
Democracy

Table of abbreviations

CoR	European Committee of the Regions
ECJ	European Court of Justice
EEAS	European External Action Service
EP	European Parliament
MEPs	Members of the European Parliament
QMV	Qualified Majority Voting
TEU	Treaty of European Union
TFEU	Treaty on the Functioning of the European Union

Introduction

by Klaus Welle and Federico Reho

Democracy is the beating heart and core of the EU's identity, along with peace. From its inception in the aftermath of the Second World War, European integration has been open only to democratic countries that respect the rule of law and fundamental freedoms. It has also played an essential role in democratising, stabilising and integrating new countries, from Greece, Spain and Portugal in the 1970s and 1980s to the post-Communist countries of Central and Eastern Europe in the 1990s and 2000s.

Since the first direct election of the European Parliament in 1979, the EU's democratic system has developed hugely too: by increasing transparency, empowering the European Parliament, making the European Commission more accountable and even involving citizens in innovative experiments such as the Conference on the Future of Europe. As a result, the EU now has clear dual democratic legitimacy as a union of states and citizens, each represented in one of the equal co-legislators: the Council and the European Parliament respectively. Moreover, the multilevel nature of EU democracy is recognised through the direct involvement of the national parliaments in various capacities, from the ratification of mixed trade agreements to the yellow and orange card procedures which protect subsidiarity.

As a side effect of the last 15 years of successive crises, EU affairs have also become more politicised. As a result, European issues have become essential to national democratic debates, and a European public sphere has finally begun to emerge. It is important that democratic accountability does not lag behind political and institutional developments, as has at times been the case over the last decades when new rules and bodies have been created outside the EU legal framework to react to crisis situations.

As the EU acquires new powers and competences to manage new challenges in the most diverse fields, it will be necessary to improve the quality of EU democracy, the legitimacy of its institutions, and their responsiveness to the needs and preferences of the EU member states and citizens. Moreover, democratic values and institutions face new challenges, such as disinformation, polarisation and a lack of trust in political elites—all in a world of systemic rivalry.

European Parliament: Nine Reforms for a Modern Democratic Legislature

by Anthony Teasdale

Summary

The increasing centrality of the European Parliament in the EU political system requires the institution not only to engage in a constant process of updating and improving its internal procedures and practices, but to present itself more confidently and clearly as a modern democratic legislature. In such a spirit, this paper recommends reforms in three areas. First, it advocates changes to increase the clarity and visibility of the Parliament and European elections to it through the codification of the *Spitzenkandidat* process, the introduction of transnational lists and the holding of an inauguration ceremony for the incoming Commission president. Second, it proposes to update the EU legislative process, by involving the Parliament in decisions on 'Emergency Europe', increasing the openness of trilogues and allowing the Parliament greater opportunities for legislative initiative. Third, it favours giving greater weight to the policy cycle and policy context in European Parliament committee work—notably in relation to *ex ante* and *ex post* evaluation; assessment of risk, capabilities and resilience; and strategic foresight—to help promote more coherent and forward-looking law-making within the Union.

Keywords *Spitzenkandidat* – Transnational lists – Legislative initiative

Introduction

The European Parliament (EP) is a unique political institution, it being the only directly elected transnational legislative body in the world. Chosen by the public every 5 years in direct elections held simultaneously in all 27 member states of the EU, and encompassing an electorate of some 360 million citizens, the Parliament is currently made up of 720 individual Members, who come from over 200 national political parties and sit together in (currently) 8 political groups of differing ideological persuasions.

The Parliament has seen its formal powers and its broader political role grow rapidly in recent decades. At the time of the first direct elections, now 45 years ago, in 1979, the Parliament's powers were essentially limited to recommending amendments to draft Union (then Community) legislative proposals tabled by the European Commission (under the 'consultation' procedure). Although it had the formal power (by supermajority) to dismiss the European Commission, the lead executive body of the Union, this 'nuclear option', as many called it, was never used, and the Parliament had difficulty in leveraging the possibility of dismissing the Commission into more effective day-to-day influence over policy.

However, through successive EU treaty changes—introduced mainly in the 22 years between the 1987 Single European Act and the 2009 Lisbon Treaty—the Parliament has progressively become a joint legislature with the Council of Ministers in most areas of European-level policy, with the notable exceptions of taxation and foreign policy, security and defence. The Parliament is now also the Union's co-equal 'joint budgetary authority' in most fields, as well as asserting itself much more actively as the central forum through which the Commission is held to political account. The president of the Commission and his or her 'college' of 26 other commissioners, although still nominated by the member state governments collectively, can now only enter office with the approval of the Parliament. As each of the five-yearly nomination processes since 2014 has confirmed, the choice of Commission president is being increasingly influenced by the political balance in the Parliament that emerges at each European election.

The increasing centrality of the Parliament within the EU political system and policy process brings with it responsibilities, as well as opportunities or rights. It requires the Parliament to engage in a constant process of internal updating and improvement of its procedures and practices, with a view to exercising its powers and broader influence in a mature and responsible manner that seeks to enhance the overall coherence and credibility of the system, rather than fragment or gridlock it, as could easily be the case. The Parliament has largely risen to this challenge in recent years, with a positive internal culture of wanting a strong Europe to address big issues and to realise its full potential as a source of collective public goods that could not be produced by individual member states simply acting on their own.

There has already been significant progress in improving the internal operation of the EP in recent years, at both political and administrative levels. The political reforms are mainly embodied in successive changes to the Rules of Procedure of the Parliament that have tried to create a more 'joined-up' institution, which might otherwise might be prone to centrifugal forces, in which the roles of its plenary, committees, political groups, president and permanent administration are dovetailed more effectively than before. They have been paralleled by administrative reforms that have aimed to focus resources more on policymaking and analytical support to give the Parliament the practical means to be a self-respecting institution capable of identifying and acting on its own priorities and choices, without being overly reliant on the (often) superior resources and firepower of its institutional partners.

Building on such changes, nine further reforms, grouped here into three broad categories, recommend themselves and are set out in detail below. They are captured in synoptic form in the table at the end of this paper.

Greater clarity and visibility for the EP and European elections

Action could and should be taken to increase the clarity and visibility of both the EP and the five-yearly direct elections to it, with a view to reflecting and underlining their importance as central vehicles for democratic expression and choice in Europe. Three specific reforms would help in this process, outlined below.

Clarify and codify the *Spitzenkandidat* or 'lead candidate' process, by which the outcome of EP elections influences the choice of Commission president

The *Spitzenkandidat* or 'lead candidate' process emerged in the slipstream of the 2009 Lisbon Treaty, which envisaged for the first time that the outcome of the EP elections should have a bearing on the choice of Commission president. Article 17(7) of the Treaty on European Union states (somewhat ambiguously) that, 'Taking into account the elections to the European Parliament and after having held the appropriate consultations, the European Council, acting by a qualified majority, shall propose to the European Parliament a candidate for President of the Commission'. That candidate for Commission president now also needs to be 'elected by the European Parliament by a majority of its component members', before being able to take office. The implication is that he or she will be proposed on the basis of a calculation by the European Council as to who will be best placed to command an absolute majority of votes in the Parliament.

In identifying which potential candidate to nominate, the most obvious first port of call would—as in many (but not all) national political contexts—be to look to the leader of each major political force, starting with the largest political party or group elected to the parliamentary body that has to confirm or reject the choice of head of the government. Since most political parties in most national parliamentary elections designate a defined individual (often, but not always, their party leader) to run as the aspirant head of government in the elections, that pattern has been increasingly replicated at EU level, with the various European political parties

designating a lead candidate for this purpose during the European elections. This practice started in 2014 and was repeated in 2019 and 2024, although with varying degrees of consistency.

There is a strong argument for giving the lead candidate process a stronger and more coherent basis on which to develop in the years ahead. Assuming the likely absence of EU treaty reform in the foreseeable future, the easiest way to do this would be to encourage the European political parties to agree among themselves a set of common basic principles and modes of practice that should apply for the next contest in 2029 and thereafter. In theory, it would also be desirable to have a parallel understanding between the EU institutions about how the system should operate, to maximise the chances of agreement between the European Council and European Parliament on the process, but this might be more difficult to achieve in practice.

The principal European political parties—namely those which correspond to the various political groups in the EP—should be invited to decide among themselves:

- whether the willingness to run a lead candidate should be an automatic precondition and feature of registration as a European political party;
- whether the concept of lead candidates should apply only to the pursuit of the Commission presidency (as the European People's Party and Party of European Socialists have done so far) or also be extended to availability for other top jobs within the EU, such as president of the European Council or high representative for Common Foreign and Security Policy (as the Alliance of Liberals and Democrats for Europe and Greens have done);
- whether 'co-lead' candidates are admissible, and if so, on what basis; and
- whether lead candidates should be obliged to run at the head of the corresponding transnational lists for the EP elections (if and when such lists are introduced—see below).

This agreement could be underpinned by financial or other incentives: for example, any European political party that did not run a lead candidate could have its public funding either discontinued or cut significantly during a European election year.

Introduce transnational lists for European elections, in parallel to the existing 27 national electoral processes

Transnational lists are conventionally understood to mean lists comprising a relatively limited number of candidates—the figure of 27 or 28 such candidates on each list has most often been mentioned—who would run for election to the EP in one large, pan-EU constituency, in addition to all other candidates, who would continue be elected in the 27 individual member states. The purpose would be to promote a stronger sense that the European elections serve as a forum for a continent-wide political choice. The lead candidate of each European political party would head up each transnational list (see above). Each *Spitzenkandidat* would in effect be the head of a *Spitzenlist*. Other candidates on the lists could be drawn upon as natural potential choices as members of the college of commissioners.

The institution of transnational lists, which could be enacted by changes to the European Elections Act, should ideally be complemented by a number of other reforms designed to promote the authentically European character of the EP elections, notably the introduction of European party logos alongside national ones on ballot papers and the adoption of a single common day for voting across the EU.

Hold a formal inauguration ceremony for the incoming president and college of European commissioners outside the EP building every fifth year

The EU lacks striking public events that embody and project its character and coherence as a free-standing political system. The Union lacks a powerful ceremony (and associated imagery) that brings together its executive, legislature and judiciary at one critical moment that marks the formal passage of power or 'changing of the guard' in Brussels. The US achieves this through its four-yearly inauguration of the president on the west front of the Capitol Building in Washington, DC. The Union should do the same with a five-yearly ceremony to inaugurate the new president of the European Commission and his or her college of commissioners. This should be administered by the president of the European Court of Justice and be held on the Agora Simone Veil, located on the western side of the EP's Altiero Spinelli building in Brussels.

Updating the EU legislative process

Action could be taken to update the EU legislative process through reforms designed to make the EP's role in law-making more relevant, more open and more responsible. Three such changes are outlined below.

Involve the EP in decisions and spending on 'Emergency Europe'

The successive crises that have buffeted the EU in recent years—from the economic and financial crisis and eurozone debt crisis through to the coronavirus pandemic and the Russian invasion of Ukraine—have seen the adoption of new forms of intergovernmental cooperation and/or inventive, ad hoc Union 'instruments' and spending of an unorthodox kind. However important and useful, many of these initiatives either operate outside the treaties or, where they are within the treaties, inadvertently or deliberately marginalise the EP. So-called secondary budgets—such as the new European Peace Facility, funded from national contributions outside the regular EU budget—have no meaningful EP involvement at all. Elastic provisions in the treaties—such as Article 122 of the Treaty on the Functioning of the European Union (TFEU), the so-called solidarity or emergency clause—minimise accountability and reporting requirements, and also allow a complex and confusing intermingling of European and national jurisdiction. The growth of joint purchasing by the Commission (acting in effect as a service provider to the member states)—whether of vaccines, gas, ammunition or arms—involves a significant expansion of executive discretion, with a corresponding lack of parliamentary oversight, at either European or national level. The bottom line is that the advent of 'Emergency Europe' is generating a new and very particular form of 'democratic deficit' within the Union.

Although the Parliament has recently attempted to force the European Commission (at least in those areas where it is the responsible authority) to keep it more closely informed about such initiatives, introducing new provisions in its Rules of Procedure to that effect, the EP needs to insist that it be given serious and meaningful standing in decision-making on 'Emergency Europe' initiatives which create policy obligations for the future and risk promoting the development of a parallel EU outside normal disciplines and oversight. In the absence of treaty reform, the Parliament should negotiate with the Commission—notably in the context of the forthcoming updating of the framework agreement between the two institutions—for its more formal and systematic consultation on the passage of crisis legislation under the Article 122 TFEU 'emergency clause' or any other article where it is effectively powerless at the moment. In parallel, the Parliament should develop new scrutiny structures and mechanisms, including subgroups or subcommittees, to oversee specific 'emergency' instruments or spending. It should also make it clear that its assent to any future Multiannual Financial Framework for the years 2028–34 is contingent, in particular, on the 'budgetisation' of these emergency instruments—so that they form part of the normal EU annual budget—and that the Parliament would express 'no confidence' in the sitting budget commissioner if he or she failed to propose such budgetisation in the next Framework.

Increase the openness of trilogues in EU law-making

The standard practice by which the key compromises on the content of EU law are brokered in closed-door 'trilogue' meetings between the Council of Ministers and the EP, with the European Commission present as a facilitator (if not honest broker), has long occasioned criticism from many observers and analysts of EU decision-making. Although highly efficient in securing agreement—often under artificial deadlines imposed by the various institutional players, reducing the duration of law-making on average by about half—the practice ironically imports into the operation of the 'ordinary legislative procedure' (co-decision) many of the highly secretive features for which the Parliament once routinely lambasted the Council when the latter enjoyed a monopoly of legislative power. These meetings are adored by rotating Council presidencies—because they increase their power vis-à-vis individual member states—and are highly attractive to EP committee chairs and rapporteurs—because they reduce the potential leverage of Members of the European Parliament (MEPs) outside of the individual committee concerned, in effect diluting the roles of political group meetings and the plenary. However, trilogues limit public access to the detail of law-making, fuel general scepticism of the EU system as a complex and impenetrable 'black box' for technocrats and the cognoscenti, and blur the question of which institution has been most influential in shaping the outcome of the legislative process.

The Parliament has made some limited progress in constraining the ability of individual committees to pre-empt the position of the plenary in legislation, by forcing the formal communication to the plenary of each committee's intended negotiating objectives. However, this process is largely pro forma and such positions are rarely debated in advance by MEPs as a whole. There is thus still a serious need to open up the trilogue process, which is central to determining EU law, as one would reasonably expect in any democratic legislature. One way of moving in this direction would be to give full details, on a public website, in real-time—that is as (not after) the relevant meetings are being held—of all agendas, papers, non-papers and amendments being discussed at all stages of the co-decision procedure. If the Council refused to cooperate in such openness, the Parliament, as a matter of principle, should simply revert to the multi-stage, first-, second- and third-reading 'conciliation' arrangements which routinely used to apply, but which have now largely fallen into disuse. Once the legislative process is concluded, EP successes in shaping final outcomes should be published quickly and in detail on the Parliament's website.

Give the Parliament greater opportunities to engage in legislative initiative

Although a very important feature of the EU system is the 'exclusive right of legislative initiative' that is entrusted to the European Commission, there is a strong argument that the EP, which is directly elected by European citizens, should have a more organised and structured way in which to table proposals for EU law that would at least be seriously considered by the other institutions in a routine way. In 2019, the Commission undertook to come forward with a generally positive response should the Parliament adopt, by an absolute majority of its Members, a 'legislative initiative report' that envisaged legislative action of some kind. Both the EP and Commission have been careful and cooperative in the way they have applied this principle, which is in effect a self-limitation by the Commission on how it exercises its right of initiative. It would be sensible now to go one stage further, giving the Parliament an even greater opportunity to exercise a measure of legislative initiative within the EU system. This could be based on the automatic tabling by the Commission of any formal EP proposal for a draft legislative text, accompanied by a formal costing and *ex ante* impact assessment, wherever that text has been adopted by a supermajority of MEPs (potentially 70%) in a roll-call vote in both committee and plenary.

Highlighting the EU policy cycle and policy context in EP committee work

The current EU law-making process, both in the EP and the Council of Ministers, has a marked tendency to place too much emphasis on the introduction and passage of amendments to draft proposals from the European Commission, and to pay too little attention to the broader context in which that law or those amendments are being tabled. Conversely, important questions relating to the broader EU policy cycle are often downgraded, if not ignored. In both arms of the EU legislature, more reflection is needed on the rationale and justification for specific proposals, on the extent to which European action is needed (subsidiarity) or desirable (added value), and on the likely and actual impact of such legislation in practice.

Especially in the light of the successive, largely unexpected, crises which have impacted the EU in recent years, high value should also be placed on the detailed analysis of global trends and strategic foresight, to help identify and frame the big potential challenges of the future. This approach needs to be matched by closer attention to the various risks to, and the capabilities and resilience of, the Union system as a whole. Within the EP, greater weight should be given to addressing such issues, to help promote more coherent, resilient and forward-looking law-making within the EU system. Key to this would be the following initiatives.

Mainstream discussion in the EP of *ex ante* impact assessment, *ex post* evaluation and European added value

Building on innovative work undertaken within its secretariat over the last decade, the EP needs to intensify and mainstream discussion of *ex ante* impact assessment, *ex post* evaluation and European added value in the routine work of its committees. Consideration and passage of all significant legislation should start with meaningful scrutiny sessions devoted to these policy cycle issues. There should be an obligation on committees to hold such sessions set down in the EP Rules of Procedure. In addition, the current, ambiguous threshold for triggering EP impact assessment work on amendments to draft legislation, as well to prepare substitute impact assessments and supplementary impact assessments (to those supplied by the Commission)—namely, the existence of broad consensus among the larger political groups in the relevant committee—should be replaced by a formal, simple provision, written into the Rules of Procedure, that an absolute majority of members of that committee is required. The existing pattern, whereby European Implementation Assessments and European Added Value Assessments are prepared automatically by the EP administration whenever a committee launches either an implementation report or a legislative initiative report, should be further codified and strengthened, with such arrangements being written into the Rules of Procedure. Given the importance of the issues involved, significantly greater administrative resources should be devoted to such work over time.

Mainstream discussion in the EP of the risks to, and the capabilities and resilience of, the Union as a system

Building on innovative work undertaken within its secretariat since the coronavirus pandemic, the Parliament needs to intensify and mainstream discussion of the risks to, and the capabilities and resilience of, the Union as a system in the routine work of parliamentary committees. This could include an annual EP report, to be submitted to the plenary, on potential 'future shocks' to the Union, and the action needed to mitigate them, building on the internal reports regularly produced within the administration on such issues. Given the importance of the issues involved, 'risk, resilience and preparedness sessions', involving internal and outside experts, should be programmed into the work of parliamentary committees. Significantly greater administrative resources should be devoted to such work over time, backed potentially by the designation of an EP vice-president for EU risk, resilience and preparedness.

Mainstream discussion in the EP of global trends and strategic foresight

Building on impressive work undertaken at both political and administrative levels since it instigated the inter-institutional European Strategy and Policy Analysis System (ESPAS) in 2010, the Parliament needs to intensify and mainstream discussion of global trends and strategic foresight in the routine work of parliamentary committees. This could include the drafting of an EP report, to be submitted to the plenary, on the Commission's annual strategic foresight report, as well as giving serious consideration to the creation of an EP Committee for the Future, as was discussed among the political groups before the 2024 European elections. Given the importance of the issues involved, 'strategic foresight' sessions, involving internal and outside experts, should be programmed into the work of parliamentary committees. Significantly greater administrative resources should be devoted to such work over time. The EP vice-president already designated for the ESPAS process should take an active lead in promoting a 'foresight culture' within the Parliament as a whole.

	Programme 1	Programme 2	Programme 3
	Increasing the clarity and visibility of the EP and European elections as central vehicles for democratic expression and choice within the EU system	**Updating the EU legislative process by involving the EP in 'Emergency Europe' spending, increasing the openness of trilogues and giving greater opportunities for EP initiative**	**Giving greater weight in EP committee work to the policy cycle and policy context, to promote more coherent, resilient and forward-looking law-making within the EU system**
Project 1	Clarify and codify the *Spitzenkandidat* or 'lead candidate' process, by which the outcome of EP elections influences the choice of Commission president. Agree certain common basic principles and practices among the European political parties and potentially between the EU institutions before the 2029 contest.	Democratise 'Emergency Europe' through the systematic 'budgetisation' of new crisis-related EU spending—backed by new scrutiny structures/ mechanisms within the EP, and formal EP involvement in use of the Article 122 TFEU 'emergency clause'.	Mainstream discussion of *ex ante* impact assessment, *ex post* evaluation and European added value in the routine work of parliamentary committees. Consideration of all significant legislation should start with meaningful scrutiny sessions on these policy cycle issues.
Project 2	Introduce transnational lists for European elections, in parallel to the existing 27 national electoral processes, to promote a stronger sense of continent-wide political choice. Plus, add European party logos alongside national ones on ballot papers, and hold a single day of voting.	Further open up the trilogue process for negotiating EU law, by *inter alia* giving full details of all meetings and amendments at all stages of the co-decision procedure. EP successes in shaping final outcomes should be published quickly and in detail.	Mainstream discussion of the risks to, and the capabilities and resilience of, the Union as a system in the routine work of parliamentary committees. This could include an annual EP report on 'future shocks', building on innovative work within the EP administration on these issues.
Project 3	Hold a formal inauguration ceremony for the incoming president and college of European commissioners outside the EP building in November every fifth year, on the Agora Simone Veil, with the oath administered by the president of the Court of Justice of the European Union.	Give the EP greater opportunity to exercise a measure of legislative initiative within the EU system, with automatic consideration by the Council of any formal EP proposals put forward by an absolute or supermajority.	Mainstream discussion of global trends and strategic foresight in the routine work of parliamentary committees. This could include an EP report on the Commission's annual strategic foresight report and the potential creation of an EP Committee for the Future.

Adapting the Council to a Geopolitical Union

by Nicolai von Ondarza

Summary

The Council of the EU is a crucial institution in EU decision-making and European democracy, serving as the main arena for negotiating compromises among member states. This paper discusses potential reforms to enhance the Council's effectiveness in three key areas: making it enlargement-ready, while increasing its capacity to act; strengthening its democratic legitimacy; and improving its role in EU defence ambitions. These reforms are proposed in the context of potential EU enlargement, the need for greater transparency and a growing focus on defence issues. The paper suggests several reforms, including extending qualified majority voting, creating a 'quintet' presidency system, establishing a special body to coordinate reform and enlargement processes, improving transparency in legislative functions, creating a dedicated Defence Council, and turning the Council into a hub for security and defence cooperation. Importantly, these reforms could be implemented without treaty changes, but to do so will require significant political will from the member states.

Keywords Council of the EU – Democratic legitimacy – Defence

Introduction

The Council of the EU is in many ways the engine room of EU decision-making and a crucial pillar of European democracy. It is the main arena for negotiating compromises amongst the different national governments, and is thus where negotiations advance from the technical to the political stage. Through direct representation of all the member state governments, it brings together the political diversity of the Union while also providing a crucial link to national democracy alongside the European Parliament. Looking ahead to the broader challenges facing the EU in the next institutional cycle, reforms in three crucial aspects of the Council are necessary: making its decision-making procedures enlargement-ready, whilst increasing its capacity to act; strengthening its democratic legitimacy; and turning it into a hub for the EU's defence ambitions. In all of these areas reforms could be implemented without treaty change, but this will require significant political will.

State of play: an emerging debate on EU governance reform

In the post-Lisbon EU, the Council is part of a multilayered governance system that connects the national governments to the Union. At the top sits the European Council, an institution in its own right, that brings together the national heads of state and government as well as its own permanent president and the president of the European Commission. But while—at least legally—the European Council focuses on giving political guidelines and steering the EU, the many detailed negotiations, and importantly the legislative, budgetary and operational work, are done within the Council of the EU, often together with the European Parliament. For this, the Council meets in 10 different formations of ministers—for instance, the foreign ministers in the Foreign Affairs Council—underpinned by deliberations within the Committee of Permanent Representatives and many Council Working Groups. Although much of the media attention is focused on the European Council, where issues become '*Chefsache*', the main day-to-day negotiations of the EU take place within the various layers of the Council system. The rules and social norms governing the Council are therefore central to the power balances among both the EU member states and the EU institutions.[1]

[1] U. Puetter, 'The Council of the European Union: Co-legislator, Coordinator and Executive Power', in D. Hodson et al. (eds.), *The Institutions of the European Union* (Oxford: Oxford University Press, 2021).

Debates about reforms of the Council have therefore also always been about the power relations within the EU. For instance, during the negotiations for first the Constitutional Treaty and later the Lisbon Treaty, one of the most controversial aspects was the switch of the voting system in the Council from political weighted votes to the current system of qualified majority (QMV), which favours the larger member states. Equally controversial have been any moves from unanimity—guaranteeing each national government an individual veto—to QMV, which increases the EU's capacity to act but makes it possible for national governments to be outvoted. Precisely because the decisions impact the power balance in the EU so significantly, reforms of the Council and its procedures are considered constitutional decisions and are usually part of wider institutional changes within the EU.

In the new institutional cycle, calls for reform of the Council come from three different directions. The first, and likely most important, is the new dynamic in the EU enlargement process in the wake of the Russian war of aggression against Ukraine. With enlargement now a 'geostrategic investment in peace, security, stability and prosperity',[2] the European Council has opened up accession negotiations with Ukraine and Moldova, granted Georgia candidate status and is working on revitalising accession negotiations with the six countries of the Western Balkans, all with the aim of closing geostrategic grey zones in competition with Russia (as well as China). Although it is unlikely that these accession processes will be completed within the current institutional cycle (2024–9), the vision of an EU of 30+ member states has returned—and with it serious questions about the Union's governance.[3] By its nature, the Council, as the body that brings together all national governments, will be particularly affected by any enlargement.[4]

Recognising this challenge, in its December 2023 conclusions, in connection with the opening of accession negotiations with Ukraine and Moldova, the European Council stated that it would be necessary to pursue the debates on accession and internal EU reform in parallel.[5] The member states agree that these reforms should address 'key questions related to its priorities and policies as well as its capacity to act',[6] but are far from unified regarding what shape these reforms should take. In June 2024 the Belgian Presidency presented an update on the state of negotiations, breaking down the internal EU preparations into four baskets: EU values, policies, budget and governance. According to this update, the predominant preference among EU member states was to make use of the flexibility of the Lisbon Treaty to the full extent, with only limited support for a wide extension of QMV in the Council and almost none for treaty change.[7]

These initiatives are not limited to making the Council more enlargement-ready in the long term, but also aim to improve its capacity to act in the medium term. Driven by the more confrontational geostrategic environment, in 2023, 11 member states formed the 'Group of Friends of QMV in Common Foreign and Security Policy', pushing for an extension of QMV in foreign policy. The group specifically stressed its aim of making use of the 'passerelle' clauses (rather than treaty change), its focus on the Common Foreign and Security Policy, and its emphasis on not pre-deciding the wider debate on QMV. A similar push has been made by Germany and Slovenia for introducing QMV into the enlargement process, specifically into the technical decisions such as on the opening of new chapters, while retaining unanimity for the final decision.[8]

2 European Council, 'The Granada Declaration', 6 October 2023.
3 N. von Ondarza, 'Getting Ready', *Verfassungsblog*, 22 December 2022.
4 O. Costa and D. Schwarzer et al., *Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century*, Report of the Franco-German Expert Group on Institutional Reform (19 September 2023).
5 European Council, *European Council Meeting (14 and 15 December 2023) – Conclusions*, EUCO 20/23 (15 December 2023).
6 Ibid., 4.
7 Belgian Council Presidency, *Future of Europe – Presidency Progress Report*, 10411/24 (10 June 2024).
8 N. von Ondarza, 'The State of Consensus in the EU. What Is the Way Forward in the Debate About Expanding Qualified Majority Decisions?', *SWP Comment* 16/2024 (19 April 2024).

From a very different direction, there is an ongoing discussion on transparency and democratic legitimacy in the Council. Under the ordinary legislative procedure, the Council is the co-legislator together with the European Parliament. Although the Lisbon Treaty stipulates that the negotiations in the Council on legislative files are to be made public, often only the final, formal proceedings are, whereas the crucial negotiations at a lower level, remain largely opaque. During the last couple of years, citizens participating in the Conference on the Future of Europe,[9] as well as the EU Ombudsman and the European Court of Justice in its 2023 De Capitani ruling,[10] have called for more transparency in the Council.

A push for adaptations to the Council also comes from a third direction, the growing focus on defence. In its Strategic Agenda for 2024–9, the European Council has designated defence and the defence industry as one of the four core priorities for the EU. Likewise, Commission President von der Leyen made defence a core pillar of her re-election bid, both as the European People's Party lead candidate for the June 2024 European elections and for getting a majority in the newly elected European Parliament. She has also designated a commissioner for defence and space, who has been given the tasks of developing a single market for defence and producing a European defence industrial strategy, amongst others.[11] The European Parliament is planning to turn its Sub-Committee on Defence into a full Defence Committee. However, the Council still has no formation for defence ministers, who only come together informally, usually twice a year, as part of the 'jumbo' Foreign Affairs Council, together with their foreign affairs counterparts. Together with the new high representative, there will be a need in the new institutional cycle to streamline and focus EU defence discussions in the Council.

Prospects: squaring the diplomatic circle

In terms of the prospects for reforms in these areas, the most important prerogative is political will. All these reforms have two things in common—they are all possible without treaty change, but most of them still require unanimity from the member states to be implemented. Below we will look at the issues in detail.

The first challenge relates to getting the EU institutions ready for enlargement whilst strengthening the Union's capacity to act. The most discussed element here is the extension of QMV in the Council using the passerelle clauses, both in the short to medium term for (some) EU foreign policy decisions, and in the longer term as part of a wider change to QMV under the next accession process in order to make the Council enlargement-ready.

The discussions between member states that have taken place in the past two years have highlighted two challenges. First, where unanimity is currently needed, member states are divided roughly into three groups: those calling explicitly for more QMV (such as the group mentioned above); many, in particular smaller member states, which are not opposed in principle to QMV, but fear that they could be overruled in areas of vital national interest; and a small minority, including the current Hungarian government, which is fundamentally opposed to QMV. The second issue to note is that without time pressure those in the second group are unlikely to embrace a change to QMV as, so far, the Council has regularly pushed decisions on using the passerelle clauses further into the future. To address this challenge, it might be necessary to attach the discussion on governance, including QMV, to the accession process, giving it a clearer timeline in order to create the momentum necessary for a wider discussion. Part of this discussion should then be about the mechanisms needed to protect vital national interests when QMV applies, such as a sovereignty safety net, which would allow member states to transfer certain questions to the European Council for negotiation by the heads of state and government.

[9] Conference on the Future of Europe, *Report on the Final Outcome* (May 2022).
[10] European Court of Justice, Case T-163/21, *De Capitani v Council* [25 January 2023], ECLI:EU:T:2023:15.
[11] U. von der Leyen, *Mission Letter. Andrius Kubilius – Commissioner-Designate for Defence and Space* (17 September 2024).

The second major proposal to increase the Council's capacity to act and make it enlargement-ready is a small but relevant reform of the Council Presidency. Even if the Presidency currently comes around to each member state only once every 13.5 years—and potentially even less frequently in an enlarged EU—it remains an important mechanism through which member states can engage their administrations in EU affairs and take ownership of the work of the Council. However, the legislative cycle often takes longer than six months, leading to disjointed priorities.[12] With a change to the Council's rules of procedure (by simple majority) the current 'trio Presidency' could be turned into a 'quintet', with each quintet lasting for 2.5 years, that is, half of each legislative cycle. This could allow for long-term planning of the legislative agenda whilst retaining the principle of a rotating Presidency.

The third proposal in this area addresses the need for coordination in the reform and enlargement processes. The European Council and the General Affairs Council have now agreed that these should be conducted in parallel. Both will be long-term processes, with considerable political stamina and guidelines needed, especially with regard to questions that transcend the four baskets (EU values, policies, budget and governance). To achieve this, the Council should create a special body under its own auspices to bring together these reforms and the enlargement process. This could be modelled after the A50 Council which helped to foster unity in the EU during the Brexit process, including through close coordination with the Commission and the Parliament. This could be established at any time by the Council Presidency; the upcoming Polish Presidency in the first half of 2025, which wants to focus on driving the enlargement process forward, would be the perfect starting point.

The second major challenge is strengthening democracy in and the transparency of the Council. The Council, with its direct representation of the nationally elected governments, is already a core pillar of EU democracy. This should be improved upon by transforming the working methods of the Council into those of a second chamber whenever it acts in a legislative capacity together with the European Parliament. This should include enhancing the transparency of Council votes and negotiated amendments to increase its democratic accountability. The negotiations themselves should retain the necessary confidentiality. This should address the concerns raised by the Conference on the Future of Europe and the European Court of Justice in its De Capitani judgment, whilst improving public access to EU policymaking. This could be achieved either by a simple Council decision or by revising the Council's rules of procedure, and as the Council's role in EU legislation would be unchanged, there would be no need for a treaty change.

A third proposal to better connect citizens to the work of the EU and the Council is the use of citizens' assemblies. The Conference on the Future of Europe was a unique exercise in trans-European participatory democracy, but it was overshadowed by inter-institutional rivalries and complexities. As a follow-up, the Commission has established single-issue-focused citizens' panels to advise on specific questions, such as EU legislation with regard to the metaverse. In the future, the Presidencies of a quintet could each host one citizens' assembly on a priority of their choice as part of chairing the Council. This could be done by the Presidencies themselves, thus improving their visibility, and ensure citizens' involvement and—with expectations managed correctly—input into the EU's decision-making.

The third major challenge, given the geostrategic context, is for the Council to become a strategic driver for security and defence policy. The necessary next step should be the more direct involvement of national defence ministers. During the early days of the European Security and Defence Policy, as the focus was primarily on external crisis management, the EU made a conscious decision not to create a Council of Defence but to leave this policy area largely under the supervision of the foreign ministers in the Foreign Affairs Council. Given the geopolitical challenges facing the EU and the prioritisation of defence industrial cooperation, this is no longer

[12] R. Coman and V. Sierens (eds.), *EU Council Presidencies in Times of Crisis* (Cham: Palgrave MacMillan, 2024).

appropriate. This is especially true now that the Commission has created the post of a commissioner for defence with a major focus on defence industrial cooperation. It is therefore high time for a Council formation for defence ministers, which would enable defence ministers to oversee this development and, along with their ministries, be involved much more regularly and directly in EU defence cooperation. Such a Defence Council could be created at any time by a decision of the European Council with a qualified majority.[13]

With the creation of a Defence Council, there will be a clear need to streamline EU external relations. In the previous institutional cycle, relations between the Commission president, the high representative and the president of the European Council were strained at best, and sometimes openly competitive. Add in a commissioner for defence and the rotating presidency of a new Defence Council, and the need for streamlining increases even further. This could partly be achieved by reducing the overstretch of the high representative, for instance, by shifting the leadership of the European Defence Agency to the new defence commissioner.

At the same time, the Council could act as a hub to link the EU's new initiatives in security and defence with those of its close European allies. These fall into two broad categories. On the one hand, they include important non-EU NATO allies such as the UK, Norway and Turkey. In particular, the UK, with its new Labour government, aims to negotiate an ambitious EU–UK Security Pact. Although the shape of this is as yet unclear, the EU should consider whether and on which occasions it should invite the UK and potentially other non-EU NATO allies to the regular consultations in the Council. On the other hand, with enlargement now firmly a geostrategic investment of the EU, but with full accession at best years, if not at least a decade, away, the EU should also invite candidate countries to take part in selected foreign affairs or defence ministerials. If those invited fully align with EU foreign policy, especially sanctions, this could be a powerful symbol and would be a concrete instrument with which to engage candidate countries before they become full members as part of the regular enlargement process.

Conclusion

The Council of the EU is core to EU policy- and law-making and, with its many layers, functions as the linchpin of the Brussels compromise machine. Given the challenges facing the Union geopolitically, economically and internally, it is in need of a calibrated update in three central areas: making its procedures enlargement-ready and increasing its capacity to act, strengthening democratic legitimacy by turning it into a true second chamber when law-making with the European Parliament, and becoming a hub for the EU's reinforced foreign, security and defence policy efforts.

The analysis has shown that in all three areas, processes are already underway to work on these issues, but that a reinforced push is required. Importantly, in all three areas all the proposed reforms are possible without treaty changes, although crucial ones—such as the extension of QMV with a sovereignty safety net to protect vital national interests—will require unanimity and therefore likely a larger package deal. Other proposals, such as the creation of a Defence Council or the expansion of transparency, could be adopted by qualified majority themselves, although it would be best to strive for consensus on such matters wherever possible. If followed through, these changes would contribute significantly to strengthening the EU's capacity to act, its democracy and its defence efforts.

[13] Art. 236 Treaty on the Functioning of the European Union.

	Programme 1	Programme 2	Programme 3
	Getting the Council enlargement-ready and increasing its capacity to act	**Strengthening the democratic actions of the EU via the Council**	**Turning the Council into a strategic driver for European security and defence**
Project 1	Use the passerelle clauses for a wide extension of QMV in the Council—albeit balanced with a 'sovereignty safety net' for sovereignty-sensitive policy areas.	Turn the Council into a second chamber for legislative votes.	Create a separate 'Council for Defence', whose work would be prepared by the Political and Security Committee, and align it with the new role of defence commissioner.
Project 2	Reform the Council Presidency to have a 'quintet' of five Presidencies for each half of the legislative cycle, with a pronounced joint agenda for major legislative files.	Ensure the full transparency of all votes and amendments when acting as a legislative second chamber, while maintaining the necessary room for informal negotiations.	Streamline EU external relations and rework the relationship between the high representative, the European External Action Service, the European Defence Agency, the Foreign Affairs Council, and the new Defence Affairs Council and defence commissioner.
Project 3	Steer the process of enlargement and reform as a core task of the next institutional cycle through the use of a special committee modelled on the A50 Council and Council Working Group.	Improve the link between the Council's work and citizens by hosting a citizens' assembly once during each Presidency on one of its core projects.	Use the Foreign Affairs Council and the new Defence Affairs Council as a hub for European security. To this, invite non-EU European partners (in particular the UK, Ukraine and Norway) to involve them in foreign, security and defence decisions, without voting rights.

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Reforming the Commission

by Richard Corbett

Summary

The Commission is the day-to-day executive of the EU. It has significant powers which warrant democratic accountability. From the beginning it was made accountable to the European Parliament (EP), which was given the ultimate right to dismiss it. More recently the EP was also given a key role in its appointment. These procedures are, however, sometimes unwieldly, and there is scope for making them more workable and more visible, as well as for introducing additional forms of accountability. Better accountability would be the counterpart to strengthening the Commission's capacity to act, which is currently hampered by a number of weaknesses.

This paper suggests several reforms, including adjustments to the majorities required in the EP to approve the Commission president and to dismiss the Commission, giving the right to dismiss the Commission also to the European Council, adjusting the size and/or internal structure of the Commission, giving greater scope to the Commission president as regards the choice of other commissioners and bringing the European External Action Service fully into the Commission.

Keywords Commission – Democracy – Accountability – Capacity

Introduction

The Commission matters. The bulk of the EU's civil servants (*fonctionnaires*) work under its authority. It has the right of initiative on new policies and new legislation. It can itself take key decisions by virtue of the treaties or through delegated legislation. It executes the budget. It represents the EU externally in its fields of competence (while the External Action Service (EEAS), headed by a Commission vice-president, represents the EU in foreign and security policy questions).

The college of Commissioners is a political executive, not a technocracy, as illustrated both by the fact that member states generally nominate prominent politicians to serve on it, and by the collective nature of its accountability to the European Parliament (EP, which can only dismiss it by a vote of no-confidence in the Commission as a whole).

The nature and mechanisms of Commission accountability have evolved considerably over time. So has the Commission's structure, as its field of responsibility and its size have both increased. Both need to evolve further if we want to improve the Commission's capacity to deliver and at the same time reassure the public that it is accountable and subject to democratic scrutiny and control.

The evolving state of play

The Commission has always been subject to scrutiny through parliamentary debates, reporting requirements and its obligation to respond to parliamentary questions. This scrutiny has been strengthened over time, through the introduction of the budgetary discharge procedure and question time, and through the Framework Agreements between the Commission and the EP, which set out agreed procedures on the flow of information to the Parliament, legislative planning, responses to EP requests, access to documents, scrutiny of international negotiations and so on.

But when it comes to the ultimate sanction, the right to dismiss the Commission, the EP's authority to act is subject to a high hurdle, requiring the adoption of a vote of censure by a two-thirds majority in the Parliament. This has never happened (the closest it has come was when the Santer Commission resigned ahead of a vote of censure that seemed likely to be adopted).

Parliament initially also had no role in the appointment of the Commission, which was appointed by national governments for a four-year term (and its president for a two-year term). Once the EP became directly elected, as of 1979, it pressed for involvement in the Commission's appointment. It unilaterally held a debate and a vote on the incoming Thorn Commission in 1981. The member states recognised and accepted this practice in their Stuttgart 'Solemn Declaration on European Union' in 1983, in which they also agreed to consult the EP Bureau on the choice of Commission presidents. In 1985 the incoming Delors Commission waited for the outcome of a confidence vote by the EP before taking the oath of office. This was an important symbolic gesture that recognised the significance of the EP's vote on the college, and implied that, had the vote been negative, they would not have gone ahead.

These practices were followed by changes to the treaties. In the 1992 Treaty of Maastricht, the member states changed the Commission's term of office to five years to coincide with that of the EP, provided for the EP to be consulted on the choice of president, and gave the EP the right to vote to approve or reject the Commission as a whole. Five years later, in the Treaty of Amsterdam, the consultative vote on the president of the Commission became a binding vote, and gave the president the right to choose the other commissioners jointly with the national governments. In the 2003 Treaty of Nice, the Commission president was given the power to appoint vice-presidents and to dismiss individual commissioners (for instance, in response to parliamentary criticisms). Finally, the Lisbon Treaty required the European Council to take into account the results of the elections to the Parliament when deciding who to propose to the EP as president of the Commission. The EP's vote on Commission president was described in the treaty as an 'election'—not merely a matter of giving a seal of approval to a decision taken elsewhere, but the key point of the process.

Despite these changes, there remains scope for improvement. The Commission is a long way from being accountable to the legislature in the way that most executives in Europe are, and when it is, this is not always very visible to the public.

It is also a weak executive which, in many circumstances, lacks the necessary capacity to deliver. There is no point holding the executive to account if it is unable to act. The growing size of the Commission has made it unwieldly, and the division of competences between it and the semi-separate EEAS is awkward.

Possible improvements and changes

The first set of three proposed improvements concerns the mechanisms by which the Commission is ultimately accountable.

1. The election of the Commission president currently requires the positive votes of more than half the entire membership of the Parliament—absences or abstentions therefore count against. There are inevitably some absences—even if just 2% of the Members of the European Parliament (MEPs) are sick or have travel delays, then that is 14 MEPs who are automatically counted as being against the candidate, potentially tipping the balance. It also effectively removes the right to abstain—an important political right—as abstentions have the same effect as voting against. The required majority should instead be a simple majority, as is the norm in most national contexts.

2. The required majority should also be changed when it comes to the dismissal of a Commission by the Parliament. The current two-thirds majority requirement is excessive. It could create a situation where some 60% of the Parliament votes for censure, but the Commission remains in office, creating political difficulties and perceptions of a lack of democracy. Here, a majority of members would be the appropriate threshold, still higher than a simple majority to ensure that the right is not used flippantly, but within the margin of feasibility and in conformity with normal democratic standards.

3. In a Union of citizens and states, there should also be a way for the European Council to dismiss the Commission. This should require a qualified majority rather than unanimity. The introduction of this right would be an important symbol, even if rarely used in practice.

A second set of improvements would make accountability more visible to citizens.

1. The practice whereby political parties announce their candidate for Commission president ahead of European elections, on the assumption that the candidate from the winning party (or the one able to build a majority coalition) should normally become president, should be continued. A widespread and well-understood practice at the national level in most European countries is that parties announce, ahead of legislative elections, who their preferred candidate is to be prime minister. That does not mean that the new prime minister is always one of the parties' candidates—sometimes there is a deadlock, and a compromise has to be found—but it is the starting point and usually one of them is chosen. It is what citizens are familiar with and increasingly expect at EU level too.

2. Visibility could also be increased by a simple symbolic ceremony: taking the oath of office on the steps of the Parliament.

3. Accountability is not just about appointments and dismissals. The ongoing answerability of the Commission to the Parliament needs to be more visible. One way to achieve this would be for the Commission to announce the main decisions taken at each of its weekly meetings to the Parliament instead of at a press conference, followed by half an hour of questions from MEPs. This would involve a short one-hour plenary sitting of the Parliament every Wednesday at the start of the afternoon. To avoid upsetting the balance between Brussels and Strasbourg, these 'micro-sessions' could replace the two-day 'mini-sessions' that are typically held four or five times a year in Brussels.

A third set of improvements would strengthen the Commission's capacity to act effectively.

1. It is increasingly odd that the EEAS is not part of the Commission, despite being headed by a high representative who is a Commission vice-president, and needing to work closely with Commission Directorate-Generals such as Trade, International Partnerships, and Defence Industry and Space. It is confusing for international partners and for the public. The EEAS could be brought fully into the Commission without losing some of its special characteristics (such as secondments from national foreign ministries).

2. With the successive enlargements of the EU, the Commission has been transformed from a compact executive into a mini-assembly. The Lisbon Treaty therefore envisaged reducing its size, but this has not been implemented. With the next enlargement, it should be. Failing that, the clear internal hierarchy that has evolved in recent Commissions should be further strengthened. In any case, member states should be obliged to offer the Commission president a choice of two candidate commissioners.

3. The president of the Commission should also be appointed president of the European Council, combining the two roles, as is possible under the existing treaties. The public does not understand the difference between the 'two EU presidents in Brussels' and third countries get confused about who they should

deal with. At G7 summits, others are irritated by the EU having two representatives (in addition to three of its member states being present, meaning five of the eight around the table are EU members). The Commission president's natural role in the European Council is to pitch ideas to, and find compromises among, the member states, just as the high representative/Commission vice-president already does when chairing the Foreign Affairs Council.

Conclusion

Some of these changes are easier to achieve than others. The first set (improving the accountability mechanisms) would require treaty changes, but the second set (improving the visibility of accountability) would be very simple to implement. If the EU's institutional system is to be effective and democratic as it grows to more than 30 member states, it is vital that the Commission both has the capacity to act effectively and is visibly accountable to the elected representatives.

	Programme 1	Programme 2	Programme 3
	Improving the mechanisms of accountability	**Improving the visibility of accountability**	**Improving the Commission's capacity to act**
Project 1	Change the threshold for the EP to elect the president of the Commission to a simple majority, not a majority of members.	Retain and promote the practice whereby political parties announce their candidate for Commission president ahead of European elections.	Fully integrate the EEAS, already headed by a Commission vice-president, into the Commission as a key part the EU's executive branch, even if some characteristics regarding the recruitment of its staff are maintained.
Project 2	Reduce the threshold for the EP to dismiss the Commission from a two-thirds majority to an absolute majority of MEPs.	Hold a formal inauguration ceremony for the incoming European Commission on the steps of the EP building (on the Agora Simone Veil), with the oath administered by the president of the Court of Justice of the European Union.	Make the Commission a more effective team. For this, it should be reduced in size, as provided for in the Lisbon Treaty (or alternatively, further strengthen the clear internal hierarchy that has evolved in recent Commissions), and member states should be obliged to offer the Commission president the choice of two candidate commissioners.
Project 3	Give the European Council the right, by a qualified majority, to dismiss the Commission.	Introduce a format whereby straight after its weekly meetings, the Commission, normally through the president, reports its key decisions to the EP, with questions taken from MEPs. For this purpose, the EP should replace its periodic mini-sessions in Brussels with weekly micro-sessions.	Appoint the president of the Commission as president of the European Council, combining the two roles and avoiding the misunderstandings that arise among the public and third countries about the current two presidents.

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Stronger European Political Parties

by Wouter Wolfs

Summary

European political parties are essential for democracy at the EU level. In the treaties it is stipulated that they contribute to forming the political awareness of and to expressing the will of citizens of the Union. However, the various rules that Europarties are confronted with at the European as well as the national level create significant barriers to their development and activities, and as such, prevent them from maximising their democratic potential. This paper offers nine different actions structured into three programmes that would give rise to stronger European political parties, greater engagement from EU citizens and a stronger EU dimension for the European elections.

Keywords European political parties – EU democracy – Citizen involvement – European elections

Introduction

The regulatory framework for European political parties is rather complex, as they are governed by a wide range of legislative and implementing acts, at both the EU level and the national level. The most important are Regulation no. 1141/2014 on the statute and funding of European political parties, and Council Decision 2018/994 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage.[1] This electoral framework is too rigid in a number of aspects and hampers the organisational development of European political parties. In the three programmes outlined below, initiatives are put forward that would transform the Europarties into stronger extra-parliamentary party organisations, engage citizens more closely in their activities and decision-making, and give the parties a larger role in the European elections.

A stable regulatory environment

The first programme aims to create a stable regulatory environment that would allow the Europarties to develop into strong extra-parliamentary organisations and would contribute to the development of a level playing field among political forces.

Complete the ratification of the revised EU Electoral Law

The negotiations to revise the EU Electoral Law reached a stalemate during the previous legislative term of the European Parliament.[2] The European Parliament has made a number of proposals to improve the European dimension of the EU ballot, which could also strengthen the organisational aspects of European political parties. These include a common electoral campaign period across the entire EU, the obligation for all political parties and other entities participating in European elections to observe 'democratic procedures and transparency', and the creation of a Union-wide constituency (with a uniform electoral system), with the

[1] European Parliament and Council Regulation (EU, Euratom) no. 1141/2014 on the statute and funding of European political parties and European political foundations, OJ L317 (22 October 2014), 1; Council Decision 2018/994 amending the Act concerning the election of the members of the European Parliament by direct universal suffrage, annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20 September 1976, OJ L178 (13 July 2018), 1.

[2] Council of the European Union, 'Proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision 76/787/ECSC, EEC, Euratom and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision' (20 May 2022).

option for associations of citizens to submit candidates for this new constituency.[3] The adoption of these changes would bring the EU Electoral Law into the twenty-first century and would substantially expand the role of the Europarties during and beyond the European elections (see also Programme 3, Project 1).

Simplify the registration procedure for new European political parties

European political parties (and European political foundations) can obtain a specific legal status under EU law. Yet, the conditions that currently have to be met to obtain this status are rather stringent: a Europarty (1) needs to have its registered seat in one of the member states, (2) must participate—or intend to participate—in the European elections, (3) must not pursue a profit, (4) must observe the founding values of the EU, and (5) must be represented by its member parties in the European Parliament, the national parliaments or the regional parliaments in at least a quarter of the member states (or have received at least 3% of the votes cast in a quarter of the member states during the most recent European elections).[4] This last condition is especially demanding: in practice, this means that Europarties—through their member parties—need to have obtained seats in national or regional elections (or at least 3% of the vote in the European elections) merely to obtain legal recognition. The condition also solidifies Europarties as de facto umbrella organisations of national member parties and is oblivious to the possibility of organisational alternatives. An important reason for these demanding conditions is that acquiring legal status provides the parties with almost immediate access to EU subsidies. The only additional condition for public funding is the requirement to have one affiliated Member of the European Parliament, which is a criterion that all registered Europarties easily fulfil. While such a high threshold could be defended for access to European subsidies, lower conditions to obtain official status would provide new European movements with the legitimacy of legal recognition. In other words, minimal thresholds for the official establishment of new parties would foster openness and a level playing field in the European party system, and consequently strengthen participation and political pluralism in the EU.[5]

Reform of the party finance rules

The rules on the legal status and funding of European political parties are currently too rigid and present challenges to the parties' activities and to the ways in which they are organised. A higher level of funding—and a more equal distribution of (some of) the subsidies—would provide more organisational stability: if some of the public funding was not tied to the obligation to match the subsidies with a party's own resources, this would create a basis for organisational stability. In addition, more flexibility would be welcome on the expenditure side. Currently Europarties are prohibited from directly or indirectly supporting national political parties or candidates. While a ban on direct financial support can be defended (because this entails the risk of Europarties becoming nothing more than vehicles for the distribution of EU funding to national parties), there should be more flexibility with regard to providing indirect support to national member parties, as this would allow for a stronger collaboration between the two levels.

[3] European Parliament, Legislative resolution on the proposal for a Council Regulation on the election of the members of the European Parliament by direct universal suffrage, repealing Council Decision (76/787/ECSC, EEC, Euratom) and the Act concerning the election of the members of the European Parliament by direct universal suffrage annexed to that Decision (2020/2220(INL)—2022/0902(APP)), OJ C465 (3 May 2022), 171.

[4] Art. 3 of Regulation 1141/2014. For the European political foundations, slightly different conditions apply.

[5] For a more detailed discussion, see L. Norman and W. Wolfs, 'Is the Governance of Europe's Transnational Party System Contributing to EU Democracy?', *Journal of Common Market Studies* 60/2 (2022).

Bridging the gap with the people of Europe

European political parties can play a more active role in connecting European citizens (from both within and outside the EU) to the entire EU political system. The second programme sets out three proposals to strengthen the linkage function that Europarties fulfil in European democracy.

Democratic bridge-builders

European democracy is party democracy. This is also acknowledged in the EU treaties, in which it is stipulated that European political parties 'contribute to forming European political awareness and to expressing the will of citizens of the Union'.[6] This aspiration has also been the main justification for providing Europarties with direct financial support from the EU budget.[7] Yet, apart from this declaratory provision in the treaties, there have been hardly any attempts to further develop and operationalise this democratic role that the Europarties are expected to play. This stands in stark contrast with some national practices, where the constitutional position and democratic function of political parties is the object of legislation and extensive discussion among legal and political theorists. Consequently, a more refined and detailed argumentation in the rules of what the core democratic functions of Europarties are—and how these differ from the role and purpose of European Parliament groups and national parties—could provide a clearer definition of them as the main democratic linkage organisations at EU level.

Democracy-building abroad

European political parties are not only beneficial for democracy within the EU but also outside the Union, particularly in the candidate countries. They are an important tool to link the political elites in those countries with the political leaders and establishment in the EU, and as such fulfil an important democracy-building role.[8] The incorporation of political parties from the candidate countries into the organisation and functioning of the Europarties contributes to capacity-building and eases the possible later transition of the political class of the new member states into the political life of the Union. Currently, European political parties are not allowed to accept membership contributions from parties outside the EU, relegating the latter to the status of second-class membership. It is argued that the opposite approach should be taken, providing Europarties with more opportunities and instruments with which to engage non-EU parties in their day-to-day functioning (by collecting membership fees, for example). This is especially important for parties in the EU's neighbouring countries.

Democracy-building at home

European political parties have an important linkage function between citizens and the EU political system. From this perspective, more could be done to involve citizens—as individual members—in the internal decision-making of the Europarties, for example, in the development of the manifesto or the selection of the party's lead candidate for Commission president or Europarty leadership.[9] The regulatory framework could provide incentives to the Europarties for establishing stronger citizen involvement. One way would be to distribute (some of) the public funding among the parties based on the number of individual members they have—the party finance system in the Netherlands could act as an interesting model in this respect. Another way would be to introduce sufficient *citizen* support—in the form of signatures—as an alternative to *parliamentary* support in a quarter of EU member states as a condition to gain official status as a European political party under EU law. Inspiration could be drawn in this respect from the conditions that have to be met to register a European Citizens' Initiative.

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6 Art. 10 Treaty on European Union.
7 W. Wolfs, *European Political Parties and Party Finance Reform: Funding Democracy?* (London: Palgrave Macmillan, 2022).
8 See, for example, K. M. Johansson and T. Raunio, 'Political Parties in the European Union', *Oxford Research Encyclopedia of Politics* (2019).
9 I. Hertner, 'United in Diversity? Europarties and Their Individual Members' Rights', *Journal of European Integration* 41/4 (2019).

Raising the electoral stakes

Free and fair elections are one of the core features of a democracy, with political parties acting as the main 'linkage' between the citizens and the political system. Parties present their manifestos to the voters and compete for the power of public office and a mandate to turn their political positions into policy actions. However, the way in which the European elections are currently organised does not allow the Europarties to reach their full potential. This third programme aims to raise the electoral stakes by giving them the means to operate as genuine campaign organisations.

Simplicity

A significant impediment to European political parties being able to conduct truly transnational EU-wide campaigns is the plethora of different electoral rules in the member states. While the EU Electoral Law provides a general framework for the European elections, the elections are predominantly regulated at national level. Consequently, Europarties are confronted with 27 different regulatory frameworks with substantial differences regarding, for example, fixed electoral periods, ceilings for campaign expenditure, bans on certain campaign tools (such as billboards, campaign rallies, television or radio commercials), and donations or other sources of campaign income.[10] Consequently, more simplicity in the electoral regulatory environment is required. While a total transfer of the management of the European elections to the EU level seems unfeasible (at least in the short term), a harmonisation of national electoral and campaign finance rules would provide more simplicity, and facilitate the cross-border campaign efforts of the European political parties.

Visibility

Currently, European political parties suffer from a lack of visibility during the European elections: since they are not—in a formal sense—standing for election, their names are often absent from the debates and they are barely recognised by voters. Therefore, measures should be introduced to raise Europarties' visibility in the run-up to the European elections. This could be done by displaying their names and logos on the electoral ballots (next to those of their national member parties), and on the campaign materials of the national parties. This also makes the affiliation between national and European parties—and their corresponding groups in the European Parliament—clearer, and as such helps to strengthen the European dimension of the electoral debates and communication. It also forces the national parties to defend their respective Europarty's *Spitzenkandidat* and common manifesto, and to take responsibility for their collaboration with other national parties and for policy initiatives of their European Parliament group.

Capacity

A successful electoral campaign requires substantial financial resources, especially if it concerns an EU-wide campaign over 27 different countries. The total campaign expenditure during the 2019 elections for all the European political parties combined was just over €12 million, and it is not expected that this number will be substantially higher for the 2024 elections. This is far less than the national parties spend in several member states, and not sufficient for a campaign on a continental scale. An important reason for this sum being relatively small is that campaign expenses are taken from the operational grants to the Europarties. Consequently, spending too much on electoral expenses could jeopardise the day-to-day functioning of the party organisation. Therefore, in addition to their regular operational grant, in election years a separate campaign grant should be provided to European political parties for spending solely on electoral expenses. This grant should not be tied to a specific co-financing obligation (as is the case for the operational grant). This would allow the Europarties to develop extensive campaigns without threatening the rest of their activities.

[10] See, for example, Authority for European Political Parties and European Political Foundations, *Provisions of National Law Affecting European Political Parties and European Political Foundations* (Brussels, 2023).

Conclusion

While the European political parties are entrusted with an important democratic mission in the EU treaties, the current regulatory environment substantially curtails their ability to live up to their full democratic potential. This paper has highlighted nine specific proposals grouped into three programmes (see the table below) that could help the Europarties to consolidate their position as extra-parliamentary party organisations, strengthen their links with European citizens and play a more prominent role in the run-up to European elections.

	Programme 1	**Programme 2**	**Programme 3**
	Creating a stable regulatory environment with European political parties as strong extra-parliamentary organisations	**Bridging the gap between the people of Europe and European political parties as the representatives of European citizens**	**Raising the electoral stakes by allowing European political parties to act as campaign organisations**
Project 1	Complete the ratification of the latest proposal amending the EU Electoral Law.	Define and empower European political parties as the core democratic linkage organisations in the EU's democracy.	Harmonise national electoral and campaign finance laws (e.g. common closing of the polls, electoral periods, spending thresholds).
Project 2	Simplify administrative procedures for the registration of European political parties to enable stronger pluralism, contestation and participation.	Allow European political parties to engage non-EU national parties in their internal organisation.	Introduce measures to increase the visibility of European political parties in electoral campaigns (compulsory display of Europarty names and logos on electoral ballots and national party campaign material).
Project 3	Reform party financing and spending rules (more funding, and more leeway to finance weaker members and run campaigns outside of European Parliament elections, on non-EU issues and at all levels).	Provide a (financial) incentive to Europarties to enlarge and engage their individual membership bases.	Introduce a separate campaign grant to provide European political parties with the resources required to conduct electoral campaigns.

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Resilient National Institutions, the EU Treaties and Good Governance

by Adriaan Schout

Summary

One explanation for the failing upward convergence among EU member states is that the EU lacks a shared administrative model. Because of this, member states have converged in some policy areas while continuing to struggle in others. Creating resilient national institutions cannot be achieved through top-down legislation; it also requires bottom-up (subsidiarity-based) involvement. Hence, in line with the EU's motto, 'Unity in diversity', upward convergence requires accepting differences as the starting point for initiating processes that stimulate national ownership of common values and objectives. Successful EU policy areas highlight the importance of cooperation in establishing good governance values and convergence. The treaty should therefore prominently acknowledge 'unity in diversity', while the European administrative procedures law should emphasise good governance principles as the basis for continued cooperation. Member states may not become identical, or even move in the same direction, but what matters is that our national institutions and actions are trusted. Moving towards a focus on bottom-up convergence processes will require a new role for the Commission.

Keywords EU values – Good governance – Limited treaty change – Administrative procedures law

Introduction

A strong EU demands strong member states. Weak legal, democratic and economic institutions at the national level result in lower growth for the EU as a whole, dysfunction in the internal market and, worst of all, the erosion of trust. Resilient national institutions are essential to enable the EU to address the changes in our economic and geopolitical environment. The struggles with the EU's fundamental values (as laid out in Article 2 of the Treaty on European Union) are the most visible in this regard, as we have seen countries backsliding, along with the criteria for fiscal stability and economic convergence, as public debt has remained, on average, far above the maximum of 60% of GDP set by the EU. The lack of ownership on the part of member states regarding the EU's common objectives and the related difficulties in enforcement are also evident in other areas, such as nature preservation. The EU has attempted to stimulate upward convergence through various additional policies, budgetary incentives and informal benchmarking, but with little effect. A new approach is required even though the EU seems to have run out of ideas.

It is a tall order to expect a clear diagnosis and path forward to address the persistent problems in delivering upward convergence. This contribution begins with a simple question: why do some EU policy areas that initially suffered from severe crises now stand among the global leaders in terms of competitiveness and standard-setting? It is time for a profound examination of the causes of our successes and failures. As argued below, we need to reconsider the relationship between the member states and the Union as defined in the treaties. Two suggestions are especially important. First, we should include respect for differences between the member states in the treaties. Second, we should specify and elaborate in the treaties what is currently listed in Article 41 of the EU Charter of Fundamental Rights regarding good administration being a fundamental right. Article 41 limits the applicability of good administration to the institutions and bodies of the EU, but this good governance principle could also be extended to the member states. In this way, both the EU and the member states would benefit from a cohesive body of law on administrative procedures to which they are all bound.[1]

[1] For a discussion, see D.-U. Galetta et al., *The General Principles of EU Administrative Procedural Law*, European Parliament, Directorate-General for Internal Policies, PE 519.224 (Luxembourg).

Politicians and officials often prefer to discuss policies (the 'what') rather than governance (the 'how') and may lean towards centralised EU solutions over subsidiarity-based options. In contrast, private-sector management typically requires a thorough examination of structures and a preference for decentralisation when strategies fail.

Centralisation, self-government and ownership

The first step in this analysis is to question whether it is realistic to impose high expectations. The desire in the EU to agree on outcomes, for example, net-zero emissions by 2050 or earlier, tends to overstate what is known about these outcomes, while leaving little room for the unavoidable changes that may arise in technology, geopolitical trends or democratic preferences in the meantime. Without delving into specifics, EU objectives tend to be very ambitious, leaving scant accommodation for the significant national differences that inevitably exist. A clear example is the criterion imposed on eurozone members of having a maximum state debt of 60% of GDP; this threshold may be high for a country with weak institutions but low for a country that retains the trust of capital markets even when it has state debt of 90% of GDP. Other ambitious and problematic examples include the objectives of the complex and uncertain Green Deal targets or ensuring respect for the EU's fundamental values.

These EU ambitions are far from being matched by the institutional capabilities necessary at the national level to manage the required reforms, or those at the EU level needed to enforce the agreements. Moreover, member states differ markedly in their preferences and cultures, as highlighted by national debates on issues such as abortion, gay rights, support for nuclear energy and commitment to nature preservation. The starting points and political dynamics vary from one member state to another. Nevertheless, the EU has abandoned its earlier successful approach of setting minimum standards (such as mutual recognition) and has gradually replaced it with that of creating maximum harmonisation.[2] With higher and more granular requirements, EU legislation has become overly complex and fragmented, as discussed in the recent Draghi Report.[3]

Full harmonisation among the EU states has become increasingly difficult with the widening and deepening of the agenda—member state ownership of EU policies and ambitions can no longer be assumed and the limitations of top-down legal enforcement have become clear. The recent elections in the Netherlands in 2023, along with the European elections in 2024 and similar democratic trends in France and Germany, among others, have highlighted the political apprehension surrounding what is perceived as EU legislation that is imposed from above and hard to change. With its ambitious centralised goals and limited administrative capacities, the EU risks overestimating the degree to which societies can be designed at will.

This leads to two inferences. The first is that adaptation processes that begin from actual situations in member states are more important than prescribing static end results. The second is that fostering ownership of EU policies and objectives is crucial, which means that differences between countries and their national dynamics, cultural specificities and values must be respected as the starting points for change. This is central to the relationship between the member states and the federal level, and raises questions about the suitability of the current treaties and whether the EU is effectively working towards a common good governance system (comparable to the Administrative Procedures Act in the US).

[2] S. Weatherill, 'The Several Internal Markets', *Yearbook of European Law* 36 (2017).
[3] M. Draghi, *The Future of European Competitiveness*, European Commission (Brussels, 2024).

Reform one: clarify the 'ever closer union' clause in the Treaty on European Union

A federal constitution or, in the case of the EU, a constitutional treaty defines the relationship between the central and the state levels and the essential values upon which a federation is built. The constitutions of federal systems differ due to their specific historical contexts.[4] The original American constitution was concise, with a preamble of 52 words and a body of 7 articles that defined the original distribution of power while emphasising the protection of the self-government of states (as famously discussed by Tocqueville).[5] In contrast, the EU treaty is much longer and reflects the original German constitution. By defining the fundamental rights that apply to all citizens, the German constitution reached beyond the *Länder* (states) and addressed the citizens with the aim of forming the German state. Following the German tradition, the tone of the EU treaty similarly embodies the concept of an ever closer union between the member states (deeper integration). However, 'ever closer union' can also be understood in terms of being a well-organised horizontal construct, as in the American form of self-government combined with a commitment to manage interdependence. Without clarity regarding the nature of the treaties, the notion of ever closer union has obscured the essential questions related to national space, minimum national obligations and how to manage interdependence. The European setup has gradually limited the space available and tolerance of diversity. Yet, in practice, self-determination arises by default as member states struggle to take ownership of or to fulfil EU agreements. Although regarded as a founding principle, the EU treaties offer little guidance regarding the meaning of subsidiarity.[6]

As the EU widens and deepens, the growing number of common ambitions and the regulatory framework are clashing increasingly with the insufficient quality of the national institutions and the lack of genuine support for European goals. Recognising the importance of diversity in preferences and capabilities calls for the expansion of self-government. Self-government does not, however, imply independence; rather, it represents the first step towards managing cooperation.

Reform two: cooperation and the strengthening of weak ties

There is a range of European policy sectors that work well and in which all member states operate as partners. For example, airlines service their highly complex planes in more or less all member states. This underlines that independent, technically advanced and well-monitored national aviation agencies can operate with comparable standards and recognised professional values. The same applies for, among others, the entire food industry. Other sectors, however, continue to suffer from serious gaps in the convergence of national institutions. This allows for a comparative perspective and the opportunity to draw out the lessons learned. Although officials and politicians have a tendency to dislike comparisons, arguing that 'my field of work is different and more difficult', in fact, many areas face comparable challenges. The differences between successful and unsuccessful policy areas in terms of establishing convergence can be linked to the quality of the EU's system of multilevel governance.

The economic sectors that now operate at the frontiers of global competitiveness did not achieve their positions easily. They had to adapt to global challenges, converge on common standards, redefine public and private institutions to foster innovation, implement and enforce legislation on issues ranging from environmental to competition rules, and overcome crises. Highly advanced sectors, such as medicine, the silicon chip industry and the EU's complex food sector have all grappled with profound crises. Similarly, the two widely divergent

[4] T. Kleinlein, 'Federalisms, Rights, and Autonomies: The United States, Germany, and the EU', *International Journal of Constitutional Law* 15/4 (2017).
[5] Evidently, the legal structures of both federations have been elaborated through laws that sit alongside the constitution (e.g. the Bill of Rights in the US).
[6] A. Schout, *EU Subsidiarity as an Antidote to Centralisation and Inefficiency*, Martens Centre (Brussels, 2022).

areas of national statistics and inspections of slaughterhouses were so poorly organised that they triggered major EU-wide crises. Poor EU statistics led to the economic crisis at the end of the 2000s, when Greece had to admit that its data on public deficits were falsified, while the inadequate quality of slaughterhouses contributed to the devastating 'mad cow' disease crisis in the 1980s and 1990s. The current high standards in these areas should not overshadow the profound crises that each had to overcome. In addition to mad cow disease, the fragmented European food industry and its poor inspection regime continued to struggle for a while, with issues such as high levels of dioxin being found in chickens. Now, thanks to a subsidiarity-based European food safety system, agricultural exports benefit from highly regarded quality standards, irrespective of the member state that produces and inspects the food. Similarly, internal market access for medicines previously suffered from deep fragmentation, with national governments protecting their own producers and imposing strict constraints on medicines from other member states, while the Commission was limited in its ability to act for legal and political reasons. The introduction of a network-based medicines agency resulted in a modernised European medicines market. Importantly, each of these areas was forced to turn a corner in terms of integration due to these adverse events and crises.

One of the previous problems with integration in these areas was related to enforcement, which was frustrated by politicisation and the lack of an agreed-upon European enforcement model. Improvement in European enforcement played a key role in binding the member states together. The successes in these sectors resulted to a large extent from the establishment of team-based monitoring systems. Networks of independent national monitoring agencies were created, centred around EU agencies. They developed common rulebooks and agreed on standards for inspections, transparency, the division of labour and teamwork. Furthermore, the Commission does not conduct inspections on its own; monitoring also relies on teams of national inspectors who inspect each other and write reports that are, with some delay, published on the network's website. Team-based working has contributed to common standards and learning, while the expectation of transparency has enforced the independence of the inspectors.

These mechanisms have enabled highly different countries to agree on common standards and foster active cooperation at various levels of government. Such cooperation not only results in standardised procedures but also ensures that inspectors cultivate shared professional values of independence and transparency. Systems may differ, but working methods and professional values converge. This indicates that subsidiarity-based agency networks make a difference.

These mutual inspections are linked to a combination of first- and second-order monitoring. First-order control is ensured because all national agencies inspect their own national systems, while team-based mutual inspections, alongside those of the Commission, supervise the national inspectorates (second-order control). Thus bottom-up convergence in terms of systems and values is indeed possible, despite the varying starting points of the member states. Top-down enforcement would be unlikely to achieve this level of collective resilience among the national institutions that deal with permanent innovations, changes in consumer preferences and shifts in geopolitical relations.

One explanation for the emergence of convergence and collective resilience is that decentralised networks pressure the actors involved at all levels to experiment, write guidebooks, participate in inspections and learn to work with shared professional values. In other words, a multitude of experts at different levels of government must continuously demonstrate their quality and trustworthiness to broad groups of peers. This concept is known as 'the strength of weak ties'. The strength is not derived from one committee or another, but rather from the creation of many bilateral and multilateral links that connect the member states within EU governance systems. In these networks, officials are compelled to prove themselves as valuable colleagues

with shared professional values and to fight off national politicisation.[7] Hence, the significance of subsidiarity lies not only in keeping tasks close to national welfare functions but also in facilitating trust-building through multilayered ties.

The successful areas, therefore, can help to clarify what good governance involves: subsidiarity-based agency networks, the separation and decentralisation of enforcement tasks, and transparent reporting. Moreover, we can see that in such areas the European Commission plays a different role, functioning more as a manager than as a standalone policymaker and supervisor.[8]

Missed networking opportunities

Many EU networks, however, offer little more than opportunities for information exchange and have hardly any institutionalised role. Systems for first- and second-order monitoring do not exist in many policy areas. For instance, national public investment systems are important for ensuring national competitiveness and effectively utilising EU investment funds. Nevertheless, despite the billions invested from EU budgets, there is no system for mutually assessing these investment systems. Moreover, the *ex post* auditing of EU funds presents a significant missed opportunity for networking. The European Court of Auditors does not operate as a networked organisation and, therefore, contributes little to building a reliable and transparent European auditing culture.[9] In economic governance, the role of the Directorate-General for Economic and Financial Affairs in monitoring national competitiveness and economic reforms is largely disconnected from the (under-used and under-developed) networks of national fiscal and productivity boards. Another example is the Commission's impact-assessment system, which does not engage with national assessment systems in either the writing or the quality control of Commission assessments. This contributes little to activating national impact systems, solidifying the value of independent impact assessments across the EU, or establishing common methodologies for assessing the administrative burdens of national and European policies.

There are many areas, both visible and less so, where EU networks are under-used. As a result, common values of good governance and best practices will not emerge. Setting up effective links with and between member states demands effort. There is typically considerable distrust, both among member states and in the Commission, regarding the will and abilities of member states, For example, a senior Commission official referred to the member states as 'a basket of rotten apples'.[10] Moreover, both member states and the Commission are reluctant to accept agency structures that are distant from governments. Additionally, striking bilateral political deals with the Commission often appears more attractive to national politicians than building transparent inspection networks. Finally, the importance of cooperation is easily underestimated. As an example, when a police officer from an institutionally strong member state was asked whether he would join a network meeting, he declined on the basis that everything was working well in his country.[11] This response dangerously misses the point about the strength of weak ties.

[7] In his famous book *Making Democracy Work*, Robert Putnam presents trust as a 'moral resource' that increases when it is used. The more people have to cooperate, the more they—and their colleagues—are forced to be reliable. Trust, he notes, is a public good that, like all public goods, tends to be undervalued and under-used. R. Putnam, *Making Democracy Work: Civil Traditions in Modern Italy* (Princeton: Princeton University Press, 1993).

[8] Schout, *EU Subsidiarity as an Antidote to Centralisation and Inefficiency*.

[9] A. Schout, *Cohesion Policy: A Management Audit*, Clingendael Research Paper (The Hague, 2024).

[10] Schout, *EU Subsidiarity as an Antidote to Centralisation and Inefficiency*, 8.

[11] A. Schout and M. Luining, *Rule of Law Policy: Ambitions Without Strong Networks*, Clingendael Research Paper (The Hague, 2018).

Step three: formalising good governance principles

Accepting considerable margins for self-government is a starting point for managing interdependence. To facilitate multilevel cooperation, it would be beneficial to establish an agreed framework of good governance in European administrative law. Related discussions were once on the EU agenda but have gradually faded from view. After the implosion of the Santer Commission, the EU began to seriously debate the issue of good governance. The agenda included, among other topics, fact-based integrated impact assessments, EU agencies, transparency and networks. The 2001 White Paper on European governance[12] had a major impact, particularly on the use of integrated impact assessments and on the transparency of EU documents. However, discussions on EU agencies proved to be too sensitive, resulting in a weak *Joint Statement on a Common Approach for Agencies* in 2012.[13] The ambitions for good governance, depoliticisation, and the use of agencies and networks were overshadowed by political ambitions from the Juncker Commission onwards. The 'how' of good governance gained a reputation for technocracy, shifting the focus to the 'what' of (ambitious) policies. As it stands, the EU has not yet succeeded in unifying the heterogeneity of national approaches to administrative law and administrative values. Paraphrasing Monnet, nothing lasts without well-defined multilevel institutions.

Conclusion

Many changes have been attempted to make national institutions more resilient, but upward convergence has not materialised in traditionally weak areas. The first step proposed in this contribution is to acknowledge that member states are different and that acknowledging these differences is essential to enabling member states to take ownership, to creating tailor-made policies and to promoting mutual learning. Self-government, however, does not equate to independence. The second step is to establish common administrative values and procedures through intensified cooperation (harnessing the strength of weak ties). Currently, EU policy areas are governed in highly ideocratic ways. These differences in part stem from the lack of an administrative model and a lack of clarity in the treaties and administrative law regarding the relations between the EU and the national level. The EU needs to renew the process to establish shared governance values. After the fall of the Santer Commission, there was broad agreement that new governance standards and methods needed to be introduced. The next Commission should revisit the good governance agenda, and this time ensure buy-in from the member states. Further enlargement will place additional pressure on the EU's polity to define national leeway as well as good governance standards. The EU's administrative models need to be ready and implemented by then.

Moreover, the European Commission should critically examine the areas in which networking can be strengthened. Instilling good governance values is not just a matter of high-level political debates about administrative law. It is also about starting pragmatically at the grass-roots level of day-to-day policies. This will require that the Commission takes on a managerial approach rather than its traditional hierarchical and legal roles.

Strengthening the Union's governance fabric and social capital will not solve all problems related to the lack of convergence, nor will it prevent leaders such as Viktor Orbán from mounting challenges. Yet, it will place the EU as a whole on a more engaged footing. The time is ripe for reconsidering the treaties and for establishing nascent European administrative procedures accordingly.

[12] European Commission, *European Governance: A White Paper*, White Paper, COM (2001) 428 final (12 October 2001).
[13] Council of the European Union, *Joint Statement of the European Parliament, the Council of the EU and the European Commission on Decentralised Agencies* (18 June 2012).

	Programme 1	Programme 2	Programme 3
	Reconsidering good governance	**Improving monitoring and enforcement**	**Addressing good governance in the member states**
Project 1	Change the spirit of the treaties from maximalist integration to self-government. 'Ever closer union' should be complemented by 'unity in diversity'. This would help all parties to accept that ownership of EU ambitions demands respect for differences and that mutual recognition should often suffice.	Specify the principles of first- and second-order control by learning lessons from policy areas that are both effectively and not effectively monitored and enforced. The former include food safety and European statistics, while the latter includes economic governance.	Use comparable impact-assessment systems to study to what extent and how EU good governance topics have worked their way into the member states. Have innovations in governance at EU level seeped into new procedures and values at the member state level? To what extent has the Commission's impact-assessment system been copied in the member states?
Project 2	Revisit the White Paper on European governance from 2001. Work closely with national authorities towards a Good Governance Mark II project to ensure buy-in from the member states.	Set up teams for examining the effectiveness of monitoring and enforcement systems to ensure mutual learning and building of common values throughout the EU. Moreover, entrust independent and national experts with formulating the appropriate roles and designs for agencies. The Nordic model is a logical point of reference.	Evaluate the choice of instrument in the 'better regulation guidelines'. It was originally intended that instruments would be kept as light as possible. To what extent have EU and national policies respected this preference? (See also the Draghi Report on over-regulation and fragmentation.)
Project 3	Adapt the treaties and administrative legislation. This should be supervised by the president of the Commission in coordination with the European Council. A first step for the president should be to consider why the previous debate on good governance stalled.	Acknowledge that the new ways of working will demand new—more managerial—functions for the European Commission, which has previously been reluctant to work with EU agencies and national authorities.	Adapt the administrative procedures law by specifying the standards of good governance.

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Stronger Subsidiarity for a More Effective, Accountable and Resilient EU

by Federico Ottavio Reho

Summary

This paper argues that, as the EU is set to acquire new resources and possibly step up its action in several important fields, from industrial policy to defence, stronger protection of subsidiarity is necessary to ensure that it does so without encroaching upon the prerogatives of the lower levels and while remaining as close as possible to the citizens. The paper outlines some of the limits of the currently existing safeguards of subsidiarity, including the principle's failure to become justiciable, the consequences of the EU's 'over-constitutionalisation', and the difficulties with the 'yellow' and 'orange card' procedures. It then proposes a number of possible actions to strengthen subsidiarity on three fronts: its legal definition and justiciability, its institutional protection and its political protection. The conclusion underlines that the ultimate safeguards of subsidiarity are a culture and an ethos that value bottom-up solutions, decentralisation, polycentricity, competition and less regulation.

Keywords Subsidiarity – Simplification – Accountability

Introduction

Respect for subsidiarity is a key precondition for the long-term political sustainability of a heterogeneous federal union such as the EU. In such a polity, legitimacy always flows upwards from the member states, regions and peoples, who share sovereignty in and rule together through common institutions, but have no vocation to ever merge into a single *demos* and state. At a deeper level, subsidiarity defines a specific type of federal political order that strives to preserve the diversity, spontaneity and freedom of all human communities as intrinsically worthy, and in which the higher levels of government exist to assist the lower ones and enhance their ability for self-determination.

The more powers and competences that the EU acquires, therefore, the more important the strong protection of subsidiarity becomes to ensure that they are exercised without encroaching upon the prerogatives of the lower levels and that they remain as close as possible to the citizens. In other words, empowering the EU and strengthening subsidiarity are two sides of the same coin, and have historically progressed together. Thus, it is only appropriate to consider introducing more robust safeguards of subsidiarity in parallel with the ongoing discussions on a stronger role for the EU in several important fields, from industrial policy to defence.

Existing safeguards of subsidiarity and their limits

The key pillars of subsidiarity protection under the current treaties are Article 5 and Protocols 1 and 2 of the Treaty on European Union (TEU). Article 5 defines subsidiarity as meaning that EU action is justified only if and insofar as its objectives cannot be sufficiently achieved by the member states (that is, 'EU necessity'), but can rather, by 'reason of the scale or effects', be better achieved at Union level ('EU added value'). Protocol 1 requires national parliaments to be adequately informed about EU initiatives and legislative proposals and allows them to send reasoned opinions to EU institutions on the conformity of a particular legislative proposal with the principle of subsidiarity. Protocol 2 deals with the role of national parliaments in the enforcement and application of the principle of subsidiarity and proportionality. In particular, it lays out the 'yellow' and

'orange card' procedures, whereby national parliaments, by sending their reasoned opinions within a certain time frame and in sufficient number, can oblige the Commission to review a proposal deemed at odds with subsidiarity and impose conditions and obstacles to its development should the Commission still wish to progress with it. Moreover, since the entry into force of the Lisbon Treaty, the same protocol also grants the European Committee of the Regions (CoR) the right to bring an action before the European Court of Justice (ECJ) on the grounds of the infringement of subsidiarity.

Though helpful as broad legal–political principles, these provisions have largely failed to protect the functions of member states and regions or to mitigate the longstanding problem of 'competence creep', that is, the tendency to adopt EU legislation in areas in which the EU has not been conferred a specific legislative competence.[1] There are multiple and complex reasons for this, one being that although it has been in force since 1992, the subsidiarity principle has never acquired any justiciable content. Its vagueness means that the principle has never emerged as a standard for adjudicating concrete jurisdictional disputes. Another, much neglected, reason is the 'over-constitutionalisation' of the EU: that is, the fact that, the treaties having been turned into a de facto constitution by the case law of the ECJ, European constitutional law is full of provisions that, in any regular polity, would be governed by what is known as ordinary law. For example, the constitutionalised goal of establishing a common market provides a legal basis that could be used to generally undermine the competences of the member states, as every national norm could be construed as an impediment.[2]

The right of complaint granted to national parliaments under the Treaty of Lisbon cannot compensate for this, as it suffers from limitations of its own, ranging from the existing discrepancy of powers and resources among the national parliaments to the relatively short period (eight weeks) available to them to scrutinise subsidiarity under the yellow and orange card procedures. As a consequence, so far only three yellow card procedures have been undertaken and not a single orange card has been used. Relatedly, the EU has also often been accused of a tendency to over-regulate. Despite repeated attempts to tackle over-regulation during the last decade, no satisfactory solution to this problem has been found so far. Overall, the Article 5 definition of subsidiarity appears 'very minimalist', as 'reasons of scale and effects can always be found to justify EU action, and have been'.[3] Moreover, existing safeguards clearly lack effectiveness. Going forward, more robust ones need to be put in place, in parallel with the necessary strengthening of EU resources and executive capacity.

Proposals for the stronger protection of subsidiarity

To overcome some of the difficulties outlined above, the remainder of this paper suggests actions to reinforce the protection of subsidiarity on three fronts: the legal definition of subsidiarity and its justiciability, the institutional protection of subsidiarity and the political protection of subsidiarity. These three aspects appear to be the essential pillars of any comprehensive system of subsidiarity protection. The proposed measures range from relatively simple initiatives that would not require a treaty change to more transformative interventions that would. They are presented in more detail in the following sections.

Reinforcing the legal protection of subsidiarity

A key loophole in the system of subsidiarity protection currently in place in the EU is the failure of subsidiarity to become fully justiciable and acquire the status of a judicial review principle. In other words, despite the

[1] S. Garben, 'Competence Creep Revisited', *Journal of Common Market Studies* 57/2 (2019).
[2] D. Grimm, *The Constitution of European Democracy* (Oxford: Oxford University Press, 2017).
[3] F. O. Reho, 'Subsidiarity in the EU: Reflections on a Centre–Right Agenda, *European View* 18/1 (2019).

founding treaties making it clear, since the changes introduced by the Maastricht Treaty, that subsidiarity is a legally binding principle, the ECJ has consistently refused to strike down any legislation challenged before it on subsidiarity grounds. Not least because of the principle's vagueness, the Court has preferred to treat its substantive content as political and, as such, has left it to the discretionary appraisal of the EU institutions, particularly the Commission. In a sense, the Court's interpretative stunting of the legal protection of subsidiarity is yet another example of its well-known judicial activism in favour of further integration.[4]

Moving forward, this should be corrected by amending Protocol 2 of the TEU to establish clear guidelines on the application of the principles of subsidiarity and proportionality, and by including a detailed definition of subsidiarity in the Inter-Institutional Agreement on Better Law-Making. Inspiration for this could be drawn from Protocol 30 to the 1997 Amsterdam Treaty on the application of the principles of subsidiarity and proportionality, which ceased to be in force with the Lisbon Treaty. The Protocol contained substantive criteria for deciding when a legislative proposal was compatible with the subsidiarity principle, and several guidelines for assessing whether the conditions imposed by it had been fulfilled. No comparable legal basis exists in the current treaties.[5]

The goal of these legal clarifications would be to restate for the ECJ's benefit that the principle of subsidiarity is meant to be justiciable, while also offering the Court more substantive and detailed criteria and guidelines for applying the principle without fear of interfering with the political process. Moreover, we know from public choice theory that ECJ judges have a vested interest in transferring power from the member states to the EU level, and the Court's history and record largely confirm this. To correct this built-in bias and ensure that the Court acts as an impartial interpreter of the treaties as far as subsidiarity is concerned, a new constituent court of the ECJ should be established, specialised in disputes about the allocation of competences between the Union and its member states, as well as actions against alleged violations of the principles of subsidiarity and proportionality. It should be composed of former judges from the national constitutional courts and act as a chamber of the ECJ, so as not to undermine the Court's overall authority.[6]

More broadly, to solve the problem of 'over-constitutionalisation', which seems to be one of the root causes of 'competence creep', it would be wise to reclassify all provisions of a non-constitutional nature present in the EU treaties (essentially, most of the Treaty on the Functioning of the European Union (TFEU)) as ordinary law. As long as such provisions continue to enjoy constitutional rank, when the Commission and the ECJ apply them they are essentially implementing the constitution, which makes it impossible to redirect their actions through legislation to protect national and regional competences.[7] A more precise definition of shared competences under Article 4(2) of the TFEU would also help.

Reinforcing the institutional protection of subsidiarity

Beyond these legal changes, it is also important to reinforce the institutional mechanisms available to protect subsidiarity in the EU. A much neglected but essential aspect of this is arguably national parliaments' ability to hold their governments accountable for EU matters. EU member states display a variety of constitutional structures and provisions, and thus the ability of the national parliaments to accomplish this task is very uneven. Some of them enjoy a very high degree of oversight of their governments' EU involvement and negotiations, others lack the slightest ability to control and question them.

4 G. A. Moens and J. Trone, 'The Principle of Subsidiarity in EU Judicial and Legislative Practice: Panacea or Placebo?', *Journal of Legislation* 41/1 (2014).

5 R. Lopatka, 'Subsidiarity: Bridging the Gap Between the Ideal and Reality', *European View* 18/1 (2019).

6 European Constitutional Group, *A Proposal for a Revised Constitutional Treaty* (2006), 9; R. Vaubel, *The European Constitutional Group: The Constitutional Approach to Limiting the Power of Government at the European Level* (2019), 4.

7 Grimm, *The Constitution of European Democracy*, 1–20.

This unevenness in national parliaments' powers and resources is an inevitable consequence of Europe's historical and institutional diversity. As such, it cannot be fully remedied. However, it could be reduced by developing what we might call a 'gold standard' for the participation of national parliaments in EU legislative and political processes. This would be a list of minimum requirements that would enable national parliaments to scrutinise their governments on EU affairs and learn from the best practices of other parliaments (e.g. Finland's and Denmark's).

As mentioned above, however, national parliaments are also directly involved in scrutinising subsidiarity under the yellow and orange card procedures. For this scrutiny to be more effective, the deadline for submitting opinions should be extended from 8 to 12 weeks and the thresholds required should be reduced, for example, from a third to a quarter of the votes expressed by national parliaments for the yellow card procedure, and from a simple majority to a third for the 'orange card' procedure.[8] Moreover, a 'green card' and a 'late card' procedure could also be introduced. The former would allow national parliaments to voice their support for a proposal submitted by another national parliament. If the support garnered was high enough, the European Commission would have to consider incorporating the proposal into its legislative agenda. This is not a fictional scenario: individual national parliaments have taken such initiatives in the past, and one of them was actually adopted by the Commission.[9]

In contrast, the 'late card' procedure would 'grant the national parliaments the right to scrutinise draft legal acts a second time at the end of negotiations between the Commission, the European Parliament and the Council'.[10] It is also worth mentioning that, in several member states (e.g. Germany), subnational parliaments possess significant legislative powers, including on matters that are regularly the object of EU legislative proposals. At the moment, they play no role in the institutional mechanisms for protecting subsidiarity. They could at least be granted consultative rights when matters under their legislative purview are at stake.

Finally, there is an obvious subsidiarity angle to the Commission's Better Regulation Agenda, particularly in initiatives such as the Regulatory Fitness and Performance programme (which aims to ensure that EU laws deliver on their objectives at a minimum cost for citizens and businesses) and the Fit for Future platform, which is a high-level expert group that helps the Commission simplify EU laws and reduce unnecessary related costs. Institutionally, reinforcing the role of the CoR and even of the European Economic and Social Committee in scrutinising EU legislation when it comes up for revision in such and similar fora would make sense. This would deepen both vertical and horizontal subsidiarity by embedding subnational and socio-economic actors, respectively, more closely in better-regulation initiatives.

Reinforcing the political protection of subsidiarity

The history of the last 30 years, however, shows that the existing legal and institutional safeguards of subsidiarity can easily be voided of substance and effectiveness if the prevailing political ethos sees the principle as, at best, a frill to pay lip service to or, at worst, a hindrance to circumvent on the road to centralisation. This is why the ultimate safeguards of subsidiarity are always political and, in a sense, even cultural. The three main EU institutions could choose a variety of ways to signal their political commitment to subsidiarity.

As far the European Parliament goes, one way would be to establish a Subsidiarity Subcommittee of the Committee on Constitutional Affairs, which so far has all too hastily brushed aside subsidiarity concerns for fear that they might halt the forward march of European integration. However, as mentioned above, this is a misguided conception of subsidiarity, which, when correctly understood, is not meant to be a brake on

[8] R. Lopatka, *Die EU und die Mitgliedstaaten: Subsidiarität. Proportionalität. Weniger, aber effizienteres Handeln*, AIES Studies (Vienna, 2018), 22.
[9] Lopatka, 'Subsidiarity', 32.
[10] Ibid., 34.

integration but rather a specific modality of pursuing it. Another important initiative in the Parliament would be the formation of a Subsidiarity Intergroup grouping of Members with a specific interest in upholding subsidiarity as a fundamental EU constitutional principle in its broadest sense.

At the level of the Council, responsible working groups should be encouraged to systematically assess the compliance of the Commission's proposals with the principles of subsidiarity and proportionality. Moreover, the Commission itself should politically commit to reducing the burden and intrusiveness of EU legislation in various ways. These include

- committing to choosing the form of EU action which least interferes with national law (e.g. directives instead of regulations, the latter having now become the overwhelmingly dominant form of EU legislation, despite, or perhaps because of, their being the most intrusive);
- limiting the use of delegated and implementing legal acts, which have multiplied in recent years, but which elude subsidiarity control mechanisms, to the disadvantage of member states and regions; and
- committing to one or the other form of sunset clause, for example, by strictly implementing the 'one in, one out' principle, according to which an existing EU provision is cancelled in parallel with any new one being proposed.[11]

This would limit the proliferation of EU regulatory initiatives that risk burdening businesses and stifling innovation.

Finally, it is important to underline that, for the first time in the history of the directly elected European Parliament, in the current legislature forces to the left of the centre–right European People's Party do not now have a majority themselves. This means that, based on the current political composition of the Parliament, centre–right support is indispensable to approve any legislative proposals and resolutions that are put forward. This places on the European People's Party the special responsibility to act resolutely as the political guardian of subsidiarity by rejecting on strict constitutional grounds initiatives, whether binding or not, from any EU institutions that seem to exceed EU competences and violate the rigorous upholding of subsidiarity. These include (but are not limited to) initiatives on, or touching upon, controversial moral disagreements, such as those promoting expansive and divisive interpretations of Article 2 of the TEU.[12] The existence of a predominant political force that chooses to act as the guardian of subsidiarity would be the ultimate political safeguard of this important principle.

Conclusion

We need to stop seeing subsidiarity as a vague and largely empty principle to which some people only pay lip service—or even worse, as a potential brake on European integration or as a fig leaf behind which ill-intentioned forces hide in the hope of maintaining an air of respectability while they promote a Eurosceptic agenda. Broadly and rightly understood, subsidiarity actually offers a specific approach to advancing European integration and constructing European unity. It is an approach that values bottom-up solutions, decentralisation, polycentricity, competition and less regulation, as opposed to one that insists on centralisation, harmonisation and increased regulation. Stronger protection of subsidiarity will not hinder the cause of European integration, but rather will make the EU more effective, accountable and resilient at a time when the need for it to acquire additional powers and resources in a number of fields is widely and justly felt. The robust upholding of subsidiarity requires effective legal, institutional, political and ultimately cultural safeguards. The proposals contained in this paper could be important steps towards achieving this.

[11] Lopatka, 'Subsidiarity'.
[12] F. O. Reho, 'Protecting Fundamental EU Values: In Search of a Balanced Approach', *European View* 23/1 (2024).

	Programme 1	Programme 2	Programme 3
	Reinforcing the legal protection of subsidiarity	**Reinforcing the institutional protection of subsidiarity**	**Reinforcing the political protection of subsidiarity**
Project 1	Amend Protocol 2 TEU to establish clear guidelines on the application of the principles of subsidiarity and proportionality, and include a detailed definition of subsidiarity in the Interinstitutional Agreement on Better Law-Making.	Reinforce national parliaments' ability to hold their governments accountable for EU matters by issuing a gold standard for the participation of national parliaments in EU legislative and political processes.	Establish a Subsidiarity Subcommittee of the Committee on Constitutional Affairs as well as a Subsidiarity Intergroup in the European Parliament, and encourage the relevant Council working groups to systematically assess the compliance of Commission proposals with the principles of subsidiarity and proportionality.
Project 2	Establish a new constituent court of the ECJ that specialises in actions against alleged violations of the principles of subsidiarity and proportionality, composed of former judges from the national constitutional courts.	Grant longer deadlines for national parliaments to scrutinise subsidiarity under the yellow and orange card procedures, reduce the thresholds required for both, introduce a 'green card' and a 'late card' procedure, and grant a role to subnational parliaments possessing legislative powers.	Reduce the burden and intrusiveness of EU legislation by committing to choosing the form of EU action which least interferes with national law (e.g. directives instead of regulations); limiting the use of delegated and implementing legal acts; and strictly implementing the 'one in, one out'
Project 3	Reclassify all provisions of a non-constitutional nature present in the EU treaties as ordinary law (essentially, most of the TFEU) and formulate a more precise definition of shared competences under Article 4(2) TFEU.	Reinforce the role of the CoR (vertical subsidiarity) in scrutinising EU legislation when it comes up for revision (e.g. the Regulatory Fitness and Performance programme and Fit for Future platform), as well as the role of the European Economic and Social Committee (horizontal subsidiarity).	Reject on strict constitutional grounds initiatives, whether binding or not, from any EU institutions that seem to exceed EU competences and violate the rigorous upholding of subsidiarity, refusing to discuss their substantive merits (e.g. initiatives on, or touching upon, controversial moral disagreements).

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EU Enlargement Policy

by Nikolaos Tzifakis

Summary

European integration has historically advanced through parallel steps towards deepening and widening cooperation. In our times, marked by the outbreak of a persistent poly-crisis, the EU again needs to move forward decisively with both dimensions of European integration. The containment of aggressive Russian revisionism has made it a strategic priority to accelerate the accession to the EU of all countries on the continent that share European norms and values. This paper argues that the successful completion of the current EU enlargement process requires reforms on three fronts: (1) EU governance needs to become more effective, (2) the Union's enlargement policy must be reinvigorated and (3) accession conditionality must be made credible again.

Keywords EU internal reforms – Candidate countries – Accession conditionality

Introduction

European integration has historically advanced as a binary process, consisting of parallel steps towards deepening and widening cooperation. More frequently than not, these two dimensions of European integration have reinforced each other. On the one hand, the successful advancement of supranational cooperation has prompted third countries to express interest in joining the European project. On the other hand, the accession of new members has propelled the EU to reform its institutions and extend its integration into new policy areas (e.g. the cohesion policy).

In our times, marked by the outbreak of a persistent poly-crisis, the EU needs to move forward decisively with both dimensions of European integration once again. The containment of aggressive Russian revisionism has made it a strategic priority to accelerate the accession to the EU of all countries on the continent that share European norms and values. This paper presents the state of play in EU enlargement policy and advances some policy recommendations to reform EU governance and accelerate the integration of all (potential) candidate countries.

State of play

The prospect of integrating several new member states is compelling the EU to reflect seriously on the efficiency of its institutions, procedures and policy instruments. The process of improving EU governance will involve long overdue reforms. The size of EU institutions (especially the European Commission and the European Parliament) cannot be increased indefinitely. Moreover, the range of issue areas where decisions are still taken with unanimity should be shrunk to avoid decision-making paralysis. Lastly, the EU budget should substantially increase to address the multiple challenges of our times (e.g. the green energy transition) facing an enlarged Union.

The European Parliament and European Commission have registered their desire for a treaty revision that would permit the undertaking of wide-ranging reforms. With such a move, not only will the EU increase the efficiency and democratic accountability of EU governance, but it will also make a decisive step forward towards European integration.[1] Nevertheless, there is no consensus among EU member states on the scope of, or even the need for, such an ambitious reform process.[2] In the meantime, an indefinite postponement of

[1] European Parliament, *Proposals of the European Parliament for the Amendment of the Treaties*, P9_TA(2023)0427 (22 November 2023).
[2] P. Buras and E. Morina, *Catch-27: The Contradictory Thinking About Enlargement in the EU*, ECFR Policy Brief (November 2023), 20.

much-needed EU internal reforms would put the enlargement policy on hold, shaking the interested countries' confidence in their prospect of joining the EU.

The EU has decided to give Ukraine, Moldova and Georgia this prospect at a time when the enlargement policy has failed to inspire applicant countries to implement the reforms essential for their EU accession. The EU enlargement policy has not worked efficiently during at least the last decade. All Western Balkan countries have experienced democratic backsliding while claiming to work towards preparing for EU accession. The EU has used conditionality inconsistently on several occasions. In some cases, the EU has failed to reward progress because of the tendency of member states to use the enlargement policy as a vehicle for projecting their national preferences. On other occasions, the accession path of (potential) candidate countries has advanced (e.g. through the opening of negotiations in chapters of the acquis) despite their poor track record in implementing reforms. While the EU has established tools to sanction stagnation in the reform effort (e.g. the 'balance clause' in fundamentals and process reversibility), it has never employed them. The EU should draw lessons from its policy failures in the Western Balkans as it embarks on the additional and more challenging task of helping Ukraine, Moldova and Georgia prepare for EU accession.

Finally, pre-accession financial assistance has not brought economic convergence between the EU27 and the Western Balkans. The assistance has been insufficient in size and does not follow the methodology and logic of the EU Structural and Investment Funds. The Western Balkan countries would need around 70 years to fully converge with the EU27 at the current pace of growth.[3] In addition, the accession prospects of Ukraine, a large country that will need vast amounts of post-war reconstruction assistance, make it imperative to increase and thoroughly review the Union's financial instruments to support (potential) candidate countries.

Prospects

The successful completion of the EU enlargement process requires reforms on three fronts: (1) the Union's internal reforms need to be advanced to make the EU 'enlargement ready', (2) the EU's enlargement policy must be reinvigorated to increase its efficiency and (3) accession conditionality must be made credible again.

EU internal reforms

Although a treaty modification does not figure among the immediate priorities of the EU member states, the Union's contemporary institutional setting allows ample room to take essential steps that would substantially improve the efficiency of EU governance.

According to Article 17(5) of the Treaty on European Union, the European Council has the leeway to decide unanimously on the size of the European Commission. Indeed, the same article also provides that, starting in November 2014, the number of Commission members should correspond to two-thirds of the number of EU member states. However, the size of the Commission has not been reduced accordingly due to the reluctance of several member states to periodically forego the right of proposing one of their citizens as a member of the Commission. Although the European Council does not appear ready to set a smaller size, certain ideas are worth exploring to prevent an even greater fragmentation of portfolios in the Commission following the accession of new member states. For instance, the 'Group of Twelve' (i.e. the Franco-German Working Group) proposed dividing the Commission's members equally between lead commissioners and commissioners on a strictly rotating basis and distributing portfolios to pairs of lead commissioners and commissioners.[4] The bottom line is that a treaty revision is not required to reduce the size of the Commission and the number of portfolios distributed among Commission members.

[3] European Bank for Reconstruction and Development, *Can the Western Balkans Converge Towards EU Living Standards?* (February 2024), 8.
[4] O. Costa, *Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century*, Report of the Franco-German Working Group on EU Institutional Reform (Paris and Berlin, 18 September 2023), 20.

For the European Parliament, Article 14(2) of the Treaty on European Union indicates that its composition is decided by the European Council by unanimity, on the initiative (and with the consent) of the European Parliament. The same article also sets the rules for the size of the European Parliament—a maximum of 751 Members of the European Parliament (MEPs)—and the EU citizens' representation (i.e. degressive proportionality and maximum and minimum thresholds for member state representation). Therefore, the existing institutional framework ensures that allocating MEP seats to new member states will not cause a proportionate increase in the Parliament's size.

Moreover, the Parliament's Constitutional Committee has received several proposals concerning the distribution of MEP seats among member states (e.g. the 'FPS method', the 'Power Compromise' and the 'Cambridge Compromise').[5] Selecting one of these models (each building on a different mathematical formula) would set the basis for a fair, democratic and transparent redistribution of MEP seats in an enlarged Union.

A major concern about the impact of EU enlargement on European integration is the possibility of decision-making failure in issue areas where unanimity is the rule. Still, the Council of the European Union and the European Council could use the general and specific 'passerelle' clauses previewed in various articles of the Treaty of Lisbon to decide (unanimously) on modifying decision-making procedures and replacing unanimity by qualified majority voting in most policy areas.[6] As the European Commission suggested, the recourse to passerelle clauses may be accompanied by 'appropriate and proportionate safeguards' to reassure member states that their strategic national interests would not be overlooked.[7]

Finally, an increase in the EU's own resources and the EU budget to finance policy priorities and socio-economic convergence in an enlarged Union requires the consent of the European Parliament and member states. It is not dependent on a treaty modification.

In sum, although a treaty modification would give a new impetus to European integration, it is not a prerequisite to making the Union 'enlargement ready'. What is needed is a commitment from member states to work towards improving EU governance. The internal reforms discussed here are much-needed irrespective of whether the EU accepts new members.

EU enlargement policy reform

The EU should reinvigorate its enlargement policy to improve its efficiency. At present, three reforms are urgently needed: (1) unblocking decision-making at the Council level, (2) ameliorating the quality of problem diagnosis concerning the deficiencies in the rule-of-law sector of applicant countries and (3) increasing and revamping pre-accession assistance.

For the Council, making dozens of decisions on the basis of unanimity during a candidate country's accession path has been counterproductive. Member states have numerous opportunities to veto the accession progress of third countries, frequently for reasons unrelated to EU enlargement policy. The Council has repeatedly been consumed in discussions about bilateral issues between member states and candidate countries instead of assessing the latter's fulfilment of EU accession requirements. That said, the EU accession of an interested third country is a fundamental constitutive decision for the Union to which all members should consent. In this

[5] See, for instance, V. Ramírez González, *A Mathematical Formula for Determining the EP Composition*, Directorate-General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, Briefing, PE 759.358 (February 2024); F. Pukelsheim and G. Grimmett, 'Power Compromise: An Objective, Fair, Durable and Transparent Fix for the EP Composition', Directorate-General for Internal Policies, Policy Department for Citizens' Rights and Constitutional Affairs, Briefing, PE 759.357 (February 2024).

[6] S. Kotanidis, *Passerelle Clauses in the EU Treaties: Opportunities for More Flexible Supranational Decision-Making*, European Parliamentary Research Service, Briefing PE 659.420 (December 2020).

[7] European Commission, *Communication on Pre-Enlargement Reforms and Policy Reviews, Communication*, COM (2024) 146 final (20 March 2024), 19–20.

respect, while the EU could continue taking all critical enlargement-related decisions unanimously (i.e. decisions related to accepting an application, granting candidate status and concluding negotiations), it could introduce qualified majority voting at all intermediate stages of the process where technical progress is assessed (e.g. the opening and closing of negotiations in different clusters). As Zweers et al. remarked, the current legal practice of requiring unanimous decisions at every step in the enlargement policy is not derived from EU primary or secondary law. We find it formally inscribed in the negotiation frameworks that the EU has concluded with each candidate country. Hence, if member states acknowledge the imperative of accelerating the EU enlargement policy, they could revise the legal practice applied in Council decision-making without treaty modification.[8]

Administering the enlargement process based on merit not only requires reducing its politicisation (and improving decision-making) at the Council level. It also presupposes upgrading the Commission's monitoring and reporting work. The progress of applicant countries is assessed annually in voluminous reports (120 to 160 pages long) that present a wealth of technical information across accession clusters and chapters. Nevertheless, the cautious diplomatic language that is used dilutes the findings and obscures the diagnosis of problems.

In 2024 the Commission, for the first time, also included four Western Balkan countries (Montenegro, Serbia, Albania and North Macedonia) in its annual *Rule of Law Report*. This decision allowed for an assessment of where these countries stood compared to EU member states regarding their rule-of-law sectors. Adding all applicant countries to the Commission's next *Rule of Law Report* would be useful. Nevertheless, the Commission's rule-of-law dialogue is far from optimal. For instance, insufficient attention has been paid so far to whether the recommendations articulated in these reports are genuinely implemented.[9] Also, concerns have been expressed about their overtly optimistic and diplomatic language and the lack of transparency in the consultations leading to their drafting.[10]

Helping applicant countries confront structural deficiencies in their rule-of-law sectors requires a more drastic solution. The Commission's reports should be complemented with periodic expert-level reviews by independent analysts (on the model of the Priebe Reports about Bosnia and Herzegovina and North Macedonia), whose task would be to account for the systemic causes of weaknesses in the rule-of-law sector. The policy prescriptions of these independent groups of experts should inform accession negotiations.

Finally, EU pre-accession assistance has not sufficed to stimulate the economic convergence of candidate countries with the EU27. In per capita terms, Western Balkan countries are still expected to receive 12 times less money than Croatia (i.e. an EU member state) despite their eligibility for additional assistance from the recently launched New Growth Plan.[11] The EU should not only substantially increase pre-accession aid; candidate countries should also be helped to grow their capacity to administer and absorb EU funds.[12] To that end, it would be beneficial if the EU introduced the methodology of support offered to member states through the EU Structural and Investment Funds to pre-accession assistance.[13]

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8 W. Zweers et al., *Unblocking Decision-Making in EU Enlargement: Qualified Majority Voting as a Way Forward?*, Clingendael, Policy Brief (June 2024), 8.

9 C. Brasseur, V. Pachta and C. Grigolo, *Towards an Enlarged Union: Upholding the Rule of Law*, International IDEA, Policy Paper 30 (April 2024), 19.

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Credibility of EU accession conditionality

To restore the credibility of its enlargement policy, the EU needs to convince applicant countries that they have real prospects of becoming members once they fulfil all accession requirements. Moreover, the EU should consistently apply accession conditionality by encouraging and rewarding compliance with EU policy prescriptions and sanctioning stagnation in the reform process.

Reforming EU institutions (deepening) and preparing applicant countries for EU accession (widening) are two processes that should run in parallel, not one at the expense of the other. The EU should unequivocally state that the accession of new member states is not conditional on the completion of its internal reforms. If candidate countries are ready to accede before EU governance is improved, they may still be offered EU accession, subject to a few transitional time-specific (e.g. five to seven years long) derogations of certain member rights. As the Centre for European Policy Studies and the European Policy Centre jointly proposed in their staged accession model, such derogations could be introduced in those countries' accession treaties, and they could concern areas such as the right to veto decisions taken in the Council with unanimity and the right to nominate a commissioner.[14]

In the meantime, applicant countries should be consistently encouraged to undertake difficult reforms entailing non-negligible political costs. The prospect of full membership no longer induces compliance with EU requirements for countries that have been struggling to advance along their accession path for the last two decades. The Commission and the policy community have proposed several interim rewards for applicant countries registering progress in implementing reforms (e.g. sectoral, gradual or staged accession). Interim rewards could include gradual integration into the single market and other policy areas, eligibility for assistance from EU Structural and Investment Funds, and periodic participation in observer status at Council meetings (discussing issues in which these countries have substantially advanced or concluded accession negotiations).[15]

Lastly, beyond introducing tangible interim rewards in the enlargement policy to induce compliance with accession conditionality, the EU should also operationalise the reversibility of the process. Democratic regression, prolonged stagnation in introducing reforms, and poor alignment with EU foreign policy decisions and actions should no longer be inconsequential. As it previewed in its revised enlargement methodology (adopted in February 2020), the EU might confront such instances of non-compliance with a range of measures such as pausing or suspending accession negotiations, reopening closed clusters or chapters, and reviewing the financial assistance and benefits offered to applicant countries. Reacting to non-compliance would restore the credibility of the enlargement policy as a merit-based policy. It would also show candidate countries that the EU is not indifferent to their accession process.

Conclusion

The European project has been repeatedly challenged in times of crisis since the establishment of the European Communities. Nevertheless, member states have historically overcome hurdles by progressing towards deepening and widening cooperation. The current poly-crisis represents another instance in which European leaders are called to take decisive steps forward. Notwithstanding the lack of consensus about the scope and necessity of a treaty modification, EU members may still implement much-needed reforms to improve EU governance, reinvigorate the enlargement policy and restore the credibility of accession conditionality. That said, member states' divergent views and national preferences should not be underestimated. The EU leaders are called to strike a new balance between empowering the Union to confront the multiple challenges of our times and protecting their vital national interests, where necessary.

[14] M. Mihajlović et al., *Template 2.0 for Staged Accession to the EU*, Centre for European Policy Studies and European Policy Centre, Revised Proposal (August 2023), 6.

[15] M. Delevic and T. Prelec, 'Flatter, Faster, Fairer – How to Revive the Political Will Necessary to Make Enlargement a Success for the WB and the EU', *European Fund for the Balkans*, 17 January 2020; European Commission, *Communication* on Pre-Enlargement Reforms and Policy Reviews, 12–17; Ibid., 7–10.

	Programme 1	Programme 2	Programme 3
	Reform EU institutions, procedures and instruments in preparation for the accession of new member states.	**Increase the efficiency of the EU enlargement policy to accelerate the process.**	**Restore the credibility of EU accession conditionality.**
Project 1	Reform EU institutions. Review the rules that determine the composition of the European Parliament and the European Commission to avoid an open-ended increase in their size.	Introduce qualified majority voting in all intermediate steps of the accession process, such as opening and closing negotiations in different chapters and clusters. Unanimity should be maintained at all decisive moments, i.e. the stages of accepting an application, granting candidate status and concluding negotiations.	Adopt a European Council declaration, stating unequivocally that the accession of new member states is not conditional on the completion of EU internal reforms. If candidate countries are ready to accede before the reform of EU institutions is completed, a series of transitional time-specific (e.g. five to seven years long) derogations will be introduced in those countries' accession treaties. These could concern areas such as the right to veto decisions taken with unanimity and the right to nominate a commissioner.
Project 2	Extend the application of the ordinary legislative procedure and qualified majority voting in most policy areas. Decision-making by unanimity should remain in a few domains, such as the Common Security and Defence Policy and, extraordinarily, whenever a member state raises a vital interest issue.	Complement the Commission's annual progress reports with biennial thorough reviews of the interested countries' rule-of-law sectors. These reviews, conducted by groups of independent analysts, should account for the causes of deficiencies in the rule of law (on the model of the Priebe Reports about Bosnia and Herzegovina and North Macedonia). The policy prescriptions in these reports should inform accession negotiations.	Introduce tangible interim rewards for interested countries registering progress in the accession process. These may include access to EU Structural and Investment Funds, and periodic participation in observer status at Council meetings (discussing issues in chapters or clusters in which these countries have substantially advanced or concluded accession negotiations).
Project 3	Increase the size of the EU budget to empower the Union to face the multiple challenges of our times, including supporting the accession of (potential) candidate countries.	Increase pre-accession financial assistance and introduce the methodology and logic of support offered to member states through the EU Structural and Investment Funds.	Operationalise the reversibility of the enlargement methodology. Democratic backsliding, prolonged stagnation in introducing reforms, and poor alignment with EU foreign policy decisions and actions should no longer be inconsequential.

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