Sieps

Svenska institutet för europapolitiska studier

2023:2op

Fit for 35? Reforming the Politics and Institutions of the EU for an Enlarged Union

Göran von Sydow & Valentin Kreilinger (eds)



Tanja A. Börzel
Sergio Fabbrini
Yves Mény
Sonja Puntscher Riekmann
Frank Schimmelfennig

THE EU'S POLITICAL, CONSTITUTIONAL AND ECONOMIC SYSTEM

**Tanja A. Börzel, Sergio Fabbrini,
Yves Mény, Sonja Puntscher Riekmann,
Frank Schimmelfennig**

Göran von Sydow & Valentin Kreilinger (eds)

Fit for 35?
Reforming the Politics and Institutions of the EU for an Enlarged Union

– Sieps 2023:2op –

Report No. 2op
September 2023

Published by the Swedish Institute for
European Policy Studies

This publication is available at www.sieps.se
The opinions expressed in the publication
are those of the authors.

Cover design by LuxLucid
Printed by EO Grafiska AB

Stockholm, September 2023
ISSN 1651-8942
ISBN 978-91-89498-09-9

Preface

In the immediate aftermath of Russia's full-scale invasion of Ukraine on 24 February 2022, Ukraine applied for membership of the European Union (EU). After many years of absence, enlargement is back at the very top of the common agenda. The decision of the European Council in June 2022 to grant Ukraine and Moldova candidate status was followed by (re-)opening of the previously blocked accession negotiations with countries in the Western Balkans.

The new geopolitical situation stemming from a brutal war on European soil has had profound effects on European cooperation. The most significant of its consequences is probably this prospect of a European Union of 35 or 36 member states. Although it will take time before any of the candidate countries are full members of the Union, discussions on how the EU should – or should not – change in order to accommodate more members are underway. Issues that are mentioned in this context include the policies and finances of the EU, its decision-making rules and its institutional set-up. In itself, this is nothing new. In previous rounds of enlargement similar debates and even treaty changes have taken place. Widening and deepening has often been simultaneous. However, the conditions and scope of the challenge are somewhat different this time around. Furthermore, after a decade of multiple crises many call for a more substantial discussion on the direction and format(s) for a European Union fit for the future.

SIEPS aims to promote and conduct research on European integration. We strive to build bridges and foster exchange between academia and policy-makers. In order to contribute to a discussion on how to make the EU 'fit for 35', we have invited five prominent political scientists to contemplate about how we should think about reforming the politics and institutions of the EU in view of the coming enlargement. It is our hope that by publishing these insightful essays we can contribute to a necessary debate.

Göran von Sydow
Director, SIEPS

About the authors

Tanja A. Börzel is Professor of Political Science and holds the Chair for European Integration at the Otto-Suhr-Institute for Political Science, Freie Universität Berlin. She is the director of the Cluster of Excellence 'Contestations of the Liberal Script'. Her most important publications include *The Oxford Handbook of Comparative Regionalism* (Oxford University Press, 2016, co-edited with Thomas Risse), *Effective Governance Under Anarchy: Institutions, Legitimacy, and Social Trust in Areas of Limited Statehood*, with Thomas Risse (Cambridge University Press, 2021), and *Why Noncompliance: The Politics of Law in the European Union* (Cornell University Press, 2021).

Sergio Fabbrini is Professor of Political Science and International Relations, Intesa Sanpaolo Chair on European Governance and Head of the Political Science Department at LUISS Guido Carli in Rome. He was Pierre Keller Professor at the Harvard Kennedy School of Government; Recurrent Professor of Comparative and International Politics at the UC Berkeley; Jemolo Fellow at Nuffield College, University of Oxford; Jean Monnet Chair Professor at the Robert Schuman Center for Advanced Studies, European University Institute in Florence. He won the 2017 Spinelli Prize, the 2011 Capalbio Prize for Europe, the 2009 Filippo Burzio Prize for the Political Sciences and the 2006 Amalfi European Prize for the Social Sciences. He has published twenty books, two co-authored books and twenty edited or co-edited books or journals' special issues, and several hundred scientific articles and essays in seven languages in peer-reviewed international journals. Among his publications are: *Europe's Future: Decoupling and Reforming* (Cambridge University Press, 2019) *Which European Union? Europe After the Euro Crisis* (Cambridge University Press, 2015); *Compound Democracies: Why the United States and Europe Are Becoming Similar* (Oxford University Press, 2010) (second and revised edition). He is political editor for the Italian financial daily *Il Sole 24 Ore*.

Yves Mény, political scientist, is emeritus President of the European University Institute (2002-09) and former President of the Sant'Anna School for Advanced Studies in Pisa and IUSS, Pavia. He was elected Chair of the ECPR Exceutive Committee in 2000. He has taught at many American and European Universities and is an honorary member of the Irish Academy. His recent publications deal with European integration issues such as democratic deficit, global governance or populist movements. In 2019, his book *Imperfect Democracies* (with Jan Kermer) was published in Italy, France, Portugal and the UK. In 2021 he published *Démocratie: l'héritage politique grec* (L'Harmattan; Italian translation, Ariele, 2022) and in 2022, *De la légitimité* (Presses de Sciences Po).

Sonja Puntscher Riekmann is Professor emerita of Political Theory and European Politics at the University of Salzburg. She is research fellow at the Salzburg Centre of European Union Studies, which she founded in 2008 and directed until 2019; full member of the Austrian Academy of Sciences; chair of the board of the Austrian Science Foundation; member of the European High Level Group on Social Innovation and of the External Advisory Board of the EUI's School of Transnational Governance. She coordinated the Horizon 2020 Project 'EMU Choices' on Member State preferences for Eurozone Reforms and has published widely on European Integration, EMU, constitutionalism, and democracy.

Frank Schimmelfennig is Professor of European Politics at ETH Zürich, Switzerland. He is a member of the Swiss National Research Council, an Associate of the Robert Schuman Centre for Advanced Studies at the European University Institute, and Chairman of the Scientific Board of Institut für Europäische Politik Berlin. He currently directs an ERC project on 'Bordering Europe: Boundary Formation in European Integration'. Among his most recent books are *Ever Looser Union? Differentiated European Integration* with Thomas Winzen (Oxford University Press, 2020) and *Integration and Differentiation in the European Union: Theory and Policies* with Dirk Leuffen and Berthold Rittberger (Palgrave, 2022).

Valentin Kreilinger is Senior Researcher in Political Science at the Swedish Institute for European Policy Studies (SIEPS). His research focuses on the role of national parliaments in and the evolution of the EU's political system. He holds a PhD in Political Science from the Hertie School in Berlin and an MSc in Politics and Governance in the European Union from the London School of Economics. Prior to that, he studied at Ludwig-Maximilians-Universität München and Université Paris 3 Sorbonne Nouvelle.

Göran von Sydow is Director of the Swedish Institute for European Policy Studies (SIEPS). His main research interests are in the fields of party politics, Euroscepticism and democracy. He has also undertaken research in Europeanization, in particular concerning Sweden and the EU. He holds a PhD in Political Science from Stockholm University and previously also studied at the European University Institute in Florence and at Sciences Po, Paris.

Table of contents

Executive Summary 7

1 Introduction: What Do We Mean by 'Fit for 35'?..... 10
Göran von Sydow and Valentin Kreilinger

2 Fit through Flexibility? Differentiated Integration and Geopolitical EU Enlargement 14
Frank Schimmelfennig

3 Fit for Reform? The Implacable Logic of Numbers..... 27
Yves Mény

4 Fit for What Purpose? Enlargement and the Goals of the European Union 41
Sonja Puntscher Riekmann

5 Widening without Deepening: Why Treaty Reforms Will Not Make the EU Fit for Enlargement 54
Tanja A. Börzel

6 From Multi-speed to Multi-tier: Making Europe Fit for Herself 69
Sergio Fabbrini

7 Concluding Remarks: What Prescription to Make the EU 'Fit for 35'? 83
Göran von Sydow and Valentin Kreilinger

Svensk sammanfattning 89

Executive Summary

After a long period of absence, enlargement is back on the EU's agenda. Following Russia's full-scale invasion of Ukraine on 24 February 2022, it took only days for Ukraine to file its application to become member of the EU. All of a sudden, the EU is not only facing a brutal war in its immediate neighbourhood but also the prospect of being substantially transformed as we may be looking at a Union of no less than 35 members in the years to come. Some would argue that this will take a very long time and there is therefore little need to dive into discussions about how the EU should operate, once it has grown. Others refer to the notion of 'absorption capacity' and emphasise that unless the EU changes its own policies, budget, decision-making rules and institutional set-up there is a risk that it will simply stop working following enlargement. The aim of this volume is to provide scholarly perspectives on how the EU should – or should not – change in order to enlarge further.

In the first chapter, *Göran von Sydow and Valentin Kreilinger* set the scene by explaining what they mean by 'Fit for 35' and why we should care about reforming EU politics and institutions for an enlarged Union. They raise cross-cutting issues that are particularly relevant to the volume and contextualise the topic within the current political and academic debate and the evolution of European integration.

The second chapter, by *Frank Schimmelfennig*, begins by pointing out that the Russian invasion of Ukraine has put enlargement back at the top of the EU agenda, and that this has confronted the EU with a dilemma. Whereas the geopolitical situation creates the need to accelerate the accession process, neither the EU nor the candidate countries are sufficiently prepared. Schimmelfennig proposes that differentiated integration would help to resolve the dilemma. Differentiated integration would facilitate the enlargement process by initially excluding new member states from those policy areas that would be most negatively affected by the expansion of the membership. It would give the EU and the new member states additional time and incentives for reform without blocking enlargement. The chapter reviews the rationale and record of differentiated integration in EU enlargement and claims that differentiated accession is established practice and would likely be more pronounced and durable in any future enlargement. Schimmelfennig further discusses and elaborates existing proposals for 'staged accession' and considers potential pitfalls and objections to differentiated enlargement. He concludes that differentiated membership is more likely to be feasible and acceptable to both members and candidates than quick institutional reforms.

The volume continues with an essay by *Yves Mény* (chapter 3). According to Mény, the EU is again confronted with a crucial but not new dilemma: growing to limits in order to address the demands of the states which are not yet members of the European club or taking the risk to rock the boat by being unable to adapt means to goals and ambitions. This chapter explores the dilemma and discusses the possible options which could reconcile ambition and realism, in other words enlarging and deepening at the same time. Mény shows some skepticism about the desire and capacity of the 27 present member states to adapt given the heterogeneity of visions and interests among them. All possible options have already been aired and debated. What is lacking is the political will on the part of the individual states taken as a political community. It is as if the member states were renouncing the exercise of their collective capacity unless forced to do so by circumstances and historical developments.

The fourth chapter, by *Sonja Puntscher Riekmann*, turns to the aim of 'fitness' and the goals of the EU. Fitness, in terms of a political community is a variable dependent on purpose. This truism applies to the European Union as much as to all polities. While enlarging the Union in Eastern Europe and the Western Balkans is a tall order that would considerably increase its territorial and demographic size as much as its socio-economic and cultural diversity, the debate about 'what are we together for?' is far from concluded. Russia's war against Ukraine accentuates the need to discuss what European elites have in mind when they convey ideas of 'sovereign Europe' (Macron/Scholz), of 'a geopolitical Commission' (von der Leyen) or of 'speaking the language of power' (Borrell). With democracy being one fundamental value of the Union, such discourse needs to draw on citizens' views on the future of the Union. Puntscher Riekmann argues that citizens' expectations about security and prosperity as European public goods run high, while the foresight capacity and strategic thinking of elites leaves much to be desired. However, the Union has difficulties even in developing a shared definition of problems and crises. Indeed, definitions often emerge from an ad hoc and cumbersome search for compromise between divergent national interpretations and interests. Further enlargement will also add complexity regarding the daunting geopolitical challenges Europe faces. Hence Puntscher Riekmann concludes that if sovereignty is to become a meaningful concept in EU affairs, it needs clarification as to the nature of the sovereign, the tools by which that sovereignty is to be exercised, and citizens' support. For that matter, treaty reform before enlargement is a worthwhile risk to take.

In the next contribution (chapter 5), *Tanja Börzel* takes a critical perspective on treaty reform and argues that it would not make the EU fit for enlargement. Putin's war of aggression against Ukraine has boosted demands for the deepening of European integration. Institutional reforms are deemed indispensable to prepare the EU for the accession of the Western Balkans and Ukraine as well as

to build the EU's strategic autonomy in security and defence. But irrespective of the degree of pooling and delegation of national sovereignty deemed necessary to make the EU fit for 35 members, changing the treaties would take time. Member states not only have to agree on reforms, they also have to ratify them, which entails a popular referendum in some cases. Börzel points out that amid weak public support for enlargement, seeking to deepen the EU could weaken, rather than strengthen, the EU's capacity to widen. According to her, the key challenge for the EU is to find a way to balance rule of law conditionality against the credibility of accession and geopolitical pressures.

In the sixth chapter, *Sergio Fabbrini* challenges the view (shared by scholars and politicians) that the EU is not a political system, but rather the contingent outcome of an evolving process that will lead to the aggregation, although differentiated, of all the states of the European continent. This view has outlived the crises of the last fifteen years (Brexit among them) and has been further strengthened by Russia's invasion of Ukraine, with the related pressure to enlarge the EU to that country, to Moldova and possibly Georgia, as well as to the six countries of the Western Balkans. The EU, Fabbrini argues, is indeed a political system; one with a dual governance structure, supranational and intergovernmental. The entry of core state powers onto the EU agenda with Maastricht and the enlargements of the 1990s and 2000s has dramatically strengthened the latter to the detriment of the former. Those processes in fact triggered divisions on the role of national sovereignty that only the European Council could manage, bending the EU in direction of an international organization. Is this development coherent with the promise of an 'ever closer union'? Further enlargement would require a change of paradigm, from a multi-speed EU to a multi-tier Europe, making thus Europe fit for herself.

In the final chapter *Göran von Sydow* and *Valentin Kreilinger* try to connect the dots by means of some concluding remarks. They look backwards to the 1990s and forwards to the remainder of this decade, for indications of what the problems are – and the opportunities for solving them.

These contributions provide different perspectives and make different prescriptions about if and how the EU should change. While many point to the difficulty of a Union of 27 engaging in tiring discussions about internal issues and burdensome negotiations about, for instance, treaty change, others argue that in order for the EU to function such reflections are necessary. In this volume there are no common conclusions. Instead, the authors provide distinct and thoughtful perspectives on what could well be a defining process for the EU.

1 Introduction: What Do We Mean by 'Fit for 35'?

Göran von Sydow and Valentin Kreilinger

The EU stands at a critical juncture. At the beginning of 2022, enlargement of the European Union (EU) was not on the immediate political agenda. But 18 months later, with Russia's full-scale war of aggression against Ukraine continuing and Ukraine having been accepted as candidate for EU membership, the situation has changed dramatically. EU leaders are beginning to think about the issues at stake if up to eight new members, including Ukraine, join the EU in the future.

'Fit for 35' refers to an EU of thirty-five members, the current twenty-seven plus eight new members. In alphabetical order, these potential new members are Albania, Bosnia and Herzegovina, Kosovo, Moldova, Montenegro, North Macedonia, Serbia and Ukraine. Georgia and Turkey are further away from membership than these eight countries.

While the war has given political impetus to the EU's enlargement policy, enormous challenges remain for all the potential future members and for the EU itself. Before joining the EU, each potential new member state must undertake challenging reforms. The internal reforms that the EU is likely to need are equally difficult to agree and implement.

The challenge for the EU is this: is it willing and able to reform in order to welcome new members into the club? The prospect of enlargement to a Union of 29, 32 or even 35 members raises the question of whether the EU needs to become fit for enlargement and, if so, what exactly it needs to do to become 'fit for 35'.

1.1 The link between enlargement and internal reform

'Absorption capacity' is the phrase that sums up the internal challenges facing the EU every time it enlarges. The larger the group of new members, the lower their GDP per capita and the larger their population, the greater the challenge for the EU in terms of the impact on its budget and the functioning of its institutions.

The renewed attention to enlargement in a geopolitical framing links this reflection to the debate on 'strategic autonomy' and to the much broader Strategic Agenda of the EU for 2024-2029, on which the first major debate will take place at the informal European Council in Granada on 6 October 2023.

The debate on internal reforms has been slow to gain momentum since 2019. The Conference on the Future of Europe concluded its work on 9 May 2022 and adopted a final report containing 49 proposals. But the prospect of enlargement may now succeed in what the Conference failed to accomplish: creating a shared perception among decision-makers in key EU member states that certain internal reforms are necessary.

1.2 The big questions

Assuming that the decision on enlargement is not 'if' but 'when' and 'how', there are several big questions for the EU.

Is now the right time for enlargement (or not)? This can be assessed from different angles, including a (geo-)political angle and an economic angle. On the one hand, enlargement to the eight countries currently under consideration would stabilise their respective regions and increase the political and economic weight of the EU in the world. On the other hand, the EU would be well advised to carry out internal reforms first and to seriously consider the economic (and budgetary) consequences of such an enlargement.

What needs to be done differently within the EU? It can be argued that the EU needs to reform and improve both its democracy and its efficiency. If reforms are necessary, what are the most important and/or promising of the many proposals that have been made to improve democracy and efficiency? The opposite view would be that the EU, as it is now, is capable of absorbing new members and does not need to change. After all, the EU's political system works with 26 Commission portfolios, the European Parliament has more than 700 members and the Council manages to take most decisions unanimously, as majority voting remains the exception. But does the system work well? Would it be (seriously) overstretched with 35 members? The same applies to the EU budget and policies such as agriculture and cohesion.

Other questions relate to lessons learnt: how can the EU (try to) get this enlargement right? And is the approach of simultaneously pursuing internal reform and enlargement doomed to failure? The initially positive assessment of the success of the last enlargement rounds has suffered from the ongoing rule of law crisis. Looking back at the Convention on the Future of Europe and the enlargements of 2004 and 2007, one possible lesson from the experience of treaty reform and enlargement in the 2000s might be not to repeat such a double challenge. Or is this time different?

Finally, in terms of the broader institutional architecture, there are other organisations, fora and institutions (beyond the EU of 27 member states) that could prove useful in guiding and managing the process that will eventually lead to enlargement. What role can and should the newly established European

Political Community (EPC) play? Is it relevant to the enlargement process? Could the EEA and EFTA become a useful preparatory stage for future EU members to prepare for accession, as was the case for Austria, Finland and Sweden (but not for later rounds of enlargement)? Are there other bodies with political or financial clout that could facilitate the path to EU membership? Ideas for a multi-speed Europe with an outer circle and/or a federal core have been floated in the past. They have not been implemented but could be rediscovered or reinvented in the context of making the EU 'fit for 35'.

1.3 Reforming, but how?

In the current political debate, there are three broad lines of thought on the need for internal reform. They share the view that reforms are necessary and differ on how far-reaching they should be. Opponents of internal reforms in the EU form a fourth line of thought, united by a position defending the status quo.

Those in favour of minor reforms see an extension of qualified majority voting in the Council of Ministers via the existing *passerelle* clauses as a possibility, for example in certain areas of foreign policy and in other policy fields. The adoption of sanctions against Russia increases the relevance of this idea to facilitate decision-making in the Council. Less cumbersome decision-making should make EU action faster and stronger, both internally and externally.

Advocates of ambitious reform generally support the possibility of treaty change. This could, of course, take very different directions. One direction includes certain long-standing ideas for reforming the main EU institutions, making them more efficient or accountable. Another would be to introduce more flexibility into a sometimes rigid system and into procedures that would allow future EU member states to participate. A gradual, functional and sectoral integration process before formal accession is an idea that could also be considered.

More revolutionary reforms could mean moving the EU even more decisively towards a 'multi-speed Europe'. European integration has become more differentiated over time. But more decisive steps would require changing the role of the central institutions, allowing differentiations within them and possibly creating new ones. Such a move could satisfy both supporters and opponents of further integration within the EU. In such a scenario, on the one hand, the unity and cohesion of the EU would seem to be at stake. On the other hand, such a leap forward (for those willing and able) could help to bridge existing differences. It also seems possible that a 'core Europe' could become a more capable geopolitical power.

1.4 Outline of the volume

These lines of thought, presented here in a simplified way, show the variety of possible approaches to making the EU 'fit for 35', to reforming the EU's politics

and institutions for an enlarged Union. The ongoing debate on the future of the EU is the starting point for the five chapters in this volume, which take a much deeper and more nuanced look at the issue.

All five contributors have different points of view on the topic. *Frank Schimmelfennig*'s contribution (chapter 2) advocates flexibility and differentiated integration as a 'Fit for 35' strategy, for example through transitional arrangements for new members. He shows how these instruments have been used in past EU enlargements. After that the third chapter by *Yves Mény* looks at the reform options available, but he remains sceptical about the will and capacity of the 27 member states to adapt and reform the EU. In the following essay (chapter 4), *Sonja Puntscher Riekmann* argues that the EU needs to define its goals much more clearly and that it should start by agreeing on common definitions of problems and crises. This is what fitness means for a political community like the EU. The fifth chapter, by *Tanja Börzel*, provides a counterpoint. She makes the case that changing the treaties would take time and that trying to deepen the EU could weaken, rather than strengthen, its capacity for enlargement. Finally, in the sixth chapter of this volume, *Sergio Fabbrini* makes a forceful pitch for a paradigm shift that he sees as necessary for future enlargement. The EU should, according to him, move from working with multiple speeds (multi-speed Europe) to what he calls a 'multi-tier Europe'.

Some of these views and proposals are more feasible than others. Their political viability varies, as does the extent to which they will be welcomed by decision-makers. There are constraints and deadlocks that hamper any reform attempt, and the editors and authors of this collection of essays are well-aware of them. Nevertheless, this volume considers where these limits could be pushed. Each of the essays presents an original argument and an important contribution to the debate on the future of the EU, which is only just beginning.

2 Fit through Flexibility? Differentiated Integration and Geopolitical EU Enlargement

Frank Schimmelfennig

Enlargement is back at the top of the EU agenda. On 28 February 2022, four days after the start of Russia's invasion, Ukraine applied for EU membership. Georgia and Moldova followed shortly thereafter. In June 2022, after many years of ambiguity, the EU not only offered the Association Trio an explicit membership perspective. It also granted Moldova and Ukraine official candidate status. The new dynamic was not limited to these Eastern European countries: in July 2022, the EU opened accession negotiations with Albania and North Macedonia, which had been blocked for many years. Finally, in December 2022, Kosovo filed an application for membership and the European Council granted Bosnia and Herzegovina the status of an official candidate.

This flurry of events comes after a decade of stagnation in EU enlargement. The last enlargement dates to Croatia's accession in 2013. What was supposed to kick off a new round of enlargement integrating the countries of the Western Balkans, turned into stagnation and backlash. Instead, EU enlargement was undermined by domestic politicization: adverse public opinion, populist mobilization, and bilateral disputes.

'Enlargement fatigue' and 'absorption capacity' became the new buzzwords (Börzel et al. 2017). At a time when the EU was struggling with economic crises and migration pressures, yet another group of comparatively poor new member states was considered too much of an economic burden. Moreover, governments and societies were concerned with democratic backsliding, weak state capacity, and rampant corruption – even state capture – in some of the new member states, as well as the candidate countries. In addition, enlargement scepticism has been a correlate of the general increase in the cultural contestation and politicization of European integration (Hooghe & Marks 2009; Hutter et al. 2016). Enlargement has become a profitable cause of populist mobilization and an issue for popular referendums – see the Dutch referendum on Ukraine's association in 2016 and the Austrian and French announcements that a popular vote would be held on Turkey's accession. Moreover, EU member states neighbouring the Western Balkans have regularly used the accession process to advance their nationalist agendas and win concessions in their bilateral territorial

and cultural disputes with the candidates. Most importantly, Greece and then Bulgaria have blocked the start of accession negotiations with North Macedonia since 2009. Under these conditions, the promise of EU membership, which had proven to be an important driver of democratic reforms, institutional change, and policy adaptation in the candidate countries of the 2004/2007 Eastern enlargement, lost its credibility, caused public disillusionment in the candidate countries, and offered candidate governments an excuse for inaction or even backsliding (Schimmelfennig & Sedelmeier 2020).

For the moment, the Russian war on Ukraine overshadows these obstacles to EU enlargement. 'Geopoliticization' (Meunier & Nicolaidis 2019) supersedes domestic politicization. Defending the post-Cold War European order and assisting Ukraine and other countries potentially threatened by Russian aggression have become top priorities for the EU. Moreover, the EU experiences a wave of solidarity with Ukraine. Support to Ukraine enjoys wide public support in most member states.[1] In this context, enlargement becomes an instrument of geopolitical competition, to anchor European countries in the 'West' and to limit the influence of systemic rivals. In this geopolitical context, even France, a leading member state traditionally sceptical of EU 'widening' but keen on building the EU's 'strategic autonomy', appears to have firmly embraced further enlargement to the east.

As French President Emmanuel Macron put it at the Globsec Conference in Bratislava at the end of May 2023, 'the question is not whether we should enlarge – we answered that question a year ago – nor when we should enlarge – for me, as swiftly as possible – but rather how we should do it' (Macron 2023). He further mentioned two mistakes the EU needs to avoid in the process. One would be to 'give hope to Western Balkans, Ukraine and Moldova, and then procrastinate'. Doing so 'would actually give more space to those who want to destabilize Europe and I think that we would wake up in a few years to a situation that is considerably worse.' The other mistake, according to Macron, 'would be to say "let's enlarge, it's our duty and in our geopolitical interest … [and] reform later". This would also be disastrous.' Trying to avoid these two mistakes simultaneously creates a conundrum for the EU. If speed is of the essence, there is unlikely to be sufficient time for thorough reform – neither of the candidate countries nor to make the EU fit for a larger membership. On the other hand, making enlargement conditional on extensive reform is a recipe for delay and may be used, indeed, by those who are sceptical of enlargement or EU reform as a pretext to 'procrastinate'. The 'how' question of enlargement then translates into the question of how the EU can maximize the speed of enlargement while minimizing the need for ex ante reform.

[1] 'European public opinion remains supportive of Ukraine', bruegel.org, 5 June 2023.

This paper explores differentiated integration as a response to this conundrum. Differentiated integration is partial membership, allowing candidate countries or new members to participate in selected EU policies. It helps facilitating and accelerating the enlargement process by initially excluding acceding countries from those policies that – from the point of view of old member states – will be (most) negatively affected from the expansion of the membership. Differentiated integration thus reduces both the opposition to enlargement among the old member states and the need to reform existing policies.

As a method to facilitate enlargement, differentiated integration is by no means new but can draw on the experience of earlier enlargement rounds. These experiences are the topic of the next section. However, the new geopolitical context and the nature of the current candidates pose challenges that require fresh thinking, too. Even before the Russian war on Ukraine, European think tanks started to develop ideas for a 'staged accession' to the EU that go beyond the 'transitional arrangements' of earlier accession treaties (Emerson et al. 2021; Lazarevic & Subotic 2022; Subotic & Lazarevic 2022). Such ideas are even more timely now. The second part of the paper therefore discusses ideas to cope with these new challenges. It will conclude that a fast-track legal membership combined with far-reaching internal differentiation is the most appropriate strategy under the current geopolitical circumstances.

2.1 Enlargement and differentiated integration: the rationale and the record

Differentiation is a constitutive feature of European integration. Not all member states participate in all EU policies to the same extent. Some have negotiated 'opt-outs' or exemptions from entire EU policies or specific EU rules. The Danish opt-outs from the Maastricht Treaty are the prototypical example. Others are excluded from participation in EU policies for a fixed period – as is typically the case for the free movement of labour from new member states – or until they meet certain conditions, such as the convergence criteria for membership of the Euro area. In addition to this 'internal differentiation', non-member states can participate selectively in EU policies through the conclusion of international agreements and the domestic adoption of EU law. The European Economic Area (EEA) is the deepest version of such 'external differentiation'.

Enlargement has been a major driver of both internal and external differentiated integration in the history of the EU. First, non-member countries use (external) differentiated integration to prepare themselves for full membership – this is the purpose of many association agreements such as the one that Ukraine signed in 2014. The EU has also often used external differentiation to put accession hopefuls in a waiting room before getting ready to accept new members – that was the original purpose of the EEA in 1989. In addition, accession treaties introduce internal differentiation. Old and new member states negotiate temporary or conditional delays of integration for individual policies. In Eastern

enlargements, restrictions on the free movement of labour, initial exclusion from the eurozone and the Schengen area, and the phasing-in of agricultural subsidies were cases in point.

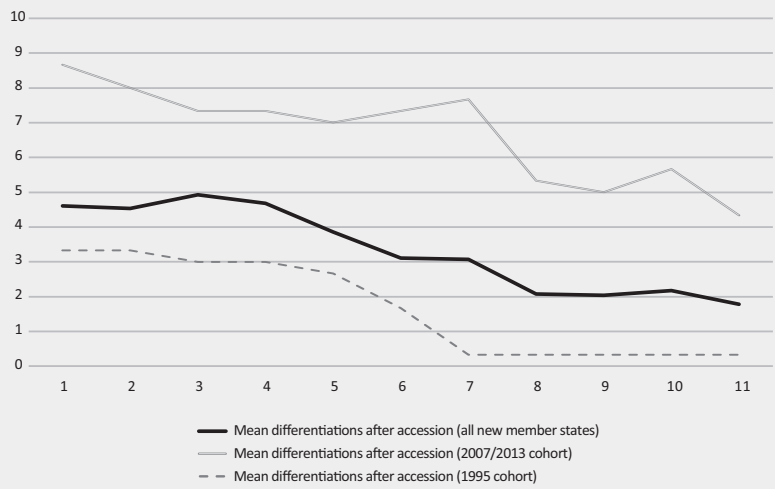
The reason for differentiated accession is that enlargement not only increases the number of member states but typically also their heterogeneity. New members are likely to differ in geographical location, historical legacies, and socioeconomic conditions from the old members and therefore bring in new preferences and additional demands. Enlargement thereby generates concerns, among the old member states, about the efficiency of existing policies and the redistribution of benefits from integration (Schimmelfennig & Winzen 2020, 43; Winzen & Schimmelfennig 2016, 621-22). Old member states, or powerful interest groups in these states, fear economic and financial losses originating from market integration with the new member states (e.g., resulting from the opening of labour markets), the redistribution of EU funds (in agriculture and cohesion policy) or weak administrative, fiscal, or coercive state capacity (e.g., for budget discipline or border controls). New member states may in turn be concerned about pressures on domestic producers in the internal market and losing competitiveness due to the required implementation of demanding regulatory rules. Differentiated integration offers an opportunity to mitigate these concerns by delaying the full participation of new member states in EU policies.

Demand for differentiated integration is particularly high when comparatively poor new member states join the EU. First, poorer candidates generate particularly strong efficiency and redistribution concerns in the older member states. They likely become net recipients of the EU budget, have problems of governance quality and capacity, and produce migratory pressures. Second, poor new members have weaker bargaining power than wealthier candidates because they are less attractive candidates, are more dependent on the benefits of membership and are less likely to do well outside the EU. For these reasons, the old member states are not only more interested in but also more capable of imposing differentiated integration on them (Moravcsik & Vachudova 2005; Plümper & Schneider 2007; Schneider 2009). The underlying assumption is that old and new member states will converge over time, thereby reducing heterogeneity, or that the full costs of enlargement can be postponed, thereby facilitating agreement on enlargement in the present.

There have been limits, however, to the degree of differentiation in the integration of new member states. First, differentiated integration has not been applied to the EU's constitutive values and norms as well as its institutions and decision-making rules. Upon joining, the new member states have had to adhere to the EU's fundamental values such as human rights, democracy, and the rule of law. Principles such as the distribution of competences between the EU and the member states, subsidiarity, or the division of powers among EU institutions

are not subject to differentiated integration either. And new member states have participated in EU policymaking with equal representation and voting rights as the old member states. Second, differentiated integration resulting from enlargement is temporary. In some cases, such as the exemptions from the free movement of labour, the maximum duration is fixed ex ante. That means differentiation will end regardless of whether convergence has taken place. In other cases, as with the Schengen area or the Eurozone, full participation depends on the new member states meeting policy-specific conditions. These cases typically require a recommendation by the Commission (for Schengen) or the European Central Bank (for joining the Eurozone) followed by a decision of the member states. This arrangement gives the old member states maximum control over the duration of differentiation. Yet it is also prone to produce discrimination when member states refuse to terminate the differentiation despite the recommendation of supranational institutions and for domestic reasons. The continuing exclusion of Bulgaria and Romania from full participation in Schengen is a case in point.

Figure 1 Trajectory of differentiation in new member states

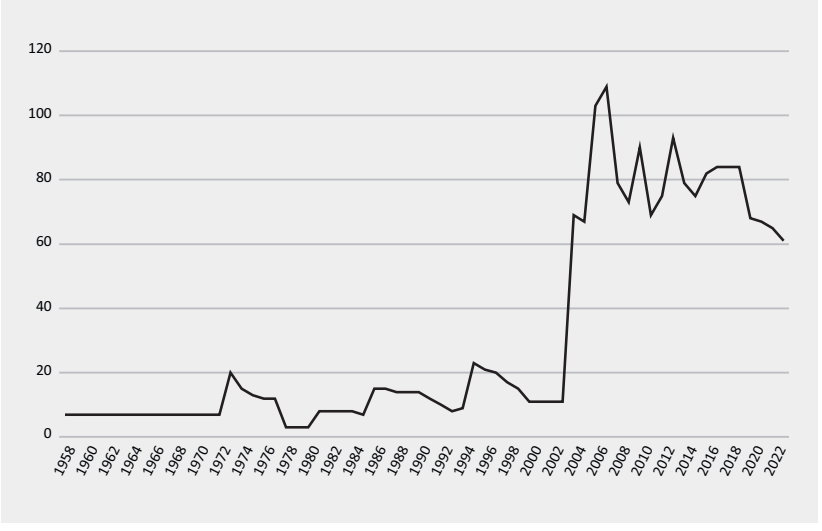


Note: Mean number of treaty-based differentiations of new member states in the first eleven years after accession. Source: updated from Schimmelfennig and Winzen (2020).

Figure 1 shows the trajectory of internal differentiation for the new member states of the EU. On the one hand, the graph confirms the temporary nature of enlargement-based differentiation. The average number of treaty-based differentiations of new member states drops from 4.6 in the year of accession to 1.8 eleven years later – approximating the differentiated integration of old member states. As the figure also shows, new member states often acquire additional differentiations in the first years of membership; then the number

of differentiations drops sharply. On the other hand, the mean for all member states masks significant variation across accession cohorts. Whereas the wealthy 1995 accession countries (Austria, Finland, and Sweden) had ended almost all differentiations in the first seven years of membership, the most recent members (Bulgaria, Croatia, and Romania) not only started, but also remained at a much higher level of initial differentiation during the same period. Their average number of differentiations after 10 years was still higher than the average differentiation of all new member states in the first year. This is a combined effect of the fact that these member states were comparatively poor and late joiners. The EU acquis has advanced, putting increasing demands on the capacity of member states, while candidates for membership have become economically and administratively weaker. Overall, however, the EU has proven open and inclusive. Even new member states with significant differentiation at the time of accession have joined the 'core' of the EU, including Eurozone and Schengen membership. Croatia is the most recent new member state to have achieved almost full integration. In cases such as the continuing non-participation of the Czech Republic, Hungary, and Poland in monetary union, differentiated integration is the result of a lack of political will in these countries rather than of persistent discrimination.

Figure 2 Trajectory of differentiated integration in the EU



Note: Number of annual differentiations in force. For further information on the measurement and methodology, see Schimmelfennig and Winzen (2020).

Figure 2 extends this analysis to the integration trajectory of the entire EU. It shows that each round of enlargement before the Eastern enlargements produced a visible peak in differentiated integration, but that the number of differentiations returned to the original level after a few years. By contrast, Eastern enlargements

have caused a step change in differentiated integration and an all-time high when Bulgaria and Romania joined. Even in the case of Eastern enlargements, however, we observe a slow decrease of differentiated integration over time. Currently, in 2023, the level of differentiated integration has fallen below the level of 2004 when ten new member states were admitted. However, differentiated integration is unlikely to drop to the pre-Eastern enlargement level soon.

Based on the experience with past enlargements, we can draw several initial conclusions regarding the future enlargement of the EU. First, any future integration of new member states will be differentiated. After the recent consolidation of differentiated integration, future enlargement will cause new differentiation peaks. Second, future enlargement will likely be more differentiated even than Eastern enlargement because the future new member states are considerably poorer than even the poorest current member state, Bulgaria – most of them have a GDP per capita that is around half of Bulgaria's or less. If enlargement brings the membership of the EU up to 35 countries, differentiated integration will likely exceed the all-time high of 2007 and potentially cause a new step change in differentiation. Third, the differentiations of future new member states are likely to be more durable than those of earlier new member states, creating extended periods of differentiated integration after accession.

These conclusions are based on a simple extrapolation of past practices of differentiation. Yet the current discussion about EU enlargement takes place in a very different context. For one, the enlargement process in the Western Balkans, let alone in Eastern Europe, has not even reached the point at which negotiations on differentiated integration could facilitate the accession of new member states. In addition, the Russian war on Ukraine creates strong pressures for accelerating the enlargement process at a time when neither the EU nor the candidate countries are much advanced in their reforms to prepare for the fast admission of up to eight additional members.

2.2 Future enlargement and differentiated integration: staged accession and beyond

In this context, the model of 'staged accession' (Emerson et al. 2021) proposes a new approach to the differentiated accession process. First, the four stages of accession from the 'initial accession stage', via the 'intermediate stage' and 'new member[ship]', to 'conventional membership' cut across the formal accession threshold and integrate external and internal differentiation into one coherent process. The move from one stage to the next depends on improved overall ratings for the candidate countries' compliance with the EU acquis. Given that policy participation, financial support, and institutional representation and decision-making rights increase gradually from one step to the next, formal accession appears to lose some of its relevance. However, to reach the new-member stage, candidates must attain mainly the highest ratings and close all negotiation chapters. Moreover, the passage from the intermediate to the new-member stage

is the only one for which the staged accession-model envisages unanimity. These conditions bear strong similarity to the current enlargement process.

Second, under this approach, in contrast to current practice, differentiated representation and decision-making rights persist after formal accession. Specifically, new members are deprived of veto rights as well as the nomination of Commissioners and judges for the Court of Justice. Third, attaining the highest stage of membership not only depends on the new members meeting all the requirements for full policy participation but also on the agreement of the old member states to the EU policy and institutional reforms deemed essential for the functioning of the EU with an enlarged membership.

The proposal further builds on the concept of reversibility, first introduced in the 2020 Enlargement Strategy. From the first to the third stage, institutional participation and funding can be reduced by qualified majority voting (QMV). At the conventional membership stage, the current (dysfunctional) Art. 7 provisions would apply, unless a reform of Art. 7 is deemed necessary before any new member state can reach the final stage.

The model of staged accession includes many suggestions that would increase the credibility of accession conditionality and revive the enlargement process. Associated countries willing to join the EU would enter a structured accession process with involvement in EU policymaking and tangible financial benefits early on. However, the model was developed before the Russian invasion of Ukraine and thus before the geopolitical pressures for an accelerated enlargement process had fully developed. According to the staged accession scenario, many of the current candidates would likely remain in the pre-accession stages for a long time. After all, to become formal members of the EU, candidates would still need to close all chapters of the accession negotiations and reach a level of adoption of and compliance with EU norms and rules equivalent to that of the current member states.

For instance, Montenegro has been in accession negotiations since 2012 with only a few negotiation chapters provisionally closed. In the staged accession model, this is equivalent to the intermediate stage, in which Montenegro would benefit from higher EU funding and participation in EU institutions and policymaking processes in comparison to the current situation. It is less clear, however, whether the staged accession model would make it easier for Montenegro to transcend the pre-accession stage and be admitted as a member. And note that Montenegro is arguably the forerunner among the current candidates for membership – other candidates would likely struggle even more to meet the conditions for accession.

To allow for a swift accession of the candidates, the EU would need to lower the conditions (the required level of rule adoption and compliance) significantly. In line with previous practice, the fundamental values and norms

and the constitutional principles of the EU would remain outside the scope of differentiated integration, and candidate countries and their governments would need to demonstrate a credible commitment to upholding and improving them, even if their current implementation does not live up to the EU's standards. Differentiated integration should not become a pathway for authoritarian or autocratic governments. The constitutional minimum would currently preclude several (potential) candidates from advancing further towards EU membership, such as Georgia, Serbia, and Turkey.

Beyond the constitutional minimum, however, the EU can steer the enlargement process with two 'adjustment screws': accession standards and post-accession differentiation. For one, the lower it sets the standards for sufficient compliance with the EU's acquis, the faster it can proceed with the admission of candidates as EU members. At the same time, the less well new members meet these standards, the more differentiated their membership will be initially. In other words, high differentiation compensates for low compliance. The more swiftly the EU aims to enlarge, the lower it needs to set the accession standards and the more extensively it will exclude or exempt the new member states from the full rights and benefits of membership.

In line with existing practice, the EU would be highly flexible regarding differentiated integration in terms of the policies involved, the extent of participation, the duration of the differentiation, and the conditions of termination. Take the example of Eastern enlargement. On the one hand, new member states have been excluded fully and without a time limit from entire policy areas such as monetary union. On the other hand, they were subject to limited participation for a fixed term as in the case of the phasing-in of subsidies in the Common Agricultural Policy. In principle, and in contrast to the EU's fundamental values and principles, no substantive policy is out of bounds for differentiation. In the case of restrictions to the free movement of workers, differentiated integration for new member states has even included the internal market, which is often considered the indispensable and indivisible core of European integration.

What the model of staged accession adds to the existing practice is the differentiation of institutional rights. Institutional disruption and decision-making paralysis after enlargement are major concerns for the member states. At the same time, the chances for reaching consensus on important institutional reforms – such as the abolishment of unanimity in foreign policy and other areas of EU decision-making, the downsizing of the college of Commissioners, or the tightening of sanctions against democratic backsliders – are slim. For enlargement to work as a lever to unblock institutional reforms, governments opposed to these reforms would need to value enlargement more highly than their veto rights and other institutional privileges. This is unlikely. Thus, including institutional rights in the differentiation portfolio helps to overcome a potential obstacle for the swift accession of the new candidates – and a potential

excuse for member state governments aiming to block enlargement. If the new member states are initially excluded from using vetoes and subject to reversibility under QMV, their accession will at least not aggravate the main institutional problems of the EU.

In sum, high post-accession differentiation, which not only includes the customary flexibility in policy participation but also extends to variable institutional rights, would allow the EU to lower accession standards, to circumvent the immediate need for institutional reform, and thereby to accelerate the accession process significantly. It also raises several important questions and objections, however.

First, would EU accession with extensive differentiation be sufficiently attractive for the candidate countries? In principle, differentiated integration may reduce the rights and benefits of membership for new members to a point at which accession does not seem worth the effort. For three reasons, however, this danger is low in the case of the current candidates. For one, the candidate countries value member status as such and the guarantees of recognition, security and support that come with it. In addition, compliance standards and membership benefits correspond with each other. It is not that, in the staged accession scheme, the EU would offer low benefits in return for high compliance. Rather, an increase in compliance would translate into an increase in policy and institutional participation. Finally, formal membership and insider status offer the candidates a better starting point for negotiating an end to or a reduction of differentiation than remaining on the outside.

Second, would fast, low-standard accession create sufficient incentives for the candidate countries to uphold and improve compliance with the fundamental norms and policy rules of the EU? According to its current rules, the EU cannot exclude members. Once countries have joined, they may thus renege on their membership obligations without facing this ultimate sanction, and this danger could increase if countries were allowed to join based on weak compliance with EU standards in the first place. Whereas it is entirely possible that new members would remain weak compliers, post-accession differentiation is precisely designed to create incentives for improving compliance and shield the rest of the EU from the adverse effects of weak- or non-compliance. Weak compliers only enjoy minimal rights and benefits of membership; to participate more fully in the EU's policies, they need to improve their compliance record. In addition, backsliders are subject to reversibility; if decisions are made under QMV, reversibility is a credible threat. Finally, the exclusion of weak compliers and backsliders from policy benefits and veto rights minimizes the danger that they undermine the functioning of the EU's integrated policies.

Third, would institutional differentiation relegate new members to permanent second-class membership? This is a concern that is also addressed by the authors of the staged accession model (Lazarevic & Subotic 2022; Subotic & Lazarevic

2022). Arbitrary discrimination would arise if the new member states fulfilled the EU's standards of policy adoption and compliance but were still excluded from participation in EU policies or equal institutional rights. Overall, the past enlargement record does not lend support to this scenario, however. While the process can be slow, new member states willing and able to fulfill the conditions have generally been included in an increasing number of policies over time (Figure 1). The problem is most acute if the decision to admit a new member state to an integrated policy must be unanimous – it can then be 'hijacked' by individual member states for idiosyncratic or domestic reasons. For this reason, such decisions should be taken by QMV upon the recommendation of the relevant supranational institution. Finally, second-class membership could result if the member states prove unable to agree on institutional reform and use this non-agreement as a pretext to deprive the new member states of equal representation and voting rights. However, second-class membership runs against constitutional principles of the EU and is only justifiable as a temporary solution. Legally, there will thus be strong pressure on the member states to agree on reforms that would allow them to terminate institutional differentiation. Politically, their status and presence as member states also gives the new members the opportunity to keep the issue on the agenda and exercise influence. At any rate, a temporary second-class membership seems preferable to long-term non-membership.

Fourth, would extensive and long-lasting differentiation undermine the functioning of the EU? Differentiated integration potentially reduces the effectiveness and efficiency of policies if it creates significant policy externalities between insiders and outsiders (Schimmelfennig & Winzen 2020). Such effects therefore need to be carefully assessed before agreeing on differentiated integration. That said, most of the candidate countries are small and economically weak states. Their outside impact on the integration outcomes among the old member states is therefore limited. Moreover, the EU has long-standing experience with differentiated integration in such important areas as monetary union and the movement of persons – without disruptive effects from the initial exclusion of many new members states after the 2004/2007 enlargement. Finally, the EU can always renegotiate differentiated integration should it prove inefficient.

In sum, the risks from a swift but highly differentiated enlargement seem limited and manageable. And highly differentiated accession seems more palatable to the candidate countries than remaining in the pre-accession stage.

2.3 Conclusions: swift accession, ample differentiation

The Russian war on Ukraine has revived EU enlargement. In the case of the Eastern European countries that had not had an official membership perspective, it has demonstrated that alternatives to enlargement such as the European Neighbourhood Policy or mere association are not viable. For the countries of the Western Balkans that did have a membership perspective, it made progress in the accession process more urgent. Within a short period of time, the EU has

overcome its reluctance and procrastination and increased its commitment to further enlargement. At the same time, fundamental obstacles remain. On the one hand, the candidate countries remain weak economically and in many cases progress towards 'good governance' has stalled or gone backwards. On the other hand, the EU struggles to agree on institutional and policy reforms that would make it fit for an increased membership – such as a reform of the Common Agricultural Policy, the transition from unanimity to QMV, or a smaller college of Commissioners. This article outlines an alternative to internal EU reforms, which have proven intractable for decades, in order to prepare the EU for enlargement.

Differentiated integration promises to mitigate the trade-off between urgency and thoroughness. Swift formal accession to the EU would give countries that commit themselves to the fundamental values and constitutional principles of the EU the status and security they seek, anchor them firmly to the European Union, and weaken the influence of the EU's systemic rivals. In addition, ample differentiation would compensate for low levels of candidate country compliance and the absence of EU internal reform. Differentiated integration alleviates concerns among the old members about potential negative effects of enlargement on EU decision-making and policies. It gives new and old members more time for domestic and EU reform, respectively. At the same time, it increases the incentives for new members to meet the standards for full participation in all EU policies, and it adds to the pressure on the existing member states to reach agreement on institutional change.

Differentiated integration is a well-tested tool. It has facilitated and accelerated the accession of new member states in all previous enlargement rounds, and it has paved the way for subsequent convergence between old and new member states. Even though differentiated integration will likely be more extensive and durable in any future enlargement, it can serve the same purpose.

References

Börzel, Tanja A., Antoaneta Dimitrova & Frank Schimmelfennig (2017). 'European Union Enlargement and Integration Capacity: concepts, findings, and policy implications'. *Journal of European Public Policy*, 24(2): 157-76.

Emerson, Michael, Milena Lazarevic, Steven Blockmans & Strahinja Subotic (2021). 'A Template for Staged Accession to the EU'. European Policy Centre / CEPS.

Hooghe, Liesbet & Gary Marks (2009). 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus'. *British Journal of Political Science*, 39: 1-23.

Hutter, Swen, Edgar Grande & Hanspeter Kriesi (eds) (2016). *Politicising Europe: Integration and Mass Politics*. Cambridge: Cambridge University Press.

Lazarevic, Milena & Strahinja Subotic (2022). 'The Model of Staged Accession to the European Union. Addressing the Four Key Concerns'. Think for Europe Network.

Macron, Emmanuel (2023). 'Closing speech by the President of the French Republic', 31 May 2023. Elysee.fr.

Meunier, Sophie & Kalypso Nicolaidis (2019). 'The Geopoliticization of European Trade and Investment Policy'. *Journal of Common Market Studies*, 57: 103-13.

Moravcsik, Andrew & Milada Anna Vachudova (2005). 'Preferences, power and equilibrium: the causes and consequences of EU enlargement' in Frank Schimmelfennig & Ulrich Sedelmeier (eds) *The Politics of European Union Enlargement: Theoretical Approaches* (198-212). London: Routledge.

Plümper, Thomas & Christina J. Schneider (2007). 'Discriminatory European Union membership and the redistribution of enlargement gains'. *Journal of Conflict Resolution*, 51(4): 568-87.

Schimmelfennig, Frank & Ulrich Sedelmeier (2020). 'The Europeanization of Eastern Europe: the external incentives model revisited'. *Journal of European Public Policy*, 27(6): 814-33.

Schimmelfennig, Frank & Thomas Winzen (2020). *Ever Looser Union? Differentiated European Integration*. Oxford: Oxford University Press.

Schneider, Christina J. (2009). *Conflict, Negotiation and European Union Enlargement*. Cambridge: Cambridge University Press.

Subotic, Strahinja & Milena Lazarevic (2022). 'The Model of Staged Accession to the European Union: addressing the Western Balkans' three key concerns'. European Policy Centre.

Winzen, Thomas & Frank Schimmelfennig (2016). 'Explaining Differentiation in European Union Treaties'. *European Union Politics*, 17(4): 616-37.

3 Fit for Reform? The Implacable Logic of Numbers

Yves Mény

Social scientists are good at analyzing empirical evidence and data; they are prone to offer interpretations and critical analysis; they are inclined to build up encompassing theories capable of making sense of multiple factors and messy facts. In other words, they are excellent at explaining the past and the present, much less at predicting the future, as illustrated by the twin fallacies of dire predictions or rosy perspectives. They are even worse when it comes to fixing policies or institutions which are not working properly since they are committed by way of principle to proposing what they see as the optimal solution. Unfortunately, most of the time, the best fix is impractical since it cannot satisfy the whole set of interested actors. Helen Wallace is right to emphasize a cautious approach: 'Flagging the issues, being aware of the trade-offs, and explaining the options might be almost as important as attempting to sketch the solutions' (Wallace 2020, 12).

This is the kind of dilemma with which the EU is confronted once again with the prospect of further enlargement to some of the remaining former communist states in Europe. The first enlargement to the countries of Central and Eastern Europe (and Cyprus and Malta) was characterized by two ambivalent attitudes (see Tsoukalis 2022): from a geopolitical perspective as well as from an ethical and political point of view there was little doubt that enlargement was a moral duty. Considered from a selfish or short-term viewpoint, however, one could have doubts and hesitations given the state of the economy and the lack of proper democratic institutions, culture and experience. Everything had to be re-built from scratch under the close monitoring of the European Commission. After 15 years of waiting for most of the applicants, the EU agreed that the transition could end. It was decided unanimously that all the candidates were ready for full integration after having swallowed and hopefully digested the famous '*acquis communautaire*'. The decision was a *'pieux mensonge*', a white lie, covered by the mantle of purely bureaucratic process of conformity to the EU requirements. The process of checks was divided in chapters from the simplest to the most difficult and resulted in a rather mechanical and mainly bureaucratic step by step process towards a politically determined destination.

This would be of mere historical interest if it weren't for the fact that the currently proposed enlargement is comparable to the first one with the caveat that the

situation is even more sensitive and difficult. The dilemma is the same: there are only good reasons to integrate the countries still in the cold from a geopolitical and democratic consolidation perspective. At the same time, the pre-conditions for successful membership are far from being met. Not only do the internal economic, bureaucratic and democratic problems of the candidate countries (Ukraine, Moldova and the Western Balkan states) constitute mighty issues, but all these states, big or small, suffer from persistent and unresolved territorial, ethnic, religious or cultural conflicts. Democratic values are rejected by part of the population and political instability is the rule. All this explains the reluctance of the EU institutions and many countries to go ahead and give a green light to a possible enlargement. While the candidates are impatient and wish to exploit the present momentum, the insiders, while providing assurance for the future, are trying to slow down the process as much as possible. Only the dramatic case of Russia's invasion has managed to shift opposition to the candidacies of Ukraine and its neighbour Moldova and to accelerate the political process. In the other cases cautiousness still prevails despite the geopolitical context which is a powerful argument in favour of a fast-track process.

The prospect of moving from twenty-seven to thirty-five or more members explains the '*Vorrei e non vorrei*' attitude of the Commission and most member states. They can't say 'no', but when and how to say 'yes' to ill-prepared candidates?

This short paper will not attempt to propose concrete solutions to the dilemma. It will instead underline that reforms are not optional given the impact that an enlargement by one third will necessarily have. The only question is the magnitude and the tempo of the changes. Will they constitute merely minimal, technical adjustments; a *bricolage* of the type so familiar to the Brussels milieu, or will this be the occasion of a major reshuffling? If the past speaks for the future, there are no reasons to be optimistic. Despite being conscious that the institutions were no longer fit for purpose (see for instance Protocol No 7 of the Amsterdam Treaty), member states have in the past been the victims of the 'joint-decision trap' which impedes any ambitious reforms which would meet the challenges of the day.

3.1 The Benefits and Drawbacks of Integration

Moving from 27 to 35 and incorporating countries plagued by multiple problems and with a limited or no experience of democratic practices and traditions raises a number of difficult issues. It has often been underlined that the EU has very few attractive options to offer other than full accession to its institutions and policies. All the other alternatives look like second best to applicants who refuse to be treated as inferior partners. This 'club logic', coupled with the Westphalian tradition of state equality, is a powerful and somewhat insuperable obstacle to differentiation, except when it is in the clear interest of the applicant. Despite the difficulties that the accession process entails in relation to the huge burden that the *acquis communautaire* represents for badly equipped candidates, the rule of

equality and uniformity of treatment is the golden rule for negotiators. It satisfies the ambitions of the candidates, and it is convenient for the EU elites who can hide their reluctancy behind the necessary application of '*dura lex, sed lex*'.

However, enlargement offers ambiguous benefits for both sides. Applicants can be expected to undertake unpopular structural reforms, participate in decision-making processes, enjoy the overall umbrella of a powerful organization, receive subsidies boosting their GDP, and, last but not least, consolidate a fragile political equilibrium after years of instability, internal conflicts, or wars. The EU, for its part, perceives enlargement as the fulfillment of its founding principles and the opportunity to anchor unstable political regimes within the Western community of liberal democracies. Extending the EU market and ensuring security and peace across the continent are powerful incentives, despite transitory economic and political tensions. Everything must be done to impede the intervention of foreign powers such as Russia which remains extremely influential in the region, particularly in Serbia or Montenegro and is waging war in Ukraine.

At first sight, enlargement appears as a positive-sum game: economic growth and political consolidation on the one hand; geopolitical stability and regrouping of nearly the whole of European nations under the banner of the EU on the other hand. By doing so, the Union would fully realize the dream of reconciling formerly acrimonious nation-states and of unifying a divided continent. So far, so good. Very few dispute the long-term benefits potentially brought in by enlarging the EU to those states which are still in the waiting room. However, the drawbacks are not less important than the potential benefits – for the candidate countries themselves and for the European Union as well.

For the applicants, the necessity to swallow rules, regulations, principles or values accumulated over seven decades by the EU is a nearly impossible task. To tell the truth, most, if not all, member states do not fully apply or respect the so-called '*acquis*' that the applicants are supposed to fully accept, digest and implement. But for the newcomers, the task is gigantic. Most of the candidates successfully admitted are declared fit for the purpose by closing one's eyes somewhat and accepting the fact that rules have been formally adopted as sufficient proof of their full implementation. However, rubber-stamping is not implementing. Obviously, this attitude is a necessary compromise between political ends and policy means. Waiting for perfection would mean postponing forever the opportunity to accede to 'paradise'.

In addition, there are 'hidden' costs that the elites of applicant countries tend to forget but that the population may strongly resent afterwards. All the candidate countries suffer from structural imbalances vis-à-vis the EU members. The main driver of their willingness to join is the hope to improve the state of their economies and the social welfare of their population. Presently, the GDP per capita of Ukraine is approximately 25 or 30% of that of Poland while the Balkan

states are among the poorest countries in Europe. Redressing this imbalance implies a modernization of economic structures, a true tsunami of reforms, and a strong increase in foreign investment. One can hope for such a development, but candidate countries must be aware of the huge social costs associated with this modernization process, such as the human flight from the country by those wishing to immediately take advantage of the EU's prosperity. In the countries which joined the EU in 2004 the migration flow is significant: since 1990 the demographic decline is above 20% of the total population in countries such as Bulgaria, Lithuania and Latvia and more than 10% in Hungary and Romania.

In the case of the new applicants, one can expect that these numbers would be even more dramatic given the economic and social gap between EU insiders and newcomers. Ukraine, which had 52 million inhabitants in 1993, suffered a continuous demographic hemorrhage and by 2021 had fewer than 44 million people living on its territory. An estimated 5 million persons left in 2022 because of the war and many of those are unlikely to return soon. According to *Le Monde Diplomatique* only 37 million Ukrainians live in the country at present.[2]

Since most of these states are hostile to migration from other continents, mainly for cultural or religious reasons, they are braced for a sharp population decline in the short and medium term and a loss of their best trained and educated generations. Beyond the economic impact, this phenomenon has important psychological, social and political consequences: 'In a country where the majority of young people want to leave, the very fact that you have remained, regardless of how well you are doing, makes you feel like something of a loser' (Krastev 2019, 63).

3.2 More is Less?

Integrating more and more countries despite their heterogeneity, differences in size, status and wealth might be seen as a winning strategy, as it tends to internalize issues and challenges which, externally, would be more difficult to tackle or control. However, one can wonder up to what point the strategy of internalization can pay off. In a provocative essay published in 2007, Jan Zielonka predicted a rather gloomy future for the EU. The European grouping had become so large, divided and fragmented to become, according to him, a 'neo-medieval empire' with no center and multiple 'islands' of power, rotating alliances and variegated allegiances (see Zielonka 2007). In other words (even if Zielonka avoided saying so as bluntly as this), it would become an unmanageable mess! Paradoxically, the succession of acute crises contributed to the rescue of the fragile construction when the reluctant partners realized that it was a matter of survival.

A new enlargement will face two different but equally difficult challenges due to the very distinct nature of the applicant countries: on the one side, a cluster

[2] *Le Monde diplomatique*, May 2023.

of small or very small countries; on the other, two large countries, Turkey and Ukraine. Turkey is for the time being off the table but could come back with a vengeance in a not so distant future. Ukraine exerts strong pressure to start negotiations by the end of 2023 and to become a full member by 2030. A not very realistic scenario in spite of the capital of sympathy that the country enjoys among EU elites and populations at large.

Should a future enlargement include both one large country and six Balkan countries (not counting other countries such as Moldova, Georgia or Armenia), the entire geopolitical and institutional assets of the European Union would be shaken up and unable to properly function under the present rules. On the one hand, the dream of reuniting the entire continent would be nearly fulfilled. On the other hand, the present institutional set up would be ill-adapted to the management of a non-state organization characterized by an extreme degree of economic, linguistic, cultural and legal heterogeneity. While today the EU's genetic code is geared towards a high degree of centralization, uniformity and convergence of economic and legal objectives (the internal market), there are large areas which remain under the control of the state-members or are subject to decision by qualified majority. One can already observe the difficulty of adopting and implementing uniform rules. Some decisions may require several years of toing and froing between member states before being finally accepted and, once this resistance is overcome, there is ample scope for non- or partial implementation at the national/regional levels. Safeguarding principles is one thing but reality on the ground is another matter.

In an EU of 35, the risk of rocking the boat would be further amplified unless the member states accept considerably reducing their ambitions or change their modus operandi. Today, there is a wide consensus, reinforced by the Commission views and reports that applicant countries must adapt to the rules, principles and values of the club. However, there are multiple and wide divergences between member states about the need for the club to adapt its structures and constitutional foundations to a novel situation. While federalists, mainly academics, advocate the necessity of a radical overhaul of the Union, many prefer a low-key approach, a kind of benign neglect attitude and make theirs again the simplistic slogan of the 1990s, 'bigger is wiser'. However, such a *laissez-faire* attitude is simply not feasible given the impact of a possible 20% increase in the number of member states. If maintained, past compromises enshrined in the treaties such as the maximum number of MEPs or the attribution of one commissioner per state would have major consequences for every member state and for the whole. Both democratic values and managerial capacities would be negatively affected. The European Parliament, which has failed for many reasons to embody the collective European will, would be further fragmented and better at framing radical resolutions than at influencing and controlling legislation. The Commission would become a small assembly rather than a *collège* and, in its present format, forced to further slice the limited competences conceded by the

Treaties between too many commissioners. The bureaucratic structure behind the scenes would be reinforced while the political dimension would be further diluted between too many portfolios. The most credible scenario will be one of discrepancy between discourse (institutions need reform) and action (only marginal adjustments will be made).

3.3 The Options on the Shelves

The available institutional options are rather well identified due to the past experience and the intense academic and political debates which have been part and parcel of European enlargements since the 1970s.

Federal revolution?

This first option is radical and advocated by committed federalists. They are convinced that a feeble set of institutions and cumbersome decision-making processes require an ambitious and radical overhaul. It would entail a major constitutional reform accompanied by a change in the overall conception of the nature of the beast: '*dal liberum vetum confederale all'Europa federale*' to use the vocabulary of Virgilio Dastoli, president of the Italian federalist movement (Dastoli 2023).[3] For the proponents of this radical option, the EU will be federal or will not be. This Hamletian choice advocated by a bunch of idealists and a few policymakers is also (officially) the German choice for a distant future. The present coalition subscribes to the concept of a fully-fledged European federation. As things stand, this preference has very little chance of materializing given the strong opposition of many states and the ambiguous militancy of Germany itself on the issue (see the cautious proposals of Chancellor Scholz on 22 June 2022, and 9 May 2023). The German government moves in the straitjacket of the Federal constitution and of the narrow space left by the court of Karlsruhe.

A more modest version would insist upon the necessity of a thorough constitutional revision of the Treaties. On paper such a solution would be ideal, but the wounds and bitter experience of the first attempt to formally constitutionalize the treaties constitute a negative incentive for many member states. In addition, public opinion across Europe is strongly influenced by populist movements and social networks often hostile to enlarging and deepening all together. Outbursts of populism and nationalism act as a deterrent (see Mény and Kermer 2021). The predisposition is rather to let the sleeping dog lie. Whatever individual preferences might be, one cannot see how individual vetoes could not impede any strategy of this kind (actually, not a single government is ready to embark in that direction for the time being).

[3] 'From the confederal *liberum vetum* to a federal Europe'. The *liberum veto* was the rule that any member of the Polish-Lithuanian parliament (or *sejm*) could block proceedings. This rule paralyzed the institution and rendered the state vulnerable to foreign powers.

Minimal adjustments

A basic fact remains: some rules – actually many rules – will have to be adapted since the Treaties in their entirety are 'constitutionalized', while some articles would become *de facto* obsolete due to the new enlargement. For once this excess of constitutionalizing, criticized by most political scientists and many lawyers of different backgrounds and leanings from Bruno de Witte to Dieter Grimm, could be an asset for reformers if treaty reforms and enlargement were to be closely knit in the same package. Indeed, many of those supporting enlargement at any cost are also the most reluctant to constitutional ambitious reforms. Even that route is not without risks given that national referenda and supreme courts controls will take place and will maintain uncertainty up to the end.

This is an insufficient but necessary condition for further enlarging the Union. It's much less grand, more prosaic and pragmatic, but probably the most realistic. It has the defect of keeping in place a system based on ambiguity, baroque compromises, mutual distrust and unstable equilibria. Such adjustments might be sufficient for day-to-day politics and policies, thanks to the role of the Commission and sometimes of the Parliament acting as a disturbing mosquito. It would not be enough to tackle big issues, old and new, such as defense or foreign policy (and so many other policies from energy to immigration). Already today, the 27 have the greatest difficulties in properly addressing issues where qualified majority rules do not apply. With the addition of eight new members, the situation might become unsustainable. Furthermore, in the areas subject to qualified majority, there are plenty options for indirect vetoes.

Indeed, when qualified majority is required, a member state can deliberately refuse to accept an otherwise consensual proposal by vetoing a regulation or a policy in a different area. In order to overcome the stalemate, the Commission and the other member states are forced either to make concessions, enter horse-trading negotiations or try to twist the arms of the opposing government. The consequences are obvious: either the decision is postponed or is watered down and sometimes both! To overcome such a blockade strategy, one could envisage that during a transition period the veto could be used only by a group of member states and not by a single state.

The rule of unanimity, which was supposed to protect fundamental national interests, has become a mere procedural instrument at the service of any high or low politics strategy. Small countries, which are by construction weaker vis-à-vis the larger states, might be tempted to use it as an instrument of last resort. In the end, there is practically no area where a veto, be it treaty-based or factual, is excluded. Its use or abuse produces two negative consequences. First, instead of favouring the integrative trends at work within the Union, it emphasizes the attributes of an international organization that the EU still is. Secondly, the veto may allow a kind of 'tyranny of the minority', to use Sergio Fabbrini's words

(Fabbrini 2015, 235). Every time a national government uses its veto rights, it contributes to weakening the democratic seeds of a nascent polity and reinforces its international organization features. Instead, democracy is a social invention created for by-passing the primitive rules of unanimity.

In his speech of 9 May 2023, Scholz announced that under the German initiative, nine members have constituted a group of 'Friends of Qualified majority in the areas of foreign policy and security'. However, this group includes only one third of the member states. Even if this limited initiative was successful, other crucial areas – the multi-annual budget, the EU's own resources, health, employment, social, and fiscal policies, the composition of the Commission or the organization of parliamentary representation, for instance – would still require unanimity. When a decision is finally taken, after years of endless discussions, it is usually sub-optimal: contorted, complex, watered down. From the very beginning of the process (the Commission initiative), the scope and magnitude of the policy is framed by limited expectations since the process unfolds in the shadow of a possible veto at any time, by any national government.

Even this very modest reform seems impossible: Hungary has made public the creation of a so-called 'Friends of the veto' (!) group, and a recent poll in Poland showed that 90% of the population is hostile to the abolition of the veto. A very welcome support for the Polish government.

Bypassing the Treaties

A stalemate resulting from the opposition between the most radical reformers and those refusing any change other than those technical niceties required by the mechanics of numbers (such as the redistribution of MEPs' seats between the new member states) is not to be excluded. In that case, and in line with the option of creating within the EU an avant-garde, i.e. differentiated integration, some countries could put in place a 'coalition of the willing' but without passing under the Caudine Forks of enhanced cooperation.

On paper this option presents many advantages. First, the Union would take note that not all countries are able or willing to go at the same speed or with the same intensity towards some ambitious objectives. Second, it may have the usual effect of pushing reluctant partners to overcome their reluctance or opposition, given the universal preference for the first class rather than second class. But the drawbacks are many, as shown by the quasi-failure of the enhanced cooperation procedure or the fact that the EU institutions are in principle at the service of all and not of a mere part.

For sure, derogations have been granted in crucial areas such as Schengen or monetary union, but multiplying ad hoc institutional arrangements to accommodate policy differentiation would be extremely complex, starting with

the reshuffling of the role and functioning of the European Council and of the Parliament. Guaranteeing the involvement of the European Council and of the whole Parliament even for member states not participating in a specific policy might be not only bizarre but unfair towards those which have opted for deeper cooperation. But excluding them brings other problems, when a policy produces collateral effects vis-à-vis other states or possibly negative consequences for the avant-garde states themselves, such as a loss of competitiveness relative to the other member states. EU policies are so intertwined that such differentiation would make the EU decision-making process even more complex and difficult to understand. The negotiation of a new, additional treaty adopted by and applicable only to some member states would be a kind of last resort option. In 2012, Jean-Claude Piris, in a thorough analysis of possible scenarios for 'The Future of Europe', emphasized the limits and the difficulties of a 'two-speed Europe'. However, he advocated this solution, as the Union, otherwise, would be squeezed between a radical but politically unrealistic constitutionalizing process and an unacceptable status quo.

Once again, Machiavelli's observation in *The Prince* is illuminating: the reason why change is difficult is that those who will take advantage of these changes have not a full understanding of the benefits they will get, while those who might pay a price for the planned reforms are fully aware of the costs. In other words, there is a differential in mobilization capacity in favour or against change.

Given the narrow procedural space for reform, the only additional card for adapting the EU structure to the challenges of a new enlargement could be to play on two crucial variables, time and space.

3.4 Playing with Time and Space[4]

'Giving time to time', according to Mitterrand's words, is a strategy which has frequently been used by the EU and the member states in various ways.

The first one is the waiting-room strategy. The EU opens the door to the candidate country but delays as much as possible the prospect of joining the club. All candidates have suffered from more of less long periods of standstill negotiations, from Britain during the Gaullist period or Spain due to Chirac's reluctance, up to the delays imposed on post-89 applicants. This 'polite' way of saying 'no' has been applied to Turkey and to the remaining countries of the former Yugoslavia, but the war in Ukraine and the new geopolitical landscape are putting this deliberate lack of enthusiasm at risk. With a war in perspective, everything else becomes secondary. In many ways, the EU may come back to its origins: the launching of the Coal and Steel Community in 1950-51 was a geopolitical project before being an economic one.

[4] See Zielonka (2023, 9) who speaks of 'political interventions in time and space'.

The second 'time strategy' is familiar to all reformers and consists in separating the formal decision itself from its actual implementation. Nobody denies that the accession of countries of the Balkan region is very difficult from an economic, political and social point of view and that it implies serious adjustments both in the interested countries and in the EU. This might explain and justify a long period of waiting and adaptation. This prudential rule is applied in full to the applicants. It could also be extended to the EU itself by setting goals to be reached over time, in parallel to the efforts required from the candidate countries. It might soften the pain of adjustment by proceeding step by step, for instance in a progressive additional expansion of qualified majority vote or a strengthening of defense policies.

There is no lack of choice when it comes to possible actions. The well-known practice of deciding in principle but postponing for some years the implementation of changes may be an effective way of tackling difficult issues. In such a perspective both applicants and the EU would commit themselves to a mutually interlocked political agenda. Progress should be made on both sides in order to avoid never-ending postponements, on the one hand, and/or the rocking of the boat on the other. There are, however, limits to these hopes for the future. The EU in 1993 (Copenhagen) and 1997 (Amsterdam Treaty) committed itself to reforms prior to future enlargements. As we know, the member states failed to make good on these commitments.

As it has been suggested by an interesting report produced by CEPS, the process of accession might be strengthened by linking progress in applicants' reforms with concrete incentives and rewards provided by the EU (Emerson et al. 2021). More time could be given to the smallest applicants whose civil service, bureaucracy and past behavior makes transition not only challenging but, de facto, nearly impossible. From a geopolitical, humanitarian and emotional point of view there are only good reasons to proceed swiftly and expediently. From a more rational and economic point of view, it is more reasonable to assess carefully the costs and risks on both sides. The tension between ideals and interests has already been perceived in 2023 when a few Eastern countries and, among them, dedicated supporters of Ukraine such as Poland decided to close their borders to Ukrainian products and in particular to the exportation of grains.

Space is the other dimension of policies which could help to fix some sensitive issues related to the future of Europe.

A French journalist writing about the Cold War gave his book the sub-title 'A Single Bed for Two Dreams' (Fontaine 1981). Europe has always been confronted by this dilemma: from the very beginning, the six first partners had different views and divergent interests while attempting to build up a new kind of cooperative instrument. With the successive enlargements, the diversity and heterogeneity of the EU has considerably increased. At the same time, and paradoxically, an

incredible process of harmonization, centralization and unification has taken place through the twin instruments of the market and of EU legislation. The 27 member states and, in the future, the 35 or more, will have very different dreams framed by their history, their ideologies, their geography and their interests. It is a legitimate claim which must be balanced by the necessity of sharing a minimum set of common rules, beliefs and institutions. It is a challenge with which the US was also confronted from the very beginning, reflected in its motto *e pluribus unum*. The astonishing fact is that after only a few dozens of years, the EU is much more unified than the US in many areas. There is much more uniformity in the application of fundamental rights than in the US despite the reluctance of some member states. This is crucial progress for EU citizens and a soft penetration of EU values in many areas formally remaining national competences.

Uniformity has reached a point where one could think of softening the rigidity and inflexibility so characteristic of the EU. As has been observed by many, and in particular by academics (de Witte for instance, in 2009), or even judges (Grimm 2015), there is an excess of constitutionalization, since the entirety of the Treaties (with a few exceptions) is submitted to the rule of unanimity. Fixing new rules for the future might also mean a 'de-constitutionalization' of the treaties by providing the possibility to change some rules or procedures through qualified majority. It would imply a drastic reform of the so-called passerelles which have been the blind windows of the Lisbon Treaty. Actually, this so-called flexibility is such that the procedure has never been used! The stalemate has obvious causes: in order to use qualified majority, the Council must authorize its use by unanimity. One can't ask the turkeys to celebrate Christmas …

Further curtailing the unanimity principle would unlock the process of change and would make EU law closer to the fundamental law of a democratic polity. Differentiation according to places might create further complexity or emphasize differences. But since a kind of Jacobin Europe is out of question, accepting that states differentiate would not only be an act of tolerance – it would be a useful acceptance of political realism while also creating a stimulating emulation at the grass-roots level not so different of the one to be observed in federations. There would be innovators and laggards but international and comparative studies show that harmonization through soft instruments such as emulation, imitation, comparative rankings, benchmarking are as influential, or more so, than hard imposed regulations.

3.5 Concluding Remarks

For the first time, and after years of enlargement and integration, a member state – and not a minor one – has decided, after a popular consultation, to exit. Britain, which was requesting greater differentiation and more opt-outs, refused to consider at the same time any 'in-between' options while the Commission and the 27 rejected any possibility of 'cherry-picking'. An opportunity was missed both by Britain, which might have benefited from more favourable conditions,

and by the EU, which had refused any derogation from its founding principles (see de Rynck 2023). After years of difficult negotiations, an exit agreement, and subsequent conflicts about its implementation (in relation to the North Ireland protocol), the Conservative government and the 27 have finally found a compromise, the so-called Windsor framework.

It is not so much this specific agreement which might be of interest, but the fact that the UK and the 27 might enhance their cooperation outside the framework of the Treaties when it is mutually beneficial. Negotiations have resumed in the field of research and science and both parties may find great opportunities in other areas, such as defense, as well. The war in Ukraine, which has emphasized the decisive role of Britain in matters of defense and security, could open the way to intermediate types of relationship between the EU and non-member states. There are already examples: Norway and Switzerland have no intention of joining but are closely linked to the EU though the European Economic Area and multiple specific agreements tailored to fit different situations, interests and intensity of collaboration, respectively. There is also a change in the process of accession following the opposition of President Macron to opening negotiations with Albania and North Macedonia in 2020. The Commissioner in charge has announced that the process should be more credible, more dynamic, more predictable, more politically steered and controlled. It remains to be seen what the concrete consequences of these words, void of substantial meaning, will be. The process could also be reversible in the case of regression on the part of the candidate country.

This model could be offered to the new applicants either as a 'waiting room seat' or as a less demanding alternative to full integration. While helping the candidate countries over a long period (ten or twenty years), it would keep the door open to full membership when ready and willing to join (or not). It could complement the European Political Community initiated by Macron. This all-encompassing umbrella has the advantage of offering a platform for political exchange and collaboration, independently of EU membership. But this forum does not offer – for the time being – any concrete support and help to those states which aspire to more than participating in a bi-annual gathering of neighbours and friends. In order to avoid a 'take all or nothing' choice to the non-EU members, the EU could offer a better deal to those states whose integration is particularly challenging, not only for themselves but also for the organization they wish to be part of. As in the myth of the quest for the Golden Fleece, the Europeans/Argonauts have no other option than to fix the vessel while at sea. It remains to be seen if member states will be able to offer an attractive alternative to the latest applicants or if the applicants will be ready to accept anything but a full membership. The problem is that the EU has entered into a vicious circle: unable to make a qualitative leap given the structural obstacles of her present 'constitution' but not enough of a polity or of a state-like organization to legitimate a substantial transfer of powers and competences.

Institutionally, and from an efficiency viewpoint, there is little doubt that the present set up does not fit the needs of an EU of 35; actually, it is already unfit for a grouping of 27 nations. But efficiency is only one parameter among many as the emblematic case of the USA shows. Adjustments and adaptations are a matter of time and circumstances such as pressing needs or crises. Paradoxically, the feeble set of EU rules and institutions has not impeded unpredictable and spectacular policy changes. However, this capacity to address crises is not a sufficient argument for adopting an attitude of benign neglect. It only offers time for changing ideas and interests in favour of more radical institutional changes. Enlargement to countries which potentially represent heavy risks could be a powerful incentive for a radical overhaul, provided that the countries that support a more ambitious strategy speak up and stand up. Who will cut the Gordian knot?

References

Emerson, Michael, Milena Lazarević, Steven Blockmans & Strahinja Subotić (2021). 'A Template for Staged Accession'. European Policy Centre / CEPS, October 2021.

Dastoli, Virgilio (2023). 'Newsletter', Movimento Europeo Italia, 8 May 2023.

Fabbrini, Sergio (2015). *Which European Union? Europe After the Euro Crisis*. Cambridge, Cambridge University Press.

Fontaine, André (1981). *Un seul lit pour deux rêves. Histoire de la détente*. Paris: Fayard.

Grimm, Dieter (2015). 'The Democratic Cost of Constitutionalization: the European Case'. *European Law Journal*, 21(4): 460-73.

Krastev, Ivan (2019). 'Is Europe Failing? On Imitation and its Discontents' in Björn Fägersten and Göran von Sydow (eds) *Perspectives on the Future of the EU*, SIEPS/UI: 58-81.

Mény, Yves & Jan Kermer (2021). *Imperfect Democracies: the Rise of Popular Protest and Democratic Dissent* (London: ECPR Press).

Piris, Jean-Claude (2012). *The Future of Europe, Towards a Two-Speed Europe*. Cambridge: Cambridge University Press.

de Rynck, Stefaan (2023). *Inside the Deal: How the EU Got Brexit Done*. London: Agenda Publishing.

Tsoukalis, Loukas (2022). *Europe's Coming of Age*. Cambridge: Polity Press.

Wallace, Helen (2020). 'Setting the Scene' in Helen Wallace, Nikos Koutsiaras and George Pagoulatos (eds) *Europe's transformations, Essays in Honour of Loukas Tsoukalis*. Oxford: Oxford University Press: 1-12.

de Witte, Bruno (2009). 'The Rules of Change in the EU: the Lost Balance between Rigidity and Diversity' in Catherine Moury and Luis de Sousa (eds) *Institutional Challenges in Post-Constitutional Europe: Governing Change*. London: Routledge: 33-42.

Zielonka, Jan (2007). *Europe as Empire: the Nature of the Enlarged Union*. Oxford: Oxford University Press.

—— (2023). *The Lost Future and How to Reclaim It*. New Haven: Yale University Press.

4 Fit for What Purpose? Enlargement and the Goals of the European Union

Sonja Puntscher Riekmann

Fitness, in terms of a political community, is a variable dependent on purpose. This truism applies to the European Union as much as to all polities. Regarding fitness there is obviously a difference between constructing a large market with common rules and creating a political union capable of taxing and spending as well as deciding on war and peace. But even the European single market project was, and still is, no easy task as its long, cumbersome and incomplete history demonstrates. As recently as May 2023 former competition commissioner Mario Monti raised concerns about the dedication to maintaining the unity and continuing the deepening of the single market, deemed to be the central pillar of the whole unifying process (Monti 2023). If even the single market is up for discussion, how far is the Union prepared to engage in further political integration? Of course, one may presume that economic and political integration unfolds more easily in a smaller community of diverse members than in a large one. However, size is a malleable term, whereas the power of a community depends on a variety of factors, above all legitimate, centralized decision-making, administrative and economic performance, but also on the context in which to wield pertinent powers. Context, however, is hardly ever stable, but instead volatile, and thus powers need to be prescient and adaptive to changing circumstances.

While these are the abstract laws of political decision-making, the European Union is a special case. First, it is incomplete as a polity. It is unfinished in its composition of members as well as regarding its internal and external powers. Second, it is unclear how far it can and wants to expand, and third, how far it can adapt its institutional set-up to further enlargement and the incorporation of quite diverse polities, economies and cultures. Most importantly, clarity on these matters depends on how the Union defines its regional and global purposes. Such definition never occurs in a vacuum. Today it must be elaborated under the spell of Russia's war against Ukraine and other conflicts in its neighbourhood as well as enormous global tensions between other powers, such as China and the US and important non-aligned states.

It is these real and potential conflicts that recently brought Timothy Garton Ash to state that the EU 'must have a sufficient degree of unity, central authority,

and effective decision-making to defend the shared interests and values of Europeans. If every single member state has a veto over vital decisions, the union will falter, internally and externally.' (Garton Ash 2023, 64). Yet a precondition of such unity is that Europeans are capable of commonly defining shared interests as well as problems that such interests may encounter. Whereas values are enshrined in the Treaties and the Charter of Fundamental Rights and bolstered by Court rulings they are hardly the undisputed yardstick for concrete foreign and security policies.

Heraclitus' often quoted adage about 'war being the father of all' is once again vindicated in Europe today. Indeed, since Russia's invasion of Ukraine in February 2022 the European Union is confronted with the challenge not only of coping with millions of Ukrainian war refugees and of providing economic aid, but also with requests for military support and commitments to post-war reconstruction. For the EU – the peace project *par excellence* – this was new, while the public was stunned by the significant shortcomings of its military facilities. Suddenly, the need to rekindle its policy on further enlargement also returned to the agenda. A pledge in this regard was made to Ukraine very quickly and the enlargement process concerning the Western Balkans re-emerged from years in the doldrums (Russell 2023). In fact, fear of Russian (and Chinese) meddling in the region eventually cleared the minds of Europeans. The enlargement fatigue of the past decade seems to be revoked, while renewed commitments are epitomized in speeches of the German Chancellor Scholz and the French President Macron, thus heeding the wishes of some Central and East European member states. At the Globsec Conference of May 2023 in Bratislava Macron went as far as saying: 'I don't think there is a western and an eastern Europe, an old and a new Europe; there is only one Europe … and a will to build a unity' (Macron 2023a). However, the concomitant challenges are formidable. Bringing the Union to 35 or even more members while still ensuring adequate decision-making within the existing institutional set-up is a daunting task. In fact, ensuring the appropriateness and effectiveness of decisions is difficult even at 27. In particular, the envisaged enlargement towards several small, often economically stunted as well as ethnically and politically conflict-riven states forces the Union to revisit its goals, if not its finalité, and thus to spell out to what kind of 'unity' in which policy fields it aspires. Is it about further centralisation as advocated by Garton Ash or about differentiation and variable geometry? (Leuffen/Rittberger/Schimmelfennig 2022)

Still, Russia's war against Ukraine is only one problem for which the Union was ill-prepared. In matters of security and defence the Union is dependent on NATO and hence on the US as the hegemon within the alliance. Conceiving a path towards peace must reckon with such dependence. Moreover, accepting Ukraine as a member of the EU inevitably raises the question of how to bring peace to the country, beforehand, and about the conditions each side may stipulate. Beyond that, the whole world order has been changing throughout the

last two decades, while European ambitions to implement geopolitical strategies are still falling short of the task. However, from the 'Global Strategy' published in 2016 under the direction of the High Representative Federica Mogherini (EEAS 2016) to the 'Strategic Compass' developed under her successor Josep Borrell in 2022 (EEAS 2022) we witness a change in rhetoric regarding the call for unity and stronger cooperation among member states. Moreover, the new document contains clearer perspectives about concrete actions buttressed by timetables for single targets and financial implications. It also repeats goals of the European Global Gateway of 2021 regarding new relations with Africa, Latin America and Asia. It remains to be seen whether concomitant policies will go beyond *ad hoc* tactics driven by problems stemming from the sudden need for specific resources or tackling migration rather than a far-sighted geopolitical strategy to enhance the Union's global role. By way of example: decoupling from or de-risking relations with China, a tactic announced by von der Leyen (2023) is extremely difficult for many companies and dependent on quite diverging interests of EU member states. What is more, member states continue to pursue their interests bilaterally and hamper the Union's capacity to act.

The central thesis of this chapter is that the fitness of a given polity, and hence the degree of its unity in action, is a variable dependent on purpose. It will be developed in the *first* part. The chapter will, *second*, describe the concept of sovereignty as a quite novel approach surfacing in selected discourses to frame the necessity of autonomy and legitimacy of European political thinking and action. It will, *third*, evaluate the concept in view of the Union's current state by focusing mainly on its geopolitical challenges. *Fourth*, and finally, it tentatively draws some scenarios for the future of the Union with and without further enlargement.

4.1 The Concept of Fitness and its Relation to Purpose

From its inception the central purpose of the European Union was peace among its main former enemies through cooperation and common market building. The European Defence Community foundered at its inception in 1954 and security was delegated to NATO. Interestingly, not even the demise of the Soviet empire and the fall of the iron curtain in 1989 changed the European conviction about market-making, now enhanced by the creation of the single currency and the concomitant rules, being the ultimate instrument to secure peace. Internally and in external relations, change through trade ('*Wandel durch Handel*') became the dominant principle. Hence, integrating the many finally free nation states of Central, East and Southeast Europe into the single market was considered as the major instrument for achieving the purpose of peace and of prosperity. However, for that matter the Copenhagen criteria also included democracy and the rule of law. Small wonder that in this logic no serious strategy to avoid or at least alleviate the disintegration of Yugoslavia was developed or that the subsequent wars were ended by NATO intervention. Thus, security matters of the region were delegated to NATO and market building to the EU. Yet after the EU's

big enlargement rounds of 2004-13, enlargement fatigue set in and the topic vanished from the agenda. It is back, in 2023, forced upon the Union by Putin's war, but also by China's investments in the Balkans.

However, with the election of Donald Trump as US president in 2016 and his shift of US foreign policy away from Europe, NATO and international organisations and towards worldwide bilateral transactionalism and domestic protectionism, European leaders developed a sense of need for greater autonomy. The first instance of this was Angela Merkel's utterance during the election campaign of 2017, in Munich, about taking 'our destiny in our own hands' (*Süddeutsche Zeitung*). This position was complemented by the idea of European sovereignty developed by Emmanuel Macron in his famous Sorbonne speech the same year. In her 2019 speech before the newly elected European Parliament Commission President Ursula von der Leyen spoke of defining her College as the 'geopolitical Commission'. Hence, the overall purpose of European integration seemed to transcend the activity of the internal market making by envisaging a global role for the Union. In 2020, the High Representative / Vice President, Josep Borrell, stated that the EU 'must learn to speak the language of power' not only by pulling its economic weight in international trade and rulemaking, but also in matters of security and defence (Borrell 2020).

The statements raise the question of whether – and if so to what extent – the Union can live up to these ambitions. The question becomes even more urgent in view of further enlargement and hence of the increase of voices (and possible vetoes) in such sensitive matters as security and defence. Here lies the test bed for Timothy Garton Ash's plea. Two caveats are in order: first, further enlargement towards the East (Ukraine, Moldova, and possibly Georgia) and six Balkan states moves the centre of gravity within the EU from the traditional Western members to the East. Moreover, some Eastern member states such as Poland or the Baltics advocate the strengthening of NATO and transatlantic relations rather than the EU itself (Ministry of Defence, Republic of Poland 2023; Euractiv 2 May 2023). Intriguingly, today the question of Turkish membership is hardly ever mentioned, although nobody dares to declare whether the accession process is silently considered as terminated or to be resumed in the future. The overtures by the re-elected Turkish president Erdogan in July 2023 about reviving accession talks were met with considerable reticence as to the chances of Turkey's EU membership (Euractiv 16 July 2023). Second, good relations with the US and with the UK – ironically the first driver of EU disintegration – are needed to uphold security and defence capabilities. Yet this also implies a degree of transatlantic allegiance in potential conflicts between the US and China, even to the detriment of European interests. It may undermine greater EU autonomy in defining its own geopolitical role and purpose. However, European fealty is cloaked in the narrative of a unified 'West'. Even Macron retreated on his erstwhile critique about NATO's brain-death (Macron/Stoltenberg 2023).

In this context the question of costs regarding security and defence cannot be shunned. Whereas today the great bulk of costs within NATO is borne by the US, the promise by the rest to invest 2% of their GDP in military expenses is hard to fulfil. EU enlargement towards rather poor new members already puts a significant strain on its rather small budget, it may imply that members who are now net recipients (e.g., Poland) become net contributors. Not to mention the eventual reconstruction of Ukraine's economy. Essentially all this leads to the difficult question about giving greater fiscal power to the EU, until now the hardest bone of contention. Given the current controversies about the renegotiation of the Stability and Growth Pact led by the hawkish Northern members, it is difficult to foresee more generous outcomes to bolster the Union's fitness in this regard. By way of example, in June 2023 the Austrian Chancellor (apparently backed by other net contributors) responded to the Commission's call for increased contributions to the EU budget to finance the reconstruction of Ukraine in a blunt and negative way (Nehammer 2023). At the same time, the combined military expenditures of the 26 members of the European Defence Agency reached 313 billion euros in 2023 which is an increase of 32% compared to 2013 and amounts to 1.5% of their GDP (SIPRI 2023). Whereas the European Peace Facility commands a budget of only 8 billion euros, better cooperation between member states has become the mantra of European discourse regarding joint procurement (Foy 2023). However, besides fiscal fitness, and related to it, stands the question of legitimate and efficient decision-making in a Union of 35, which is ultimately about its sovereignty and democracy.

4.2 The Concept of Sovereignty: Autonomy and Legitimacy

Sovereignty is a concept concomitantly born and developed with the Westphalian nation state. It clarified who has the power to define national interests in view of internal and external problems, as well as modes of resolution. It entailed the transfer of power to one level of decision-making, at the beginning mainly to monarchs and their administrations which over centuries were complemented and ultimately supplanted by democratic institutions. The European Union, too, has repeatedly managed to achieve such a transfer (e.g., in the Euro- and the COVID-19 crises) that is, however, restrained by temporary conferral of powers in some policy fields and by national veto in others. While temporary solutions create problems of compliance and uncertainty (e.g., the future of Next Generation EU), veto powers may impair resolutions or lead to provisions outside EU law (e.g., European Stability Mechanism, Treaty on Stability, Coordination and Governance in the Economic and Monetary Union) and thus enhance confusion about who is actually in charge.

Hence, if sovereignty is not to remain a lofty slogan, the Union needs further reforms to resolve such conundrums. For that matter, the Union and its members need to clarify their connotations of the very term of sovereignty. If it is conceived in the vein of its statist origin, the parameters of defining sovereignty are quite clear: centralized powers in foreign, security and defence policy as well as justice

and home affairs; establishment of central autonomous fiscal capacity and monetary and economic policies; vertical division of powers between the centre and the subunits of the polity; to ensure democratic legitimacy of the centre (in our case of the supranational level) horizontal separation of powers between the three branches of governance, decision-making by majorities and protection of minorities. If this is meant by sovereignty, working towards the enumerated parameters promises to ignite significant controversy among member states. But if political actors still cling to the notion and practices of 'pooling sovereignty' where necessary and only occasionally allow for more centralisation more muddling through will be the reality also in the future. Hence the debate should rather start from the question 'for what purpose do we aspire to fitness?'. Is it global power to shape the new world order or rather socio-economic prosperity in the single market? Are the two visions at all separable? Where is the institutional centre to debate these and related questions that will allow to go beyond member states' bickering on single issues or linkages between them? Ultimately, who has the authority to decide on an eventual constitutional revolution? The last question in particular lies at the heart of European democracy and sovereignty.

Over the last 250 years and after several national revolutions the concept of sovereignty changed and finally became a synonym for democracy. Once the very idea of the sovereign was equated with the citizenry of the state, political action needed some form of consensus of the new sovereign. Generally, the choice was for parliamentary representation and thus for parties representing the various societal interests as well as elaborating positions on the national common good. Sovereignty was a promise of freedom not only in terms of non-interference by one state in another's affairs, but also – just as importantly – in terms of the rights to dignity and integrity of the individual citizen, to free speech, to free association and participation in public life and political decision-making. These and other pertinent rights were eventually enshrined in constitutions and charters of fundamental rights and enforced by legislation and court rulings to ensure their respect by state authorities and third parties. Hence the necessity to separate powers, to create a system of checks and balances. While these developments were not confined to Europe, the political philosophy and practice were born on the 'old' continent. When talking about European values and the 'European way of life', political actors implicitly or explicitly also refer to this special history, in which such values were not only hailed but also repeatedly spurned – most horribly in the totalitarian regimes of the 20th century and in the Shoah. Their restoration after 1945 (and the widening of human rights to non-citizens stipulated in international conventions) also entailed the construction of Europe's unity through state cooperation, even if it took several decades to speak of the polity in the making as a constitutional order based on democracy and fundamental rights. Discourse on Europe's sovereignty is only of more recent coinage: until Macron's explicit use of the term (Macron 2017) Europeans had contented themselves with the formula 'pooling of sovereignty' without specifying where such pooling would lead to and indeed to what extent it really meant to give up national sovereignty

rights for good. Even less so whether it would give birth to a European sovereign as a result of an 'ever closer union among the peoples'. In fact, the Treaty of Lisbon no longer contains the opening formula of the Constitutional Treaty which points to 'the will of the citizens and the States of Europe' as the ultimate source of legitimacy of European politics. While the Treaty of Lisbon enshrines solemn promises about democracy and de facto democratic representation of citizens in the European Parliament, that in the Ordinary Legislative Procedure has been put on equal footing with the Council, the allusion to the constitutional symbolism of 'We the people' has not been repeated.

4.3 The State of the Union

Before envisaging action, unity is needed in problem definition. While we can enumerate many instances of diverging problem definitions in the past composition of the Union, such divergence is quite likely to grow after further enlargement. One lesson drawn from the last big enlargement was that the next increase of members should not only be based on more appropriate politico-institutional and socio-economic improvement within the accession states but also to be preceded by further deepening of the Union itself. Some of the deepening requirements were hitherto fulfilled *ad hoc* as during the Euro- and the COVID-19 crises (though not in view of migration, on which compromise building started in June 2023). However, even in those cases solutions remained half-hearted (neither the Banking Union, nor the Capital Market Union are complete), or were conceived as temporary from the start (Next Generation EU), or needed intergovernmental treaties outside EU law to come into being. While some governments promised that this time will be different, others have already announced their resistance to deepening that involves treaty change. While the former implicitly endorse the idea of European sovereignty, the latter fear further dilution and the stealthy demise of national sovereignty.[5] Further enlargement by six, eight or nine members, who have come in from the cold of communist (imperial) rule and only quite recently re-acquired national sovereignty, will certainly complicate matters of problem definition and resolution.

The issue of fitness has been part and parcel of almost all enlargement rounds. The treaty changes from Maastricht (1992) to Lisbon (2007) were driven by member states recognising the need to widen the spectrum of EU policy fields

[5] In this regard two non-papers are important: first, the Non-paper submitted by Germany, Belgium, Luxemburg, Italy, the Netherlands and Spain on implementing the proposals of the Plenary of the 'Conference on the Future of Europe', 13 May 2022, in which governments state that they 'remain in principle open to necessary treaty changes that are jointly defined.' France is missing from the list of proponents. Second, the Non-paper by Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Sweden on the outcome of and follow-up to the Conference on the Future of Europe, 9 May 2022. Throughout the second Non-paper, signatories reiterate their opposition to treaty reform which had not been the task of the Conference and thus would not be supported by them. Their position is to work within existing treaties and in respect 'of the key principles such as subsidiarity and proportionality'.

due to functional spill-over effects and their consequences, to confer more power to the Union and to change decision-making rules. The empowerment of the European Parliament and the Commission, the establishment of the independent European Central Bank and the increase in the use of Qualified Majority Voting in the Council (weakening member states' veto powers), are important cases in point. So why are member states not opting more boldly for treaty change today? Their resistance has various sources.

First, the renaissance of nationalism is not confined to the new Central and Eastern members, it has engulfed most members of the Union. In the last two decades far-right and far-left parties weaponizing criticisms of the EU's democratic deficit or neoliberal bias also affected so-called mainstream parties. Brexit as the first instance of disintegration exacerbated it, as it put the desire to 'take back control' front and centre in the national 'Leave' campaign, even if Brexit so far found no followers.

Second, there is still the ghost of negative results in ratification referenda haunting the Union. Twice it chose a novel instrument for treaty change by summoning a Convention including also national parliamentarians: first, to draft the Charter of Fundamental Rights (2000), and then, to negotiate a Treaty Establishing a Constitution for Europe (2004). That the constitutional project was meant to settle the fitness question in a longer perspective and also to embed the big enlargements of 2004 and after is shown by the fact that representatives of all accession states (including Turkey) were invited to the deliberations of the second Convention and finally also given a limited right to vote on the outcome. The rejection of the Constitutional Treaty in the 2005 referenda by the citizens of France and the Netherlands is one of the least told crises in EU history (Puntscher Riekmann and Wessels 2006). At the time, however, the shock among European elites was paramount. A cure was sought in a reflection period, but in the end member states did not so much reflect as, under the German Council Presidency, absorb the bulk of provisions of the Constitutional Treaty into the Treaty of Lisbon (2007). Except for Ireland, all member states opted for ratification of the 2007 treaty by national parliaments. The very term 'constitution' was chosen as scapegoat and consequently eliminated from treaty language. It was accused of conveying the idea of the supranational union built in the image of the state. The negative referenda had taught national elites that such connotation had to be avoided despite the Union impinging upon, or even taking over ever larger parts of, core state powers (Genschel and Jachtenfuchs 2013). The old formula about European unification as 'integration by stealth' (Keohane and Nye 1977) continued to be valid.

Third, the 'polycrisis' (Jean-Claude Juncker) which has seized the Union – from the financial and fiscal crisis to migration to COVID-19 to climate change and finally the wars in the EU's neighbourhood – exacerbates citizens' feelings of uncertainty. Populist parties exploit such feelings by presenting the nation

state as the supposedly more capable actor. While such developments appear to legitimate national governments to ever more egoistically assert their national interests, this is not a one-way street. Indeed, the citizens' perceptions of the Union are much more in flux as conveyed by governments, mainstream media and some think tanks. The Spring 2023 Eurobarometer shows an overall positive rating of the Union (albeit with some conspicuous national differences), including with regard to its democratic qualities, while the Conference on the Future of Europe, which involved thousands of citizens, by and large confirmed their will to deepen the unification process. Regarding the geopolitical role of the Union, the call for it to 'speak with one voice' was paramount in the Conference deliberations. However, so far, the acknowledgment of citizens' demands by EU institutions has been disappointing (Petit 2023).

So is, *fourth*, the way in which European discourse on the next steps of unification, on definitions of sovereignty and consequently of democracy is framed. Sovereignty is projected now in varying shades: it is used to invoke strategic economic, industrial and technological autonomy (mainly from China) or energy and other resource independence (mainly from Russia and China). In foreign and security policy sovereignty is blurred given that most EU states (except the neutrals) are members of NATO and thus dependent on the US, but also due to the preponderance of bilateral engagements of national governments with the outside world. Such bilateralism is often pursued to the detriment of the EU as epitomized by the trip of the French President Macron in parallel to the President of the Commission von der Leyen to China or the trip of the German Chancellor Scholz to Latin America in 2023. Moreover, most national government leaders cherish individual invitations to Washington as much as the Presidents of the Commission and the European Council and the High Representative for Foreign Affairs. Finally, within the Union big states tend to coalesce in smaller groups such as the Weimar group of Germany, France and Poland. At the same time clear leadership in bringing all member states together to substantiate European global sovereignty is wanting. In particular, the Franco-German motor, so important in the history of Europe's integration, is now stuttering. In his 2022 speech in Prague Scholz failed to mention Macron's ideas on European sovereignty (Scholz 2022). Returning from his visit to China's President Xi Jinping the French President warned against following the US into the potential military conflict over Taiwan (Macron 2023b), seemingly without consulting beforehand with the German Chancellor, let alone other European heads of government. Yet, most European leaders remain quite silent on these issues and prefer to pursue their narrow interests often under the spell of party rivalry in electoral competition.

4.4 Future Perspectives: Conceptualizing European Sovereignty

Conspicuously, concrete concepts for the future of Europe, its sovereignty and democracy, do not seem to be burning issues for most European political leaders. Those few who dare to speak up for a more general overhaul of the institutional set-up to ensure sovereign and democratic decision-making of

the Union are quietly ignored or criticised for voicing their proposals at the wrong time or in the wrong manner. At the same time many are convinced that the current treaties offer enough provisions to be used or stretched to fulfil specific purposes as was the case during the crises (which have only partly been overcome), whereas they fear that going further is to open Pandora's box. The current conflicts with Poland and Hungary regarding the rule of law seem a particularly tough obstacle to public debates about further deepening in the form of more centralized decision-making, greater fiscal and financial capacity of the EU, and autonomous foreign and security policy. Thus, the mantra about the need to reform the Union before enlargement sounds hollow. It also puts into question enlargement itself, for which there is no time schedule, and which can be postponed 'forever' as the case of Turkey demonstrates.

A certain pessimism as to the future of a sovereign EU is therefore appropriate. What allows for a more optimistic outlook is the sobriety of the citizens who, when asked, convey by considerable majorities their satisfaction with and expectations from the Union. The majoritarian will is not only to maintain but also to deepen the Union. Thus, the real question is how the preferences of the citizens feed into the purposes and procedures of their elites. While the Commission's initiative to organise Citizens' Panels might work as an outlet to limit complaints about the EU's institutional remoteness, it is no substitute for conceptualizing the European sovereign as the source of legitimacy and thus of basing European sovereignty on that sovereign which is the compounded citizenry. For that to happen the public debate needs to go beyond those rather exclusive panels. But such a process cannot be the responsibility of the Commission or the Parliament alone. Member state institutions – parliaments and parties, the media and civil society, schools and universities – need to take up the task which is neither easy nor self-fulling.

Obviously, a broad and open debate implies risking major controversies. But then sovereignty is inherently about the dialectics of order and anomie (Galli 2019). In recent democratic theory anomie has gained some prominence as a term defining a loss of norms and orientation in parts of society (Sebaldt et al. 2020) and thus as a challenge to democracy. Urbinati theorizes expertocracy and populism as phenomena that 'disfigure democracy' (Urbinati 2014) because they prioritize opinion over will and vice versa, instead of constructing channels for communication between *episteme* and *doxa* through democratic procedures. The ultimate basis of democracy is political equality of citizens who must enjoy the freedom to voice also dissenting opinions while respecting decisions which remain always open to change. In a combined reading of this literature, I hold that anomie emerges from different opinions on norms and that the art of democratic politics is creating order out of this anomie resulting from different positions and preferences of citizens and their representatives. In this vein, also populist actors fuelling and thriving on anti-EU sentiments can be defeated much better by offering voters an alternative than by imitating their stances.

As for enlargement, several questions are still unresolved on both sides: first, regarding ethnic rivalry, in particular the Balkan states need to understand that in the EU all peoples are minorities, some arguably very large ones, but none holding a majority. If they wish to enter the 'compound democracy' (Fabbrini 2010) the insistence on past victimology is a dead end. The alternative is becoming part of a large polity capable of defining also 'their' sovereign role in the world. For that matter, the new applicants' respect for political equality of all citizens and the rule of law are paramount.

Second, the EU needs to clarify the rules of pursuing accession in the name of the European common good instead of projecting itself as the generous benefactor whose funds seem so attractive to new members. In more practical terms proposals of 'staged accession' (Emerson et al. 2021) with clear benchmarks to be achieved in order to gain full membership is recommendable. Moreover, not only regarding the Union's geopolitical challenges, I advocate a broad public debate on a treaty reform which ensures the EU's political and financial power to act autonomously and by majority rule as the norm. I remain sceptical about the use of the 'passerelle' clauses on the following grounds: (1) where it applies to CFSP, military and defence issues are excluded; (2) unanimity is required to its use and (3) national parliaments retain a veto power to be notified within six months. This procedure is hardly to bolster more efficient decision-making. But then, greater efficiency in questions of peace and war should be based on broad support. The same holds true also for the Union's financial capacity as expressed in the multi-annual financial framework for which one of the six special 'passerelle' clauses is foreseen. Finally, I wonder how many citizens are conscious of these provisions and what use populists of all kinds could make of their implementation if it serves their anti-Europeanism. If fitness in terms of sovereignty of the Union is the goal, winning the minds and hearts of the citizens needs training for an uphill struggle.

References

Emerson, Michael, Milena Lazarević, Steven Blockmans & Strahinja Subotić (2021). 'A Template for Staged Accession to the EU'. European Policy Studies / CEPS.

European Union External Action Service (2016). *Shared Vision, Common Strategy: a Stronger Europe*. Brussels: EEAS.

European Commission/High Representative of the Union for Foreign Affairs and Security Policy (2021). 'Joint Communication to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank: *The Global Gateway*'. JOIN (2021) 30 final.

European Union External Action Service (2022). *A Strategic Compass for Security and Defence*. Brussels: EEAS.

Fabbrini, Sergio (2010). *Compound Democracies. Why the United States and Europe Are Becoming Similar.* Oxford: OUP.

Foy, Henry (2023). 'Why Europe is finally taking joint arms procurement seriously', *Financial Times*, 20 February 2023.

Garton Ash, Timothy (2023). 'Postimperial Empire: How the War in Ukraine is Transforming Europe', *Foreign Affairs*, May-June 2023: 64-75.

Genschel, Philipp & Markus Jachtenfuchs (eds) (2013). *Beyond the Regulatory Polity? The European Integration of Core State Powers*. Oxford: OUP.

Galli, Carlo (2019). *Sovranità* (Bologna: Il Mulino).

Keohane, Robert & Joseph S. Nye (1977). *Power and Interdependence. World Politics in Transition*. New York: Little Brown and Company.

Leuffen, Dirk, Berthold Rittberger & Frank Schimmelfennig (2022). *Integration and Differentiation in the European Union: Theory and Policies*. Cham: Palgrave Macmillan.

Macron, Emmanuel (2017). 'Initiative pour l'Europe – Discours d' Emmanuel Macron pour une Europe souveraine, unie et démocratique'. Sorbonne 26 September 2017, Elysee.fr.

—— (2023a). 'Closing speech by the President of the French Republic', Globsec Summit in Bratislava. 31 May 2023, Elysee.fr.

—— (2023b). 'L'autonomie stratégique doit être le combat de l'Europe', *Les Echos*, 9 April 2023.

Macron, Emmanuel & Jens Stoltenberg (2023). Déclaration conjointe du Président de la République Emmanuel Macron et du secrétaire générale de l'OTAN Jens Stoltenberg'. 28 June 2023, Elysee.fr.

Ministry of National Defence Republic of Poland (2023). 'Increasing the US military presence in Poland'. Gov.pl.

Monti, Mario (2023). 'Europe Must Not Forget about the Single Market', *Financial Times*, 22 May 2023.

Nehammer, Karl (2023). 'Österreich zahlt nicht mehr Geld an EU', *Kurier*, 23 June 2023.

Petit, Perle (2023). 'EU level citizens' participation needs wider institutional support' European Policy Centre, June 2023.

Puntscher Riekmann, Sonja & Wolfgang Wessels (eds) (2006). *The Making of a European Constitution: dynamics and limits of the convention experience*. Wiesbaden: Verlag für Sozialwissenschaften.

Russell, Alec (2023). 'Putin has revived the EU's dreams of enlargement', *Financial Times*, 9 June 2023.

Scholz, Olaf (2022). 'Speech by the Federal Chancellor Olaf Scholz at the Charles University in Prague'. 29 August 2022, Bundesregierung.de.

Sebaldt, Martin et al. (eds) (2020). *Demokratie und Anomie: Eine fundamentale Herausforderung moderner Volksherrschaft in Theorie und Praxis*. Wiesbaden: Springer.

SIPRI (2023). 'World military expenditure reaches new record high as European expenditure surges', Press Release, 24 April 2023.

Urbinati, Nadia (2014). *Democracy Disfigured. Opinion, Truth, and the people*. Cambridge, MA: Harvard University Press.

von der Leyen, Ursula (2023). 'Speech by President von der Leyen on EU-China Relations to the Mercator Institute for China Studies and the European Policy Centre', Brussels 30 March 2023.

5 Widening without Deepening: Why Treaty Reforms Will Not Make the EU Fit for Enlargement

Tanja A. Börzel

After the sovereign debt, migration, Brexit, and pandemic crises (to name but a few), the EU faces yet another crisis of – as yet – unknown proportions. Putin's war of aggression against Ukraine violates every principle of the European security order that emerged with the end of the Cold War. It also contests the liberal model for organizing societies the EU has been built around. German Chancellor Scholz referred to the Russian invasion as a 'Zeitenwende', or historic turning point. Amid the profound challenges the war has occasioned, politicians and pundits alike have called for the deepening of European integration to defend the EU as a liberal project. Institutional reforms are deemed indispensable to prepare the EU for the accession of the states of the Western Balkans, Ukraine, Moldova, and possibly Georgia, but also to build the EU's strategic autonomy to fend off external shocks. The Euro crisis, mass migration, Brexit, rule-of-law backsliding, and the COVID-19 pandemic all revealed the EU's weakness as a regulatory polity in coping with non-military cross-border crises. The expectation now is that the current security pressures will finally push the member states to build up the EU's fiscal and coercive power moving it ever closer to the United States of Europe.

Even if the treaty reforms necessary for remedial capacity-building were on the cards in the foreseeable future, EU research hardly supports the expectation that according the EU more powers will necessarily produce a more powerful EU, particularly when it comes to future enlargement. The problem of the EU's lacking actorness does not lie in the weakness of its fiscal and coercive power nor in its decision-making rules and procedures. The problem is its member states – in the East and the West – prioritizing their national self-interests. The Schengen crisis demonstrated how asymmetrical effects on the member states, on the one hand, and the increasing electoral support for populist parties, on the other, result in a constraining dissensus on centralized political action (Hooghe and Marks 2009; Börzel and Risse 2018). More EU competencies or majority voting are unlikely to make member states upgrade the common interest placing a higher value on shared goals. At the same time, the war in Ukraine demonstrates that the EU is perfectly able to act as one, under unanimity (Kelemen and McNamara 2022). The EU has never been so united on foreign and security policy issues.

Upgrading the common interest has also been a major challenge for widening the EU. The EU's enlargement fatigue has been caused by certain member states opposing any further enlargement (e.g., the Netherlands, France) or insisting on conditions related to their national interest (e.g., Greece, Bulgaria). EU membership has been an on-the-whole successful tool for locking-in the democratic transition of post-socialist countries. To be effective, however, the perspective has to be credible. While the member states unanimously agreed to grant Ukraine, Moldova, and possibly Georgia, candidate status, it remains to be seen whether they will live up to their commitment. Reviving the stalled accession of Western Balkan countries provides a first test case.

The paper starts by acknowledging that widening is a logical and possibly effective response by the EU to Russia's destruction of Europe's security architecture – with two important caveats.[6] First, enlarging the EU further to the east will fuel Putin's narrative of the West encroaching on Russia's national security. It will also enhance the threat to the survival of his regime. Therefore, EU enlargement has to be embedded in the deterrence of Russia from any further acts of aggression against its EU membership-seeking European neighbours. Second, the need for providing credible security guarantees to Ukraine, Moldova, and possibly Georgia, will put geopolitical pressure on the EU and its member states to accelerate the accession process despite the comprehensive and time-consuming reforms necessary to meet the membership criteria. Amid the EU's military weakness, such security guarantees will have to come through NATO. The more Ukraine will be integrated into NATO, the more difficult it will be to withhold EU accession. Moreover, the EU will have to balance the political, economic, and social costs of these reforms against the credibility of the membership perspective. Domestic changes required by EU accession are costly, also politically. Governments need to be able to pay them off by the prospect of EU membership in a not too distant future.

Against this background, the paper continues by arguing that the integration of up to ten new members[7] will require substantial changes in EU institutions and EU policies. However, a reform of the Common Agricultural Policy to absorb Ukraine does not necessarily entail a deepening of European integration. Nor does mitigating the distributional effects of market integration. Irrespective of how much pooling and delegation of national sovereignty is deemed necessary

[6] Research for this article was part of the Cluster of Excellence Contestations of the Liberal Script (EXC 2055), funded by the *Deutsche Forschungsgemeinschaft* (DFG, German Research Foundation) under Germany's Excellence Strategy – EXC 2055 – 390715649.

[7] Ukraine and Moldova join the existing five Western Balkan candidates (North Macedonia, Montenegro, Serbia, Albania, Bosnia and Herzegovina, and Kosovo) and Turkey. If Georgia meets the EU's conditions for obtaining candidate status, there will be altogether 10 countries that could become members of the EU one day.

to make the EU fit for 35 members or more, changing the treaties will take time. Member states not only have to agree on reforms, they also have to ratify them, which entails a popular referendum in some cases. Amid the weak public support for enlargement, seeking to deepen the EU could weaken rather than strengthen the EU's capacity to widen.

This contribution concludes by discussing the need to balance the long-term process of building the accession capacity of candidates and the integration capacity of the EU with the short-term geopolitical pressures on the EU to protect and promote the democratic transition of Russia's European neighbours by accepting them as members as fast as possible.

5.1 Widening: Enlargement and the EU's Transformative Power

Forty years of research on EU enlargement (from Spain, Portugal, and Greece in the 1980s to Eastern enlargement in the 2000s) has found that EU membership is a necessary condition to ensure that nationalism and liberalism go together (Börzel, Dimitrova, and Schimmelfennig 2017a). An indication that it may not be sufficient is the anti-liberal backlash in Poland and Hungary (Sedelmeier 2012). More specifically, the EU's transformative power depends on a credible membership perspective offered by a security community of democracies and is an effective way to firmly anchor liberal democracy from the outside. Accession conditionality empowers liberal reform coalitions vis-à-vis conservative nationalists and authoritarian populists. It also provides strong incentives for rent- and power-seeking governments to deliver costly democracy and good governance reforms (Schimmelfennig and Sedelmeier 2004; Vachudova 2005). Incumbent elites tend to tax, spend, and regulate for their own economic and political benefit rather than the public good. Pre-accession financial assistance provides compensation for the political and economic costs incurred by the domestic changes necessary to meet the membership criteria.

This is the success story of the EU's Southern enlargement in the 1980s as well as its Eastern enlargement in the 2000s. The stalled accession of the Western Balkans and Turkey further corroborates the importance of a credible membership perspective to pay off the costs of domestic reforms. Pro-Russian forces and rent-seeking governments are strengthened where the EU fails to follow up on its commitment to membership.

The war in Ukraine seems to have reminded the member states of the EU's transformative power, ending 20 years of 'enlargement fatigue' (Rehn 2007). President Zelensky has successfully constructed Ukraine's struggle for survival around nationalism and liberalism. However, there is no natural alliance between aspirations for national self-determination and individual freedom. Many countries which cast off the yoke of foreign rule in the name of liberal democracy ultimately turn authoritarian, as many examples from post-Soviet states demonstrate.

Granting candidate status to Ukraine, Moldova, and Georgia, together with reviving accession negotiations with qualifying countries in the Western Balkans, may restore the credibility of the EU's commitment to liberal values with regard to its neighbours. Moreover, it provides the EU with a comprehensive set of instruments to support pro-Western reform coalitions in these countries making sure that nationalism and liberalism go together. A strong commitment to Ukrainian democracy also restores the EU's credibility in getting serious with those among its own members who violate fundamental principles, such as Poland and Hungary. Last, but not least, candidate status will send another powerful political signal, alongside sanctions and weapons, that the West stands with Ukraine against Putin's aggression and that Europeans are willing to contribute their share to the preservation of the liberal international order.

At the same time, a credible membership perspective for Eastern European countries and their ensuing accession process will fuel Putin's narrative of the West encroaching on Russia's national security. NATO's eastwards enlargement has served as a primary justification for the war of aggression against Ukraine, in Russia as well as in Western countries (Mearsheimer 2014, Mearsheimer 2022; cf. Goldgeier and Shifrinson 2023). Even if full membership of Ukraine, Moldova, and Georgia may lie in a distant future, they need for a security guarantee to deter Russia from seeking to destabilize their accession, militarily or otherwise. Given the current military dependency of European states on the US, this will most likely amount to a proto-membership of NATO, and will certainly be perceived and framed as such by Putin. Moreover, a democratic and economically prospering Ukraine, Georgia, and Moldova will pose a growing threat to the political survival of Putin's regime, which, arguably, has been a major driver of Russia's destabilization efforts in its near abroad (Babayan and Risse 2015).

To conclude, a widening of the EU will most likely bring a hardening of the border between Eastern Europe and Russia with Europeans building security against rather than with Russia, irrespective of whether we see a deepening of European integration.

5.2 Deepening: Strategic Autonomy and Integration Capacity

Providing future member states in Eastern Europe with a security guarantee will require strategic autonomy of the EU in defense policy. So far, the EU Heads of State or Government are only prepared 'to contribute, together with partners, to future security commitments to Ukraine, which will help Ukraine defend itself in the long term, deter acts of aggression and resist destabilisation efforts' (European Council 2023). This is the first time that EU member states have made such a security commitment to a third country. At the same time, a security commitment to be shared with others is not the same as a security guarantee by the EU alone. Even if it was, it would lack credibility since the EU currently lacks autonomous military capabilities. Majority voting on defense matters might circumvent the

veto of non-aligned member states (Austria, Ireland, Malta, Cyprus) as an obstacle to the EU's strategic autonomy. However, the Permanent Structured Cooperation (PESCO) already allows willing and able member states to engage in joint security and defense projects (Art. 42(6) TEU). PESCO has hardly been used. Even smaller groups of member states lack the political willingness to go it alone. Therefore, a deepening of security and defense policy is unlikely to produce the upgrading of common interests among the 27 EU member states that is necessary for the EU to provide a credible security guarantee.

It remains to be seen whether the 31 NATO members are prepared to offer post-War Ukraine, together with Georgia and Moldova, membership, and how credible such a commitment would be amidst Turkey's stalling of Sweden's accession and the possibility of Donald Trump returning to the White House in 2024. The NATO Summit in Vilnius in July 2023 acknowledged that Ukraine should eventually join NATO but failed to offer an immediate invitation for membership.

Strategic autonomy has become part of the EU's general integration capacity (formerly absorption capacity, European Council 1993). Integration capacity refers to the risks of enlargement undermining the integrity of the Single Market, the functioning of EU institutions, and citizens' support for accepting new member states. Also labelled the 4th Copenhagen Criterion, Börzel, Dimitrova and Schimmelfennig defined integration capacity as 'the ability of the EU to expand its membership successfully, i.e., to turn non-member states into member states while maintaining the cohesion and functioning of the EU' (Börzel, Dimitrova, and Schimmelfennig 2017b: 160). According to this definition, integration capacity has an external and an internal side. External integration capacity is about turning non-member states into member states. It refers to the ability of the EU to associate states more closely and prepare them for membership. Internal integration capacity is about maintaining the cohesion and functioning of the EU. It refers to the ability of the EU to prepare itself for enlargement.

The accession of up to ten new members challenges both the external and the internal integration capacity of the EU. Concerns echo those voiced in the EU's 'big bang' Eastern enlargement in 2004/2007: countries are comparatively poor and have been stuck in their transition towards democratic market economies, not least due to rampant corruption. Commentators and policy-makers warn that the EU has exhausted its capacity to accept any new member states. To avoid the risk of overstretch, it should first complete the integration of the 13 countries that joined the EU since 2004 and come to terms with the effects of the multiple crises, the EU went through over the past 15 years, respectively.

Concerns about overreach and overburdening have been answered by calls for a deepening of the EU. Deepening might strengthen the EU's capacity to cope with external shocks, such as financial crises and pandemics. Research on the

effects that the earlier Eastern enlargement had on the EU casts doubts on the extent to which the challenges of making the EU fit for 35 would or could be met by deepening before widening (cf. Börzel, Dimitrova, and Schimmelfennig 2017a). Regarding its internal integration capacity, the EU had not managed to systematically overhaul its institutions, policies, and budget to prepare for the accession of 12 new members. The Constitutional Treaty of 2003 was never ratified. While many of the envisioned reforms could be saved in the Lisbon Treaty, it only entered into force in late 2009. In the meantime, the massive enlargement of the mid-2000s did not have any systematic negative effects on the legislative capacity of the EU or its legal system. On the contrary, the speed of decision-making has increased, and more rather than less legislation is being adopted (Toshkov 2017). The accession of 12 new member states has not led to a deterioration of compliance with and implementation of EU law either (Börzel 2021); nor has it resulted in a greater use of soft law and differentiated integration in the long run (Schimmelfennig and Winzen 2017). Economically, the EU's integration capacity proved equally effective. Pre-accession assistance programmes helped to prevent economic collapse after communism. The combination of market opening and regulatory transfer with substantial economic assistance facilitated the Eastern candidates' transition to membership, mitigated the economic hardships of integrating with the EU market, and contributed to decreasing inter-state economic disparities between old and new member states (Bruszt and Langbein 2017).

The EU has faced serious challenges regarding the effectiveness of its policies and its distributive capacity. However, where these challenges have been met, it was by reforming policies instead of treaties (agriculture, structural funds, Next Generation EU). Other challenges were not met or were not exclusively related to the Central and Eastern European (CEE) newcomers. The CEE countries were not at the heart of the Euro crisis or the COVID-19 pandemic. Attempts to reform the EU's flawed asylum and migration policy after the Schengen crisis have been stalled by Hungary and Poland, usually supported by Slovakia, and the Czech Republic. However, several Western member states have been equally resistant against changing the status quo (Börzel and Zürn 2021). Nor is the rise of authoritarian populism confined to CEE countries (cf. Norris and Inglehart 2019; Schäfer 2022). Overall, the CEE member states have fallen in line with existing cleavages and coalitions among the existing EU members (Toshkov 2017). In selected policy areas, including environment, migration and asylum, and anti-discrimination, the CEE member states have distinct preferences from the older member states. Even in these cases, though, their legislative clout has been limited because they do not always act or vote as a cohesive group.

The overall successful accession of 12 new member states is commonly attributed to the EU's external integration capacity with conditionality at its core (cf. Börzel, Dimitrova, and Schimmelfennig 2017a; Schimmelfennig and Sedelmeier 2020). EU conditionality proved instrumental in supporting the transformations of the

new CEE member states. It had a positive impact on democracy, governance capacity, and the market economy; in addition, pre-accession assistance cushioned the shock of integrating transition economies into the EU's market.

There is little in the EU's integration capacity that would require treaty reforms to replicate the success of Eastern enlargement. Its internal capacity to integrate new members depends on its external capacity to prepare them for membership. This will require immense financial transfers, which, in the case of Ukraine, the EU and its member states have already committed, for the country's reconstruction. Making these funds conditional upon domestic reforms will support Ukraine in becoming the democratic state it aspires to be and it needs to become to join the EU. The key, hence, is conditionality and the more sizable and more credible the EU's rewards for meeting its conditions for domestic reform are, the more effective they will be. With membership, the EU has offered its greatest prize. The credibility of this depends on the member states' *willingness* to enlarge. There is simply no research that suggests that deepening integration enhances member state support for widening – on the contrary, to prevent or pre-empt its deepening, some Eurosceptic member states (e.g., UK, Poland) have framed deepening and widening not as complementary but as mutually exclusive goals of the EU.

At the same time, Euroscepticism severely undermines the credibility of the membership perspective. Concerns about enlargement and accompanying migration have become grist to the mill of Euro-sceptic parties and movements across Europe (Toshkov and Kortenska 2015; Dimitrova and Kortenska 2016). Since the 2004 enlargement, there has been a downward trend in public support for future enlargements of the EU (Toshkov et al. 2014; Dimitrova and Kortenska 2017). The public majority used to be against accepting new members. This has changed with Russia's war of aggression against Ukraine. In spring 2023, 53% of EU citizens are in favour of widening the EU. It remains to be seen how sustainable this public support for future enlargement will be. Moreover, the majority of the French citizens remains opposed, making the referendum France requires to ratify the accession of new members unlikely to pass.[8]

To sum up, the EU's capacity to integrate up to ten new members depends on the credibility of both a conditional membership perspective and a security guarantee. Credibility is about the political *willingness* of the member states to make and honour commitments. Such commitments are a precondition for, rather than a consequence of, deepening European integration. In fact, treaty reforms carry the risk of undermining the EU's credibility as they are likely to fuel public Euroscepticism. Finally, treaty reforms will do little to address the soft spot of the EU's integration capacity – the sustainability of accession conditionality.

[8] Standard Eurobarometer 99 – Spring 2023, https://europa.eu/eurobarometer/surveys/detail/3052, last access 18 July 2023.

The EU's external integration capacity played an important part in facilitating the democratic and economic catching-up process of CEE countries ahead of joining the EU. It has been less effective after they became members. The EU has not been able to counter the growing intra-state disparities regarding income and consumption (Bruszt and Langbein 2017; Medve-Bálint and Bohle 2016, which undermines the support for future enlargements and European integration more generally (cf. Boda and Medve-Bálint 2014). While cohesion funds contributed to the new members' wealth (Jacoby 2014), they have created new opportunities for rent-seeking and corruption feeding into rule of law backsliding (Mungiu-Pippidi 2014). The EU has been unable to prevent such backsliding in Hungary and Poland (Börzel and Schimmelfennig 2017; Priebus 2022). The EU's capacity to promote and protect democracy and the rule of law weakens once candidate countries become members.

There is no shortage of mechanisms to monitor and enforce the EU's fundamental values, ranging from imposing financial penalties (infringement proceedings, Art. 258 TFEU) to freezing access to EU funds (Rule of Law Conditionality Regulation) and suspending membership rights (Art. 7 TEU). Their effectiveness has been limited, so far, which is related to a lack of political willingness to deploy them not only on the part of member state governments, but also on the part of the European Commission and the European Parliament (Oliver and Stefanelli 2016; Kelemen and Blauberger 2017; Sedelmeier 2017; Pech and Scheppele 2017; Pech 2022). Given the growing electoral support of right-wing populist parties throughout the EU, a change in decision-making rules and procedures to depoliticize enforcement is unlikely. Nor would it do much to address the political dynamics that undermine the enforcement of the EU's fundamental values. When the EU decided to block funds over rule of law concerns, the Polish and Hungarian governments threatened to veto the EU's decisions on the reception of Ukrainian refugees and EU aid for Ukraine, respectively. There are several member states by now running the serious risk of breaching the EU's fundamental values but the reluctance of the Council and the Commission to ostracize individual member states has prevented the use of the Art. 7 sanction. There is also the danger that EU sanctions against democratic and rule of law backsliding backfire, bolstering public support for targeted governments and their authoritarian policies (Schlipphak and Treib 2016).

Strengthening the EU's enforcement powers might help restore compliance with democratic and rule of law principles in backsliding states and prevent similar developments in other EU member states (see e.g., Priebus 2022). Yet, such deepening would do little to tackle the dilemma the EU is facing in widening. The dilemma is the following: on the one hand, geopolitical pressures push the EU towards accelerating the accession of candidate countries, which is also necessary to maintain the credibility of the membership perspective as an engine of domestic reforms. On the other hand, while the current and future candidates have made progress, they are still a long way from reaching the EU's average

level of rule of law, even when compared to the four CEE laggards. Among the prospective future members Ukraine has the most catching up to do. Georgia, whose candidate status is pending, outperforms all current accession countries its recent tendencies of backsliding notwithstanding.

Figure 1 Rule of Law in selected European countries, 2010 vs. 2020

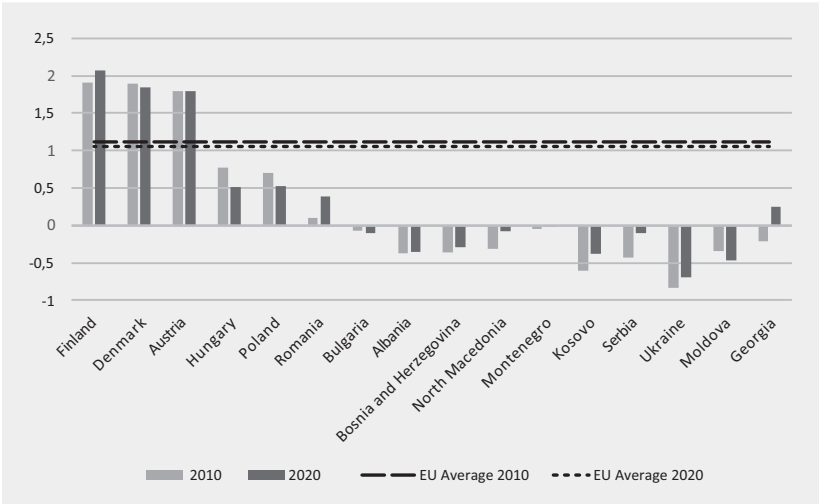


Figure 1: Data obtained from the World Bank (2023) Worldwide Governance Indicators [data set], DataBank, accessed 3 July 2023. https://databank.worldbank.org/source/worldwide-governance-indicators

Respect for citizens' rights, access to independent and impartial courts, and anti-corruption agencies undermine the power of incumbent, rent-seeking elites. A credible – i.e. not so distant – membership perspective is the only way to pay off the political costs of constrained government power and fighting corruption (Schimmelfennig and Sedelmeier 2005); it also provides incentives for voters to no longer support governments that refuse to introduce these rule of law reforms (Vachudova 2005). Compromising on the rule of law in accession countries will not only undermine the EU's credibility vis-à-vis backsliding member states regarding the enforcement of the EU's fundamental values; rule of law is the foundation for both democracy and economic growth, which, in turn, are both necessary for accession countries to successfully integrate into the EU (Mungiu-Pippidi 2015). The key challenge for making the EU fit for 35, then, is the balancing of rule of law conditionality against the credibility of accession and geopolitical pressures.

5.3 (Re-)Balancing: Differentiation and Consistency

Democratic backsliding in EU member states has been going on for almost 15 years. How to stop it is the subject for another paper. Suffice to say that while

the EU's toolbox could be optimized to deal with the symptoms, the multiple root causes have to be mainly addressed at the domestic level. The EU's tax and spending capacity is too limited to mitigate the distributional consequences of economic liberalization that comes with the integration into the Single Market. Nor does the EU have the coercive capacity to fight systemic corruption in the member states. Neither the COVID-19 crisis nor the war in Ukraine created a 'Philadelphia' moment of state-building (Kelemen and McNamara 2022) in which member states are ready to complement the EU's regulatory powers with 'core state powers' (Genschel and Jachtenfuchs 2014), such as independent fiscal revenue, a sizeable bureaucracy, and external security forces. The war in Ukraine has pushed the EU towards more unity and more intergovernmental cooperation rather than supranational centralization in security and defense (Genschel 2022).

In any case, deepening the EU by giving it core state powers in the area of internal and external security and fiscal policy, and expanding majority voting to deploy these powers would do little to help the EU integrate new member states insofar as it would not help them comply with the major accession criteria, particularly regarding the rule of law. The key challenge lies with the EU's revised methodology for accession negotiations adopted in February 2020 (Bargiacchi 2020). It aims at increasing the credibility and predictability of the process by clustering the 35 chapters that make up the *acquis communautaire* which candidates have to implement before joining. The 'cluster on fundamentals' sets the pace for the overall negotiations. Besides the Copenhagen Criteria (working market economy, functioning democratic institutions, and public administration reforms), it includes all major aspects of the rule of law.[9] The candidates need to show sufficient progress here before any of the other five clusters can be opened. And they need to make continuous progress as the cluster of fundamentals is the last to be closed in the accession negotiations. To put it differently, rule of law conditionality precedes and predominates what Schimmelfennig and Sedelmeier labelled 'acquis conditionality' (Schimmelfennig and Sedelmeier 2004). Amidst the poor rule of law record of all candidate countries, Ukraine in particular (see above), the EU's current enlargement methodology needs to be re-balanced if it is to provide a credible accession perspective.

Due to its centrality for EU membership, compromising on rule of law is not an option. The question is to what extent chapters in other clusters can be used to provide tangible benefits not only for citizens but also the ruling elites to implement costly reforms. This may systematically vary depending on elite constellations (cf. Ademmer, Langbein, and Börzel 2020). Some governments fear losing political power, others are more concerned about rent-seeking opportunities. EU conditions may harm some societal actors and economic sectors more than others. Governments often also lack the financial and administrative capacity to

[9] Chapters (23) judiciary and fundamental rights, (24) justice, freedom and security, (5) public procurement, (18) statistics, and (32) financial control.

implement the domestic reforms expected by the EU (cf. Schimmelfennig and Sedelmeier 2020). Finally, the Western Balkans and Eastern European countries are at different stages in their accession process, reflecting the extent to which they have made progress on the EU's reform priorities. Some have been accession candidates for around ten (Montenegro, Serbia, Albania) or even twenty years (North Macedonia, Turkey), others have become candidates recently and are waiting for negotiations to be opened (Bosnia and Herzegovina, Moldova, Ukraine). Two are only potential candidates (Georgia, Kosovo). Differences in the progress of domestic reforms and their distributional consequences defy the EU's 'one-size-fits-all' approach to enlargement.

In addition to differentiation, the EU needs to reward progress in a (time-) consistent manner. Benefits need to materialize in a timely manner if they are to compensate for adopting costly EU rules. 'Micro-conditionalities' (Schimmelfennig and Sedelmeier 2020: 828), such as sectoral agreements, provide for a more incremental integration of accession candidates, but the distant and uncertain rewards hardly compensate for domestic reforms that impose high and immediate costs.

Requiring member states to unanimously agree on every step in the process (granting candidate status, opening and closing negotiations and individual chapters) not only slows down the delivery of rewards considerably (access to additional assistance, opening of new chapters); it also allows member states to ask for concessions that are unrelated to the acquis or to stall enlargement altogether. In this sense, EU enlargement is already politicized, and geopolitical competition with Russia and China in Western Balkans and Eastern Europe is likely to politicize it further. In the past, unfavourable public opinion and the rise of populist parties in EU member states have delayed or stalled the accession process of candidates. In the future, public support for a more geopolitical EU might result in different priorities in the enlargement process, such as foreign, security and defense policy, and energy.

However, competition with Russia and China is not only about political and economic power over spheres of influence. It involves a systemic rivalry over how to organize societies. Societies in the Western Balkans and Eastern Europe seek membership in the EU not only for security but because of its capacity to provide peace, prosperity, and freedom. Europe in the confines of the EU has experienced the longest period of peace since the Peace of Westphalia, which ended the Thirty Years War in 1648.[10] The Single Market constitutes the world's

[10] Russia's military invasion of Ukraine launched by Putin in 2022 is not the first war fought on the European continent since the end of the Second World War – the Yugoslav Wars lasted 10 years and only ended in 2001. Unlike previous wars in Europe, EU member states have not been parties to these wars. The EU offered a membership perspective to the Western Balkan countries to prevent future wars in the region. EU accession also appears the main strategy for ensuring a peaceful reconstruction of Ukraine as an independent state.

largest trading block. The multiple crises the EU has been facing for more than a decade testify to the resilience of the EU as a 'working peace system' (Mitrany 1943). Human rights, democracy, and the rule of law provide the normative foundation for peace and prosperity of the region. They are at the center of the EU's normative and transformative power. The shared commitment to the EU's 'liberal script' that comes with the application for EU membership (Art. 49 TEU) gives the EU some normative leverage over ruling elites who resist domestic reforms; this is particularly the case in accession countries where public support for EU membership is high. The credibility of commitments needs to be mutual for enlargement to work. Public support is key and unlikely to be swayed by attempts to deepen European integration. On the contrary, deepening is likely to empower populists claiming that the EU undermines popular sovereignty in member states. Accession countries may see their membership moving into an even more distant future by the EU shifting the goalposts. The EU has all the tools necessary to make integration work, internally and externally. The member states just have to make use of them.

References

Ademmer, Esther, Julia Langbein & Tanja A. Börzel. (2020). 'Varieties of Limited Access Orders: The Nexus Between Politics and Economics in Hybrid Regimes'. *Governance* 33(1): 191-208.

Babayan, Nelli & Thomas Risse (eds) (2015). *Democracy Promotion and the Challenges of Illiberal Regional Powers. Special Issue of Democratization* 22(3).

Bargiacchi, Paolo (2020). 'The Revised Enlargement Methodology for the Western Balkans'. *Regional Law Review* 47-58.

Boda, Zsolt & Gergö Medve-Bálint (2014). 'The Poorer You Are, the More You Trust? The Effect of Inequality and Income on Institutional Trust in East-Central Europe'. *Sociologický časopis/Czech Sociological Review* 21(3): 419-53.

Börzel, Tanja A. (2021). *Why Noncompliance. The Politics of Law in the European Union*. Ithaca, NY: Cornell University Press.

Börzel, Tanja A., Antoaneta Dimitrova & Frank Schimmelfennig (eds) (2017a). *European Union Enlargement and Integration Capacity. Special Issue of the Journal of European Public Policy* 24(2).

Börzel, Tanja A., Antoaneta Dimitrova & Frank Schimmelfennig (2017b). 'European Union Enlargement and Integration Capacity: Concepts, Findings, and Policy Implications'. *Journal of European Public Policy* 24(2): 157-76.

Börzel, Tanja A. & Thomas Risse (2018). 'From the Euro to the Schengen Crisis: European Integration Theories, Politicization, and Identity Politics'. *Journal of European Public Policy* 25(1): 83-108.

Börzel, Tanja A. & Frank Schimmelfennig (2017). 'Coming Together or Driving Apart? The EU's Political Integration Capacity in Eastern Europe'. *Journal of European Public Policy*.

Börzel, Tanja A. & Michael Zürn (2021). 'Contestations of the Liberal International Order From Liberal Multilateralism to Postnational Liberalism International Organization'. *International Organization* 75(2): 282-305.

Dimitrova, Antoaneta L. & Elitsa Kortenska (2016). 'Enlargement as Foreign Policy in the Western Balkans: Has it Reached Its Limits?' in Wim Voermans and Stefaan van den Bogaert (eds) *Fit for the Future? Reflections from Leiden on the Functioning of the EU*, Den Haag: Eleven International Publishing, 265-90.

—— (2017). 'What Do Citizens Want? And Why Does it Matter? Discourses Among Citizens as Opportunities and Constraints for EU Enlargement'. *Journal of European Public Policy* (2): 259-77.

European Council (1993). 'European Council meeting in Copenhagen 21-23 June 1993. Conclusions of the Presidency'. Brussels: European Council.

Genschel, Philipp (2022). 'Bellicist Integration? The War in Ukraine, the European Union and Core State Powers'. *Journal of European Public Policy* 29(12): 1885-900.

Genschel, Philipp & Markus Jachtenfuchs (eds) (2014). *Beyond the Regulatory Polity. The European Integration of Core State Powers*. Oxford: Oxford University Press.

Goldgeier, James & Joshua R. Itzkowitz Shifrinson (2023). *Evaluating NATO Enlargement: From Cold War Victory to the Russia-Ukraine War*. Cham: Springer Nature.

Hooghe, Liesbet & Gary Marks (2009). 'A Postfunctionalist Theory of European Integration: From Permissive Consensus to Constraining Dissensus'. *British Journal of Political Science* 39(1): 1-23.

Jacoby, Wade (2014). 'The EU Factor in Fat Times and in Lean: Did the EU Amplify the Boom and Soften the Bust?' *Journal of Common Market Studies* 52(1): 52-70.

Kelemen, R. Daniel & Michael Blauberger (2017). Introducing the debate: European Union safeguards against member states' democratic backsliding'. *Journal of European Public Policy* 24(3): 317-20.

Kelemen, R. Daniel & Kathleen R. McNamara (2022). State-building and the European Union: Markets, War, and Europe's Uneven Political Development'. *Comparative Political Studies* 55(6): 963-91.

Mearsheimer, John J. (2014). 'Why the Ukraine Crisis is the West's Fault: The Liberal Delusions that Provoked Putin'. *Foreign Affairs* 93: 77-89.

—— (2022). 'The Causes and Consequences of the Ukraine War'. *Horizons: Journal of International Relations and Sustainable Development* 21: 12-27.

Medve-Bálint, Gergö & Dorothee Bohle (2016). 'More Integrated But Also More Divided: Intended and Unintended Consequences of Foreign Direct Investment and the Cohesion Policy in Eastern Europe'. Berlin: Freie Universität Berlin,

Mitrany, David (1943). *A Working Peace System. An Argument for the Functional Development of International Organization*. London: Royal Institute of International Affairs.

Mungiu-Pippidi, Alina (2014). 'The Legacies of 1989. The Transformative Power of Europe Revisited'. *Journal of Democracy* 25(1): 20-32.

—— (2015). *The Quest for Good Governance: How Societies Develop Control of Corruption*. Cambridge: Cambridge University Press.

Norris, Pippa & Ronald Inglehart (2019). *Cultural Backlash: Trump, Brexit, and Authoritarian Populism*. Cambridge: Cambridge University Press.

Oliver, Peter & Justine Stefanelli (2016). 'Strengthening the Rule of Law in the EU: The Council's Inaction'. *JCMS: Journal of Common Market Studies* 54(5): 1075-84.

Pech, Laurent (2022). 'The Rule of Law as a well-established and well-defined principle of EU law'. *Hague Journal on the Rule of Law* 14(2-3): 107-38.

Pech, Laurent & Kim Lane Scheppele. (2017). Illiberalism Within: Rule of Law Backsliding in the EU. *Cambridge Yearbook of European Legal Studies* 19: 3-47.

Priebus, Sonja (2022). 'The Commission's Approach to Rule of Law Backsliding: Managing Instead of Enforcing Democratic Values?' *JCMS: Journal of Common Market Studies* 60(6): 1684-700.

Rehn, Olli (2007). 'What's the Future for EU Enlargement?' speech delivered at the German Marshall Fund of the United States, 25 September 2007, Speech 07/185, available at: http://www.eu-un.europa.eu/articles/es/article_7355_es.htm.

Schäfer, Armin (2022). 'Cultural Backlash? How (Not) to Explain the Rise of Authoritarian Populism'. *British Journal of Political Science* 52(4): 1977-93.

Schimmelfennig, Frank & Ulrich Sedelmeier (2004). 'Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe'. *Journal of European Public Policy* 11(4): 661-79.

Schimmelfennig, Frank & Ulrich Sedelmeier (eds) (2005). *The Europeanization of Central and Eastern Europe*. Ithaca, NY: Cornell University Press.

Schimmelfennig, Frank & Ulrich Sedelmeier (2020). 'The Europeanization of Eastern Europe: The External Incentives Model Revisited'. *Journal of European Public Policy* 27(6): 814-33.

Schimmelfennig, Frank & Thomas Winzen (2017). 'Eastern Enlargement and Differentiated Integration: Towards Normalization'. *Journal of European Public Policy*.

Schlipphak, Bernd & Oliver Treib (2016). 'Playing the Blame Game on Brussels: The Domestic Political Effects of EU Interventions Against Democratic Backsliding'. *Journal of European Public Policy* 30(9): 352-65.

Sedelmeier, Ulrich (2012). 'Is Europeanization through Conditionality Sustainable? Lock-In of Institutional Change after EU Accession'. *West European Politics* 35(1): 20-38.

Sedelmeier, Ulrich (2017). 'Political Safeguards Against Democratic Backsliding in the EU: The Limits of Material Sanctions and the Scope of Social Pressure'. *Journal of European Public Policy* 24(3): 337-51.

Toshkov, Dimiter (2017). 'The Impact of the Eastern Enlargement on the Decision-Making Capacity of the European Union'. *Journal of European Public Policy* 24(2): 177-96.

Toshkov, Dimiter & Elitsa Kortenska (2015). 'Does Immigration Undermine Public Support for Integration in the European Union?' *Journal of Common Market Studies* 53(4): 910-25.

Toshkov, Dimiter, Elitsa Kortenska, Antoaneta L. Dimitrova & Adam Fagan (2014). 'The "Old" and the "New" Europeans: Analyses of Public Opinion on EU Enlargement in Review'. MAXCAP Working Paper Series, No. 02, 'Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond' Berlin: Freie Universität Berlin.

Vachudova, Milada Anna (2005). *Europe Undivided: Democracy, Leverage and Integration after Communism*. Oxford: Oxford University Press.

6 From Multi-speed to Multi-tier: Making Europe Fit for Herself

Sergio Fabbrini

The main theories on European integration have consistently interpreted the European Union (EU) as an evolving process, rarely as a political system with its own stable institutional and policy configuration. There is a teleological predisposition, in the institutions in Brussels as well as in epistemic communities, to think that the course of history is heading towards a politically unified continent – through the EU. This predisposition has outlived the crises of the last fifteen years (Brexit, among them) and has been further strengthened by the Russian aggression against Ukraine, with the related pressure to expand the EU to that war-torn country, and, with it, to Georgia and Moldova, as well as to the six countries of the western Balkans (Serbia, Bosnia and Herzegovina, Montenegro, Albania, North Macedonia, and Kosovo) which have been in the waiting room for some time. This paper offers a critical discussion of the predominant teleology from a governance perspective. The new enlargements would further strengthen the EU's intergovernmental institutions, to the detriment of its supranational ones. To be *fit for 35* (or *36*) would require a change of paradigm, from multi-speed EU to multi-tier Europe. I will proceed as follows: first, I will analyse what the EU is, today; second, I will discuss the paradigm of a multi-speed EU which has been conceived and used to impose some order on the growing enlargement and differentiation in the EU; third, I will discuss an alternative paradigm, that of a multi-*tier* Europe, identifying the rationale which justifies it. Finally, I will conclude with some considerations on the idea of a plural Europe.

6.1 The Dual Governance of the EU

Launched in 1951 with the creation of the European Coal and Steel Community and then with the formation of the European Economic Community under the Rome Treaties of 1957, the EU is the result of a process of institutionalisation which has given rise to a dual political system. The 1992 Maastricht Treaty was a turning-point in this process (Fabbrini 2015). It established a single Union with three pillars, by reinforcing the European Economic Community (by then simply the European Community) and creating two new pillars, the pillar of Common Foreign and Security Policy (CFSP), and later (1999) the Common Security and Defence Policy (CSDP), and that of Justice and Home Affairs (JHA). While the first pillar maintained its supranational structure, the two new pillars were instead organised according to a new, intergovernmental logic. In the first pillar, the European Commission maintained its monopoly over legislative initiative

(the ability to propose regulations and directives). Proposals by the European Commission are put to the Council of national ministers (hereafter simply the Council) and to the European Parliament (or EP, directly elected for the first time in 1979), and each has the power to approve or reject such proposals on the basis of different majorities within them. Supranational governance of policies regulating the common market (which became the single market with the Single European Act of 1986) is thus based on a triangulation, which the 2009 Lisbon Treaty formalised as the 'ordinary legislative procedure'.

In contrast, intergovernmental was the logic introduced in the other two pillars: the institutions representing national governments (the Council and, increasingly, the European Council of national heads of state or government) control the decision-making process, with the European Commission playing a secretarial role and the EP placed on the margins of the decision-making process (Bickerton et al. 2015). The 2009 Lisbon Treaty abolished the formal distinction between pillars, leaving intact however the institutional distinction between supranational and intergovernmental governance. While in supranational governance the decision-making process is primarily horizontal (though the Council – the vertical institution entrusted with representing member states' interests in Brussels – has an important role), in intergovernmental governance the decision-making process is mainly vertical, with the intergovernmental bodies coordinating member states' interests brought to Brussels by their national governments. Here the policy initiative frequently comes from individual national governments rather than from the European Commission, national governments which in turn arrange to implement the decisions of the intergovernmental bodies. The two governance models also reflect two different models of integration. Supranational governance represents integration through law, a process overseen by the Court of Justice of the European Union (CJEU) whose task is to supervise the congruence between national laws and European Treaties. Intergovernmental governance instead represents integration through voluntary coordination by national governments, where decisions are mainly of a political rather than legislative nature. The distinction between the two governance models is heuristically helpful for conceptualising the EU's decision-making processes, even if hybrid decision-making models have taken hold in interstitial policies or as answers to urgent events (Batora 2020).

Thus, the EU has passed through an institutionalisation process which has created a political system with a basic differentiation in forms of governance. Different policies are decided by different decision-making models. Since Maastricht, the EU has lost the unitary character which it had previously, because at Maastricht the European agenda took on board policies which were traditionally close to core state powers (Genschel and Jachtenfuchs 2014). And yet much of the literature on European integration has barely conceptualised the difference in forms of governance, focusing solely on differentiation when it comes to the making of policies. The latter has been understood as different

groups of member states participating in specific policy areas (such as the Eurozone, in which 20 out of 27 member states participate), and in some cases with the involvement of states from outside the EU (as in the case of the Schengen area, which encompasses 23 out of the 27 member states, but also four states outside the EU: Norway, Switzerland, Iceland and Liechtenstein). Certainly, the theoretical underestimation of governance differentiation has been acknowledged by scholars of differentiation – Schimmelfennig and Winzen (2020: 191) recognise that 'we know less about governance and decision-making under conditions of differentiation' – however its implications for the democratic nature of the decision-making process have been largely ignored. If supranational governance has managed to guarantee some balance among the institutions which make it up, the same cannot be said for intergovernmental governance.

The European Council has claimed greater decision-making powers for itself without any horizontal and vertical checks and balances on its deliberation. The collective decisions of the European Council, which apply to the whole of the EU and not only to individual countries, have been considered legitimate because the individual members of that institution are accountable to their respective national parliaments. This is a theoretical nonsense, since the European Council, as an executive institution, should be accountable to a legislative institution located at an equivalent institutional level (and representing those affected by the executive's decisions), and not by a collection of dispersed and unconnected national parliaments. Unchecked by other institutions, the internal functioning of the European Council has evidenced the pathologies that are the result of the logic of unanimity, from majorities imposing their will to minorities vetoing them.

6.2 The Paradigm of a Multi-speed EU

The enlargements of the 1990s and 2000s have justified the transformation of the EU into an increasingly differentiated political system. However, for political leaders and scholars, differentiation is not a challenge because it has mainly an instrumental character. A 'Europe undivided' (Vachudova 2005) requires the EU to give the new member states time to acquire the capacity to fall into line with the legal and administrative complexity of the so-called *acquis communautaire* of the single market. With the enlargements of 2004 and 2007, the administrative and legal divide between the old and new countries ran particularly deep. The countries which joined the EU through those two enlargements needed to rebuild their institutional systems to bring them into line with the operating standards of a highly regulated market economy. It was a question of dismantling the old administrative apparatus of the state economy and building the new administrative apparatus of the market economy. Hence the understanding of instrumental differentiation as a temporary deviation from the common integration path. Two or more speeds (Piris 2012) but heading in the same direction.

The paradigm of a multi-speed EU reflects the reality of the instrumental differentiation, interpreted as a contingent deviation without implications for the EU in the medium/long term. The paradigm assumes that *all* the member states agree on the purpose, celebrated since the Rome Treaties of 1957 and now in Art. 1 of the Treaty on European Union (TEU) and signed up to by each of them on joining the EU, of 'creating an ever closer union among the peoples of Europe'. Meeting in Rome on 25 March 2017, on the occasion of the sixtieth anniversary of the foundation of the EU, the leaders of national governments and of Brussels institutions signed a declaration which stated: 'We will act together, at different paces and intensity where necessary, while moving in the same direction, as we have done in the past, in line with the Treaties and keeping the door open to those who want to join later. Our Union is undivided and indivisible.' The Brexit referendum was held less than a year earlier.

The vision of the EU as 'undivided and indivisible' has been made even more compelling by Russia's full-scale invasion of Ukraine. New countries are asking to join the EU as soon as possible to guarantee their security, upending the logic of the accession criteria approved in Copenhagen in 1993. These criteria stipulated that the countries seeking to join the EU must be fully democratic, must have constitutions capable of defending the rule of law and human rights, and must have efficient administrations and functioning market economies. Indeed, apart from East Germany, which was absorbed by West Germany in 1990 ('overnight' as François Mitterrand put it), all the other countries in Central and Eastern Europe had to wait until 2004 and 2007 to be able to join the EU. Of course, Ukraine and the other countries threatened by Russia's imperialism cannot wait the decade or more it will take to adapt their internal legislation and administration to the requirements of the single market. Rather, they are asking to enter the EU institutional system, and then to adapt, from within, their economic and political structures. Their request has met with support from the main EU and national leaders, on the preliminary condition of introducing majority voting in intergovernmental security and fiscal policy (so far decided by unanimity). On 12 June 2023, seven ministers of foreign affairs (of Germany, Belgium, Luxembourg, Netherlands, Romania, Slovenia, and Spain) signed a document 'advocating for greater use of qualified majority voting (QMV) in the EU's Common Foreign and Security Policy (CFSP)' (Baerbock et al. 2023). So, according to this paradigm, member states can adopt differing speeds in the integration process, on the assumption that each of them agrees with the goal of Art. 1 TEU. Is that true?

6.3 Divisions over Sovereignty

It is true that the EU has become differentiated, however its differentiation is not only instrumental but also constitutional (Winzen 2016). The latter arises from the refusal by some member states to participate in policy regimes that could limit their national sovereignty (Sidjanski and Saint-Ouen 2022). This concerns policies close to core state powers. Fiscal sovereignty (within the

Economic and Monetary Union, or EMU), territorial sovereignty (in migration and asylum policies), military and security sovereignty (in the CFSP and CSDP) are some examples of core state powers which member states wish to control directly. The more these policies have become central in the EU agenda, the more the intergovernmental regime has been strengthened. The strengthening of intergovernmental institutions (particularly the European Council) was further promoted by the culture of the member states that joined the EU with the enlargements in the 1990s and the 2000s. Those member states jealously guarded their own historical national sovereignty (the Scandinavian countries) or were fearful of losing control of their newly reacquired national sovereignty (the eastern countries). Those states aimed thus to directly manage policies which could affect their national sovereignty, thus supporting the intergovernmental regime of voluntary policy coordination among national governments, with the European Council as the top decision-making institution. This was also partially true for countries which were nevertheless involved in advanced projects of integration. Just think of the Eurozone, where fiscal policy has remained in the hands of national governments, even if monetary policy has been transferred to the supranational European Central Bank.

Monetary policy, in fact, is the only core state power managed through a supranational (if not federal) model – for specific historical reasons related to the price Germany had to pay for proceeding in the post-Cold War unification of the country – while all other core state power policies are managed through intergovernmental coordination, a distinction that seems to be underestimated by Schimmelfennig (2019: 108) when he takes for granted 'the supranational integration of core state powers'. If there had been supranational integration, it would have a legislative character, binding for all member states, with the European Commission and EP each enabled to play a decision-making role. The more core state powers have become crucial to the EU agenda, the more intergovernmental institutions have become central in the EU dual decision-making system. The more the EU has enlarged, the more intergovernmental institutions (led by the European Council) have strengthened. Control over core state powers through intergovernmental coordination has been the condition of transferring their management to Brussels. The decision-making centrality of the European Council has been the guarantee for new member states that their membership of the EU would not force them to agree to the project of the 'ever closer union'. It will be more so for Ukraine and the other eastern countries asking to enter the EU. After all, in the agreement of 18-19 February 2016, between the European Council and David Cameron's British government, it was already recognised that 'the United Kingdom, in the light of the specific situation it has under the Treaties, is not committed to further political integration into the European Union', thus specifying that 'the references in the Treaties and their preambles to the process of creating an ever closer union among the peoples of Europe do not offer a legal basis for extending the scope of any provision of the Treaties or of EU secondary legislation' (European Council 2016,

section c). Divisions on sovereignty have thus led the EU to accommodate different finalities and not only different capabilities.

6.4 A Plural Europe

The predominant literature in European studies has systematically undervalued not only the correlation between intergovernmental governance and core state powers, but also the existence of different views on the finalité of the integration process. Those different views were and are the expression of the complex historical processes that led to the formation of national identity, a cultural configuration largely independent from the government of the day. A cleavage based on sovereignty has regularly emerged during the poli-crises of the 2010s and 2020s, when national interest and national identity systematically overlapped. Think of the migration crisis of 2015-16 (and the implications for territorial sovereignty), with the division between the countries of east Europe (contrary to any policy of openness towards migrants) and the countries of the west (more favourable to integrating refugees, in this case mainly Syrians). Think of the pandemic crisis of 2020-22 (and its implications for fiscal sovereignty), with the division between a group of 'frugal states', mainly in the north and majority of the states in the Eurozone, in relation to the use of common European debt to support the recovery of national economies hit by COVID-19. Think of the division between those two coalitions of states and Poland and Hungary, in relation to respecting the principles of the rule of law as a condition to access EU ordinary and extraordinary funds (with its implications for constitutional sovereignty). Think of the Russian war against Ukraine, which has called into question national control of energy, military, and sanction policies. Certainly, in the end, the EU took important collective decisions, but a system cannot rely on emergencies for overcoming national prerogatives and vetoes.

Divisions over sovereignty have also shown the persistence of different 'regional' cultures, the result of shared historic experiences, albeit with different implications for integration. There is a group of countries in Western Europe (revolving around the Franco-German axis and consisting of the main countries which make up the Eurozone), which has continued to adhere to the goal of a closer union, favouring policy programmes with greater integration's impact (most recently the Next Generation EU programme for dealing with the pandemic's consequences). Historically, these countries' elites have interpreted the integration process as a further check on their internal democracies, to the point of including in their countries' post-war constitutions the need to share with other countries the amounts of national sovereignty considered necessary for pursuing common goods. Those élites have thus institutionalized a model of 'constrained democracy' (Larsen 2021) for preventing the recurrence of the authoritarian experiences of the first half of the 20th century and its warfare consequences. Certainly, their commitment to 'ever closer union' has been affected by subsequent events. The unification of Germany in October 1990 led to a reduction in that country's supranational culture and to the favouring

of the intergovernmental approach. France has continued to fluctuate between supranational tendencies and an attraction towards intergovernmental solutions. However, in these countries, being pro-Europe continues to be an essential component in the national identity.

The frugal states in the north, with their preference for confederal solutions, have showed a general preference for integration through the single market. After all, Denmark (from 1960 to 1972), Sweden (from 1960 to 1995), Austria (from 1960 to 1995) and Finland (from 1961 to 1995) were part of a (still existing) alternative international organisation to the EU, the European Free Trade Association (EFTA). When they joined the EU, those countries immediately settled in the Eurosceptic camp, led by the United Kingdom which in turn was a member of the EFTA from 1969 to 1972, declaring their primary interest to be participating in the single market (even if, in 1999, both Austria and Finland decided to join the Eurozone, too). Denmark, Sweden, and Finland are also members of the Nordic Council, coordinating with countries which are not part of the EU (such as Norway and Iceland) within the European Economic Area (EEA). The Netherlands, having a traditional preference for intergovernmental solutions (despite being a founding member of the EU), has provided this group with its leadership, filling the void left by the United Kingdom after 2016. This group of countries has an economic vision of integration, since each of them aims to jealously preserve its national sovereignty in core state powers, while complying with the supranational logic of the single market.

At the same time, the crises showed the convergence of countries from east Europe, under the leadership of right-wing governments of Hungary and Poland, towards a 'sovereignist' vision of the EU (Fabbrini and Zgaga 2023). In light of Brexit's costs, right-wing sovereignist governments (of Central and Eastern Europe, but with significant backers in western countries, such as France, Italy, where they recently formed a government, and Spain) no longer sought to exit the EU, but rather worked to make their right-wing nationalism endogenous to the EU, by recognizing the decision-making authority of only the intergovernmental European Council. Those governments represent countries which have a long experience of regional cooperation, in the case of the Visegrad Four (Poland, Hungary, Czech Republic, Slovakia), since 1991. There is, nevertheless, no shortage of differences among the governments of these countries. Slovakia (unlike the other countries) has joined the Eurozone, while Russia's invasion of Ukraine has seen Hungary as the only country in the group which has resoundingly opposed sanctions against the Russian regime. As Ivan Krastev (2019) has written, those governments transformed the pressure to adapt to the integration model into the refusal of the latter and of its democratic implications. Adopting the argument of constitutional pluralism, their post-communist constitutions, Larsen (2021: 93) writes, celebrate 'what the constrained democracies aspired to overcome, namely the nation-state and national sovereignty'. In the name of the defence of their national sovereignty,

Poland and Hungary have taken the path that leads to 'illiberal democracy', calling into question the founding principles of the EU as well as the authority of its supranational institutions, starting with the CJEU and the European Commission – see, for example, the decision of the Polish Constitutional Court of 6 October 2021 which declared articles 1, 2, and 19 of the Treaty on European Union irreconcilable with the principles celebrated in the national constitution.

The European Council has thus become the venue for managing these divisions. The more the clash of finalities has taken hold, the less it has been possible to use supranational governance to manage the conflict. The central place of core state powers on the EU agenda has led to the affirmation of the European Council as the EU's holistic institution, simultaneously undertaking executive, legislative and, in some cases, even judicial functions (Fossum 2020). It is plausible that the new enlargements, accelerated by security needs, will intensify the process by which the EU is transforming into an international organisation, whose purpose is to provide political protection and economic support for its member states. The supranational promise of building 'an ever closer union' is going to become an historical redundancy (like monarchical sovereignty in contemporary systems of parliamentary government). For this reason, the proposal to introduce majority voting on core state powers will be fiercely opposed. As affirmed by Robert Roos (2023), vice-president of the European Conservatives and Reformists (ECR) group in the EP, 'for us, the national veto is sacred'.

Lastly, although there is an emotional pressure for the new enlargements to proceed, their approval by the 27 national parliaments and voters (in cases where the constitution dictates that referenda should be held) is by no means certain. This is for political reasons, but also for economic ones. Politically, there is the fear that the new countries would tilt the geopolitical balance, within the EU, towards the East and far away from the West, where the integration process started. Economically, the new enlargements would imply a restructuring of the EU agricultural and cohesion funds, transforming the EU eastern member states from net beneficiaries to net creditors, an outcome feared by their citizens, unless an increase of the EU budget (Multiannual Financial Framework or MFF) were to be agreed unanimously by the member states (a highly unlikely possibility). Consider the strike by Polish farmers, in May 2023, to block the import of Ukrainian grain because it reduced the price of local grain, a request soon accepted by the sovereignist government, which continues to be at the same time the strongest supporter of Ukraine's fight against Russian invasion. A poll carried out by Warsaw University in April-May 2022, reported that 55% of Poles 'believe their country should not offer more help to Ukraine' (Euractiv, 15 June 2023). Thus, it seems reasonable to assume that the next enlargement will be all but a simple process. It might take years, it might be successful in one case but not in others, leading to divisions between candidate states and EU member states (and among the latter). Decision-making 'stop and go' might become the normal condition under which the EU will have to live for long time. If

that is plausible, then it might be worthwhile to conceptualize, at least as an analytical exercise, an alternative paradigm for ordering the divisions regarding the finality of integration which have come to characterize the European (and not only EU) states.

6.5 The Paradigm of a Multi-tier Europe

Europe is a plural continent. It consists of territorial units (national, sub-national, regional) which have gone through different historic experiences and cannot be grouped under a single pattern of development. European pluralism is an element of strength, and not of weakness, for the continent. However, a plural Europe is different from the differentiated EU. It requires distinct organisations having separate purposes and separate institutional arrangements (even if they might overlap in specific policy fields), to prevent the degeneration of pluralism in infra-institutional fights. This implies moving from a multi-*speed* to a multi-*tier* paradigm (multi-tier rather than multi-level, because the latter, unlike the former, conveys the idea of hierarchical relations, which is not what I mean here). Establishing multi-tier Europe would not imply reforming the Treaties, an unlikely outcome given the power of veto guaranteed by the unanimity needed for any such reform. Rather, the multi-tier paradigm would suggest going outside of the Treaties, setting up separate organisations by means of 'coalitions of the willing and able' (as was the case of the intergovernmental treaties of the 2010s). The multi-tier Europe paradigm, which aims to order the pluralism of European states acknowledging it, consists of distinct integrative projects, involving distinct groups of states (with some participating in all the three tiers, some in two, and some in only one). On the basis of the information derived from the literature on European sub-regionalism and interstate cleavages, three distinct tiers seem most plausible, intelligible to the eyes of European citizens and the outside world. In this conceptualization, each tier should have its own legal foundation, although the latter's depth will differ from one tier to another.

The broadest tier would reflect the *minimum* common denominator among all the European states, i.e., the current 27 member states of the EU plus those countries which are not part of the EU but have interests in common with it (in the field of security, environmental protection, energy independence, and free trade policy). French President Emmanuel Macron spoke of a European political community (Macron 2022) which, at its first meeting in October 2022 in Prague consisted of 44 states and at the second meeting, held in Chişinău in June 2023, of 45 (plus the presidents of the three EU institutions, European Commission, European Council and the EP). It involves countries which have asked to join the EU, but which do not meet the Copenhagen criteria, such as the Western Balkan states, countries that are seeking to join the Union as soon as possible for security reasons (Ukraine, Moldova, and Georgia), but also countries which have chosen not to be part of it (such as the United Kingdom, Norway, Iceland, and Switzerland). One might conceptualize this tier as a *Confederation*, based on an Intergovernmental Agreement between distinct sovereign nation

states, voluntarily deciding to cooperate in order to solve common problems. The Agreement should also establish criteria for entering and exiting the organization. The Confederation should be coordinated by a confederal Council, constituted by the presidents or premiers of the participating states, supported by a streamlined secretariat (autonomous from the European Commission, if one wants the UK on board) (Mayer et al. 2022). The confederal Council's decisions might then be freely implemented at national level by the individual governments which are part of it. In the Confederation, national sovereignty is untouchable.

The intermediate tier would reflect the *medium* common denominator among EU member states. One might conceptualize this tier as the *Community* of the single market, based on a regulatory system aimed at making possible the realisation of a common playing field among the various economies of the member states, as it was originally defined by Jacques Delors (European Commission 1985). The Community should be based on an inter-state treaty focused only on the single market, without any reference to the core state powers. The Treaty should also make clear the conditions for entering and exiting the single market. The current member states of the EU would be able to be part of it, whether they have adopted the euro or have maintained their monetary sovereignty. The Community, however, would be the expression of a single market and not of a free trade area, i.e., it would be a structure in which economic transactions occur and are overseen by supranational institutions (Egan 2020). The CJEU would have to continue to exercise its role in settling disputes among member states, as well as between citizens and their national governments. The European Commission would have to maintain its monopoly over legislative initiative, just as the Council of national ministers and the European Parliament would have the power to approve or refuse its proposals on majority criteria. Specific electoral criteria will have to be devised for preventing the formation of a voting block (i.e., the Eurozone) able to impose its own policy preferences on the other member states (those outside the Eurozone). The current EU member states that do not acknowledge the supremacy of EU law would not be eligible for membership of the Community (but they will be eligible for the Confederation's free trade area). In the Community, illiberal domestic regimes cannot be accommodated. In the single market, national sovereignty is not untouchable. However, the Community can accommodate forms of differentiation. A group of countries may agree to advance deeper forms of integration, i.e., adopting a Schengen model for guaranteeing free movement, within the group, for their nationals.

Finally, the innermost tier would reflect the *maximum* common denominator among the member states of the Eurozone. The finalité of this tier would be the one shared by the six countries which promoted the integration project as it was formulated in the Schuman Declaration of 1950, with its explicit federal aspirations. One might conceptualize this tier as a *Union,* or *Federation*, whose

member states share crucial core state powers, such as monetary, fiscal, defence, foreign policy, migration, and asylum policies. National sovereignty prerogatives relating to collective security should be shared (shared rule), while member states should retain control over policies that do not affect the collective security (self-rule). Shared-rule policies cannot accommodate forms of differentiation, which, instead, are likely in the self-rule policies pursued by individual member states or groups of them. It should be clear, here, that supranational sharing is institutionally different from intergovernmental pooling (Fabbrini 2015). The former consists in delegating to the centre authority and capabilities which are distinct and independent from those of individual member states, a possibility balanced by the limited prerogatives attributed to the centre, whereas intergovernmental pooling implies the coordination by national governments of their policies. No member state of the Union has the power to nullify a decision taken by the Union's political authority or to opt-out from implementing it. In shared-rule policies, member states are no longer sovereign (that's why the scope of shared rule should be limited to dealing with problems that no member state can deal by itself). The Union must have its own, single international representation (from the United Nations Security Council to the International Monetary Fund). The compromise between the centre and the member states must be formalised in a constitutional pact (a kind of Political Compact), formalizing the conditions which must be respected for a state to enter and remain within the organization. The pact should specify the reasons which led to the formation of the Union, the political values which it upholds, the institutional system for organising its horizontal and vertical relationships, with the CJEU in the role of dispute settler of last resort (Fabbrini 2022). Regarding the institutional system, a Union of demographically asymmetrical states should be anti-hierarchical and anti-hegemonic. It cannot resemble a 'federal state' (with its centralizing parliamentary logic) but should rather be similar to a 'federal union' (with its checks and balances for preventing either the legislature or the executive's predominance) (Fabbrini 2020). Regarding the values, a Union of nationally differentiated citizenships should clarify that what holds them together is not a common European cultural or religious identity but rather the sharing of democratic principles and practices. In the Union, all decisions will be taken on a (qualified) majority basis, including the option to suspend a member state which does not respect the rules of the founding pact. The Union should be the centre of gravity of a plural Europe, the organization having the political and military resources to act as unitary actor within the transatlantic security system.

6.6 Conclusion

The teleology of the 'undivided and indivisible' EU, which has required its internal and external differentiation, has given rise to an increasingly intergovernmental political system. In this intergovernmental EU it is difficult to establish who is responsible for decisions taken or not taken, a feature that is transforming the EU from a democratic supranational project to a post-democratic international

organisation (one freed from complying with democratic principles). Brussels seems to be pressing ahead on autopilot, whereby events, and not a strategy, determine its choices. This paper has sought to change the perspective, arguing that the governance system of the EU is likely to progress further towards the intergovernmental end with the new enlargements, making it more similar to an international, rather than supranational, organization.

In fact, the existing, multi-speed EU paradigm cannot contain the disagreements over questions of sovereignty that will intensify within the EU, which implies that the deliberative role of the heads of state and government will increase. To deal with those divisions, without going towards an intergovernmental solution, there would need to be a decoupling from within the EU (Fabbrini 2019), to create the conditions for promoting distinct projects of aggregation. Governance differentiation within the EU must be replaced by constitutional differentiation beyond the EU, i.e., by the formation of separate organisations (Confederation, Community, and Union), pursuing different goals with different logics. A constitutional differentiation necessary for saving the 'ever closer union' project which is at the origins of the integration process. Thus, a plural Europe, *united in diversity.*

References

Baerbock Annalena et al. (2023). 'It's time for more majority decision-making in EU foreign policy'. *Politico,* 12 June.

Batora, Jozef (2020). 'Interstitial organizations and segmented integration in EU governance', in Jozef Batora & John Erik Fossum (eds) (2020) *Towards a Segmented European Political Order: The European Union's Post-Crises Conundrum,* London: Routledge: 152-74.

Egan, Michelle (2020). 'The Internal Market: Increasingly Differentiated?', in Ramona Coman, Amandine Crespy and Vivien A. Schmidt (eds) *Governance and Politics in the Post-Crisis European Union,* Cambridge: Cambridge University Press: 159-78.

European Commission (1985). *Completing the Internal Market*, White Paper from the Commission to the European Council, Milan, 28-29 June 1985.

European Council (2016). 'A New Settlement for the United Kingdom within the European Union' Extract of the conclusions of the European Council of 18-19 February 2016 (2016/C 69 I/01)

Fabbrini, Sergio (2022). 'Differentiation or federalization: Which democracy for the future of Europe?' *European Law Journal,* 28: 9-21, DOI: 10.1111/eulj.12384

—— (2019). *Europe's Future: Decoupling and Reforming*. Cambridge: Cambridge University Press.

—— (2015). *Which European Union? Europe After the Euro Crisis.* Cambridge, Cambridge University Press.

—— (2010). *Compound Democracies: Why the United States and Europe Are Becoming Similar.* Oxford, New York, N.Y., Oxford University Press, 2nd edition.

Fabbrini, Sergio & Tiziano Zgaga (2023). 'Right-Wing Sovereignism in the European Union: Definition, Features, Implications'. *Journal of Common Market Studies,* forthcoming.

Fossum, John Erik (2020) 'Politics versus Law: The European Council and the 'Balancing European Union Style', memo, Arena Working Paper.

Genschel, Philipp & Markus Jachtenfuchs (eds) (2014). *Beyond the Regulatory Polity: The European Integration of Core State Powers.* Oxford, Oxford University Press.

Krastev, Ivan (2019). 'Is Europe Failing? On Imitation and its Discontents', in Björn Fägersten and Göran von Sydow (eds) *Perspectives on the future of the EU,* Stockholm: SIEPS/UI: 58-81.

Larsen, Signe Rehling (2021). *The Constitutional Theory of the Federation and the European Union*. Oxford: Oxford University Press.

Macron, Emmanuel (2022). 'Speech at the closing ceremony of the Conference on the Future of Europe', Strasbourg, European Parliament, 9 May.

Mayer, Franz, Jean Pisani-Ferry, Daniela Schwarzer & Shahin Vallée (2022). 'Enlarging and deepening: giving substance to the European Political Community'. Bruegel Policy Contribution, 15/22, September.

Piris, Jean-Claude (2012). *The Future of Europe: Towards a Two-Speed EU*. Cambridge: Cambridge University Press.
Roos, Robert (2023). 'Il veto nazionale è sacro'. *Euractiv,* 20 June.
Schimmelfennig, Frank & Thomas Winzen (2020). *Ever Looser Union? Differentiated European Integration*. Oxford: Oxford University Press.
Schimmelfennig, Frank (2019). 'Is differentiation the future of European integration?', in Björn Fägersten & Göran von Sydow (eds) *Perspectives on the future of the EU.* Stockholm: SIEPS/UI : 99-121.
Sidjanski, Dusan & François Saint-Ouen (2022). *Vers Une Union Politique Européenne: Le Rôle d'un Noyau Fédérateur*. Geneva: Université de Genève.
Vachudova, Milada Anna (2005). *Europe Undivided: Democracy, Leverage and Integration After Communism.* Oxford: Oxford University Press.
Winzen, Thomas (2016). 'From Capacity to Sovereignty: Legislative Politics and Differentiated Integration in the European Union'. *European Journal of Political Research*, 55(1): 100-19.

7 Concluding Remarks: What Prescription to Make the EU 'Fit for 35'?

Göran von Sydow and Valentin Kreilinger

The contributors to this volume have discussed their 'Fit for 35' prescriptions at length. The purpose of these brief concluding remarks is not to summarise the volume or to offer common proposals, but to contextualise the five essays with some practical considerations that take into account political feasibility and options, both looking back to the early 1990s and looking forward to the next few months, 2024 and beyond, while also pointing out the various pitfalls, constraints and political obstacles that lie in the path of any attempt at internal reform and enlargement.

7.1 Looking back: The 1993 Copenhagen criteria

The fall of the Berlin Wall in 1989 and the collapse of the Soviet Union transformed the European continent. In the early 1990s, the countries of Central and Eastern Europe sought to align themselves with Western Europe by joining the Council of Europe, NATO and the European Community / European Union (EU).

This was the general geopolitical context in which the European Council met in Copenhagen on 21 and 22 June 1993. Helmut Kohl, François Mitterrand and Jacques Delors were among those around the table. The European continent was experiencing a brutal war in Yugoslavia. The Maastricht Treaty had barely survived a referendum in France. It was initially rejected but later approved by Danish voters. At the meeting, the leaders of the then 12 member states agreed on the usual Conclusions, including what became known as the 'Copenhagen criteria':

> 'The European Council […] agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.
>
> Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as

well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.' (European Union 1993)

The year 2023 seems to be as relevant as 1993 for the next enlargement(s) of the EU. Russia's war against Ukraine has prompted Ukraine and Moldova to seek EU membership. The EU is abandoning the idea that there could be a 'grey zone' between it and Russia. Intense political momentum has built up in recent months, and the unthinkable in terms of EU enlargement has become thinkable. From a niche issue in recent years, a distant prospect, enlargement has moved to the top of the political agenda. In addition to Ukraine and Moldova, the six countries of the Western Balkans are now more firmly on the road to accession. The 'Copenhagen criteria' of 1993 still guide enlargement policy. However, as this volume has shown, the situation is different from 30 years ago. What exactly is different in 2023 in terms of the internal preparedness? On the one hand, the EU has suffered from 'enlargement fatigue' and has been hit by a series of crises, which it has largely dealt with by muddling-through. On the other hand, it is also important to keep in mind that the EU has evolved considerably in terms of policies and politics over the last three decades.

The ongoing debate on enlargement and internal reforms along the lines of becoming 'fit for 35' should consider three broad issues: the unavoidable budgetary and policy challenges, the feasible institutional engineering and the likelihood of major institutional reforms.

7.2 'Fit for 35': Budgetary and policy challenges, institutional engineering, major institutional reforms?

Budgetary and policy challenges

The EU's current multi-annual financial framework ends in 2027. The budgetary impact of any kind of enlargement will depend on the economic situation of the acceding countries and the extent to which their integration into EU policies will be gradual, through transitional arrangements. *Frank Schimmelfennig*'s chapter discusses these in detail as a possible remedy. *Tanja Börzel* also argued that these challenges can be solved if the EU is not disturbed by an attempt to change the Treaties. One thing is clear: if the EU does not address the budgetary and political challenges, it will not be 'fit for 35' – on this all five contributors agree. Some of them go further in their demands for reform.

Institutional engineering

What could be called institutional engineering has two dimensions. The first dimension relates to the candidate countries themselves and their gradual integration into the EU in terms of policies. The second dimension relates to the internal reforms that the Union of 27 needs to undertake before enlargement. Institutional engineering thus refers to reforms that could be undertaken without treaty change.

The gradual integration of acceding countries before and after the actual moment of enlargement could amount to institutional engineering as a firm measure to address the budgetary and policy challenges. Differentiated integration is a key instrument of institutional engineering. It is the focus of *Schimmelfennig*'s contribution. Differentiated integration offers all member states a high degree of involvement in the preparatory phase and even in the implementation of the instrument. In the past, most formats of enhanced cooperation have grown larger than expected, but the total number of cases in which the instrument has been used is still very limited (four cases). Permanent Structured Cooperation in the field of defence has also involved almost all member states in at least one of its many initiatives. 'Multi-speed Europe', the term used by *Sergio Fabbrini* to describe the status quo of the EU, is based on differentiated integration and is often used simultaneously or as a synonym.

Major institutional reforms

Major institutional reforms would require treaty change via a convention and referendums in several EU member states. The scope and depth of such reforms are very much open – as are the chances of such an exercise succeeding. This is why *Tanja Börzel* argued against such an attempt in her contribution. The debate about the goals of the EU and the search for common problem definitions, which *Sonja Puntscher Riekmann* advocates, is a profound one that could also be dealt with through institutional engineering, for example in declaratory formats, and could build on the Conference on the Future of Europe and its proposals. However, *Puntscher Riekmann* believes that treaty reform is a risk worth taking. Whether the current 27 member states are willing and able to head in this direction, is another question that *Yves Mény* raised when he questioned their desire and capacity to adapt given the heterogeneity of visions and interests among them. Ideas for going beyond a multi-speed Europe, such as the multi-tier Europe proposed by *Sergio Fabbrini* in this volume, would fundamentally change the Union as we know it today. When it comes to such a transformation, 'major institutional reforms' is a huge understatement.

7.3 Looking ahead: Short-term and longer-term perspectives

The Spanish Presidency has decided to convene an informal European Council in Granada on 6 October 2023, preceded by a meeting of the European Political Community the day before. The topics to be discussed informally by the 27 Heads of State or Government will be enlargement in its new geopolitical framing, strategic autonomy and the EU's next Strategic Agenda for 2024-2029.

The opening of accession negotiations with the EU before the end of 2023 is a goal that Ukraine is currently trying to achieve. However, it is impossible to predict how long the accession negotiations would take, how the accession of Ukraine and the other prospective members will be institutionally designed and when it will take place. Ultimately, the 1993 Copenhagen criteria, which established a merit-based, politically managed accession process that takes into account the EU's absorption capacity, remain the blueprint and benchmark to be kept in mind.

After Spain, the Belgian Presidency in the first half of 2024 is likely to put institutional issues even more firmly on the EU's political agenda. 22 years ago, the Belgian Presidency initiated the Laeken Declaration on the future of the European Union, adopted by the European Council on 15 December 2001. It launched the EU's constitutional process, which failed in the French and Dutch referenda in 2005 but eventually led to the Lisbon Treaty.

But there is an elephant in the room when it comes to 'fit for 35': what are the risks of enlargement *without* reform? Are there any? Some might argue that the EU could still function. In the absence of the necessary unanimous political will to reform, such a scenario cannot be ruled out and seems plausible, perhaps even likely. Could the EU enlarge and continue to enlarge without reform? Yes, it could. But the risk involved is similar to what Christopher Hill described in 1993 as the 'capability-expectations gap'. Expectations for EU action would be high (and possibly rising), but policies and procedures would be inadequate to meet the challenges.

Alongside the remarkable political momentum behind enlargement, a certain fragility of support for Ukraine is also possible. The Belgian Council Presidency will be followed by Hungary and Poland. Denmark will then take over the Presidency in the second half of 2025. Copenhagen is well placed to play a decisive role in this round of enlargement again. After all, it was not only the Danish capital where the criteria were agreed in 1993, but also the place where the accession negotiations with Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic and Slovenia were concluded on 12-13 December 2002. The Heads of State or Government of the EU-15 looked forward to welcoming these countries as members from 1 May 2004. A European Council meeting in Copenhagen in autumn 2025 could be an important moment in the process of outlining the roadmap to becoming 'Fit for 35'.

Broadening the discussion and engaging the public into a discussion about this should start soon. The European Parliament elections from 6 to 9 June 2024 provide an opportunity to debate the Future of Europe and the future organisation of the EU. Political parties and leaders can present their ideas and plans to citizens and voters in all 27 member states, offering them a clear choice of what the EU should look like and how it should function. In this sense, the elections are an opportunity to engage with the public and extend the debate beyond closed circles – an opportunity which should not be missed.

References

European Council (1993). 'European Council in Copenhagen, 21-22 June 1993, Conclusions of the Presidency'.

Hill, Christopher (1993). 'The Capability-Expectations Gap, or Conceptualizing Europe's International Role'. *JCMS: Journal of Common Market Studies* 31(3): 305-28.

Svensk sammanfattning

Frågan om en utvidgning av EU lyste länge med sin frånvaro men är nu tillbaka på EU:s dagordning: efter Rysslands fullskaliga invasion av Ukraina den 24 februari 2022 tog det bara några dagar för Ukraina att lämna in sin ansökan om att bli medlem i EU. Plötsligt står EU inte bara inför ett brutalt krig i sitt omedelbara grannskap, utan också inför utsikterna att omvandlas i grunden, eftersom unionen kan få inte mindre än 35 medlemmar under de kommande åren. Vissa skulle hävda att detta lär ta mycket lång tid och att det därför inte finns behov av att inleda diskussioner om hur EU ska fungera med fler medlemmar. Andra hänvisar till begreppet ”absorptionsförmåga” och framhåller risken för att EU slutar fungera efter utvidgningen om inte politiken, budgeten, beslutsreglerna och den institutionella strukturen ändras. Syftet med denna volym är att ge akademiska perspektiv på hur EU bör – eller inte bör – förändras för att kunna utvidgas ytterligare.

I det första kapitlet beskriver antologins redaktörer *Göran von Sydow* och *Valentin Kreilinger* vad ”Fit for 35” syftar på och förklarar varför det är angeläget att reformera EU:s politik och institutioner för en union med ett större antal medlemsstater. De tar vidare upp övergripande frågor som är särskilt relevanta för syftet med denna volym och sätter ämnet i relation till den aktuella politiska och akademiska diskussionen, samt i förhållande till hur den europeiska integrationen utvecklas.

Frank Schimmelfennig (ETH Zürich) inleder det andra kapitlet med att konstatera att den ryska invasionen av Ukraina har fått utvidgningen att än en gång hamna högst upp på EU:s dagordning. EU står dock inför ett dilemma: samtidigt som den geopolitiska situationen gör att anslutningsprocessen behöver påskyndas är varken EU eller kandidatländerna tillräckligt förberedda. För att göra det enklare att hantera dilemmat föreslår Schimmelfennig differentierad integration. Differentierad integration skulle underlätta utvidgningsprocessen genom att nya medlemsländer till en början inte omfattas av de politikområden som skulle påverkas mest negativt av att antalet medlemsstater blir fler. Detta skulle ge EU och de nya medlemsländerna mer tid och incitament att genomföra reformer, men utan att utvidgningen blockeras. I sitt kapitel tar författaren upp skälen till att differentierad integration har tillämpats i samband med att EU har utvidgats, och beskriver hur det har gått. Han menar att differentierad anslutning är etablerad praxis och sannolikt kommer att bli en mer uttalad och varaktig metod för framtida utvidgningar. Schimmelfennig diskuterar och utvecklar även aktuella förslag om ”stegvis anslutning” (*staged accession*) och tar upp potentiella fallgropar och kritik mot differentierad utvidgning. Slutsatsen är att differentierat medlemskap sannolikt är ett mer genomförbart och godtagbart alternativ än snabba institutionella reformer – för både medlemsstater och kandidatländer.

Volymen fortsätter med ett bidrag av *Yves Mény* (Europeiska universitetsinstitutet, EUI). Han menar att EU återigen står inför ett avgörande men inte nytt dilemma: antingen växer unionen maximalt för att tillmötesgå de stater som ännu inte är medlemmar i den europeiska klubben, eller också dribblar EU bort uppgiften på grund av en oförmåga att rätta medel efter mål och ambitioner. I kapitlet analyserar författaren dilemmat och diskuterar vilka alternativ som skulle kunna förena ambition och realism, det vill säga alternativ som åstadkommer utvidgning och fördjupning på samma gång. Mény är något skeptisk till de nuvarande 27 medlemsländernas vilja och förmåga till anpassning, med tanke på att de har så olika visioner och intressen. Alla tänkbara alternativ har nämligen redan ventilerats och debatterats. Vad som saknas är den politiska viljan hos de enskilda staterna i egenskap av medlemmar av en politisk gemenskap. Enligt författaren kan man se det som att medlemsstaterna avstår från att utöva sin kollektiva förmåga – om de inte tvingas till det av omständigheterna och den historiska utvecklingen.

Det fjärde kapitlet, av *Sonja Puntscher Riekmann* vid universitetet i Salzburg, lyfter fram ordet *fitness* och EU:s mål. När vi pratar om en politisk gemenskap är ”fitness” en variabel som är beroende av syftet; det handlar om ändamålsenlighet. Denna truism gäller för Europeiska unionen lika mycket som för alla andra politiska gemenskaper. Att utvidga unionen i östra Europa och på västra Balkan är en stor uppgift som avsevärt skulle öka EU:s territoriella och demografiska storlek, liksom den socioekonomiska och kulturella mångfalden inom unionen. Samtidigt är diskussionen om frågan ”För vad är vi tillsammans?” långt ifrån avklarad. Rysslands krig mot Ukraina understryker enligt Puntscher Riekmann behovet av att diskutera vad Europas eliter har i åtanke när de förmedlar idéer om ”ett suveränt Europa” (Macron/Scholz), ”en geopolitisk kommission” (von der Leyen) eller om att ”tala maktens språk” (Borrell). En sådan diskussion måste enligt henne bygga på medborgarnas syn på EU:s framtid, eftersom demokrati är ett av EU:s grundläggande värden. Puntscher Riekmann hävdar att medborgarna har höga förväntningar på säkerhet och välstånd såsom europeiska kollektiva nyttigheter, men att eliternas förmåga till framsynthet och strategiskt tänkande samtidigt lämnar mycket i övrigt att önska. Inom unionen är det till och med svårt att utveckla en gemensam definition av problem och kriser, och gemensamma definitioner är i sin tur ofta resultatet av ett osystematiskt och mödosamt sökande efter kompromisser mellan skilda nationella tolkningar och intressen. Ytterligare utvidgningar kommer också att öka komplexiteten när det gäller de enorma geopolitiska utmaningar som EU står inför. Om suveränitet ska bli ett meningsfullt begrepp på EU-nivå, avslutar Puntscher Riekmann, måste det därför klargöras vad suveränitet innebär, vilka verktyg som finns för att utöva denna suveränitet och vad medborgerligt stöd går ut på. I det perspektivet är det enligt henne värt att ta risken att genomdriva en fördragsreform före utvidgningen.

I det femte bidraget intar *Tanja Börzel* (Freie Universität Berlin) ett kritiskt perspektiv på fördragsreformer och menar att sådana reformer inte skulle göra EU redo för en utvidgning. Putins angreppskrig mot Ukraina har ökat kraven

på en fördjupning av den europeiska integrationen: institutionella reformer anses nödvändiga för att förbereda EU för att Ukraina och länder på västra Balkan ansluter sig till unionen samt för att bygga upp EU:s strategiska autonomi inom säkerhet och försvar. Att ändra fördragen tar dock tid, oavsett vilken grad av sammanslagning och delegering av nationell suveränitet som anses nödvändig för att göra EU lämpat för 35 medlemmar. Dessutom måste medlemsländerna inte bara komma överens om reformerna, de måste också ratificera dem, vilket i vissa fall fordrar en folkomröstning. I ett läge där allmänheten visar svagt stöd för utvidgningen, framhåller Börzel, kan strävan efter att fördjupa EU försvaga snarare än stärka EU:s förmåga att växa. EU:s viktigaste utmaning är enligt henne att komma fram till den rätta balansen mellan å ena sida kraven på att kandidatländerna efterlever rättsstatens principer och å andra sidan behovet av att ge dem trovärdiga perspektiv om EU-medlemskap, liksom det geopolitiska trycket.

I det sjätte kapitlet ifrågasätter *Sergio Fabbrini* vid Luiss Guido Carli-universitetet i Rom uppfattningen (som delas av forskare och politiker) att EU inte är ett politiskt system utan snarare ett oförutsett resultat av en utvecklingsprocess som är tänkt att leda till en sammanslagning – om än differentierad – av alla stater på den europeiska kontinenten. Denna uppfattning har överlevt de senaste femton årens kriser (däribland brexit) och har stärkts ytterligare av Rysslands invasion av Ukraina och det därmed ökade trycket på att utvidga EU till att omfatta Ukraina, Georgien, Moldavien och de sex länderna på västra Balkan. Men enligt Fabbrini är EU i högsta grad ett politiskt system, ett system som har ett dubbelt styre: ett överstatligt och ett mellanstatligt. I och med Maastrichtfördraget letade sig statens kärnuppgifter in på EU:s dagordning, och utvidgningarna under 1990- och 2000-talen har dramatiskt stärkt det mellanstatliga styret på bekostnad av det överstatliga. Dessa processer utlöste nämligen splittringar om den nationella suveränitetens funktion som bara Europeiska rådet kunde hantera, vilket fick EU att bli mer av en internationell organisation. Är denna utveckling förenlig med löftet om en ”allt fastare sammanslutning”? Författarens svar är att utvidgningar kräver ett paradigmskifte: från ett EU med flera hastigheter till ett Europa med flera nivåer. Det skulle göra Europa lämpat för sig självt.

I det sista kapitlet försöker *Göran von Sydow* och *Valentin Kreilinger* knyta ihop säcken med hjälp av ett avslutande resonemang. De blickar bakåt mot 1990-talet och framåt mot återstoden av detta decennium för att få en bild av vilka problemen är – och möjligheterna att lösa dem.

Dessa bidrag ger skilda perspektiv och gör olika bedömningar av om och hur EU bör förändras. Många pekar på svårigheterna med att 27 medlemsstater ägnar sig åt prövande diskussioner om interna frågor och mödosamma förhandlingar, till exempel om fördragsändringar, medan andra hävdar att just den typen av reflektioner är nödvändiga för att EU ska fungera. I volymen dras inga gemensamma slutsatser. I stället ger författarna tydliga och tankeväckande perspektiv på vad som mycket väl kan bli en avgörande process för EU.

‘The challenge for the EU is this: is it willing and able to reform in order to welcome new members into the club?’

Göran von Sydow and Valentin Kreilinger



SIEPS carries out multidisciplinary research in current European affairs. As an independent governmental agency, we connect academic analysis and policy-making at Swedish and European levels.

www.sieps.se • info@sieps.se • +46-8-586 447 00