater tax policy harmonisation for Member States but also a greater pool of common EU resources, which would be required to finance an enlarged EU and can only be achieved by matching decision-making on resources and spending.

- *Making more QMV acceptable*

In addition, in order to address the legitimate concerns of Member States regarding QMV and the protection of national interests as core state powers, the method for voting should be reviewed. For this, we make three recommendations:

First, **if QMV is extended to additional policy areas, a 'sovereignty safety net' should be included**. It could be modelled after Article 31(2) TEU[10] that allows Member States to voice their vital national interests in the very few decisions in CFSP which can already be taken by QMV. In new areas of QMV, if a Member State considers its vital national interest at stake, it could make a formal declaration and call for a transfer of the issue to the EUCO, in order to voice its reservations and find an agreement at the highest political level by consensus. In Article 31(2) TEU, the decision on whether to transfer a matter to the EUCO is taken by QMV in the Council. In our view, this provides a good balance between giving Member States the opportunity to voice their vital national interests and concerns, and the aim to find political consensus and increasing the EU's capacity to act. This safety net could be included both within a limited transfer towards QMV as part of a *passerelle* decision, and as a general instrument as part of a wider transfer to QMV in preparation for enlargement.

Second, if part of a wider treaty change, the **calculation of QMV voting shares should be rebalanced.** Smaller to medium-sized Member States fear domination by the larger ones, as they can organise blocking minorities much more easily. The share of Member States and the population they represent should thus be adjusted. For instance, from the current system of 55 % of Member states representing 65 % of the EU population, it could be changed to 60 % of Member States representing 60 % of the population. For the most sovereignty-critical policy decisions, a 'super majority' requirement could be created, of 'unanimity minus one'. It would need to be negotiated as part of a treaty change, in which EU policy decisions that currently fall under unanimity are so 'sovereignty sensitive' that they are transferred to 'unanimity minus one'. This does not relate to constitutional decisions as these should remain under regular unanimity (see above).

Third, Member States should be able **to opt-out of policy areas transferred to QMV, and potentially the OLP**. This is only possible via a treaty revision and not with the use of the *passerelle* clause. Conceptually, this approach follows the UK model in the Treaty of Lisbon. As part of the transfer to the OLP in justice and home affairs, the UK was granted a protocol allowing it to opt-out of the decisions thus transferred after an examination period of five years. Unlike the UK protocol, however, new opt-outs should be limited to a block and not to individual measures, as this would create a highly fragmented '*Europe à la carte*'. The use of 'constructive abstention' in CFSP decisions is no substitute for this policy, as this form of abstention is purely

[10] Article 31(2) TEU: *'If a member of the Council declares that, for vital and stated reasons of national policy, it intends to oppose the adoption of a decision to be taken by qualified majority, a vote shall not be taken. The High Representative will, in close consultation with the Member State involved, search for a solution acceptable to it. If he does not succeed, the Council may, acting by a qualified majority, request that the matter be referred to the European Council for a decision by unanimity.'*

voluntary and does not address the challenges of the EU's capacity to act.

3. EU-level democracy

The democratic legitimacy of EU decision-making is crucial, particularly as European politics becomes more contentious. The EU has taken important steps to improve it, most notably through the introduction of direct elections to the EP and the gradual strengthening of its powers. The enhanced role of national parliaments and participatory instruments also reach for this goal, with the recent CoFoE being the largest participatory transnational exercise ever held.

And yet the question of the EU's democratic quality remains at the heart of the debate. We suggest four sets of measures to improve democratic legitimacy without changing the EU's political system or the relations and balance between its institutions.

• *The harmonisation of EU electoral laws*

Even if the EU is not a fully-fledged parliamentary democracy, it has been increasingly 'parliamentarized' to make it more democratic and to allow it to expand its competences. Developments in European integration have led to greater voter mobilisation, but the European elections remain largely focused on national issues with low visibility. Legally speaking, there are 27 national elections, and the common electoral framework offers only a bare minimum in harmonised rules, despite continuous efforts by the EP. The current proposals on the table – namely, the Hübner-Leinen (2015) and the Ruiz Devesa (2022) reports – will not be approved and ratified before the 2024 elections. As a result, the next EP elections will take place under the same electoral law as previous ones.

It is regrettable that no further harmonisation has happened since 2002, as it is a crucial step towards strengthening the European dimension of EP elections. It is also unfortunate that many national parties make little effort to explain the transnational dimension of these elections. While it is understandable that they campaign more successfully under their own party name and logo, they should step up their game in contributing to the visibility of European political parties[11].

Recommendation

Member States' governments and national parties should harmonise the conditions under which the EP elections take place, to facilitate a transnational electoral space, at least for the elections in 2029 and beyond. An agreement should be found on this in the next legislative cycle. The Act adopted in 2018 by the Council should be swiftly ratified and we recommend that the Council examines the 2022 EP proposals considering the points outlined above.

[11] Transnational lists could strengthen the European dimension of the EP elections and their introduction was supported by a Franco-German non-paper in 2019. But given that this is a highly controversial issue in the Council, which blocked negotiations on other files, transnational lists do not feature in our recommendations. If the political context changes, the idea should be reconsidered.

• *The appointment of the Commission President*

The main European parties and many MEPs have argued that a so-called lead candidate procedure would improve EU democracy[12]. It is to be expected that several European parties will once again appoint their lead candidates for the elections in 2024; indeed, some have already started this process. Supporters of the lead candidate approach argue that giving people a choice over who leads the executive and over the policy agenda for the coming term raises the stakes in EP elections and bolsters electoral accountability. This effect, however, is difficult to concretely measure.

In our view, the top priority for 2024 is to avoid another damaging institutional turf battle between the EP and the EUCO which harms the EU's democratic legitimacy. Article 17(7) TEU in fact leaves too much room for interpretation and creates tensions between the two institutions. The launch of the lead candidate system in 2014 and its semi-failure in 2019 ultimately led to post-electoral messiness.

The procedure to appoint the Commission President must do justice to the EU's unique institutional framework in which the Member States' governments (represented in the EUCO) and European citizens (represented by the MEPs) both provide legitimacy to the EU. Neither the EUCO imposing its candidate on the EP, nor a fully-fledged lead candidate system, in which the European parties represented in the EP would solely nominate the candidate with no input from the EUCO, is thus suitable.

Recommendations

Consequently, we do not recommend the legal institutionalisation of the so-called lead candidate system, as requested by the EP. But the EUCO and the EP need to find an agreement before the next EP elections on how to appoint the Commission's President to avoid institutional conflict. Ideally, **this should take the form of a binding interinstitutional agreement (IIA) by the end of 2023**. A political agreement at the highest level (between the President of the EUCO, semestrial presidency of the Council, President of the EP, and leaders of the main European political parties) would be a second-best option.

We see three possible options:

1. The newly elected EP clearly supports a candidate (as in 2014): Political groups representing a majority of MEPs agree on which political family won and support its lead candidate. The EUCO must then consider this 'proposal,' as the EP could vote down any other nominee and create a deep institutional crisis. The EUCO should do so unless there is a major obstacle – for instance, if the candidate does not meet standards of probity, competence, or experience, or if their appointment would contradict the principle of balance between Member States in terms of access to leadership positions. In this case, the EUCO, represented by its President, should open a formal dialogue with the leaders of the main European political parties to seek an agreement.

2. The EP is divided over whom to support: Several political groups claim to have won the elections, alone or in a coalition and support different candidates. The EUCO should then offer one of the candidates the possibility to try and win the support of the European political parties/

[12] We intentionally refer to the 'lead candidate' instead of 'Spitzenkandidaten' procedure because the latter term only speaks to those who understand German. It further recalls the failed attempts in 2014 and 2019 and thereby adds to the negative perception of this principle.

groups. If that person succeeds in establishing a coalition with a clear majority, he or she is formally appointed. If not, another candidate is offered the chance to forge a majority. As in Scenario 1, the EUCO could claim that there are major problems with the proposed candidates and then exchange with the leaders of the main European political parties to find another agreement. The same would apply if no candidate is able to find a majority

3. The situation is very unclear on the side of the EP: The EUCO then has more leeway to determine which political family has 'won' the EU elections and whom to appoint. Nevertheless, to ensure that the candidate wins a majority vote in the EP, the EUCO nonetheless conducts political exchanges with representatives of the European parties. The potential talks between the EUCO and the leaders of the main European parties after the EP elections may or may not include negotiations on other leadership positions. However, to ensure institutional independence, we do not advise bringing the positions of the President of the European Central Bank (ECB) or the President of the EP into the negotiation package.

• *Participatory democracy*

In addition to strengthening representative democracy in the EU, participation instruments have been developed to address democratic deficiencies. Today, the EU has more of them than many Member States, such as the European Citizens' Initiative (ECI), petitions to the EP, citizens' dialogues, public consultations, and complaints to the EU Ombudsman. More recently, the CoFoE (2021-2022) was the largest transnational participatory exercise ever undertaken.

While we agree that participatory instruments are essential, the existing ones have not been used effectively. They are little known and mainly used by actors already very active in EU affairs. Most of them are not directly connected to the EU's regular decision-making process and there is a lack of political will to take their results into account and to draw serious policy consequences. The CoFoE was, moreover, overshadowed by interinstitutional rivalry and its conclusions have not shaken up the EU agenda. Subsequent Citizens' Panels conducted by the Commission are a major innovation in the EU's political system, but they received little attention. And like in other participatory instruments, it seems that the Commission uses the panels to rubberstamp what it had already planned, rather than to facilitate the upstreaming of innovative policy ideas.

Yet we see the interface between participation and representation today as one of the most interesting challenges for our democracies, and citizens should be offered more meaningful involvement in democratic life at every level of government. Emerging technologies such as artificial intelligence will create new opportunities for multilingual pan-European citizen's exchanges.

Recommendations

Existing participatory instruments need to be tied more closely to EU decision-making. We recommend strengthening them (including the Citizens' Panels) rather than designing new ones, also by effectively using digital tools. In particular, how the ECI is conducted needs to be improved and its potential needs to be better communicated to European citizens. This will only be effective if the Commission takes ECI results into account more transparently. This should also apply to EU-wide citizens' panels.

Citizens' panels should be institutionalised with high visibility to meaningfully

accompany major choices such as reorienting existing policies, treaty reform or enlargement. An IIA could ensure a stronger commitment from the EU institutions to work with the results. Panels could be organised regularly, for instance every year, around the State of the Union address by the Commission President on key issues on the European agenda, alongside additional topics identified by citizens. The rotating Council presidencies could organise panels on their priorities which would strengthen their public outreach. But all this only makes sense if the panels have a tangible impact on EU policy.

Participatory instruments should be employed to prepare for enlargement. Inviting citizens, parliamentarians, representative of civil society organisations, youth movements and trade unions from candidate countries, together with their EU counterparts, would bring their views to the table, support mutual understanding and instil a sense of ownership before formal accession takes place.

• *Probity, transparency, and the fight against corruption*

Guaranteeing probity and transparency and fighting corruption in the European institutions and in the implementation of EU policies within the EU and in its neighbourhood is fundamental in three regards.

Firstly, to increase legitimacy: in most countries, EU institutions do not enjoy the same degree of support by citizens as national institutions, which are often underpinned by a strong national sentiment and narrative. If they are not seen as promoting and protecting the general European interest, in a difficult political context, highly influenced by populist discourse and challenges to representative democracy, the acceptance of EU decisions may be greatly affected.

Secondly, with regards to independence: EU institutions need to be shielded from influence and pressure e.g., from foreign states, the private sector, and other lobbies. New forms of hybrid intervention which include the strategic use of corruption aim at undermining democratic institutions and processes as well as democratic transformation. This is especially important from a security and democratic resilience perspective, and when it comes to enlarging the EU.

Thirdly, to enhance credibility: European institutions and their representatives must be exemplary if they want to credibly enforce the respect for EU principles and values in the Member States and to ensure that candidate countries make major efforts in the fight against corruption and in bolstering the rule of law. This is also crucial if the EU wants to continue arguing in favour of the rule of law, a rules-based international order and the principles enshrined in the UN Charter at the global level.

Recommendations

The EU institutions have so far not implemented sufficiently ambitious measures to guarantee probity, transparency and good governance in their own actions. We recommend **the creation of a new Office for Transparency and Probity (OTP) in charge of monitoring the activities of all the actors working within the EU institutions or for them**. Action could be taken via Article 15 TFEU (good governance and the participation of civil society) and 298 TFEU (good administration), under the OLP. However, an ambitious reform would require the use of Article 352 TFEU (subsidiary powers) under unanimity. To allow the OTP to bring a case to the CJEU, it would be even better to include entirely new provisions in the treaty and make it a fully-fledged EU institution.

In any case, the OTP should be independent from the EU institutions, and not composed of 'delegates' of the latter, but of independent experts, selected from academia, civil society organisations and within similar bodies at national level. Otherwise, like the existing organs within the Commission and the EP, its propensity to sanction misconduct or to constrain the behaviour of EU actors, both during and after their term (especially in the case of 'revolving doors'), would remain low. The OTP should be granted sufficient legal, budgetary, and human resources and important competences in control, enquiry, and sanction so that its actions can be efficient and dissuasive. Its role should not be limited to examining infractions and complaints. It must have the capacity to analyse the behaviour of actors and to define a proactive policy in view of probity and transparency. It should, for instance, be allowed to check the evolution of EU actors' assets through time.

The centralisation of competencies relating to EU institutions' good governance in the hands of the OTP would have three advantages. First, it would enable the uniform and consistent application of the rules to the various EU actors and institutions which is not currently the case. Second, it would clearly affirm the EU's desire to be exemplary in this area. Third, the OTP would have the means to actively promote transparency and probity, without waiting for complaints or allegations of misconduct, as is often the case with existing organs.

4. Powers and competences

The powers and competences at EU level have increased since 1957, by now extending to a vast array of policy areas beyond the original areas of integration. Criticism that the EU is stretching or even exceeding its competences, that it does 'too much' and disregards the subsidiarity principle, has come up on a regular basis, but it has not been backed up by substantive legal arguments.

Several reviews of the allocation of EU competences, including the most comprehensive one conducted by the British government 2012-14 in the context of Brexit[13], ultimately did not find any indication of a European pretension of competences beyond what the treaties foresee. We also note that the provisions and mechanisms in place to enforce the subsidiarity principle work rather well, which explains the absence of subsidiarity cases at the CJEU. Nevertheless, we do not rule out the repatriation of competencies from the EU to the national level as a matter of principle if they can be better handled on the national or subnational level with positive effects for legitimacy, efficiency or the quality of decisions made. We are equally open to extending EU competences for the same reasons[14].

In several consecutive crises since the mid-2000s, the EU has successfully used the existing competence framework to cater for emergencies and entirely new situations. But even treaty provisions such as Article 114 TFEU (the general legal basis for legislative harmonisation), Article 122 TFEU (a legal basis for measures in an emergency) or Article 352 TFEU (a reserve legal basis for measures that are in line with the objectives set out in the Treaties) that were general enough to accommodate unforeseen situations have their limits.

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[13] *See* UK Government Services, 'Review of the balance competencies', 2012-24.

[14] It is beyond this report's mandate to suggest areas in which the EU should or should not be active in the future. We focused on aspects that could be usefully consolidated with an upcoming treaty revision. Other studies e.g., on the provision of public goods in the EU provide a policy-oriented assessment.

Recommendations

While we think that it is useful to clarify certain provisions related to powers and competencies, this alone does not justify a major formal treaty revision. However, if the EU does decide to change the treaty for other reasons, **lessons taken from the various crises should be expressed in the wording of competence provisions**. This ranges from a clearer legal basis for the ECB in the context of the banking union, to more health competences for the EU, or the integration of crisis response instruments that – for reasons of timing and political considerations – were created outside the formal treaty framework (such as the European Stability Mechanism (ESM)).

Secondly, **the EU should strengthen provisions on how to deal with unforeseen developments, competency-wise, and concerning the EP**. Policy areas that are particularly likely to be hit by a crisis with transnational effects (e.g., finance, health, security, climate, the environment) should be reviewed to determine whether the treaty base for emergency measures is sufficient. Indeed, crisis responses should not undermine EU law (e.g., the single market and its four freedoms) or democracy. Power transfers to the EU would require formal treaty change, though. In case the treaty is opened, Article 122 TFEU should be amended to include the EP in the decision-making on measures to address emergencies or crises.

Almost as old as the debate on European powers and competences is the one on who is the ultimate arbiter of the reach and the limits of EU competence. The CJEU is the court of competence, but its ultimate legal authority has been challenged on multiple causes, the most trivial being discontent with an actual or anticipated ruling. An additional forum for judicial dialogue between courts at different levels, but without the authority to take binding decisions, could accommodate institutional concerns of not being heard without endangering the CJEU's authority. We recommend **the creation of a 'Joint Chamber of the Highest Courts and Tribunals of the EU'**, structuring the dialogue between European and Member States' courts. It would place the numerous existing informal contacts between the courts into a more formal setting, but without the authority to take binding decisions, in order to strengthen mutual understanding, cultivate a joint European outlook, and provide for more transparency.

5. EU resources

The reform of EU policies – and hence the distribution of funding – is among the largest of EU internal political challenges. Enlarging the EU will amplify this challenge. It is thus highly relevant to consider the inevitable impact of enlargement as well as governance and competence reforms on the EU budget. This adds to the growing demands on the EU in the fields of financial stability, health, energy and decarbonisation, digital and research, and defence and security, which have created new demands on EU funding. Equipping the EU with the financial means to have the capacity to react quickly and substantively to changing economic circumstances requires profoundly modifying the governance and the negotiation process of the EU budget and the MFF.

Recommendations

First and foremost, **the EU budget must grow over the coming budgetary period in nominal size as well as in terms of a proportion of GDP.** The ongoing mid-term review has already exposed the extent to which the 2021-2027 budget was stretched beyond its limit by asking for additional contributions from the Member States. The prospect of enlargement and the

reconstruction of Ukraine, as well as the fact that EUR 600 billion every year will be needed to meet the EU's emission reduction objectives, all call for a substantially larger EU budget. Additionally, the debt issued under the NextGenerationEU programme will need to be repaid progressively as of 2027. A larger MFF is better agreed and transparently debated earlier rather than later, where it is likely that holes in the budget would have to be fixed.

The Commission has proposed the creation of new statistical own resources that would raise revenues without forcing tax harmonisation. While effective in principle, we believe **the EU should create truly new own resources for the EU budget that would limit tax optimisation, avoidance, and competition within the EU**. This could be achieved through enhanced cooperation or even via a smaller coalition of willing countries. In the absence of such progress, the EU will be confronted with a 'fiscal cliff' that will either force new contributions from Member States' national budgets, or a sharp reduction in EU spending.

We also believe that the EU budget negotiations are marred by the *'juste retour'* logic that will be increasingly difficult to manage as the budget funds more and more European public goods. This calls for **a profound reform of how the EU budget is adopted, which should move towards QMV for spending**. The own resources decision, or any transfer of taxation power to the EU, would still be voted for under unanimity. In the absence of a full move to QMV**, there should be more enhanced cooperation or other forms of cooperation between even smaller groups of Member States to agree to finance policies together**. This would simplify budgetary negotiations but also provide for the flexibility that the EU needs to enable 'coalitions of the willing' to integrate further.

The enlargement process, greater security and defence needs, and the energy and climate transition are all expected to profoundly impact the EU budget. It is critical that this does not come at the expense of delivering true European policies and common goods, in particular the EU's climate and environment goals. We thus recommend **establishing a thorough spending review to reduce the size of some spending areas and increase others.** We would also **draw on the positive experience of NextGenerationEU by enabling the EU to issue common debt in the future**.

The possibility of an EU budget fit for operating with smaller groups of Member States depending on policy areas would also allow for the integration of existing inter-governmental financing agreements into the EU budget. They should be brought under community law and the EP's control to centralise and improve the EU's financial might. A new package combining the integration of the ESM and the Single Resolution Fund should be an integral part of the next MFF.

Finally, **each institutional cycle should set a new MFF based on its strategic agenda and popular mandate.** Accordingly, within its first six months, a new Commission should propose a five-year MFF, to be voted upon by the Council/European Council and the new EP. Reducing the MFF's length would moreover result in greater flexibility, both when it comes to moving spending around on an annual basis and to redefining long-term priorities.

III. How to manage progress: Deepening and widening the EU

1. Options for treaty change

Many of the recommendations we make above do not require treaty change, such as extending the mechanism for protecting the rule of law through budgetary conditionality or applying QMV to new areas through the *passerelle* clause. Annex 2 gives an overview.

The treaties contain numerous provisions below formal treaty change, such as the *passerelle* clauses, emergency powers, and the use of enhanced cooperation or Article 352 TFEU. Using these instruments is politically more feasible than needing to secure a 'double unanimity', i.e., an agreement on the actual changes in the EUCO plus ratification of a new treaty by all Member States with all the risks and delays that come with national ratifications.

Relevant reforms that are possible without treaty change include shifting decision-making from unanimity to QMV, giving the EP more powers and even extending policy areas. Article 352 TFEU offers a legal base to decide if EU action is necessary, within the framework of the policies defined in the Treaties, to attain one of the objectives set out in the Treaties, and if they do not provide the necessary powers. A roadmap of such a sub-treaty reform should be agreed by the Member States before the European elections.

Nevertheless, for reasons of democratic legitimacy, transparency, coherence and ambition of change, we recommend the more challenging route of treaty revision, and there is more than one option to do this. The standard option is the ordinary revision procedure, which normally requires the convening of a Convention (Option 1). However, the experience of the previous Convention (2002-03) and the history of treaty revisions teach us that unforeseen political obstacles are more than likely. We thus also consider alternative options and fallback solutions (Options 2 to 6) (see also Annex 3). Which of these options is most suitable is a political choice and must be carefully balanced.

Recommendation

We suggest adopting the proposed amendments in accordance with the **procedure laid down in Article 48(1) TEU,** the default option for treaty change (convening of a Convention followed by an Intergovernmental Conference (IGC)) (Option 1). This would be the logical follow-up to the CoFoE. It could enhance the legitimacy of the treaty revision, especially if it included representatives of the candidate countries. The prospect of a Convention could also have mobilising and legitimising effects for the 2024 elections, as political parties could campaign on the desired treaty changes. Member States, the 'Masters of the Treaties', would not lose control over the content of the amendments as they would decide on the changes through an IGC after the Convention.

If there is no agreement to convene a Convention, the 'simplified revision procedure' is the alternative (Option 2). Under Article 48(3) TEU, the EUCO can decide (by a simple majority vote and with the consent of the EP) that a Convention is not justified by the scope of the amendments sought. But this choice could be challenged, if not before the CJEU then at least before national courts, creating a risk that treaty changes are not ratified. Moreover, it is not

certain that the EP would give its consent since it voted on 9 June 2022 in favour of convening a Convention. Finally, the 'simplified' revision does not escape the need for 'double unanimity', and creates even more risk of a deadlock, as seen in Nice (2000).

- *Alternative scenarios: Treaty revision through an accession Treaty or Treaties*

The **reform of the EU could be formally linked to the accession treaties** which modify the founding Treaties (Option 3). Article 49 TEU states that this is a separate special treaty revision procedure. This would streamline the revision process by formally linking it to the (next) accession treaty, allowing for a package deal in the Council between the pro-deepening and the pro-enlargement camps. National parliaments or citizens via a referendum would only have to vote once for both operations (revision and accession(s)), which can facilitate the amendments' entry into force. As enlargement will require at least the formal adjustment of the treaties, it is a plausible starting point to link EU reform with enlargement and treaty amendment.

However, according to the wording of the provision, this possibility of revising the treaties is, in principle, limited to only those 'adjustments to the treaties […] which such admission entails'. Anything that maintains or improves the functioning of the EU after an enlargement could though be part of an accession treaty. But there may be limits to this approach. Firstly, some reform proposals are difficult to link to accession: an extension of EU competences, such as in public health, do not seem logically viable, although a candidate with specific public health issues may offer such a link.

Linking EU reform to an accession treaty raises issues in terms of timing, since this makes it dependent on the speed of accessions, and therefore on the progress made by the candidate countries. In addition, if accession does not take place '*en bloc*', the treaty amendments would have to be included in the first accession treaty, making it difficult to involve the other candidate states in the discussions. Finally, the democratic legitimacy of this solution is questionable, given that the EP is not fully involved in negotiating the accession treaty.

A solution for the above-mentioned problems could be a **sequenced approach** (Option 4). In a first step, Member States would draft a 'framework enlargement and reform treaty'. This framework treaty would contain the changes deemed necessary for the EU's functioning in the future. This treaty would be negotiated with the view to accession, though decoupled from actual accession treaties, which would still be negotiated by the Commission. Thus, there would be no need to have all candidate countries joining at the same time with the same accession treaty that also contains amendments to the EU treaties. Institutional provisions in the framework treaty could be conditioned on the number of Member States changing. The reform would thus be in place before the actual accession of the first candidate countries. A concern with Option 4 may be, once more, the issue of democratic transparency since the EP does not take part in negotiating accession.

This leads to Option 5: **the involvement of a Convention in a reform based on Article 49 TEU** (an enlargement treaty). It is not explicitly provided for, but it is also not excluded. A Convention could be mandated to draft the 'framework enlargement and reform treaty' mentioned before. Unlike Option 1 there would be a link with the accession process, meaning that no accession could become effective without reform having first taken place. It would also be easier to include the candidate countries in the process.

- *Fallback solution: revision through a supplementary treaty (coalition of the willing)*

Whichever route is chosen – ordinary revision or accession treaty-related – the entry into force

of amendments to the treaties is subject to 'double unanimity'. There are numerous ways to react to any deadlock resulting from a Member State's refusal or inability to sign or ratify the revision treaty or even to launch the ordinary revision procedure: opt-outs can be negotiated, or a Member State can decide to leave, accompanied by the negotiation of a treaty granting it a special status with the EU. All this still needs the consent of the Member State(s) unwilling to reform.

But even if there is no consent to overcome deadlock, there may still be a path forward (Option 6): **A supplementary reform treaty (such as the ESM Treaty) between the Member States willing to move forward**. This option would be available in the case of a failed Convention or a ratification deadlock in the context of the ordinary treaty revision procedure (Options 1 and 2) or a lack of consensus on a framework enlargement and reform treaty (Options 4 and 5). Any preparatory work could still serve as a starting point for a revision through a supplementary treaty among the Member States willing to reform. Such additional treaty law would supplement existing treaty law, not deny it. It would create a 'coalition of the willing', paving the way for more differentiation within the EU.

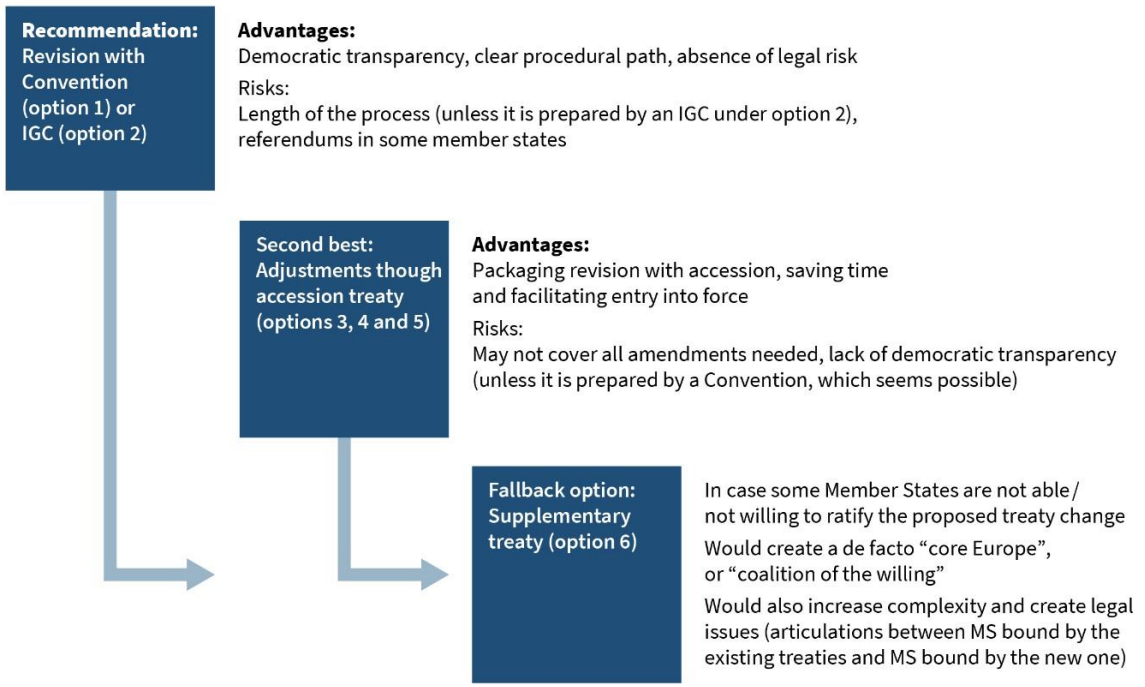
For instance, QMV could be introduced through a supplementary reform treaty: Member States can agree to exercise their veto rights only under certain conditions, e.g. only together with at least one other Member State. The supplementary treaty would amend the relevant legal bases for the States' parties only, specifying the new decision-making rules – the others would retain their individual veto right.

A supplementary treaty could also be used to change the EU budget. Only the Member States party to this new supplementary treaty would benefit from the proposed changes, the non-signatories would not. This would mean designing two separate budgets, one general, and another operating according to the new rules (adoption procedure, resources etc.). Regarding the rule of law, the Member States party to this supplementary treaty would accept that Article 7 could be applied to them, if necessary, by a majority of four-fifths.

Moreover, policies and EU competences can be governed by such distinct rules. But there are also limits: it is not possible, for instance, to reduce the number of Commissioners.

Figure 2

Potential avenues for treaty change



A supplementary treaty would further increase the complexity of the EU legal system, while *de facto* creating a 'core Europe'. It would raise problems of articulation between the obligations of EU Member States that remain bound by the Lisbon Treaty and those bound by the new supplementary treaty.

2. Differentiation

In an EU of over 30 Member States, flexibility tools are required to retain and enhance the EU's capacity to act. The EU already has a large toolbox, such as transition clauses after new Member States' accession, temporary derogations, enhanced cooperation, permanent structured cooperation (PESCO) or conditional participation. And yet, differentiation creates institutional and normative complexity: a '*Europe à la carte*' is what the Community Method was designed to avoid.

Differentiation moreover has clear limits. Within the EU, it cannot be used to solve disagreements over the respect for the primacy of EU law or rule of law issues on the Member State level. The principles and values enshrined in Article 2 TEU are non-negotiable for EU membership.

Differentiated integration has an internal and an external dimension. Internally, multiple instruments help to facilitate circumstances in which some Member States wish to deepen integration in certain areas by carrying out joint projects within the EU's institutional framework and in compliance with its fundamental principles and values and the *acquis communautaire*, while others do not. The EU has always extensively used internal differentiation, including opt-outs from certain steps to deepen integration, even central ones such as acceding to the monetary union.

In addition to safeguard clauses, the procedure of enhanced cooperation (Article 20 TEU) is a crucial tool that should be expanded. Some of the recommendations made in this report could also be implemented in this way. For others, enhanced cooperation would not be sufficient or unlikely to replace a proper reform of the treaties.

Externally, differentiation has thus far allowed non-EU states to participate in individual EU policies, such as Switzerland, Iceland, Norway, and Liechtenstein being a part of the Schengen area. The latter three also participate in the internal market via the European Economic Area (EEA), Switzerland partially via bilateral treaties, and Turkey is in a customs union with the EU.

In more general terms, external differentiation also relates to the EU's enlargement and neighbourhood policy. The European Political Community (EPC) could serve as an important venue for this purpose and could be developed accordingly. External differentiation could become relevant for the future of the (enlarged) EU if individual Member States either block necessary treaty reforms and consequently negotiate new opt-outs, or even prefer a less committed status regarding European integration. In these cases, a special association status with the EU could be envisioned or even just simple participation in the EPC.

Recommendations

- *Principles for differentiation within the EU*

Member States should be more ready to make use of existing flexibility instruments. However, differentiation is not without risk for European integration, for the coherence of the EU's actions and the integrity of the principles that govern it. Thus, we recommend the use of flexibility

instruments under the five following principles:

- **Respect for the *acquis communautaire* and the integrity of the EU's policies and actions**: Differentiation shall aim to further the EU's objectives, respect its principles, protect its interests, and reinforce its integration process. Respecting the rule of law principle applies to all EU Member States, no matter which differentiated formats they participate in. Depending on the policy area, additional criteria may apply (e.g., Schengen).
- **Use of the EU institutions**: Differentiation should remain within the EU framework, making use of EU instruments and institutions such as Enhanced Cooperation, PESCO, or even treaty based opt-outs and supplementary treaties. This preserves the EU's institutional integrity and ensures that non-participating Member States can join in the future.
- **Openness to all EU members**: Participation in the deeper areas of integration should be open to all Member States. External differentiation should be designed so that it does not impact the question of EU membership – it is not an alternative, not a precondition, and does not create rights for automatic accession.
- **Sharing decision-making powers, costs, and benefits**: Only those countries participating in deeper integration should have the corresponding decision-making powers (e.g., in the Council), as well as share the costs and benefits. This could entail the creation of specific budgets only for participating Member States.
- **Make sure the willing can move ahead**: If a Member State which had joined a pioneer group created to deepen integration suddenly no longer subscribes to the goals of the group, it shall not be able to prevent the group from moving ahead with deepening integration and must not limit its capacity to act. A mechanism needs to be provided to suspend a Member State from a core group if it no longer supports its objectives. While exiting from the core group, the Member State's EU membership as such would remain in place.

- *Use of differentiation in the framework of treaty revisions*

As already stated above, any kind of treaty revision is likely to require differentiation. This is a very likely scenario and opt-outs are a meaningful tool to dissolve blockages. So, in such a case, **the uncooperative/unwilling state(s) could be offered opt-outs to be included in the new treaty**. It should only be possible to grant an opt-out where the revision deepens integration, either by adding new competences or by extending QMV. Yet exemptions from the existing *acquis communautaire* or EU core values (the rule of law, democracy, and fundamental rights) should not be possible. In the future, the euro should be considered as part of the non-negotiable elements of European integration.

In more practical terms, Member States could be exempted from participating in new areas of EU competences if the prospect of utilising enhanced cooperation (Article 20 TEU) is not sufficient. Those opposed to extending QMV could be offered an exemption from the policies affected. In budgetary matters, it should be possible to develop fiscal capacities through enhanced cooperation, in the form of new own resources, budgets based on Member States' contributions and/or borrowing capacities (see below)[15].

[15] This option differs from the possibility of a supplementary treaty mentioned above. A supplementary treaty is open to Member States that want to deepen integration between them – the non-willing have nothing to say. Here, it is a possibility offered to Member States that do not want to reform the treaties or face problems in ratifying it to be granted opt-outs to allow the others to move on.

- *United in diversity in Europe*

Not all European states will be willing and/or able to join the EU in the foreseeable future. Even some current Member States may prefer looser forms of integration. **We therefore recommend envisioning the future of European integration as four distinct tiers**, each with a different balance of rights and obligations.

1. The inner circle: Internally, the members of the Eurozone and Schengen Area already participate in forms of deeper integration, with either permanent or temporary exemptions for the non-participating countries. In addition, there are already several uses of Enhanced Cooperation as well as PESCO in defence. These coalitions of the willing could be further used in a wider range of policy areas (climate, energy, taxation etc.), as seen previously. This inner circle should be submitted to the above-mentioned five principles.

2. The EU: All current and future EU Member States are bound by the same political objectives, required to comply with Article 2 TEU and they benefit from cohesion funds and redistributive policies. Current EU competences remain at the heart of EU integration.

3. Associate Members: A first outer tier could allow for streamlining the different forms of association with the EEA countries, Switzerland or even the UK. Associate members would not be bound to 'ever closer union' and further integration, nor would they participate in deeper political integration in other policy areas such as Justice and Home Affairs or EU citizenship. Still, the basic requirement would be the commitment to comply with the EU's common principles and values, including democracy and the rule of law. The core area of participation would be the single market. Institutionally, associate members would not be represented in the EP or the Commission but have speaking without voting rights in the Council and would be offered associate membership in relevant EU agencies. They would fall under the jurisdiction of the CJEU. Associate members would pay into the EU budget but on a lower level (e.g., for common institutional costs), with lower benefits (e.g., no access to cohesion and agricultural funds).

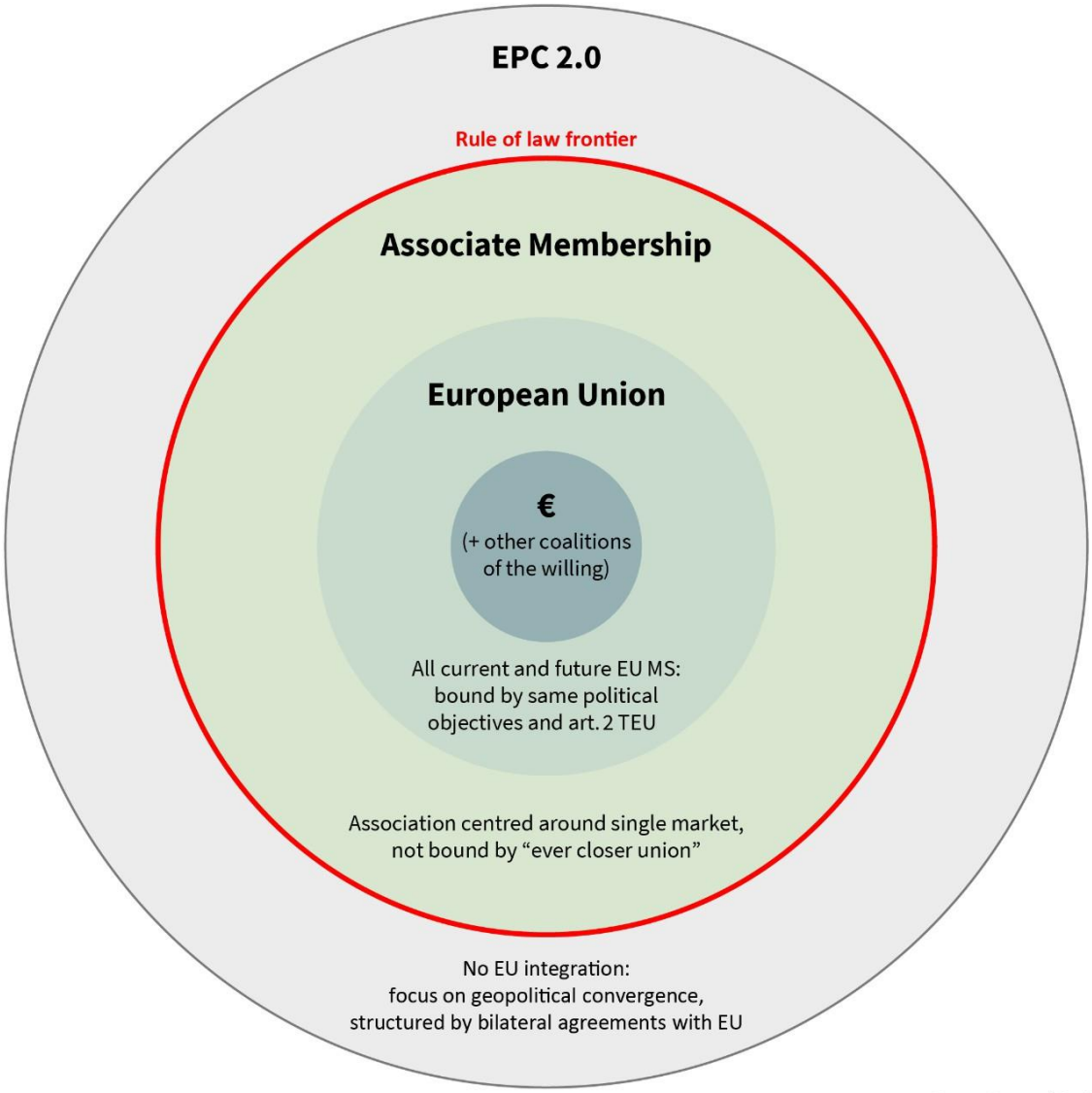
4. The EPC: A second outer tier would not include any form of integration with binding EU law or specific rule of law requirements and would not allow access to the single market. Instead, it would focus on geopolitical convergence and political cooperation in policy areas of mutual importance and relevance such as security, energy or the environment and climate policy etc. The recently established EPC's institutional underpinning could be upgraded to provide more structured cooperation. The EPC would have to evolve from its current loose form into an arrangement with stronger institutional ties that could enable the Commission to play a greater coordinating role and the EU budget to mobilise some funding. Economic relations within the EPC could be structured by Free Trade Agreements and in certain policy areas, such as energy or defence, a mixed treaty could provide a stronger legal and institutional framework for policy coordination, very much like the Energy Union. There should still be a minimum common basis for all participants, including membership in the Council of Europe and the European Convention of Human Rights.

These two outer tiers – although open to any European country, including accession candidate countries – would be distinct from the accession procedure as membership in them can be permanent. EPC membership can be a useful step towards EU membership, but is not a prerequisite, as it could also involve countries from the southern shore of the Mediterranean, which could be granted guest status or even permanent guest status.

Countries would join one or the other outer tier out of their own political will, either because they

withdraw from the EU or because they have no intention of joining it in the first place. Careful negotiations will be needed to find the right balance between a looser form of integration and institutional participation while retaining the highest benefits for full EU Member States.

Figure 3
European integration in four concentric circles



3. Managing the enlargement process

The next enlargement will be different from previous ones, not only because geopolitical challenges have added Ukraine and Moldova to the group of candidates. The accession process has been revised with the aim to making it 'more predictable, more credible (based on objective criteria and rigorous positive and negative conditionality, and reversibility), more dynamic and

subject to stronger political steering[16]'. Negotiations are now restructured along six clusters instead of 35 individual chapters and candidate countries can phase into individual EU policies and programmes.

The recent reform of the enlargement process might have had an impact on the technical level but has not created strong political momentum within the EU's enlargement policies. For the next enlargement to happen, concrete steps need to be taken, not only to get the EU ready for enlargement, but also to re-dynamize a merit-based accession process and support candidate countries' transition.

Recommendations

To regain credibility, **the EU should set the goal to be ready for enlargement by 2030 and accession candidates should work to fulfil the criteria to accede to the EU on this earliest entry date**. This mutual commitment would increase trust in the accession process that has been undermined by a lack of commitment and progress over the past few years. It makes clear that there is no free entry into the EU and that the timeframe is an objective rather than a set date. **The new political leadership after the European elections in 2024 should fully commit to this goal and the reform process required to reach it**. A joint summit with the political leadership of all candidate countries could also add to a renewed sense of dynamism.

It is unclear whether there will be a second Big Bang enlargement, with many candidates joining '*en bloc',* or a 'regatta', with different accession dates for different candidates. Both options have their pros and cons. The '*en bloc'* option expects the candidate countries to motivate and support each other's reform process. But it conflicts with the merit-based approach that makes each candidate the pacemaker of its own accession. This means that either the more advanced need to wait for the latecomers, or that they define the speed of accession, which implies the admission of countries that are not yet ready to join.

A *'regatta'* approach would better comply with the merit-based principle. However, it would allow Member States, including newcomers, to block the accession of some countries due to bilateral conflicts. This risk could be mitigated by clauses in their accession treaties on a transitory period that takes away their right to vote on future enlargements for a jointly agreed timeframe. Also, accession could be considered only after conflicts between candidate countries are resolved. In view of these considerations, our second recommendation is to **break down the accession rounds into smaller groups of countries (a 'regatta') in full compliance with the merit-based approach and in consideration of potential bilateral conflicts**.

Our third set of recommendations concerns the accession process itself. We take note of the EUCO having invited 'the European Council, the Commission, the High Representative and the Council to further advance the gradual integration between the European Union and the region already during the enlargement process itself in a reversible and merit-based manner[17].' Given the focus of our mandate, this report does not discuss concepts of 'accelerated', 'gradual' or 'staged' accession in greater detail or develop another concept or other conclusions to be drawn

[16] European Commission: Enhancing the accession process – A credible EU perspective for the Western Balkans, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2020) 57 final, Brussels, 5.2.2020, p. 1. Important contributions that lead to this communication were non-papers from France (2019) as well as Austria, the Czech Republic, Estonia, Italy, Latvia, Lithuania, Malta, Poland, and Slovenia (2020).

[17] European Council, Conclusions, June 2022, p. 5.

from previous enlargement experiences. We yet recommend nine principles that should guide future enlargement strategies and their connection to EU reform.

On the qualification for accession:

- **'Fundamentals first' principle**: Regardless of any new flexibility in the accession process, compliance with the political accession criteria and EU principles is the precondition for accession to the EU. The Copenhagen criteria need to be rigorously applied in the accession process and ongoing compliance needs to be ensured. Even any partial integration into the single market as a basic form of accession would require adherence to rule of law and democratic principles. Stronger instruments, as outlined in the rule of law section, are thus necessary before any enlargement takes place.
- '**Geopolitical' principle:** Geopolitical considerations, which are currently the strongest drivers for the EU's enlargement, should be taken into account. Accession countries should fully align themselves with the EU's CFSP, notably its sanctions policy and the principles of the United Nations Charter. For this, the strategic dialogue, within the EPC and between candidates and EU Member States and the institutions should be strengthened.
- '**Conflict resolution' principle:** For security and stability reasons, countries with lasting military conflicts cannot join the EU. The same applies to countries with a territorial conflict with another candidate country or an EU Member State. However, if managed well, the accession process can be a vehicle for easing tensions and resolving conflicts between candidate countries and should therefore be seen in this light. The accession of countries with disputed territories with a country outside the EU will have to include a clause that those territories will only be able to join the EU if their inhabitants are willing to do so.
- **'Additional technical and financial support' principle:** The EU should provide more technical assistance to accelerate domestic reforms and to increase administrative and absorption capacity. Financial support to encourage the most challenging and security-relevant reforms should be increased. If helpful to candidate countries, more EU and national experts should support progress within candidate countries.
- **'Democratic legitimacy' principle and participation**: Democratic legitimacy during the entire process should be encouraged through regular dialogue between the EP and national parliaments of both Member States and candidate countries. Citizens of accession countries should be invited to join EU participatory mechanisms to get involved in EU debates and to potentially create understanding and support for fulfilling the accession criteria. Communications initiatives, including the fight against disinformation, should encourage a greater sense of ownership of the enlargement process in the EU and candidate countries.

On the dynamic of the accession procedure:

- **'Equality' principle:** Accession procedures and criteria need to be equal for all candidate countries. Fast-tracking would damage EU integration and will erode trust in the other candidate countries.
- **'Systematisation' principle:** The revised accession methodology already foresees the phasing-in of candidate countries. Additionally, some have been integrated into selected EU programmes based on the Association Agreements and Deep and Comprehensive Free Trade Area (DCFTAs). A more structured and conditional methodology for sectoral integration, and a staged approach to participation rights in EU institutions still needs to be developed.
- **'Reversibility' principle**: If phasing-in and staged participation in EU institutions takes place, it must be possible to reverse this partial integration if the EU's principles, values, and

strategic orientation – that is the prerequisite for partial integration – are no longer met. A candidate country experiencing backpedalling on participation criteria needs to feel the consequences in order to preserve reform momentum in all accession countries.

- **The 'QMV' principle:** The dynamic of the accession process not only depends on candidate countries' progress, but also the EU's capacity to take decisions on opening and/or closing negotiation chapters that are shielded from particular national self-interests. New stages should be approved by QMV to avoid individual Member States blocking progress for national reasons. The final decision on the actual accession of a Member State, however, must be taken with 'double unanimity' of all Member States in the EUCO and national ratifications of the accession treaty.

Conclusion and outlook: Two windows to reform the EU

Two observations are widely shared across the EU today. The first is that the inclusion of new Member States is a geostrategic imperative – the stability of the continent and the security of the EU and candidate countries require rapid progress in this area, whatever the scale of the task. The second observation is that the EU's institutions, policies, and budget must be reformed before any further enlargement, or at the very moment of the next one. If this does not happen, the EU's ability to function well will be at risk. Reforms after enlargement will be more difficult and very unlikely. The new Member States will be preoccupied with managing the *acquis communautaire* and their integration into the single market and the Union in general. At the same time there is no reason why the current 27 should not be in a better position to agree on post-enlargement reforms than now.

Paradoxically, although this twofold observation is broadly shared, timidity reigns when it comes to reform, particularly concerning a treaty revision. It may seem hard to argue that the EU urgently needs to reform as it has managed to survive so many crises over recent years. Yet reform is imperative to prepare the EU for its future challenges, which will make it even harder for the EU and national governments to deliver for their citizens, and time is running out. If the next enlargement is to take place as early as 2030, it is essential to take the initiative and launch what will be a long and complex process.

This report has set out what is at stake, makes a series of recommendations, and proposes a roadmap on how to get there. It is one contribution to a broader debate which will hopefully gain further ground over the next few months.

It is important that governments decide to begin the process with no further delay. Some reforms can be implemented in the short term without treaty change in a first phase as of autumn 2023 and before the 2024 European elections. Reforms that require treaty change should be tackled during the next institutional cycle (2024-29). A further set of reforms will be needed after the next enlargement occurs.

1. Short-term measures before the EU elections (October 2023-June 2024)

Before the European elections of June 2024, governments should implement measures that improve the functioning of the EU's institutions in line with the three principles set out in this report. These measures should be practical, achievable, and have a tangible impact on the EU's functioning. They can be implemented under the current framework of the treaties and lay the groundwork for the next institutional cycle.

The EUCO and the Spanish and Belgian Council Presidencies should work with other governments to make sure a damaging political stalemate and lack of direction is prevented when the new European leadership will be selected following the European elections. Related procedural and substantive decisions should be taken before the election.

Moreover, they should tackle immediate deficiencies which have lasting damaging effects and

set the stage for deeper reforms. They should include:

- a calendar and framework regarding the appointment of the next Commission;
- a reform of the organisation of the Council Presidency – a quintet is better than a trio – as of the next term;
- a redesigned accession process, including decisions on intermediate phases, is adopted by QMV;
- a clarification of the 'phasing-in' option for accession candidate countries;
- the implementation of QMV based on the *passerelle* clause in some policy areas;
- a strengthening and more stringent use of the rule of law conditionality mechanism;
- the creation of a dedicated Office for Transparency and Probity (OTP);
- mutual commitment by the EU and the candidate countries for preparing for enlargement by 2030; this declaration should be taken during the December 2023 EUCO meeting, on the basis of the Copenhagen criteria;
- a more systematic and coordinated use of participatory democracy tools.

2. Medium-term measures during the next institutional cycle (2024-29)

The next institutional cycle (the 10th EP term, 2024-2029) should be used to introduce a series of necessary changes to the treaties and to EU policies to prepare the EU for the next enlargement. We propose that the new EU leadership works on the target date of 2030 set by the EUCO in December 2023 and defines the obligations for both sides. This should be the deadline for completing the necessary adoption and ratification of the modified EU treaties, if reforms are not included in the accession treaties. The candidate countries which want to be part of the next wave of enlargement should also be ready by 2030.

Regarding the EU, changes and reforms should include:

- the better protection of the rule of the law, via a reform of Article 7 TEU;
- the harmonisation of EU Member States' electoral laws concerning EP elections;
- the adoption of a new mechanism to allocate seats in the EP and to limit their number;
- transition to QMV and OLP in all 'policy' areas;
- changing voting weights within QMV in the Council;
- limiting the use of unanimity in the Council;
- extending EU competences;
- the creation of a 'Joint Chamber of the Highest Courts and Tribunals of the EU';
- a reform of the EU's Multiannual Financial Framework;
- increasing the EU budget in nominal size and in relation to GDP;
- the creation of an 'associate member' status.

The path towards treaty change needs to include a broader public debate, picking up on the results of the CoFoE. Projects for the future of the EU and reform proposals should feature prominently in the electoral campaign for the 2024 EP elections and the new Commission's political guidelines should reflect these priorities. Various participatory democracy tools should be mobilised to involve the citizens of both Member States and candidate countries in this process.

The EU has successfully muddled through over the past couple of decades and very often achieved progress or managed crises more diligently than expected, only to come out stronger. Given the current external and internal conditions, it would be of high risk to assume that this will continue.

We highly recommend thinking in terms of 'the cost of non-action'. Given that neither global changes nor internal challenges will become lighter, time and decisiveness is of the essence. Choosing to not reform the EU or not to integrate candidate countries with a strong commitment to the EU and its principles and values would come at an even higher price for the EU, its Member States and its citizens. The EU could be in very real danger if not enough is done to prepare it for the future.

This report proposes flexible solutions to manage the challenges the EU is facing as it is sailing on high seas. If it fails to reform and enlarge, the European continent may face an even deeper political crisis. For this eventuality, we cannot propose a legal or technical solution upfront.

Annex 1: Joint press release of the German Federal Foreign Office and the French Ministry for Europe and Foreign Affairs (23.01.2023)

German-French working group of experts on EU institutional reforms

On the occasion of the German-French Council of Ministers, a working group of experts has been launched in order to make recommendations for EU institutional reforms. In the follow-up of the Conference on the Future of Europe, the working group has been initiated by German Minister of State for Europe and Climate, Anna Lührmann, and French Secretary of State for European Affairs, Laurence Boone. It is composed of twelve non-governmental experts from both countries. To include a wider European perspective, the working group will also reach out to other member states and candidates.

> It is obvious that the EU needs an institutional overhaul to maintain its capacity to act. This is especially important with the perspective of future enlargements. To identify potential ways for reforms, we bring together German and French experts at one table. We thereby gather valuable ideas on how to strengthen our common European project.
> **Anna Lührmann**
>
> The mission of the working group is to elaborate, within the next months, concrete recommendations on how to strengthen the EU's capacity to act, to protect its fundamental values, to strengthen its resilience, especially in light of the Russian war of aggression against Ukraine, and bring it closer to European citizens.
> **Laurence Boone**

The conclusions, elaborated by the group, will be handed over to Ms. Lührmann and Boone by autumn 2023. The members of the working group are committed to include perspectives from other European countries in their analysis.

The members of this joint working group of experts are:

- Pervenche Berès, Fondation Jean Jaurès
- Olivier Costa, CNRS CEVIPOF
- Gilles Gressani, Grand Continent
- Gaëlle Marti, Université de Lyon III
- Franz Mayer, Universität Bielefeld
- Thu Nguyen, Jacques Delors Centre
- Nicolai von Ondarza, Stiftung Wissenschaft und Politik

- Sophia Russack, Centre for European Policy Studies (CEPS)
- Daniela Schwarzer, Open Society Foundations
- Funda Tekin, Institut für Europäische Politik (IEP)
- Shahin Vallée, DGAP
- Christine Verger, Institut Jacques Delors

Annex 2: Overview of recommendations and the need for treaty change

This table provides an overview of the recommendations in this report, including a preliminary high-level assessment on which avenues could be used for implementation and whether a change of EU primary law would be required. The final assessment on the need for treaty change would be subject to the exact implementation.

I. Better protect a fundamental principle: the rule of law

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
Make the rule of law conditionality mechanism an instrument to sanction breaches of the rule of law and EU values	Secondary legislation	No	Possible based on Art. 352 TFEU, but would be stronger with change of Art. 7 TEU
If no agreement: Extend the scope of the budgetary conditionality	Secondary legislation	No	
Introduce conditionality, similar to NGEU for all future EU funds	Secondary legislation / MFF	No	
Change decision-making on Art. 7 (2) TEU to 4/5 majority	Change of Art 7 TEU	Yes	
Reinforce automaticity of response in the event of a serious and persistent breach	Change of Art 7 TEU	Yes	
Automatic sanctions five years after a proposal to trigger the procedure	Change of Art 7 TEU	Yes	

II.1 Making the EU institutions enlargement-ready

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
Stick with the limit of 751 or fewer seats in the EP and redistribute seats according to mathematical formula	EUCO decision based on proposal from the EP	No	In the past, this has been part of accession agreements
Trio format extended to a quintet of presidencies	Rules of Procedure of the Council	No	
Decision on the size and organisation of the College of the Commission	Option 1: Use Art 17(5) to introduce rotation system	No	
	Option 2: Differentiation between 'Lead Commissioners' and 'Commissioners'	Potentially	Treaty Change required if only 'Lead Commissioners' retain voting rights in the College

II.2 Decision-Making in the Council

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
Generalisation of QMV	E Passerelle clause or treaty change	Potentially	Treaty change required for defence
Sovereignty Safety Net on new QMV areas	Passerelle decision or change in treaties	Potentially	
Rebalancing of QMV voting system	Treaty change	yes	
Opt-outs on new QMV areas	Treaty change	Yes	

II.3 EU-level democracy

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
Harmonisation of EU electoral law for 2029	Secondary legislation	No	
Agreement on Commission President Appointment Procedure	IIA or political agreement	No	
Existing participatory instruments need to be tied more closely to EU decision-making	Secondary legislation, political practice	No	
Institutionalisation of citizen panels to accompany major choices	Secondary legislation, political practice	No	
Participatory instruments employed to prepare for enlargement	Secondary legislation	No	
New independent Office for Transparency and Probity	Secondary legislation	No	

II.4 Powers and Competences

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
Strengthen provisions on how to deal with unforeseen developments, including EP role in Art. 122 TFEU	Treaty change	Yes	
Create a “Joint Chamber of the Highest Courts and Tribunals of the EU”	No	No	

II.5 EU resources

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
Increase the overall EU budget	MFF decision	No	
New own resources	Own resources decision	No	
Change EU budgetary decision-making procedure	Treaty changes or enhanced cooperation with special budgets	No	
Enable the EU to issue common debt in the future	Treaty change	No	
Each institutional cycle (EP term) sets a new MFF of five years	MFF decision	No	According to Art. 312 TFEU, the MFF should be 'for a minimum of five years'

III.1 How to manage progress: Deepening and widening the EU

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
1st Option: Regular Treaty Change with Convention and IGC according to Art 48 (1) TEU	Convention, then IGC and national ratification	Yes	
2nd Option: Simplified Revision Procedure	IGC only	Yes	
3rd Option: Reform via Accession Treaty	Accession Treaties	Yes	No convention
4th Option: Member States draft a 'framework enlargement and reform treaty'	Accession Treaties, 'Framework enlargement and reform treaty'	Yes	No convention
5th Option: Involvement of Convention in drafting of 'framework enlargement and reform treaty'	Accession Treaties, 'Framework enlargement and reform treaty'	Yes	
If deadlock, 6th Option: 'Supplementary reform treaty' between willing Member States	Supplementary Treaty	No	

III.2 Differentiation

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
Make use of existing flexibility instruments under five principles	Enhanced Cooperation, PESCO	No	

Offer opt-outs as part of treaty change	Treaty change	Yes	
Create status of associate members	Treaty change	Yes	Part of the idea might be explored without treaty change based on bilateral agreements with the partner countries

III.3 Managing the enlargement process

Recommendation	Potential avenue for implementation	Is Treaty change required?	Notes
Target date of 2030 for the EU to be ready for	EUCO conclusions	No	Accession itself remains merit-based depending on progress in candidate countries
Break down the accession rounds into smaller groups of countries ('regatta') accession	Political agreement on Accession process, e.g., in EUCO conclusions	No	
Reform the accession process, inter alia with introduction of QMV	Secondary legislation	No	As long as basic criteria and decision-making at the end via unanimity remain untouched, no treaty change required

Annex 3: Overview of the options for treaty change

PROs and CONs of the six options for treaty change

Treaty change option	PROs	CONs
1. Ordinary treaty revision with CONV and IGC	• Standard procedure, • High degree of democratic transparency with EP and national parliaments involved	• Risk of friction between CONV and IGC • Lengthy process with uncertain outcome
2. Ordinary treaty revision with IGC only	• Faster without a CONV • Member States assume their role as 'Masters of the Treaties'	• Intergovernmental reform deliberation has reached its limits with the Nice Treaty • Without CONV less democratic transparency • Risk of legal challenges
3. EU reform related-treaty changes included in next Accession Treaty	• Tailored and conditioned primarily to changes that are related to enlargement • No enlargement without reform	• Without EP and a CONV less democratic transparency • Risk of legal challenges • Difficulty of timing if different waves of accession • Difficult to include other candidates in reform deliberation
4. Framework 'Reform and Accession Treaty' with IGC	• Tailored and conditioned primarily to changes that are related to enlargement • No enlargement without reform	• Without EP and a CONV less democratic transparency • Risk of legal challenges
5. Framework 'Reform and Accession Treaty' with CONV and IGC	• Tailored and conditioned to changes that are primarily related to enlargement • EP will be represented in a CONV • Participation of candidate states in reform debate easier to organize in a CONV • No enlargement without reform	• Risk of legal challenges
6. 'Coalition of the Treaty-willing' Supplementary Treaty / Treaties	• Circumvents 'double unanimity' problem • Future development of European integration not defined by the most reluctant Member State(s)	• Increased complexity • Not all reforms possible • Risk of legal challenges

Annex 4: Members of the Group of Twelve and acknowledgements

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The Group of Twelve would like to express their warmest thanks to all those who accepted our invitation to share expertise with the group or who spontaneously contacted us to share their insights. This allowed us to have a truly trans-European debate about the issues at stake.
We would also like to kindly thank Laurence Boone and Anna Lührmann for their trust and support, and for the complete independence we had in carrying out our work.
The Group's work has received logistical and financial support from the following organisations to which its members belong:

- Bertelsmann Stiftung
- CEPS (Brussels)
- CEVIPOF, Centre for Political Research at Sciences Po (Paris)
- College of Europe (Bruges)
- German Institute for International and Security Affairs (SWP)
- Jacques Delors Institute (Paris) and Jacques Delors Centre (Berlin)
- University Jean Moulin Lyon 3