



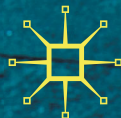
# THE DEPTH AND SIZE OF THE **EUROPEAN UNION** IN A TIME OF WAR

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Interdisciplinary European Studies

EDITED BY PER EKMAN, BJÖRN LUNDOVIST,  
ANNA MICHALSKI, LARS OXELHEIM

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# The Depth and Size of the European Union in a Time of War

Per Ekman · Björn Lundqvist ·  
Anna Michalski · Lars Oxelheim  
Editors

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# CONTENTS

1. **European Integration in a Time of War: Can the EU Gear Up to Face Unprecedented Internal and External Challenges?** 1  
Per Ekman, Björn Lundqvist, Anna Michalski, and Lars Oxelheim
2. **Future EU Enlargements—Opportunities and Dilemmas** 23  
Mats Öhlén
3. **EU Security, Collective Self-Defence, and Solidarity** 49  
Ester Herlin-Karnell
4. **What Can the EU Learn from Brexit?** 67  
Pehr-Johan Norbäck
5. **The Brexit Effect: How Has British Withdrawal Shaped the EU's Development?** 97  
Nicholas Aylott
6. **Union Citizenship: Towards a Deepened Legal Meaning** 123  
Katarina Hyltén-Cavallius
7. **Improved Working Conditions and Paths to Worker Solidarity in an Increasingly Diversified EU** 151  
Ann-Christine Hartzén

<b>8.</b>	<b>How Well Can the EU Labour Markets Absorb Refugee Immigrants?</b>	<b>177</b>
	Özge Öner and Hans Seerar Westerberg	
<b>9.</b>	<b>The EU's New Pact on Migration and Asylum: Towards a Long-Term Sustainable European Migration Policy?</b>	<b>197</b>
	Andrea Spehar	
<b>10.</b>	<b>AI and Digitalisation's Impact on EU's Future Labour Market: Scenarios and Implications</b>	<b>223</b>
	Robin Teigland and Mikael Wiberg	
<b>11.</b>	<b>Reconsidering the Depth and Size of the EU in View of Enlargement in a Time of War</b>	<b>251</b>
	Per Ekman, Björn Lundqvist, Anna Michalski, and Lars Oxelheim	
	<b>Index</b>	<b>273</b>

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# LIST OF FIGURES

## Chapter 4

- Fig. 4.1 GDP per capita development in U.S. dollars from 1970 to 1986 for the UK, Germany, and France, adjusted for purchasing power parity at 2015 prices. The vertical line marks the UK's accession to the EEC in 1973 (*Source* OECD, n.d.) 78
- Fig. 4.2 The development of GDP per capita in U.S. dollars from 1990 to 2021 for the UK, Germany, and France. GDP per capita is expressed in purchasing power-adjusted 2015 prices (*Source* OECD, n.d.) 83

## Chapter 10

- Fig. 10.1 The year 2035: Four alternative futures for the EU 231

# LIST OF TABLES

## Chapter 2

Table 2.1	Enlargement processes in the Western Balkans	33
Table 2.2	The EU's relations with the Eastern Partnership	36

## Chapter 8

Table 8.1	Labour market indicators for refugee immigrants in the largest receiving countries between 2015 and 2021 (%)	185
Table 8.2	Proportion of refugee immigrants not working and difference from total population 2015–2021 (%)	186

## Chapter 10

Table 10.1	Four scenarios for EU's labour market in 2035	243
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## CHAPTER 1

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# European Integration in a Time of War: Can the EU Gear Up to Face Unprecedented Internal and External Challenges?

*Per Ekman* , *Björn Lundqvist*, *Anna Michalski* ,  
*and Lars Oxelheim*

Russia's unprovoked and illegitimate invasion of Ukraine in February 2022 was a rude awakening for the EU. The war has forced the Union

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to face a set of complex challenges which necessitates action in order to reinstate stability in the wider Eastern European region. Yet, the difficulty of such a task has brought pertinent and urgent questions to the fore about the EU's ability to take a prominent role in the stabilisation of the European neighbourhood (Bakardjieva Engelbrekt, 2024). Doubts abound whether the EU will show itself capable of decisive action in the shorter term to provide direct military, political, economic, and humanitarian support to Ukraine in its war effort and in the longer term show the necessary unity to build a new European security order to restore a sense of security and resilience and ultimately shoulder the responsibilities which come with it.

Nonetheless, since the outbreak of the war, the EU has shown unparalleled unity in its support for Ukraine, which, according to the European Council in repeated statements since 2022, will continue for as long as it takes (European Council, 2022, 2023, 2024). This support has taken several forms: strategic military support in the form of weapons systems, financing of munitions, and training of the Ukrainian army; financial support through macroeconomic aid and promises of funding for Ukraine's reconstruction; and humanitarian aid through the activation of the Temporary Protection Directive for Ukrainians to facilitate the reception of people fleeing the war (Council of the EU, 2022; Kiel Institute for the World Economy, 2024). The support of the EU has also been political in the form of repeated condemnations of Russia's actions, the adoption of multiple, far-reaching packages of sanctions, and various diplomatic *démarches*. Perhaps most important of all, politically speaking, are the clear signals from the EU since the onset of the war that it already considers Ukraine, Moldova, and perhaps Georgia to be part of the European security architecture, thereby frustrating Russian President Vladimir Putin's goal of incorporating these countries into the Russian sphere of interest.

The war in Ukraine has resulted in the EU and its member states having had to take on an inescapable responsibility for the future peace and development in Europe, which in principle can only take an enduring and concrete form by enlarging the EU to include these countries. Ursula von der Leyen summed up this momentous task, when launching the European Commission's report on the enlargement of the EU in October 2023, holding forth that "[C]ompleting our Union is the call of history, it is the natural horizon of the European Union" (Von der Leyen, 2023). In December 2023, the European Council took the first steps in this

historical mission by endorsing the Commission's proposal to open accession negotiations with Ukraine and Moldova. By the end of 2024, the EU had opened negotiations for EU memberships with six countries: Montenegro (2012), Serbia (2014), Albania (2022), North Macedonia (2022), Ukraine (2024), and Moldova (2024). In addition to these negotiations, the European Council agreed to open accession talks in March 2024 with Bosnia and Herzegovina as soon as a negotiating framework is in place. Georgia received candidate status in December 2023, but negotiations have yet to be opened. Meanwhile, the negotiations with Turkey have stalled since 2016, with little prospect of being resumed any time soon (European Commission, 2024).

After many years of enlargement fatigue, the war in Ukraine thus acted as a trigger for the EU to once again consider in earnest the prospect of enlarging the Union. To this effect, the EU in 2024 set in motion a comprehensive and complex enlargement process which, at its completion, is expected to result in a Union consisting of up to 35 countries. According to the European Commission's (2023) own assessment, many of the countries in line to become members of the EU are far from fulfilling the membership criteria regarding their level of economic and democratic development and capacity to apply the EU's laws and regulatory frameworks. These countries face major challenges in terms of consolidating democracy and their political systems, combating endemic corruption, managing border disputes, strengthening a deficient public administration, and, in some cases, adopting a foreign policy orientation that is in line with that of the EU. A more numerous and heterogeneous membership constitutes an obvious challenge to the EU which needs to be addressed before enlargement on a great scale can be envisaged. The European Council meeting in Granada in October 2023 underlined that the Union "needs to lay the necessary internal groundwork and reforms" in order to "make the EU stronger" in a manner that will "enhance European sovereignty" and to draw up a road map for enlargement at its meeting in July 2024 (European Council, 2023, npn). The fact that the European leaders raise the necessity of strengthening the EU's structures and functioning in parallel to widening can be seen as an attempt to learn from the experiences of the Eastern enlargement in 2004 and 2007. Since then, the EU's internal cohesion has been challenged by a few member states that steadfastly deny some important principles of integration, for instance, by refuting the supranational nature of EU legislation, systematically favouring national interests to those of the EU, and

regularly opposing policy measures, common stances, and reform initiatives (Sedelmeier, 2014, 2024). The enlargement in 2004 and 2007 was not the only trigger for contestation within the Union as Euroscepticism and right-wing populism are present in all current EU member states. Nevertheless, the specific brand of political culture with autocratic leaders disregarding rule of law, human rights, and democratic values is seen as a very real threat to European unity and the endurance of integration in the EU. Therefore, and in light of these challenges, it is important to reflect on the preconditions which need to be in place in order to ensure that the EU is not weakened by allowing many more states to become members of the Union. For this reason, European leaders are obliged to consider what parameters need to be in place in order for the EU to successfully conduct yet another round of enlargement and how intractable problems associated with widening versus deepening the Union are to be handled.

### DEEPENING AND WIDENING IN PERSPECTIVE

It is somewhat of a paradox that the EU is facing perhaps its most complex enlargement ever just a few years after the United Kingdom (UK), as the first country ever, decided to leave the EU in 2020. The withdrawal process, commonly referred to as Brexit, proved to be more complex and protracted than its proponents had claimed in the June 2016 referendum campaign, and has had predominantly negative consequences for both the UK and the EU. As Nicholas Aylott shows in his chapter in this volume, although the UK retook formal legislative power when leaving the EU, it lost in the access to the EU's internal market and the right to participate in EU programmes in the process, on the balance putting the UK in a worse position than before Brexit. Ironically, Brexit also resulted in an expansion of bureaucracy in the UK, and problems still abound at the border for goods entering and leaving the country (Cheung, 2018; Speed, 2024). Initially, Brexit initiated a debate about whether the UK's decision to leave the EU in 2016 would be copied by other countries, and whether this would ultimately lead to the dissolution of the EU (Schelkle et al., 2024). The Brexit negotiations turned out to be much more difficult than predicted by the Brexiters as the EU member states presented a united front throughout the process and the negotiating team, headed by Michel Barnier, was better prepared than the counterpart. The outcome of the Brexit negotiations, which left the UK with a limited free trade agreement with the EU, put the spotlight

on the principles and values enshrined in the preamble of the Treaty on the EU (TEU). These can be regarded as a commitment by the member states towards the Union and therefore stipulate the basic building blocks of integration which need to be respected in order to keep the Union together. In this sense, the preamble delineates the principles which have guided the many rounds of enlargements in the past and, along with the requirements of the *acquis communautaire*, will make up the cornerstone of the EU's approach to future enlargements. A first important principle is that EU membership should not be undermined by allowing non-EU countries to have an influence over the shaping of EU policy, or to obtain undue advantages by participating in some policy areas but not others, without assuming their fair share of the responsibilities which come with membership. A second principle is that membership entails rights and obligations that balance out over time and between policy areas, although not necessarily in every decision. A third principle is that membership has clear legal boundaries, that is, there are no degrees of membership. In the current debate on the forthcoming enlargement negotiations, these three principles are increasingly in the spotlight, as the complexity of the task to integrate a great number of countries, many of which are beset by important economic, social, and strategic challenges, without watering down the level of integration in the EU is indeed daunting. The old dogma of EU enlargement is being challenged by voices from within the EU member states which ask whether the time has not come to organise an enlarged EU according to degrees of integration with implications for the boundaries of membership for individual countries (see Chapter 11 in this book).

The question of the relationship between the widening and deepening of the EU, or rather whether an enlargement of the EU necessitates a deepening prior to the accession of new members, was not raised in earnest until the Eastern enlargement taking place in 2004 and 2007, when the EU almost doubled its membership with 12 new members (Michalski, 2014). In the accession rounds preceding the Eastern enlargement, new members were incorporated into the existing structures without any major adjustments to the EU institutions, decision-making procedures, or extension of competences. Even so, these enlargements also called for internal discussions prompted by fears that problems regarding the functioning of the Union would be exacerbated in the event of additional members, along with perceived injustices in EU policies and political priorities caused by enlargement, and whether and how



the new members would affect the EU's internal balance. A well-known historical example of how such a multifaceted dilemma was resolved is the reform package that surrounded the enlargement to include Portugal and Spain in 1985. In addition to reforming the rules governing the co-decision procedure, this package included establishing a new Cohesion Fund, a deepening of foreign policy cooperation, and a formalisation of the deliberations of the heads of state and government. Taken together, the reforms not only enabled the enlarged Community to include Spain and Portugal, but also laid the foundation for the completion of the EU's internal market by rendering the decision-making surrounding the internal market more efficient (Noël, 1989). Important to remember in the current context is that even this rather modest enlargement to countries whose economic development admittedly was on a lower level than the then member states and whose transition to democracy was very recent, still provoked a reform of the treaties in order to make the decision-making processes more efficient, enhance the political dimension of integration, introduce new policy areas into the Community's remit, and increase the overall size of the European budget.

The prospect of Eastern enlargement in the mid-1990s prompted afresh a broad debate on how the Union would be affected by an expansion of its membership to countries whose socioeconomic development was not only at a much lower level than the existing member states, but also shaped by a completely different political and economic model. Moreover, for decades, Eastern European countries had been ruled by authoritarian communist regimes, which meant that their national democratic institutions and practices were nascent, and their political values not yet firmly established. Alongside these issues, the EU was also concerned that the national administrations of the Eastern European countries lacked the capacity to act in the EU's multi-tier system, where national administrations have a major responsibility for implementing Union legislation. Also the national administrations' role in managing the considerable financial transfers that the new member states were expected to receive from the EU's structural funds and agricultural policy raised concerns about a possible state capture on behalf of national political elites (Innes, 2014). There were also concerns about systemic corruption, ethnic discrimination and tensions, unresolved border disputes, an unpredictable political culture, and an unstable relationship with the former hegemony of the Russian republic.

These concerns and their possible consequences fed into a discussion of when, how, and under what conditions the EU's enlargement to the east would take place (see, among others, Avery, 2009; Börzel et al., 2017; Cremona, 2003; Hughes et al., 2004; Williamson, 1998). Similar arguments can be identified in the debate of the mid-2020s and therefore it appears important to repeat them here. The EU's starting point for the 2004 and 2007 enlargement to the east was the principle that the candidate countries must have incorporated the EU *acquis* (its laws, regulations, and foreign policy statements) before they could become members. However, this requirement was considered not to be adequate given the extent of the economic, social, and political transformation that Central and Eastern European countries were going through. Therefore, the European Council decided to make the conditionality for EU membership stricter by adopting the so-called Copenhagen criteria in 1993 (see, among others, Grabbe, 2005; Schimmelfennig, 2008). These criteria stipulate that candidate countries must also be functioning market economies robust enough to withstand the competitive conditions in the internal market; have a functioning state governed by the rule of law; and be able to uphold democratic values and democratic governance. The extent and precariousness of the necessary changes resulted in some arguing that the alignment should happen before the countries joined the EU, even if it were to take a long time. Others argued that the alignment did not have to be perfect at the time of accession but that the general direction of national reforms ought to show that the countries were moving in the right direction. Derogations, at least temporary such, should be granted and the pre-accession period should therefore be relatively short, according to this view. On the question of how accession to the EU should be organised, the member states had differing opinions as to whether candidate countries should be granted accession when they were found to be ready on an individual basis, or whether they should be grouped together. The member states could not agree on this issue because they had different preferences in relation to individual candidate countries and varied appreciations of the danger of letting candidate countries linger in a drawn-out and uncertain trial period. In turn, the countries seeking membership in the Union strongly opposed a logic of competition between them, which they argued would arise if entry on individual merits were to be applied. Ultimately, the issue of the terms and conditions for the enlargement—besides each candidate country's alignment—came down to the EU's own capacity to function with many

more member states. This factor was referred to as the EU's absorption capacity. Even before the start of the enlargement negotiations, three principles had been established in the European Commission's *Agenda 2000* report published in 1997 (European Commission, 1997). The first of these was that the EU's institutional decision-making capacity must not be impaired following the incorporation of many more members. The second principle was that certain important policy priorities, such as the Economic and Monetary Union (EMU) and the introduction of the euro, should not be jeopardised by the enlargement. The third principle applied concerned the absorption capacity of the candidate countries in economic terms with regard to financial aid from the EU, which was set at 4 per cent of gross domestic product (GDP). The first of these principles in particular meant that the EU's institutions and decision-making procedures would need to undergo reforms before the accession of new members, and that these reforms would take into account an expansion of the EU's areas of competence through the transfer of further powers to the EU's institutions in new and existing policy areas.

### WIDER BUT ALSO MORE DIVERSE

Subsequently, the Eastern enlargement of 2004 and 2007 resulted in a deepening of the EU's institutional structure, a streamlining of decision-making procedures, and an increase in the EU's areas of competence, including a deepening of several policy areas. It also resulted in a higher degree of diversification of the degree of integration in different areas. The Eastern enlargement was not, of course, the only driver of this development, but an increased membership resulted in greater pressure from the existing member states that wanted to achieve deeper integration, and this highlighted differences in their ambitions in relation to the EU. Diversification in member states' participation in different policy areas has manifested in a variety of ways and is just as much about existing member states not wanting to participate in certain policy areas as it is about protecting certain policies against members who do not fulfil the requirements, going beyond those set for EU membership. One example is the third stage in the EMU, in which the euro replaces national currencies, and another is the Schengen Agreement, in which internal borders are dissolved. Not all EU members participate in these policy areas, and the Schengen Agreement also includes non-EU countries (Norway, Iceland, Liechtenstein, and Switzerland). Participation in Permanent Structured

Cooperation (PESCO) is also voluntary in the area of defence, and the member states decide for themselves whether they want to participate in PESCO at an overarching level, and to what extent they wish to participate in PESCO joint projects. The same logic of diversification applies to the European Public Prosecutor's Office (EPPO). These forms of cooperation are usually referred to as differentiated integration, and are permitted within the framework for Enhanced cooperation (Article 20 of the TEU and Title III of the Treaty on the Functioning of the European Union [TFEU]).

Another type of differentiation is the type that arises from an enlargement, where derogations are granted at the request of the candidate country. Most often, this concerns areas where compliance with the EU *acquis* would be costly and time-consuming, for example in environmental policy. Derogations have also been requested by existing member states to mitigate the effects of enlargement on certain sectors and for specific groups. Prior to the Eastern enlargement, existing member states were permitted to apply a seven-year derogation on the free movement of labour, and the application of the EU's common agricultural policy in the Eastern and Central European countries was protracted, even after the accession of these countries. Certain permanent derogations have been granted in limited areas with restrictions, such as the sale of *snus* (oral snuff) that is permitted in Sweden but is prohibited in other EU countries. However, the basic principle for derogations from alignment with the EU *acquis* is that they should be temporary. In cases where the EU has been particularly concerned about the candidate country's capacity to align itself to EU membership, a special monitoring of the implementation of EU laws and regulations has been applied. This was the case when Bulgaria and Romania joined the EU in 2007. They were subject to a monitoring mechanism in certain areas that was in force until 2023, when these countries' memberships were finally fully completed. This form of integration can be described as a gradual approach to full membership, where the country becomes a member, but with time-limited restrictions applied to its participation in specific policy areas. However, these restrictions can also be without time limits and instead depend on the member states fulfilling specific criteria. This is the case in the transition to the third stage of the EMU when an EU member state adopts the euro as its currency. This transition is subjected to ongoing monitoring on behalf of the European Commission according to a set of convergence criteria set out in TFEU, art. 140, para. 1.

These forms of differentiated integration are frequently used in the EU and are based on decisions taken within the framework of the treaties and involve the EU institutions, including the Court of Justice of the European Union. Most of them are based on temporary and limited derogation from the rights and obligations of membership, although some are dependent on the ability of the acceding member state to fulfil the criteria. On balance, therefore, they do not fundamentally challenge the formal definition, content, and boundaries of EU membership. Other forms of differentiated integration have been discussed at various times but, unlike variable and gradual integration, they constitute different statuses when it comes to membership (see Chapter 11 in this book).

### INTERDISCIPLINARY PERSPECTIVES ON THE SIZE AND DEPTH OF THE EU

In the eighth edition of the *Interdisciplinary European Studies*, researchers highlight questions about the size and depth of the EU in terms of its members, policy areas, and security in a time of upheaval and war. How has the UK's withdrawal from the EU affected the political dynamics of the Union, and what lessons can be learned from Brexit? What do the contours of a larger Europe potentially look like, and what premises will apply for the accession of new members? Does European solidarity require a collective defence of the EU? How will new refugee flows to the EU be handled under the shadow of a hostile neighbourhood? What should EU citizenship entail, and how can solidarity between workers be framed? How is the future of the EU's labour market dynamics being shaped in light of artificial intelligence?

In the following chapters, scholars from economics, law, and political science reflect on various challenges that arise from the widening and deepening of the EU policies from the vantage point of their respective fields. They pay attention to the issue of deepening the EU's competences and scope of policy in areas which are under strain due to external pressures, such as migration, the integration of refugees on labour markets, and the widening of EU citizenship. The way in which the EU chooses to solve the conundrum of a larger and more diverse EU from the perspective of key principles of integration, such as subsidiarity, the rights and obligations conferred to member states, and the balance between flexibility and centralisation in various policy areas, will have a decisive impact on the shape that the larger Union will take towards the end of the 2020s.

*Mats Öhlén* concentrates in his chapter on the prospects of a widening of the EU based on an analysis of past accession rounds and the EU's handling of the existing candidate states since the early 2000s onwards. He argues that the EU's future enlargement process has gained new momentum in a time of great insecurity, and that the central question is how the EU can, and should, handle the dilemma of the risks and opportunities that a future enlargement entails. Building on perspectives from political science, Öhlén discusses the various driving forces of EU's enlargement: economic, geopolitical, and normative. On that basis, he maintains that the EU's enlargement process has changed over time and become increasingly protracted due to new member states' uncertain administrative and democratic qualities, which need to be evaluated before membership can be considered.

Further, Öhlén goes on to analyse two regions where the issue of enlargement of the Union has been raised recently: the Western Balkans and the countries in the Eastern Partnership. These two entities include countries which differ quite substantially in terms of the challenges that they give rise to in relation to EU enlargement, making a comparison relevant. Moving on, Öhlén discusses the EU's own capacity to widen its circle of members, which is particularly relevant in light of the enlargement fatigue that occurred after the Eastern enlargement of 2004 and 2007. In this context, Öhlén refers to the proposals for reforms of the EU's institutions that have been highlighted in connection to future enlargements and discusses existing proposals about how to render the EU more flexible so that it can handle a more heterogeneous membership. The chapter concludes with a discussion on the dilemmas facing the EU and how the EU ought to address these. Öhlén's key message is that a successful handling of the problems surrounding enlargement must be based on the EU internally getting behind the fundamental issue, which is that the member states and the institutions must agree on whether or not an enlargement of the Union is desirable, and if so, showing patience and perseverance with the process. Only then will the EU be able to credibly pursue the process moving forward, while the applicant countries will have a greater incentive to enforce the necessary reforms.

In the third chapter of the book, *Ester Herlin-Karnell* discusses whether the EU has adequate mechanisms for collective self-defence. She does this through an analysis of two main treaties of the EU, more precisely, the solidarity clause in the TFEU and the provision of mutual assistance in the TEU. Herlin-Karnell holds forth that the design of the

EU's rules stems from the international regulatory framework and that in some respects it shares some traits of regional military alliances, such as NATO. In this respect, she shows that Kant's legacy has shaped the rules on self-defence in the UN Charter, and explains how this insight can help us understand the limits of using self-defence within EU law. According to Herlin-Karnell, this Kantian legacy is relevant at many levels in EU law, as the EU is in part a peace project and in part based on the idea that trade promotes peace. Both of these ideas have their origins in Kantian ideas.

Furthermore, Herlin-Karnell compares self-defence in situations of war with the rules of self-defence in criminal law as it is generally designed in most countries, as this comparison is often made in political theory concerning "the just war". The author then discusses the particular role and capacity of the EU in collective self-defence, and security questions in a broader sense. Herlin-Karnell concludes that Kant's categorical imperative can act as a compass for EU security cooperation and when it comes to the question of collective self-defence, the EU and its member states should behave in the way they themselves would like to be treated.

In Chapter 4, *Pehr-Johan Norbäck* takes a historical look at the UK's complicated relationship with Europe. The chapter shows how the debate on the UK's participation in the European integration process started already in the early 1950s when the UK chose not to join the predecessor of the EU, the European Coal and Steel Community. According to Norbäck, the explanation for the UK's initial reluctance to participate in the European integration project can be traced back to the country's unique historical and constitutional development—that, as an island nation, it has never been defeated or occupied by a foreign power—and to the UK's past as an imperial power. Norbäck argues that the UK was more or less forced to seek membership in the then European Economic Community to reverse a downward spiral of weak economic growth and diminished political influence in the world. To that extent, the UK's accession was more the result of a cost-benefit analysis than of any genuine passion for European integration. This may have facilitated its decision to leave the EU when Euroscepticism increased during various crises and economic and technological shocks.

What, then, can the EU learn from Brexit? Norbäck reminds the reader that the UK differs in so many ways from other EU countries and that it is therefore difficult to draw general conclusions on why a country might want to leave the Union based on Brexit. The Brexit process shows how difficult and costly it is for a member state to leave the EU after

many years of membership, but at the same time highlights that the main lesson of Brexit is not to be found in how “imprudent” it is to leave the Union. Instead, he stresses that Brexit has become a reminder to the remaining EU members of the value of protecting the internal market and the EU decision-making process, and how this created a willingness and determination to unite and act effectively. Although there were major differences in how the different member states would be impacted, and despite the fact that in many member states there were groups that wanted to follow the lead of the UK’s withdrawal, they managed to stick together throughout the long and complicated Brexit process. Furthermore, Norbäck argues that the unity and cohesion after Brexit has given the EU greater confidence to act in subsequent crises, which is in stark contrast to how the euro crisis, for example, was handled in 2012. The EU weathered the COVID-19 pandemic and was able to present an (almost) united front in relation to Russia’s war of aggression against Ukraine, with joint sanctions packages and even jointly funded military aid to Ukraine. Norbäck therefore concludes that the EU’s most important lesson from Brexit is what the Union can achieve when it is united.

In Chapter 5 of the book, *Nicholas Aylott* also analyses Brexit, but from a different angle. The chapter asks how Brexit has affected the development within the Union. The answer to that question is, of course, complicated by everything else that has happened in and around the EU during the period, such as the COVID-19 pandemic and Russia’s war against Ukraine. Therefore, and with the preferences of the actors in mind, Aylott chooses to ask the counterfactual question: What would have been different if the UK had still been a member of the EU during these crises?

The chapter’s overall argument is that Brexit has accelerated integration between the remaining EU member states. Aylott shows that, without the British naysayers, the EU managed to agree on a comprehensive recovery fund after the pandemic, partly financed by the sale of the EU’s own bonds on the international financial markets. It is unlikely, according to Aylott, that the UK would have agreed to such a transfer of economic policy power to the EU institutions. In the case of Russia’s invasion in 2022, the UK probably would not have opposed the strong support the EU has given to Ukraine, as the UK’s own support has been no less clear. On the other hand, as a member state, the country probably would not have accepted the strengthening of the EU’s own instruments



in order to channel resources to Ukraine. These include, for example, the European Peace Facility and the Union's renewed ambition to strengthen its role in world politics.

According to Aylott, Brexit strengthened the EU in yet another way. Some feared that the UK referendum would trigger a wave of Euroscepticism in other member states as well. At first, there were signs of precisely that. However, in the turbulence of the Brexit process, the voices most critical of the EU were silenced and support for the Union has increased slightly among its citizens. The most likely explanation for this is that the constitutional crisis provoked by the UK referendum has had a deterrent effect on EU citizens. The chapter concludes with a warning that Brexit's accelerating effect on European integration will not necessarily last. In the long term, the UK's economic growth may experience an upturn, while the Union may face very major challenges.

In the book's sixth chapter, *Katarina Hyltén-Cavallius* writes about the opportunities for and limitations of deepening the meaning of Union citizenship, while expanding access to the free movement of people to third-country nationals residing in the EU. The main questions of the chapter are the legal meaning and effect of citizenship of the Union, and who should be covered by its status or alternatively access its associated rights. In her chapter, Hyltén-Cavallius describes the link between the status of Union citizenship and the free movement of people. She points to the trends in the case law of the Court of Justice of the European Union and other developments in the law which show that this link already exists and may continue to be disengaged under primary legislation. This would allow more people to be granted the right to exercise freedom of movement within the EU and thus to benefit from the protection of fundamental rights in the EU Charter, which are channelled through free movement. She also points out that there is already a trend in EU law that is chiselling out a distinctly legal content in the status of being a Union citizen and what this status means—wholly outside of the context of free movement.

In this context, Hyltén-Cavallius highlights EU law's protection of the political rights of Union citizens, the protection against a Union citizen being forced to leave the EU's territory, and the protection against the loss of Union citizenship when an individual's national citizenship is revoked by a member state. In concrete terms, Hyltén-Cavallius proposes that EU law should continue to develop new constitutional depth concerning the status of Union citizenship, such as protection for

the EU's values. She also suggests that the EU legislator should adopt the European Commission's proposal to amend Directive 2003/209/EC in order to strengthen access to rights in the internal market for third-country nationals who are long-term residents of the EU.

In Chapter 7, *Ann-Christine Hartzén* reflects on the importance of the EU continuing to promote improved living and working conditions for its citizens without jeopardising competition between workers from different member states. The discussion of this problem is grounded in the importance of social progress to ensure that its citizens will continue to support the EU, and the set of problems that arise when EU law is confronted by the different levels of and regulatory models for social protection in the member states. The chapter begins with Hartzén presenting the problem area by highlighting how differences within the EU have increased during the 2000s, and how these differences have led to conflicts and tensions that have spawned a breeding ground for EU scepticism, with Brexit as a concrete result of this. Hartzén then discusses the background to and design of the Minimum Wage Directive as an example of how the EU can address citizens' needs for social improvements. In the chapter, Hartzén highlights the Minimum Wage Directive's specific regulatory model as a clear recent example of how the EU can reconcile the need for initiatives that improve conditions for its citizens, without also risking undermining existing regulatory frameworks and national social protection schemes. In conclusion, Hartzén argues that this form of regulatory technique may be a way forward for the EU in the future when it comes to increasing opportunities for strengthening solidarity between workers in different member states.

In the eighth chapter of the book, *Özge Öner* and *Hans Seerar Westerberg* analyse how well the EU member states have succeeded in integrating refugee immigrants into the labour market. Öner and Seerar Westerberg begin by showing that there is variation in the EU in how refugee immigrants are seen in different member states, and over time. The strains of a common migration policy for the EU are then discussed against the background of the Union's fluctuating and sometimes inconsistent approach to migration.

Öner and Seerar Westerberg emphasise that, since the refugee crisis in 2015, refugee immigration has been debated in many member states, and that these discussions often raise the problems associated with the social and economic integration of newly arrived migrants. In addition, Öner and Seerar Westerberg conclude that work and being able to support

oneself are key adjustment mechanisms for successful integration. In order to gain a more detailed insight into the labour market integration of individuals who have immigrated to Europe, where their need for asylum or protection has been the main reason for migrating, Öner and Seerar Westerberg analysed statistics from Eurostat. More specifically, they present figures on how many refugees are in work, how many are unemployed, and how many remain completely outside the regular labour market. Furthermore, they analyse how refugee immigrants fare on the labour market in comparison to the general population in general in a specific national setting. To conclude, they argue that the EU must make better use of the diversity of untapped capabilities and skills among refugee migrants and promote an inclusive labour market. This could potentially improve the EU's economic competitiveness and innovation capacity.

In the book's ninth chapter, *Andrea Spehar* highlights the motley development towards a common asylum and migration policy. The overarching question discussed in the chapter is to what extent the new pact on migration and asylum negotiated in 2023 solves the fundamental problems of the EU's common migration policy. Spehar argues that the main reasons why the EU finds it difficult to live up to and maintain a humane, legally certain, and sustainable migration policy are the abiding lack of EU policies that deal with different forms of migration and the lack of solidarity between member states. In addition, Spehar believes that the EU's handling of the refugee crisis in 2015 in particular confirmed these two shortcomings. On the one hand, a few member states took responsibility for the great majority of asylum seekers, and on the other hand, asylum seekers are not treated equally in all EU member states. This meant that asylum seekers sought out some member states over others.

Spehar then discusses the EU's objective of reducing the number of refugees reaching the EU's external borders, as well as the desire to curb irregular migration. This has been expressed in both a strengthening and externalisation of the EU's external border. Spehar argues that instruments such as trade agreements and aid policies have increasingly shaped the EU's handling of migration since 2015. As part of this, a considerable number of its policy and economic initiatives have targeted states and areas outside the EU's borders. Spehar argues that the new pact on migration and asylum reinforces the image of the EU as "fortress Europe" where borders and security are of paramount importance. She argues that, despite the European Commission proclaiming a fresh start,

the new pact on migration and asylum is primarily a pragmatic reformulation of old ideas. However, there are some innovative additions, intended to convince reluctant states to remain part of the EU's common migration policy. The requirement of solidarity between states and what this is deemed to mean continues to be a stumbling block.

In conclusion, Spehar recommends that the EU should review its labour immigration policies and establish additional legal pathways to access the EU labour market—not only for highly skilled third-country workers, but also for medium- and low-skilled workers. Furthermore, she argues that the EU should increase the number of safe routes to international protection. For persons in need of protection, legal pathways could include resettlement programmes for quota refugees, other types of humanitarian admission and reception programmes, and opportunities to apply for a humanitarian visa.

In the tenth chapter of the book, *Robin Teigland* and *Mikael Wiberg* investigate the implications of artificial intelligence (AI) and digitalisation for the EU labour market and the consequences this may have for the depth and size of the EU. Digital technologies and AI, in particular generative AI such as ChatGPT, raise many questions related to tomorrow's labour market, and there is considerable uncertainty as to where this development will lead in the long term. In their chapter, Teigland and Wiberg raise a number of questions. What will Europe look like in a decade? What role will digital technologies play, also taking into account the development of AI? And what alternative ways forward can be discerned?

In order to answer these questions, they use a method called disciplined imagination—a way of working with scenarios with the aim of analysing the future. Teigland and Wiberg draw up a scenario matrix and take the reader with them to 2035. There, they explore how four distinct yet plausible scenarios for how the EU and the world, as well as the nature of technology and the labour market, might develop. In developing these four scenarios, they questioned many assumptions about technology, the labour market, and even society and its development that are considered self-evident—both within the EU and in relation to other countries in the world. Thus, these four scenarios allow the reader to break free from the situation in 2024—a current situation marked by significant concerns and an uncertain development.

Although none of these scenarios can be seen as more likely than any other, a number of policy recommendations are proposed at the meta

level. Teigland and Wiberg also present ideas on the regulation of AI that could help the EU move towards what they consider to be the most desirable scenario for the Union—which they call “A transformed world. The sky is the limit”. To get there, Teigland and Wiberg argue that the EU needs to implement policy measures along both axes of the scenario matrix, that is, along what they call technology for exploration and a high willingness to integrate. If the right questions are asked about the future and appropriate measures are taken, they argue that the EU could be well placed to move towards a sustainable future labour market.

In the concluding chapter of the book, the editors draw together the various strands of the EU’s development discussed in the previous chapters, each providing an important part of the puzzle of the EU’s ability to prepare for the future and deal with the challenges of enlargement. The future enlargement will set the tone for the political dynamism in the EU for many years to come and many thorny questions about the Union’s institutional structure, competences, and decision-making will have to be settled. Nonetheless, as highlighted in the previous analyses, the EU’s economic competitiveness and capacity to adopt new technologies play a major role in the financial frameworks within which the Union acts. Another major question is how the ongoing strong pressure of immigration is handled by the EU and its member states, where failure would inevitably lead to increased political tensions within the EU. Other questions related to security, European citizenship, and the labour market’s capacity to integrate the labour force also affect the EU’s ability to respond to internal and external challenges. Besides the EU’s enlargement and scope of policy, security threats, increased tensions between the great powers, attempts by external powers to influence the EU, the inroads made by Eurosceptic parties, and many other challenges all play a major role in what the depth and size of the EU will be in the future. To conclude, the ability of the EU to meet these internal and external challenges will be weighed against the specific issues that the accession of new members entails feeding into various future scenarios regarding the size and depth of the Union in terms of competences, institutional frameworks, and decision-making capacity.

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## Future EU Enlargements—Opportunities and Dilemmas

*Mats Öhlén*

In June 2022, the European Union (EU) decided to grant Ukraine and Moldova candidate status for EU membership. Shortly after, the EU decided to open formal accession negotiations with Albania and North Macedonia. In August 2023, the President of the European Council, Charles Michel, stated that the EU should be ready for enlargement by 2030. The following year, in June 2024, the EU initiated membership negotiations with Ukraine and Moldova. This chain of events illustrates a clear shift in the EU's plans for future enlargements, which have been on hold for more than a decade. Europe is currently going through a turbulent period, not least because of Russia's full-scale invasion of Ukraine in 2022. The invasion has triggered a paradigm shift in EU security policy and has the potential to accelerate the current enlargement plans. The June 2023 Eurobarometer showed that support for EU enlargement was clearly higher, at 53 per cent, than it was in 2018, at 43 per cent (see Eurobarometer, [2023](#)).

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The situation described above clearly illustrates the central topic of this book: the depth and size of the EU in a time of war and instability. Is a new enlargement the most reasonable way to manage Russian aggression and stabilise the situation in the neighbourhood? Enlargement always involves certain risks, because adding more member states increases the complexity of the EU system. Moreover, the prospective member states are countries with weak economies and little historical experience of democracy. The conflicts between the EU and Hungary and Poland, for example, clearly illustrate the risks involved in accepting new democracies as EU members. At the same time, there is a risk in *not* enlarging the Union. It would send a signal to the applicant countries that they are not welcome in the European family, which in the long run could lead them to seek partnerships with more authoritarian countries. Another dilemma concerns the enlargement process itself. On the one hand, it is important to set clear requirements for membership in order not to admit countries that are not ready. On the other hand, there is a risk that applicant countries will become frustrated if the membership process drags on for too long, and that domestic EU scepticism will increase. This could open the door to alternative partnerships with, for example, Russia or China.

These dilemmas constitute the starting point for this chapter. In a time of war, the future EU enlargement process has gained new momentum, and the central question is now: How can (and should) the EU manage the risks and opportunities associated with the current enlargement plans? The chapter is structured as follows. After this introduction, the second section addresses the EU's incentives for enlarging the Union. The third section presents the formal and informal characteristics of the enlargement process and how it has evolved historically. Sections four and five deal with the two groups of countries that are involved in the current enlargement plans: the Western Balkans and the Eastern Partnership. (Turkey is not included in this chapter). Section six then looks at the EU's capacity to manage further enlargements. The seventh section concludes with a discussion of how the EU might navigate the dilemmas surrounding a new enlargement.

## INCENTIVES FOR EU ENLARGEMENT

The idea of a united Europe was not created with the Coal and Steel Community. As early as the First World War, there were calls for a European federation to prevent future wars. The best known of these is the

1923 “Pan-Europa” manifesto by Richard von Coudenhove-Kalergi. The same idea was expressed in the so-called “Ventotene-Manifesto” of 1941, by Altiero Spinelli (Rosamund, 2000, pp. 22–23). When the European Coal and Steel Community was established in 1951, there were references to a united Europe, and the Treaty of the European Union (TEU) contains a formulation declaring that the Union is open to all European countries: “Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union” (TEU, art. 49).

Since its creation, the EU has gone through seven waves of enlargement, the first in 1973 and the most recent in 2013. As a result, the EU has developed from a fairly small and homogeneous association of six countries into a culturally and economically more differentiated union of 27 member states (after Brexit). It is reasonable to ask why the EU has continued to enlarge even though this results in a more complex union that is more difficult to manage. In short: What are the incentives behind EU enlargement? According to Karen Smith, enlargement is the EU’s “most powerful foreign policy tool” (Smith, 2003, p. 66), as the Union can set criteria for membership and influence the applicant countries in preferred directions. However, the motives for enlargement can vary. There are three main explanatory models in the political science literature: geopolitical, economic, and normative.

The geopolitical explanation is based on a realist view of international relations, which focuses mainly on security issues, but also on questions of international power and prestige. Each enlargement has led to an expansion in terms of both territory and population. The EU began in the late 1950s as a cooperation between six countries with a total population of 185 million. Since then, successive enlargements have led to a Union with 27 member states, a population of 450 million, and a geographical reach stretching from the Atlantic coast to the Baltic, the Mediterranean, and the Black Sea. This means that the EU has become a geopolitical actor as well as a major global trading power. The eastern enlargements of 2004 and 2007 revealed clear geopolitical ambitions. On the one hand, this has been seen as a power-balancing strategy on the part of the EU, in order to manage potential future Russian revanchism. On the other hand, it has been viewed as a measure to stabilise the situation in the eastern neighbourhood. The entire region was a source of instability, with irredentism and minority-majority tensions combined with weak and inexperienced governments. Moreover, there was concern that the civil war in

Yugoslavia would spread to other parts of Central and Eastern Europe. It was thought that enlargement would contribute to regional stabilisation and thus minimise a potential security threat (O'Brennan, 2006, pp. 125–127).

The economic motives behind enlargement have mainly concerned increased opportunities for economic growth in both old and new member states. For the new members, the economic benefits are related to economic modernisation, increased investment, and growing trade. This has benefitted the old member states by creating new export markets and investment opportunities (Vachudova, 2014, p. 127). Enlargement also strengthens the EU's global power position in economic terms. It is a fact that after the enlargements, the EU has become one of the world's leading economic powers, alongside China and the USA. Size may play a decisive role in a potential trade war, in which EU sanctions could have dramatic consequences for countries outside the Union.

The normative incentives for enlargement are based on the EU's self-image as a “community of values” rather than the maximisation of economic advantages or geopolitical interests. This became increasingly clear before the 2004 enlargement, when the applicant countries had weak economies and little democratic experience. Offering them membership was more of a risk than an opportunity, both politically and economically. Nevertheless, the enlargement took place. The basic idea behind European integration was to create a security community that would replace the old intrigues, power games, and rivalries between countries in Europe. However, this was conditional on members adhering to fundamental values such as democracy, the rule of law, and human rights. In fact, the Copenhagen criteria were adopted in 1993 to ensure that these values were consolidated in candidate countries before they were accepted as full members. According to Frank Schimmelfennig, there was a certain lock-in dynamic in this process. The rhetoric prescribing that all European states were welcome in the Union if they accepted these values led to a “rhetorical trap” that made it practically impossible to deny membership to the countries of Central and Eastern Europe (Schimmelfennig, 2001).

It should be noted that the incentives for enlargement discussed above can just as well be used to explain scepticism or resistance to enlargement. For example, the economic factor has figured prominently in arguments against the inclusion of poor countries, as it increases the burden on the EU budget, leading to rising costs for the net contributors among the member states. The geopolitical factor may also become problematic.

This concerns fears of admitting member states with ongoing territorial conflicts and of provoking other actors such as Russia. Enlargement scepticism could also be linked to the normative dimension, mainly in the form of fears that prospective member states will not live up to the basic values of the EU. All these issues have been raised when member states have expressed scepticism about the EU's enlargement plans for the Western Balkans and the Eastern Partnership. However, before we take a closer look at the EU plans for enlargement, it is necessary to become familiar with the procedures for enlargement. These have changed over time and have developed into a formal policy area with its own dynamics.

### THE FORMAL (AND INFORMAL) PROCESS OF ENLARGEMENT

Since the establishment of the EU, the treaties have contained rules for the admission of new members to the Union. However, the procedures for enlargement have undergone significant changes since the end of the Cold War, when the preparations began for enlargement to Central and Eastern Europe. These changes have affected both the conditions for membership and the enlargement process itself. The trend is clear: the conditions for membership have become stricter, and the process has become more scrutinising and time-consuming. The simple explanation is that the countries seeking membership were in transition from communist dictatorship and a planned economy to democracy and a market economy. It was a challenge for the EU to manage its relations with these countries, which wanted to become EU members but could not yet fulfil the criteria for membership. Consequently, the enlargement became an important part of the EU's strategy for external influence; by using membership as a carrot, the EU could exert influence over the applicant countries, ensuring that reforms were implemented and that the countries took important steps towards democracy and a market economy.

In the early years of the EU, the formal conditions for membership were not very detailed. The Rome Treaty, signed in 1957, only stipulated that all European states could apply for membership. The Amsterdam Treaty, signed in 1997, added requirements of respecting the core values of the Union, and the Nice Treaty, signed in 2001, went a step further, stipulating that the European Council could add further conditions if necessary. As previously mentioned, the so-called Copenhagen criteria were adopted in 1993. These were adopted by the European Council

as more concrete requirements for membership. In order to be accepted as members, the candidate countries had to ensure the following:

- Stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities;
- A functioning market economy able to cope with competitive pressure and market forces within the EU;
- The ability to take on the obligations of membership, including adherence to the aims of political, economic, and monetary union (European Commission, n.d., “Accession Criteria”).

These criteria have served as a starting point for assessing whether potential new EU member states can be accepted. However, there was also a fourth, lesser-known criterion about the Union’s “capacity” to absorb new members. This played little role in the 2004 and 2007 enlargements, but was more prominent in the enlargement to the Western Balkans. In actual application, the criteria have generally been more broadly interpreted, and additional factors such as fighting corruption and organised crime have been included. In 1999, “good neighbourly relations” was also added. In the specific case of the Western Balkans, additional criteria have been added, such as cooperation with the International Criminal Tribunal for the former Yugoslavia (Sedelmeier, 2017, pp. 457–458).

When it comes to the enlargement process, since 1989 the EU has developed a practice that goes beyond the procedures laid down in the formal treaties. As we shall see, the European Commission plays a key role in this new practice, which has led to a more protracted and evaluative process. The new role of the Commission was highlighted by the creation in 1999 of a new Directorate General: DG Enlargement (see Ghione, 2010, p. 16). Broadly speaking, three phases can be identified in the enlargement process. The first is association status, the second is candidate status, and the third is accession negotiations. Below, each phase is described along with its main characteristics.

Association agreements establish long-term legal frameworks for the EU’s relations with potential member states. Such agreements emerged in the 1990s, during the accession negotiations with the countries of Central and Eastern Europe, and became a new practice for EU enlargement. An important difference from previous enlargements was that the formal

accession negotiations began much later in the process. This is because the potential members do not yet meet the requirements of the EU's regulatory framework and membership criteria. Association agreements have thus become an important step on the path to membership, and are also a way for the EU to evaluate potential member states before they formally apply for membership. The main idea is to offer economic and political support and advice to the applicant country in exchange for the implementation of necessary reforms. In addition to obligations to fulfil certain market rules, these agreements also contain conditions relating to democracy, the rule of law, and human rights. The European Commission plays a central role in this process, as it regularly evaluates the progress of each applicant country in terms of the association agreement, the need for further economic assistance, and (most importantly) whether the country is ready for the next step: candidate status.

The second step in the process—candidate status—was originally only used with countries that had begun accession negotiations. In the 1990s, however, the meaning of the term changed; it became a kind of reward for progress in the reform work, even though a country was not yet ready for accession negotiations. When a country seeks to become a member of the Union, it submits a formal application to the Council of the European Union, which asks the European Commission to prepare an opinion. The European Parliament is also formally informed of the application. If the Commission delivers a favourable opinion, the European Council decides unanimously to grant the country candidate status. When a country has obtained candidate status, a formal policy framework is established, setting out the preparations needed for the country to meet the membership criteria. While it is up to each country to decide on its own pace of adaptation, there is a clear link between progress in reforms and the possibility of access to EU financial assistance and further progress in the association process. It should be noted that candidate status does not replace the association agreement, which continues to be valid until full EU membership is achieved.

The third step—the formal accession negotiations—can begin after the European Commission submits a recommendation and all member states give their unanimous approval. This step does not happen automatically. It is not a given that the Commission will think that the country is ready, nor is it certain that the member states will give their unanimous approval. Some member states may demand something in return for their approval, while others may be sceptical about enlargement in general or may be

involved in a controversy with the candidate country. An example of the latter is North Macedonia, whose formal accession negotiations have been postponed several times after critical remarks from first Greece and then Bulgaria. The negotiations are divided into more than 30 chapters (the number of chapters has varied over time) that cover the various EU policy areas. During the negotiations, the Council of Ministers decides whether new chapters should be opened. In so doing, the Council relies on the Commission's recommendations. The Commission and the candidate country examine the country's body of legislation and identify discrepancies with EU requirements. A chapter can only be considered closed if the Council of Ministers (unanimously) and the candidate country approve it. At the same time, the negotiations are not finished until all chapters are closed. This means that the EU (and the candidate country) can reopen a closed chapter if they deem it necessary. In general, the membership negotiations are characterised by the dominant position of the EU in relation to the candidate country, which is expected to adapt its legislation to EU standards. When the accession negotiations are concluded, an accession treaty is drawn up. This must be ratified by the main EU institutions as well as by all member states and the candidate country, through referenda or parliamentary votes.

The European Commission plays a central role in all three phases described above. Since the 1990s, the Commission has increasingly acted as an agenda-setter, negotiating pragmatic agreements that pave the way for enlargement, managing the relations with the applicant countries, and evaluating their progress. It has also actively shaped the outcome of the accession negotiations by acting as a mediator and proposing compromise solutions. It should be noted that since 2013 the Commission has developed a new strategy for enlargement. A central figure in this transformation has been Christian Danielsson, the then director-general for the Commission's work with enlargement and the neighbourhood. The idea is to focus on key issues such as the rule of law, economic governance, and public sector reform as early as possible in the negotiation process. The format of the negotiations has also changed. Instead of working on a chapter-by-chapter basis, the most important chapters are merged into a cluster of chapters that are the first to be opened and the last to be closed. This gives a stronger impetus in the negotiations and demonstrates that the EU takes these issues seriously when deciding whether to admit a country as a member.



In short, the path to EU membership has become increasingly complicated. In order to handle applicant countries with little experience of democracy and a market economy, and with an unstable political situation, including territorial disputes, the EU has introduced stricter conditions and more numerous conditionality checkpoints in the enlargement process. To proceed past each checkpoint in the process requires the agreement of all member states. This means that there are plenty of opportunities for reluctant member states to block or delay the process. The result of all this is an increasingly time-consuming process, as will be illustrated in the following section on the Western Balkans.

### THE ENLARGEMENT TO THE WESTERN BALKANS

The plans for enlargement to the Western Balkans have been shaped partly by the aftermath of the Yugoslav civil war in the 1990s and partly by the experience of the negotiations leading to the eastern enlargements in 2004 and 2007. The incentives for enlargement to this region can be described as geopolitical and normative rather than economic. Since the Dayton Agreement in 1995, the EU has taken an increasing share of responsibility for the whole region in terms of stabilisation, reconstruction, and future European integration. The main idea has been to extend the EU's core values, such as democracy, the rule of law, and human rights, and thereby contribute to security and stability in the region and, by extension, in Europe as a whole. The process of enlargement to the Western Balkans began in 1999, when the EU—following a German initiative—decided to extend its promise of future membership to the region. These ambitions were confirmed and given an institutional framework with the Thessaloniki Declaration of 2003 (Sekulić, 2020, p. viii). Despite initial optimism, the planned enlargement to the Western Balkans stagnated. Slovenia became a member state in 2004, and Croatia was accepted as a member in the latest EU enlargement in 2013. However, when it comes to the other countries in the region—Albania, Bosnia-Herzegovina, Montenegro, North Macedonia, and Serbia (and later Kosovo)—the enlargement process has been repeatedly delayed. There is a sense of frustration in the region about the stagnation of the process, but there are also explanations for it.

First, the enlargements in 2004 and 2007 were the largest in the history of the EU, with a total of 12 new member states. Although the enlargement was seen as a success, it was a daunting task to integrate

first ten new members and then, only three years later, two more. It is not surprising that a general sense of enlargement fatigue arose, and the EU's "absorption capacity" was frequently discussed. Second, a series of crises occurred from 2007 onwards: the financial crisis and the euro crisis of 2007–2009, the Arab Spring in 2011, the Crimea crisis in 2014, the refugee crisis in 2015, and the Brexit process that began in 2016. Much of the EU's time, energy, and attention has been devoted to dealing with these crises. In a speech in 2014, European Commission President Jean-Claude Juncker said that "no further enlargement will take place over the next five years" (Juncker, 2014). Third, there have been more pressing problems in the Balkan region that have complicated the enlargement plans. Bosnia-Herzegovina hardly functions as a state, North Macedonia's EU membership has been delayed by diplomatic quarrels with first Greece and then Bulgaria, and the status of Kosovo has caused tensions with Serbia and between member states with different views on Kosovo's bid for independence and recognition. Moreover, there have been several cases of democratic backlash in the region. According to a Freedom House report, the democratic trend for the whole region took a negative turn after 2010 (Csaky, 2016). It should be mentioned that the political actors in the Western Balkans are not passive recipients in this process. They act strategically on the basis of their own interests. Significantly, several steps forward were taken in the region until around 2009–2010, but this progress stagnated when the EU signalled that no enlargement was realistic in the short term. Political leaders in the region were ready to implement reforms if they would lead to concrete rewards for which they could take credit, such as visa-free travel to the EU. Fourth, the EU has imposed additional and stricter conditions on the Western Balkan applicant countries, which has led to a more time-consuming process. The stricter criteria are based partly on lessons from the previous enlargements, partly on the specific challenges in the Western Balkans mentioned above, and partly on the special circumstances surrounding the post-war Yugoslav successor states.

Even if the enlargement plans have stagnated, the process has not completely stalled since the Thessaloniki Declaration in 2003. The European Commission has worked systematically with specific stabilisation and association agreements for each of the Western Balkan countries (see Table 2.1). These agreements are based on a logic of rewards for results, whereby the EU offers financial and technical assistance and the possibility

of tariff-free trade with the EU (in certain sectors) on the condition that the partner country makes progress in political and economic reforms. As previously mentioned, the Commission has also adopted a new strategy that focuses on evaluating crucial reforms concerning the rule of law, economic governance, and the public sector at an earlier stage in the process. Despite all the challenges, some progress has been achieved. Serbia, for example, has begun to cooperate on the extradition of suspected war criminals and has begun to negotiate over the status of Kosovo. Moreover, the so-called Berlin Process was initiated in 2014 to keep the EU's stagnating relations with the Western Balkans alive. Even if the process has been slow, it has moved forward step by step. The name conflict between Greece and Macedonia was resolved in 2018, when the latter changed its name to North Macedonia. In 2022, a compromise was reached in a language dispute between North Macedonia and Bulgaria (Reuters, 2022). In 2022, the EU decided to start accession negotiations with Albania and North Macedonia. As a result, four out of six applicant countries in the Western Balkans have reached the stage of concrete accession negotiations (see Table 2.1). Kosovo and Bosnia-Herzegovina are special cases that require special treatment, but the other four seem to be making progress towards membership. Or is it really that simple?

One dilemma facing the EU is whether a potential enlargement to the Western Balkans should include all six countries, or if the process should focus on each country individually, depending on how far the negotiations have progressed. A second dilemma has to do with how explicit the EU

**Table 2.1** Enlargement processes in the Western Balkans

	<i>Stabilisation and association agreements</i>	<i>Application for EU membership</i>	<i>Recognised as a candidate country</i>	<i>Start of membership negotiations</i>
Albania	2009	2009	2014	2022
Bosnia-Herzegovina	2015	2016	2022	2024 <sup>b</sup>
Kosovo	2016	2022	2022 <sup>a</sup>	–
Montenegro	2010	2008	2010	2012
North Macedonia	2004	2004	2005	2022
Serbia	2013	2009	2012	2014

<sup>a</sup>Potential candidate country

<sup>b</sup>Decision to start negotiations was made in 2024

Source European Union (n.d.) "EU enlargement", official EU website

should be in its “promise” of future membership. The problem is that the EU has sent mixed signals in both these areas. In 2017, the European Commission President Juncker gave a speech in which he signalled that Serbia and Montenegro were “frontrunners” and were likely to be new EU members in 2025 (European Western Balkans, 2017). However, in a 2018 Commission report, the language was more cautious, stressing that accession “remains a merit-based process” and that “countries may catch up or overtake each other depending on progress made” (European Commission, 2018, p. 2). When it comes to the “promise” dilemma, the Commission stated in 2018 that “the Western Balkan countries now have a historic window of opportunity” (European Commission, 2018, p. 2) to tie their future to the EU, but that it requires the governments to show leadership and support this line. The following year, France blocked the opening of accession negotiations with Albania and North Macedonia (Emmot et al., 2019).

Consequently, the EU has (so far) failed to resolve the dilemmas associated with a process of enlargement to the Western Balkans. There is still no unity among the 27 EU member states on how good the enlargement plan to the Western Balkans really is. There is not even agreement on which countries can be considered qualified for membership. When it comes to Kosovo, for example, there is no consensus among the EU member states on the legitimacy of Kosovo as an independent state as Spain, Slovakia, Cyprus, Romania, and Greece have not yet recognised Kosovo. If membership negotiations with Kosovo are to take place, these countries must first recognise Kosovo, and this is not a given. This issue is also linked to Serbia’s future EU membership. Serbia still considers Kosovo to be a part of Serbia, and as long as it sticks to this line it is impossible for both countries to become members. It is unlikely that the countries that have recognised Kosovo will welcome Serbia into the EU if it continues to claim that Kosovo is part of Serbia. Also, when it comes to North Macedonia’s future EU membership, there has been a lack of unity in the EU even after the name dispute was resolved in 2018. Bulgaria blocked membership negotiations with the country because it was critical of North Macedonia’s interpretation of historical events and whether Macedonian could be considered a separate language. A French mediation proposal in 2022 suggested that North Macedonia should recognise the existence of an ethnic Bulgarian minority in its constitution. The proposal also included regular evaluations of the handling of the dispute between the two countries. Although the French proposal was well received, it

has not been fully implemented, and tensions between the two countries remain high.

Much in this process is therefore up to the EU itself; the outcome depends on how strong a promise of membership the EU is prepared to make to these countries. The 2004 enlargement process showed that a clear promise of membership by a certain date increased the willingness of applicant countries to implement the necessary reforms. However, the context for enlargement plans in the Western Balkans is different. First, the period following the 2004 enlargement shows that the argument that EU enlargement strengthens democracy risks becoming increasingly hollow, especially when new member states such as Hungary are criticised for shortcomings in this regard. Second, it is unclear whether the EU's incentives to expand to the Western Balkans are strong enough to overcome the difficulties discussed above. Territorially, the region is completely surrounded by the EU and has little geopolitical significance after the accession of Albania, Montenegro, and North Macedonia to NATO. Additionally, the region is of little economic importance to the EU. Third, there is a parallel development in which enlargement fatigue has turned into open opposition to further enlargement. The background to this is the rise of populist and nationalist political forces in the EU, and the reluctance of applicant countries to accept all the conditions set by the EU. Thus the EU faces a number of challenges that it must address.

## ENLARGEMENT TO THE EASTERN PARTNERSHIP COUNTRIES

In comparison to the Western Balkans, the EU's relations with the post-Soviet states (with the exception of the Baltic states) have been more cautious, with discussions of membership coming much later. The dynamics of the relationship have also been different, mainly due to the competition between the EU and Russia for influence in the region. Russia's annexation of Crimea in 2014 and its full-scale invasion of Ukraine in 2022 have led to rapid changes in the EU's enlargement plans. Below is a presentation of how the EU's relations with countries in this region have evolved over time, and the dilemmas that the EU has faced when it comes to the question of enlargement.

When the Soviet Union collapsed in 1991, the EU's response was muted, and there was no agreed strategy towards the post-Soviet region. Partnership and cooperation agreements were concluded with all the

post-Soviet countries in the region (see Table 2.2). However, these were far less generous than those with the countries of Central and Eastern Europe or the Western Balkans, and there was no mention of future membership. One explanation for the EU's cautious stance was a general sense of uncertainty about how the region would develop. The post-Soviet countries were newly established, with little or no experience of democracy and market economies. Instead, they were clearly steeped in a Soviet legacy of authoritarian tendencies, corruption, clientelism, and leader-based political parties with weak links to civil society.

It was not until 2002 that the EU formulated a common strategy—a neighbourhood policy—towards the post-Soviet countries, which included Belarus, Moldova, Russia, and Ukraine. After intense lobbying by Armenia, Azerbaijan, and Georgia, these countries were also included in 2004. Russia received an invitation, but chose not to participate. The neighbourhood policy was to some extent similar to the stabilisation and association agreements with the countries in the Western Balkans: the partner countries were offered economic integration and deepened political cooperation in exchange for the implementation of democratic reforms, the rule of law, and human rights. The difference was that there was no mention of future EU membership.

In 2008, a new Swedish-Polish initiative for a deepened “Eastern Partnership” was launched. In contrast to the previous agreements, the purpose was to make preparations for a future EU enlargement. The EU offered more ambitious association agreements, involving deeper free trade relations and limited visa-free travel to the EU. There was some

**Table 2.2** The EU's relations with the Eastern Partnership

	<i>Cooperation agreements</i>	<i>Association agreements</i>	<i>Applied for EU membership</i>	<i>Recognised as candidate country</i>	<i>Start of membership negotiations</i>
Armenia	1996	–	–	–	–
Azerbaijan	1996	–	–	–	–
Belarus	1995 <sup>a</sup>	–	–	–	–
Georgia	1996	2014	2022	2023	–
Moldova	1994	2014	2022	2022	2024
Ukraine	1994	2014	2022	2022	2024

<sup>a</sup>Not ratified by the EU

Source European Union (n.d.) “EU enlargement”, official EU website

controversy over the decision to also invite clearly authoritarian states such as Belarus and Azerbaijan. This was because the EU hoped that a deeper cooperation with these countries would strengthen reforms for democracy and human rights. When it comes to Belarus, its participation in the Eastern Partnership was suspended in 2021 (BeTA, 2021). However, the EU was more divided on how far it should go in the wording of the agreements. Ukraine in particular pressed the EU to mention its ambitions to join the EU in the future. The sceptical member states argued against an explicit recognition of Ukraine as a European country eligible to apply for membership under Article 49 of the EU Treaty. The result was a compromise. The 2008 declaration contained no formulations about future EU membership, but it clearly recognised “the European aspirations of Ukraine” and welcomed its “European choice” (Council of the European Union, 2008, p. 3).

It was expected that the association agreements would be deepened after some time, and that this would further encourage the partner countries to continue their reforms. The plan was to sign the deepened association agreements at an EU summit in Vilnius in 2013, but Russia expressed harsh criticism. From Russia’s perspective, the deepened association agreements were an attempt to expand the EU’s influence and challenge Russia’s sphere of interest, as well as to be a rival to Russia’s project of a Eurasian Economic Union (Smith, 2017, p. 337). Under Russian pressure, Armenia and later Ukraine refused to sign the new association treaties with the EU. This decision by the Ukrainian government led to a dramatic chain of events in Ukraine. After massive popular protests (the so-called Euromaidan protests) the president fled the country and was formally removed from office by the Ukrainian parliament, Russia annexed Crimea in early 2014, and a Russian-backed armed rebellion in eastern Ukraine led to the unilateral declarations of the “people’s republics” of Donetsk and Luhansk. For the first time since the Second World War, a European country had forcibly seized and annexed the territory of another country. International reactions were strong, and the EU accused Russia of violating international law and several other international agreements.

Russia’s annexation of Crimea was a wake-up call for several EU governments. It became increasingly clear that this had turned into something with far greater implications than specific wordings in an association agreement. What was at stake was the outcome of a rivalry between two political models in the post-Soviet region. Simply put, the EU offers

Western democracy, the rule of law, and a market economy, while Russia wants to promote the “Russian civilisation” and authoritarian rule. The same rivalry between Russia and the EU is seen in how they view international relations. The EU wants to promote a world order built on cooperation, rules, and multilateralism, while Russia prefers bilateralism and respect for powerful countries’ need for spheres of interest. Consequently, the Crimea crisis became the starting point for a new approach by the EU, in which geopolitical concerns dominated its relations with the Eastern Partnership—not because the EU was actively seeking this role, but as a response to Russia’s actions. In 2014, the deepened association agreements were finally signed by Ukraine, Moldova, and Georgia, and in 2016 they were extended to include access to the EU’s internal market (in some sectors) and visa-free travel within the Schengen area. Despite the new geopolitical situation, the EU remained divided over a future enlargement in the region. These internal divisions led to a certain amount of passivity in the EU; the instruments to assist the partner countries in meeting the EU criteria were weak, and there was a general lack of awareness of what was at stake. Would the EU’s enlargement plans fall into the same sleepy “autopilot” that had characterised the enlargement plans for the Western Balkans?

The EU’s passivity regarding future plans for enlargement to the countries in the Eastern Partnership came to an abrupt end with Russia’s full-scale invasion of Ukraine on 24 February 2022. This led to a paradigm shift in how the EU viewed Russia and how it viewed a potential enlargement to the countries in the Eastern Partnership. If Russia’s annexation of Crimea was a breach of international law, the full-scale invasion of Ukraine was of a different order altogether; it was perceived as a serious threat to European security and stability (see Engelbrekt, 2024). Simply put, much was (and is) at stake in this conflict, and the EU and its member states have demonstrated strong support for Ukraine. Apart from a few individual member states like Hungary and Slovakia, the EU’s resolve remains intact today, in 2024. Shortly after the Russian invasion, Ukraine, Moldova, and Georgia submitted formal applications for EU membership. Given the unique context, the applications were processed quickly, and in June 2022, Ukraine and Moldova were recognised as candidate countries. Georgia was recognised as a “potential candidate”. Moreover, in December 2023, it was decided to open accession negotiations with Moldova and Ukraine. At the same time, Georgia was upgraded to a candidate country.



However, while these countries achieved candidate status remarkably quickly, it is not necessarily the case that membership can be negotiated on a fast track. According to André Sapir, the granting of candidate status in this context can rather be seen as a symbolic action to demonstrate support and solidarity, and to send a clear signal to Russia (Sapir, 2022, p. 4). In Ukraine, the popular support for EU membership is high, but there are unrealistic expectations about how quickly this process can proceed. In a June 2022 poll, some 40 per cent of respondents believed EU membership was possible within two years, and a third of them believed it would take up to five years. Only three per cent believed it would take 10–20 years, which is the more realistic alternative (Rating Group Ukraine, 2022). There is a risk of even greater disappointment than in the Western Balkans, which the EU will need to manage.

In fact, the road to a potential EU membership could be as long as that of the Western Balkans. Not only must the applicant countries meet certain criteria, but the EU must also acknowledge that it has the capacity and willingness to accept the new countries. Before Russia's full-scale invasion, the probability that Moldova, Georgia, and Ukraine would get candidate status was low. Above all, two factors were problematic. First, all three countries had unresolved territorial conflicts in which Russian troops were involved. It is not obvious that these countries can achieve membership without some kind of resolution of these conflicts. Second, all three countries still face internal institutional challenges regarding democracy, the rule of law, transparency, and efficiency. In Georgia, these have worsened, as the government has shown authoritarian tendencies and introduced a new "foreign agents law" in May 2024. The EU has expressed concern, warning that this could be detrimental for Georgia's path to the EU (Politico, 2024).

Russia's full-scale invasion of Ukraine in 2022 allowed the EU to temporarily ignore these challenges and grant candidate status to Moldova and Ukraine (and later Georgia). However, it is not clear to what extent these challenges must be resolved before the EU can accept the countries as members. The EU has previous experience of this type of situation, as the 2004 enlargement also included Cyprus, which has an unresolved territorial conflict. This shows that there are ways to move forward despite all the challenges. In favour of the Eastern Partnership countries is the fact that their association agreements are more ambitious than those of the Western Balkans. Indeed, they cover all the chapters of the accession negotiations, which means that Moldova and Ukraine (Georgia being a

special case) are technically ahead of the Balkan countries in fulfilling the criteria for membership. However, the political criteria on the rule of law, efficiency, and transparency remain, and for obvious reasons there is little room for deeper reforms in Ukraine in the midst of a full-scale war. A realistic scenario is that a final decision on enlargement to the region will be possible after some kind of peace treaty is negotiated between Russia and Ukraine, and the EU has had time to evaluate the progress in Moldova and Ukraine.

### THE EU'S CAPACITY FOR ENLARGEMENT

A recurring theme in this chapter has been the EU's ambivalence about new enlargements. This has mainly been related to scepticism in some member states about whether the applicant countries are ready to become members. But concerns have also been raised about the EU's "absorption capacity", i.e. whether it has the capacity or the will to enlarge further. To understand these challenges, it is crucial to understand the internal dynamics within the EU. The sceptical voices have argued that institutional reforms are needed to manage a new enlargement. The main issue is the application of qualified majority voting in several areas that are currently—in 2024—decided unanimously. In a recent report, the European Commission mentions foreign policy, tax, and social matters as examples where qualified majority voting should be considered (European Commission, 2024, p. 19). However, these kinds of proposals are mainly supported by the European Parliament and the European Commission, while the member states, with the exception of France, have shown little interest. Another concern has to do with economic challenges associated with new enlargements. The new candidates for EU membership are poor countries compared to the average EU standard of living. If the costs of Ukraine's reconstruction are included, the EU budget will have to be significantly increased, and a large proportion of the increase would be allocated to supporting the new member states.

It is therefore relevant to ask whether we are facing a situation where the EU wants to enlarge but is forced—due to internal concerns—to postpone the issue so far into the future that the process loses all legitimacy. In my view, this pessimistic scenario is exaggerated. There is little empirical evidence to support the argument that enlargement leads to paralysis of the EU machinery. In fact, the EU was at its most deadlocked and ungovernable between 1963 and 1969, when it had only six

member states. Sylvain Kahn argues that paralysis of the EU decision-making capacity is not a result of the number of countries, but of frictions between different visions of the EU project and between majorities and minorities, and of the ability to find compromises (Kahn, 2023). According to Kahn, every enlargement has been preceded by fears of a paralysed and ungovernable Union. One example is the strong concerns that were expressed before the eastern enlargements of 2004 and 2007. It turned out that these fears were largely unwarranted. Except for the challenges related to Hungary's democratic backsliding and populist anti-EU rhetoric, the EU's institutions and decision-making capacity remained basically intact. The surprisingly smooth character of the enlargements in 2004 and 2007 can partly be explained by the informal aspects of the EU's efforts to prepare the applicants for membership. One example is that the European political parties developed close relations with parties in the applicant countries prior to the enlargement. In a study of this process, I concluded that the European parties, through membership criteria, various educational activities, and informal forums, gradually integrated the new parties into their respective party families and contributed their knowledge and experience of how political parties are expected to behave in a democracy (Öhlén, 2013). This work of developing links with sister parties can also be observed in the potential new member states in both the Western Balkans and the Eastern Partnership. In another report, I concluded that the European parties have been very active in supporting their sister parties in Ukraine. They are also using their networks and experience to support the Ukrainian government in preparing the necessary reforms, and are acting as ambassadors for Ukraine's EU membership bid through their extensive networks in both the member states and the EU institutions (Öhlén, 2023).

When it comes to demands for broad institutional reforms, it is reasonable to see them as attempts to push through these proposals in a context full of concern and uncertainty about the consequences of a new enlargement. The prospects of gathering enough support for these reforms are slim, especially as the EU has already gone through several treaty changes since the 1990s, and most member states think that the Lisbon Treaty is functioning fairly well (see Ocvirk, 2024). Moreover, in retrospect, the EU has shown a remarkable capacity to adapt to new circumstances with small, gradual changes in its day-to-day work, for example in the budget and EU policies. However, the economic challenge is more serious. Enlargement to the Western Balkan and Eastern Partnership countries, in

combination with the post-war reconstruction of Ukraine, would place a significant burden on the EU budget. Moreover, Ukraine's large agricultural sector is not only a challenge for the EU budget, but also a potential threat to the market position of some current member states. In my view, it is crucial that there is a carefully prepared plan for this and that this plan is supported by the current member states.

Another proposal, promoted most passionately by France, is to create a more flexible EU as a solution to the frictions caused by admitting more member states. The idea, therefore, is that the current 27 member EU is already a heterogeneous group, and any further enlargements would make it even more so. The idea, then, is to introduce so-called "differentiated integration". This means that, while all member states are obliged to participate in some key areas of cooperation, such as the internal market, a smaller group of countries may want to take this integration even further. There are already tendencies in this direction, as can be seen in the monetary union and the plans for future defence cooperation. The advantage of this idea is that it allows member states to deepen their cooperation in some areas, based on each country's interests and needs. Sceptics argue, however, that this could create a division between first- and second-class member states, which in the long run could undermine the legitimacy of the Union. It remains to be seen whether this proposal will be presented as a condition for a new enlargement.

Another French initiative is the "European Political Community", established in 2022. This is a forum for discussion between the leaders of Europe's democratic countries, i.e. both EU and non-EU states. A similar idea in 2016 for a "continental partnership" was focused on the future relationship between the EU and the UK after Brexit, but could also be applied to countries such as Ukraine. Participating non-EU countries would gain access to some EU institutions (without voting rights) and to parts of the EU internal market. Several applicant countries have expressed concern that these initiatives may create conditions that exclude them, but according to André Sapir, this could be a pragmatic transitional solution, as it may be a long time before the current applicant countries can become members (Sapir, 2022, p. 4).

## THE KEY TO ENLARGEMENT: POLITICAL WILL AND PATIENCE

This chapter has focused on the EU's future enlargement plans for two distinct regions, each with its own challenges. The central obstacles in the Western Balkans are tensions within applicant countries (Bosnia & Herzegovina), between applicant countries (Serbia–Kosovo), and between the applicant countries and EU member states (Bulgaria and North Macedonia). The obstacles in the Eastern Partnership—with Ukraine, Moldova, and Georgia—are mainly related to unresolved territorial disputes in all three countries, in which Russian troops are present. Both regions (Western Balkans and Eastern Partnership) face the challenges of inefficient bureaucracy, low transparency, weak rule of law, and corruption. Although Russia's full-scale invasion of Ukraine has given a new impetus to the enlargement process, this chapter has identified several challenges that remain. First, there are domestic challenges within the applicant countries in these regions. It remains unclear whether the EU is prepared to proceed with enlargement before these problems are solved, and it is likely that none of them will be solved in the near future. Second, there is internal disagreement within the EU regarding the enlargement plans. Furthermore, the membership negotiation process provides numerous opportunities for member states to impose new conditions and demands, which is devastating for the legitimacy of the enlargement process.

The challenges mentioned above could lead one to question whether EU membership is even possible for these countries. In my view, this pessimistic conclusion exaggerates the negative aspects and sees the EU only as a passive evaluator. On the contrary, the EU is an active party in this process and has contributed to significant progress in both the Western Balkans and among the countries in the Eastern Partnership. As this chapter has shown, the EU is acting as a condition-setter as well as a supporter, advisor, and donor to encourage reforms in the applicant countries. Admittedly, the EU faces some difficult dilemmas, but I would argue that they are manageable. Let us discuss them one at a time.

First, should the EU accept countries with unresolved territorial disputes? The fact that Cyprus was granted membership in 2004 shows that it is possible. However, these situations require a degree of pragmatism on the part of the EU. Second, should the applicant countries be

treated as a single group, as a number of smaller groups, or on a country-by-country basis? An important lesson from the enlargement in 2004 is that a “big” enlargement carries the risk of enlargement fatigue and of admitting countries that do not meet all the criteria. In my view, it makes sense to adopt a more cautious approach, in which the EU works systematically with each applicant country, without making grandiose statements that only lead to unrealistic expectations. Third, how strict should the membership conditions be? The EU should set strict criteria on core values such as democracy and the rule of law, but at the same time be more pragmatic in other areas. The European Commission’s new strategy, described earlier in this chapter, is appropriate in this context. There are, however, member states that could disrupt the process because of a bilateral dispute with an applicant country. In line with Anders Åslund and Torbjörn Becker (Åslund & Becker, 2024, p. 252), I agree that the EU should remove the right of veto for EU member states in enlargement negotiations with countries with which they have neighbourhood disputes. However, this requires a treaty change and is difficult to implement in the short term. A more realistic recommendation is that the EU removes the requirement for unanimous approval at each stage of the negotiation process. This requirement creates a negative atmosphere around the entire process and risks bringing it to a standstill. A fourth issue, which is also discussed in Chapter 11 of this volume, concerns what internal EU reforms are needed to make an enlargement possible? As discussed in the previous section, the voices calling for treaty change seem to find little support among the member states. The proposals for a differentiated EU are indeed interesting, but they may also fall into the trap of looking for simple answers to complex problems. My recommendation is that the EU should put aside the discussion about treaty changes and vague proposals for differentiation and instead focus on the practical question of how to manage a future EU budget with an enlargement.

It is possible to manage the dilemmas that accompany a new enlargement, but this will require pragmatism and diplomatic sensitivity on the part of the EU. Ultimately, a successful enlargement process depends on political will. An important lesson from the 2004 enlargement is that the EU’s promise of membership must be credible, otherwise the incentives to implement reforms will be weaker. Consequently, for an enlargement to take place, the EU needs to come to an agreement that this way forward is desirable. The “EU” refers not only to the European Commission and the European Parliament, but also to all the member states. It is important to

look at the bigger picture and consider what Europe would have looked like if the EU had *not* expanded over the last decades. There is a tendency to focus on the problems related to enlargement, especially in Central and Eastern Europe, but the fact remains that previous enlargements have been successful and have had a clear democratising effect. If the current enlargement process is obstructed, the EU will miss an important opportunity to contribute to stability and democracy in the Western Balkans and the Eastern Partnership. More is at stake than just increased trade and economic profit. Russia's ruthless war in Ukraine has created strong geopolitical and normative incentives for EU enlargement. To conclude, the EU now has a unique window of opportunity to contribute to a long-term, stable, peaceful, and democratic Europe, if the Union and its member states decide to bring their enlargement plans to completion. To succeed, however, the EU needs to proceed with persistence, pragmatism, and patience.

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# EU Security, Collective Self-Defence, and Solidarity

*Ester Herlin-Karnell*

## INTRODUCTION

Self-defence is a central concept in war theory and international criminal law, but how is it relevant in EU law? Security questions and war are seemingly far from the traditional area of free movement in EU law. Yet the Russian full scale invasion of Ukraine in 2022 and the current security situation in Europe have put the question of self-defence and security matters more generally high on the agenda. Interestingly, the current regulation of self-defence in war has a clear historical dimension. Indeed, already Immanuel Kant, born 300 years ago (1724), distinguished between just and unjust wars (Ripstein, 2021).

The purpose of this chapter is to discuss the EU's rules on collective self-defence in light of international law's rules on self-defence, as well as its history. I will examine whether the EU has its own collective self-defence mechanisms for the member states by discussing the solidarity clause in Article 222 Treaty of the Functioning of the European Union

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(TFEU), as well as the mutual assistance provision 42 (7) Treaty of the European Union (TEU). I will also discuss how the Kantian legacy has shaped the rules of self-defence in the UN Charter and how it can help us understand the limits of using self-defence in EU law. Furthermore, I will briefly compare self-defence in war situations with the rules on self-defence in criminal law (as it generally stands in criminal law theory). Subsequently, the chapter discusses the role and capacity of the EU when it comes to the issue of collective self-defence and briefly examines the relationship between NATO and the EU. The chapter ends with some thoughts for the future regarding how we should understand the use of collective self-defence at the EU level.

### JUST WAR AND SELF-DEFENCE

Before discussing the role of the EU, it is important to understand the legal and political framework of war theory and self-defence. In contemporary international law, the premises for using force are strongly grounded in the Kantian tradition. For example, force is only allowed by states to remedy a wrong, i.e. to repel an attack or uphold an important right held by a state (Ripstein, 2021). Immanuel Kant's monumental writings on *The Perpetual Peace* from 1795 and *The Doctrine of Right* from 1797 are important in shaping the rules about when self-defence may be used by states and for how the laws of war look today (Ripstein, 2021; Herlin-Karnell & Rossi, 2021). The Kantian legacy is relevant on many levels within EU law. After all, the EU was created as a peace project, partly based on the idea that trade favours peace. Moreover, in international law, there is a general ban on the use of force, except when used in self-defence which is largely Kantian. On the international level, Article 2 (4) of the UN Charter clarifies that countries in their international relations must refrain from the threat or use of violence. Article 51 of the UN Charter, which declares that states have the right to use force in self-defence, is ultimately a question of balancing between, on the one hand, the UN Security Council's prerogative right to deal with matters of international peace and security and, on the other hand, the state's interest in being able to act when the Security Council is unable to do so. The UN Charter thus allows states to depart from the prohibition of using force in two specific circumstances: the Security Council's authorisation to restore international peace (Article 42) and self-defence (Article 51).

Furthermore, any use of force must be justified in the light of the axioms of proportionality and necessity (Kretzmer, 2013). The question that is interesting for us to discuss is whether the EU has its own regime on self-defence and, if so under what circumstances it can be used. Self-defence is of course a central issue national criminal law. More specifically, in criminal law, the theoretical provisions of criminal law on self-defence fall within the competence of the individual member state and are not a matter for the EU although the EU has some competence to legislate in the field of criminal law in accordance with Article 83 TFEU. Nevertheless, if EU member states were to be subjected to an attack, the question of self-defence is also a question of solidarity and survival of the EU. This raises the question of collective self-defence. Although member states have retained their sovereign right to decide on security policy decisions, the EU also has provisions similar to NATO's rules on collective self-defence (Kretzmer, 2013), namely Articles 222 TFEU and Article 42(7) TEU which are based on the concepts of solidarity and reciprocity as well as assistance.

### THE EU DEFENCE CLAUSES

According to Article 222 TFEU, in short, the Union and its member states shall “act jointly in a spirit of solidarity if a Member State is the victim of a terrorist attack or is affected by a natural or man-made disaster”. Article 222 TFEU is mainly aimed at terrorist attacks and other man-made disasters. However, the line between a terrorist attack and other security situations similar to war is not crystal clear. Furthermore, Article 42 (7) TEU, which is more intergovernmental as this provision excludes the jurisdiction of the Court of Justice of the EU (CJEU), states that if a member state is subjected to an armed attack on its territory, the other member states are obliged to provide the member state with support and assistance. Thus, Article 42 (7) TEU expressly states that member states' national security and defence policies must be respected. Having said this, however, there is a far-reaching duty of solidarity as a duty of loyalty within the EU for the member states both horizontally and vertically, which makes the issue of national identity somewhat complex. For example, it can be argued that no EU member state is non-aligned or totally neutral, as EU membership as such means that the member state in question must show its alliance with the EU in the event of a potential attack. In short, there are two types of collective self-defence in EU

law. One type is based on solidarity, that is to say, that other member states within the Union must help in the event of terrorist attacks and other security matters, which takes place within the framework of the jurisdiction of the CJEU, in accordance with Article 222 TFEU. The second type of solidarity is based on more of a NATO-like cooperation on military assistance within the framework of the EU's external relations on a common security and foreign policy (compare Article 5 NATO) (Herlin-Karnell, 2021). This type of self-defence falls in principle outside the jurisdiction of the CJEU. It seems unclear whether self-defence can also be applied in the case of several member states who claim they use self-defence in solidarity with other member states.

### THE LEGACY OF KANT AND THE QUESTION OF FORCE

As mentioned above, within international law, the premises for using violence are firmly rooted in the Kantian tradition, which bans the use of force unless it is used in self-defence and is deemed proportionate. Specifically, Kant saw war as barbaric and therefore he only accepted the use of force if it was in self-defence (Ripstein, 2021). Kant generally ruled out preventive violence but believed that it could be used in certain circumstances (Ripstein, 2021). For example, he argued that pre-emptive force may be morally right in defensive wars if early fighting is less costly to both sides. According to the philosopher and jurist Arthur Ripstein, Kant also linked the idea of preventive war to the idea of breach of contract, that is, an enemy who is breaching the established laws of war and, for example, kills soldiers who wave a white flag (Ripstein, 2021). In this way, just war is also a matter of applying fair rules of the game. Yet he stressed, for example, that soldiers must not attack civilians or falsely raise a white flag. In other words, Kant meant that a state that conducts a defensive war is not applied in a vacuum or immunised from the scope of the law of war. Instead, self-defence is a natural right to protect oneself which is based on the need for law to bring about peace. Interestingly, Kant linked this to concerns about colonialism, excluding general invasions of countries. Kant believed that general preventive force could lead to increased colonisation where dominant states adopted other states. War is never to secure new rights, but the central thing is to secure peace with the role of law. Otherwise, according to this reasoning, there is a risk that states see all other nations as potential threats, and therefore preventive war cannot be legitimate. However, the line between defence and prevention is not

easy to draw. Michael Walzer, who is a well-known proponent of just war, has argued in his classic book, for example, that preventive use of force is justified if three conditions are present, namely: that there is an obvious intention to harm another state, that there is some active preparation for an attack, that there is a risk to a state's territorial integrity or political independence if no measures are taken (Walzer, 1977).

While proportionality is extremely important in constitutional law matters (Barak, 2012), in just war theory, proportionality is not measured solely in the number of civilian deaths but is both forward-looking and backward-looking with respect to the risk of an attack in the given case (Meisels, 2018). Proportionality means that the destructiveness of the war must not be excessive with regard to the relevant benefit that the war will achieve. In the legal context, proportionality is an overarching concept that includes damage in the form of violating the territorial integrity of another state, damage to infrastructure, and effects on third parties as a result of a military attack. But only a legitimate war (that is, where the aims are legitimate) can pass the proportionality test and thus count as a just war (Meisels, 2018). Walzer has argued that a just war must be legitimised twice; *jus ad bellum* (whether a state's decision to use force is justified) and *jus in bello* (how justly the war is fought) (Walzer, 1977). This very question of *ad bellum* and *jus in bello* is interesting. For example, Kant argued that the reason for that distinction is that even if one side in a war is waging a defensive war, both sides in the war can still violate the rules *in bello*. The *in-bello* norms governing the conduct of war are restrictions on the use of defensive force since national defence is the only legitimate reason for waging war. Arthur Ripstein (2021) has argued that “the norms apply to both sides of a war because both sides are wrong to violate them, even if one side was already wrong by going to war at all”.

In Russia's war against Ukraine, Russia has violated both *jus ad bellum* and *jus in bello*. Russia invoked self-defence, but it was based on lies (Allison, 2023), which means that the war is not considered legitimate according to the theory of a just war. Based on this theory, it is the attacking state that is judged, not how “fairly” the attacked state responds. However, the principle of proportionality applies in general. The legacy of Kant is thus that modern international law places great emphasis on the fact that the use of force against other states is only considered acceptable in self-defence. A further condition from Kant is that the assessment of

proportionality is central, and that self-defence must not be abused. There is an ethical dimension here, and barbarism must not occur (Ripstein, 2021).

### ON THE IMMINENCE CRITERIA AND SELF-DEFENCE

What then does the concept of “imminent” attack mean when applied in a complex EU security law context within a Union law constitutional structure? Within the framework of the laws of war, the question of the difference between self-defence and preventive self-defence is also interesting because it raises the question of what demands are being made. On the one hand, and unlike criminal responses, the idea of pre-emptive violence reflects a planned military operation that represents the convergence of intelligence gathering that law enforcement has been tracking. On the other hand, self-defence in criminal law usually requires a decision to be made on the spot and this type of preventive strategy would, in most cases, fall outside what is meant by self-defence in criminal law, with the exception of (for example) the legal debate on battered women which also covers non “imminent” situations (Herlin-Karnell, 2021). Here we seem to be facing risk regulation and emergency regulation, which raises the question of whether there can ever be sufficient knowledge in these matters. Prevention regulates events in the future.

Nevertheless, it remains unclear whether the assessment of self-defence for states should and can have the same overriding criteria as an individual in a criminal context. The question seems inescapably linked to the idea of what is meant by prevention and preventive measures. Thus, we may ask what exactly is meant by “preventive” self-defence. Examples of preventive measures at the EU level, beyond martial law, are most obvious in the fight against terrorism, combating the financing of terrorism, legislation against money laundering, and measures to fight organised crime. Prevention in this regard is perceived as more effective in maintaining peace than waiting for an attack. Likewise, in the well-known Nicaragua case, non-state actors were responsible for an armed attack, but a line was drawn between state-sponsored terrorism and non-state-sponsored terrorism (ICJ, 1986). In this legal case, the International Court of Justice ruled that it was wrong for the USA to interfere in the internal affairs of other states and that states do not have the right to support, e.g. rebellion in another state or seek to control the course of events by means of arms to separatists. In the Nicaragua case, the International Court of



Justice held that self-defence must be proportionate and thus not excessive. However, the court held that non-state actors can sometimes be treated as a state.

## COLLECTIVE SELF-DEFENCE AND EU SOLIDARITY

As seen above, I have argued that the EU has its own provisions on self-defence. But it is needed to ask whether each of the various member states using armed force in a self-defence situation has such a right, or whether only the territory of the attacking state is essential to assert self-defence. It is clear from a legal perspective (for example in NATO Article 5) that the right to self-defence only applies to the state that is attacked, or from the territory of that state. In criminal law theory (in most countries), self-defence applies to a broader category of people who are present at the time when the crime is committed, for example, a person can remedy an attack on a friend who is standing next to him. States cannot be “present” in the same way as individuals, and it does not matter if it is the neighbouring state or an ally from afar who comes to the rescue. What added value does collective self-defence have in the EU when NATO already has similar provisions and when most EU member states are members of NATO? How can they both complement each other and what should EU cooperation look like when it comes to self-defence? Could the EU function as effectively as NATO, a quasi-NATO (Herlin-Karnell, 2022)? The idea of solidarity seems to apply between states in terms of collective self-defence at the EU level, unlike NATO which is a cooperation between different states. As previously mentioned, the Union and its member states shall under Article 222 of the TFEU act jointly in a spirit of solidarity. The article is designed as a constitutional obligation to help other EU states in a spirit of solidarity (however, exactly what this means is not clear). Similarly, Article 42(7) TEU can send a strong political signal that the EU stands united in the face of a common threat to its territory and society, especially as it implies a common European response in internal and external border security domains where NATO cannot take action (such as when France invoked both the solidarity and mutual aid provisions in 2015 after the terrorist attacks in Paris).

NATO’s Article 5 has not been used often; it was invoked after the attacks of 11 September 2001 (NATO, 2023). However, it has had, it may be assumed, a considerable preventive effect as far as NATO is concerned. The inclusion of a similar article in the EU treaty can be

assumed to have a similar purpose, where the signal is that all member states support each other. As previously mentioned, the idea of self-defence is central to the UN Charter and international law. In this context, it is interesting to look at the doctrine of just war in political theory, which plays an important role in the debate about how the laws of war should be designed. The use of force in self-defence is an important means of preventing and punishing violations of international law, and to respect national sovereignty. The question concerns how to balance the right or duty to protect individuals against the rights and independence of states. The UN Security Council has the primary responsibility and obligation to maintain international peace and that obligation limits the right to self-defence and involves a shift from unilateralism to multilateralism in *jus ad bellum* (i.e. what happens before war) considerations (Kretzmer, 2013).

Specifically, when can self-defence be used? The idea of preventive war, of course, is to avert imminent harm or injury before it occurs. The question concerns the possibility of justified prevention in exceptional circumstances. In this context, David Luban (2018) and others have called for more reliable intelligence to allow some form of pre-emptive force to justify the use of Article 51 of the UN Charter on self-defence. This is about decision-making in emergency situations, where risk regulation and emergency-led decision-making are central. It also raises the question of whether there can ever be clarity on these issues. The issue of self-defence and the degree of risk assessment to be applied was up for consideration as early as the early 1840s. In the classic Caroline case, the criterion of necessity was considered to mean: “instant, overwhelming, leaving no choice of means and no moment of deliberation” (Caroline Case, 1841). Since the concept of self-defence (even broadly interpreted) is considered to be the only legitimate basis for using force against another state, it is sometimes considered that this would exclude the use of preventive force.

For example, preventive violence is sometimes considered morally justifiable if preventive measures are less costly to both sides in terms of protecting civilians. Imagine, for example, that there is an army just outside State A’s border. Of course, State A does not have to wait until State B’s army crosses the country’s border to defend itself. A problem when discussing whether an attack will take place, however, is the so-called preventive risk assessment. How can we know when another state will attack? The provisions concerning the doctrine of just war look

different here compared to criminal law in its traditional meaning (Herlin-Karnell, 2021). How does criminal law (general criminal law theory in most jurisdictions) view the circumstances that must exist for an individual to have the right to use self-defence? As previously mentioned, an attack must be imminent in the sense that if a person, for example, comes running with a knife towards you, only then can you protect yourself with deadly violence.

Certain excessive violence is tolerated if someone “could hardly come to his senses” even in national criminal law but also proportionality is central here (Ashworth, 2003). Furthermore, there are certain exceptions, for example regarding “battered women” where a woman who has been abused for a long time by her husband can use some self-defence even when the attack is not imminent (e.g. when the man is asleep) (see McColgan, 1993). She describes how in some cases self-defence can be considered justified even when it takes place in a preventive manner. Within the laws of war, there is thus not as strict an assessment of self-defence as in self-defence in criminal law, and these are thus similar to the women’s rights provisions in this part. For example, certain preventive operations and so-called preventive strikes may be compatible with the principle of proportionality, if these are strictly necessary. Furthermore, it is also considered that a certain degree of accidental civil losses (“collateral damage”) is compatible with proportionality. This is of course highly repulsive, but unfortunately reflects the realities of war. Although the self-defence of states at war is often likened to the law of self-defence of the individual in criminal law, there are some differences. EU law partially addresses this through the solidarity mentioned in Article 222 TFEU, i.e. there is a duty of solidarity for other states within the EU to help even if the attack was carried out by private actors, such as in the case of a terrorist attack.

## SECURITY ISSUES WITHIN THE EU AND THE EXTERNAL DIMENSION

Within the EU’s external relations, the EU is often described as a strategic and important security actor. The EU is an autonomous international legal entity with the EU external action service as its face to the outside world. Internally, however, the Union consists of 27 different member states with both common and individual national rules, all of which must comply with the EU’s duty of loyalty, both within the Union and in

its external relations. According to some scholars (Leino-Sandberg & Ojanen, 2022), however, it could be asked why there is no further integration in defence matters within the EU. The issue is political, and the member states have been vigilant in giving the CJEU the power to decide foreign policy issues. It has also not been so popular in all member states as NATO was considered a better alternative, although French President Emmanuel Macron pushed the issue of deeper EU cooperation in security matters.

The EU's relationship with NATO has been described as two mutually complementary organisations. Engelbrekt (2024), for example, argues that the European security order is at stake and that the relationship between the EU and NATO is as important now as it was during the Cold War. Indeed, the Russian invasion of Ukraine has significantly threatened peace in the EU's neighbourhood (Kauert & De Deau Periera, 2023). Further, Engelbrekt argues that the way to a more robust security order is to preserve the cooperation between the EU and NATO and maintain the transatlantic link to be able to act against Russia's aggressions. This is of course dependent on the political reality, such as a possible regime change in Russia as well as the outcome of the presidential election in the USA in 2024 and how much focus is shifted from the war in Ukraine due to the war between Israel and Hamas since 7 October 2023. In any case, the EU is an important global actor.

The EU has the capacity to act, primarily through its extensive economic sanctions that are sometimes classified as hybrid warfare (European Council, 2024). Furthermore, the EU has an extensive sanctions programme and, for example, at the time of writing at the end of 2023, has adopted eleven sanctions packages against Russia. The Commission's website is instructive and states that in response to Putin's unprovoked and unjustified military aggression against Ukraine, the EU has imposed exceptional sanctions to reduce the Kremlin's ability to finance the war (European Commission, 2024). In addition to significant sanctions packages, the EU also has various military engagements managed by the European External Action Service (EEAS) that relate to defence and peacekeeping operations. Moreover, the EEAS states that in order to become a stronger global partner, the EU must define the type of security and defence actor the Union wants to be (EEAS, 2023). In short, the EU must be able to take care of its security interests and bear its share of the responsibility as a global actor when it comes to the world situation in the wider sense. The EU also works with conflict prevention to

strengthen international security, and the EEAS is responsible for various crisis management, using civilian and military resources. Furthermore, the EU is keen to show commitment to deepening cooperation with third countries, which concerns everything from new trade rules and climate agreements to security cooperation (EEAS, 2023).

In addition, security issues in the EU context are also closely connected with measures in the area of “freedom, security, and justice”. In particular, the measures to combat terrorism in the EU have had a revolutionary impact on the member states, partly because new legislation was adopted with a very short deadline to incorporate the measures into national legislation, and partly because it was no longer considered sufficient to deal with the threat of terrorism through the ordinary criminal law. The EU’s main tactic in the war against terrorist financing is mainly through the criminal law framework. The EU also has an extensive system of restrictive measures by means of administrative law which has often been criticised for being excessively harsh without sufficient guarantees of legal certainty (Herlin-Karnell, 2012). The EU’s security mission follows from the ambitions set out in the Treaty of Lisbon, among other things, the EU must “endeavour to ensure a high level of security”, according to Article 67 TFEU. There are thus no watertight barriers between internal and external security in the EU. The external dimension of security in the EU context (the Common Foreign and Security Policy) is also very central to the EU’s security ambitions and concerns the EU’s security vis-à-vis third countries. The constant response to security problems from border control and migration management to counter-terrorism strategies means that the EU is currently very active in this area and largely follows the norms of international law (Bakardjieva Engelbrekt et al., 2024). Although the EU’s dependence on security is often used as a justification for the EU’s presence in a current issue, the security aspect still plays an important role in the EU’s security agenda. It also confirms a precautionary approach in the fight against crime and terrorism, which favours prevention (Herlin-Karnell, 2012).

However, a problem that arises with overly preventive measures is that the individual’s rights—which are, among other things, enshrined in the Charter of Rights and the European Convention for the Protection of Human Rights—are set aside (e.g. Bossung, 2012). As mentioned above, the concepts of security and defence issues span many intertwined areas of EU law. This goes back to the terrorist attacks on the USA on 11 September 2001, and subsequently other terrorist attacks

in Europe, where rapid solutions across member states' borders were needed to combat terrorism (Bossung, 2012). The ordinary criminal law was often overridden to justify longer periods of detention. In addition, measures were often adopted in the context of administrative law proceedings with a lack of procedural guarantees. Interestingly, the EU anti-terrorist directive—which was adopted in 2017—utilises mainly the criminal law framework, and not the administrative one (European Parliament & Council, 2017). This could mean that countries cannot deviate from their obligations to ensure a fair trial and that they must be guaranteed proportionality in the restrictions on the individual's rights that are made. In order to understand these issues, it is important to look at the EU's other regulations of these issues. A recurring question within the EU has been whether the fight against terrorism should be seen as a criminal law project at all. It should be known that the majority of EU countries have used administrative procedures, which are partly faster and partly provide lower rights protection for the individual and limited possibility of judicial review, with longer detention times, etc. The term terrorist crime has always been extremely difficult to define and there has been no clear international definition (European Parliament & Council, 2017). The EU has been quite innovative in trying to provide a definition although it remains broad and relatively vague. Central is that the terrorist crime has as its purpose to instil serious fear in a population or to, for example, seriously destabilise or destroy the basic political, constitutional, economic, or social structures of a country or an international organisation. Furthermore, it is criminalised to encourage terrorist crimes, as well as to provide training for terrorists. The question of national security is, according to Article 4 TEU, a national competence. However, it is the case that almost all security issues these days have a cross-border impact. Furthermore, the EU does not have any specific regulation for a state of emergency concerning war and terrorism. This is instead a matter for the member states.

Furthermore, a security threat to a member state of the EU means a security threat to all member states of the Union, as there is an extensive duty of solidarity within EU law. With the internal crises that the rule of law crisis in the EU has brought about and that have been extensively debated in this book series, the EU is facing a series of challenges, not least in the shadow of the Russian war in Ukraine. More specifically, Poland and Hungary have violated EU values and the rule of law for a long time. However, Poland changed its government in late 2023 and it

remains to be seen whether the new government can repair democracy in a satisfactory manner. Although the EU does not have an army despite a long-standing debate on this issue, the EU's security problems seem to boil down to the use of force in the fight against terrorism as well as security threats including war and peacekeeping. The Eurobarometer (2022) survey shows that the vast majority of EU citizens (81 per cent) are in favour of a common defence and security policy, with at least two-thirds in each country supporting this (EU Monitor, 2023). It also states that around 93 per cent agree that the countries should act together to defend the EU's territory, while 85 per cent believe that defence cooperation should be expanded at the EU level (Eurobarometer, 2022).

In conclusion, the solidarity mechanism under Article 222 TFEU can cover many situations, from terrorist attacks to other man-made disasters including war. Leino-Sandberg and Ojanen (2022) recommend that the EU's security cooperation be deepened. The question concerns the idea of solidarity in a wider sense. The European Court of Justice has emphasised the principle of solidarity, enshrined in Article 2 of the EU Treaty, which in itself is one of the fundamental principles of EU law. This is a dynamic area, and the breadth of the solidarity mechanism has not yet been tested under Article 222 TFEU. In addition, solidarity as a constitutional issue in EU law could perhaps be framed as a loyalty issue.

### SANCTIONS AS COLLECTIVE SELF-DEFENCE AND ON BROADER ISSUES EU-NATO

Sanctions are important in EU law as a way of “hybrid warfare” (Kaunert & Zwolski, 2015) or collective self-defence. Sanctions can be used as a countermeasure to divert an imminent threat, i.e. in self-defence. The EU has so far adopted 14 sanction packages against Russia (European Commission, 2024). After 24 February 2022, in response to Russia's military aggression against Ukraine, the EU massively expanded the sanctions. It added a significant number of individuals and organisations to the sanctions list and adopted unprecedented measures with the aim of weakening Russia's economic base, depriving it of critical technologies and markets, and significantly curtailing its ability to wage war.

In the context of the recent and ongoing EU restrictive measures adopted against Russia's aggression and illegal invasion of Ukraine, the Commission proposed adding any violation of Union restrictive measures to the areas of crime laid down in Article 83(1) TFEU. The Directive was

recently adopted and makes it clear that the implementation of Union restrictive measures is not as uniform across the Union as it ought to be (European Parliament & Council, 2024). Restrictive measures are an essential tool for the promotion of the objective of the Common Foreign and Security Policy (CFSP), as set out in Article 21 TEU they are concerned with the EU's role in the wider world. These objectives include safeguarding the Union's values, maintaining international peace and security as well as consolidating and supporting democracy, the rule of law, and human rights. The ambition of promoting peace may indeed be seen as connected to the EU value of dignity. The Directive states, *inter alia*, that the implementation of sanctions and restrictive measures is not as uniform across the Union as it ought to be. The Commission states that "this creates distortions in the Single Market, as Union companies, including EU subsidiaries of foreign companies, can find means to circumvent the restrictive measures. This also creates uncertainty among operators" (European Parliament & Council, 2024).

Interestingly, the Russian war in Ukraine led to Swedish NATO membership in 2024.

In the spring of 2022, the then-Swedish government made a complete U-turn from being non-aligned to applying for membership in NATO, because of the Russian invasion of Ukraine (Åhman, 2022). Finland joined NATO in the spring of 2023, and Sweden joined on 7 March 2024 after a long application procedure that was hindered by Hungary and Turkey for almost two years (Cramér, 2022, Österdahl, 2022). Interestingly, a legislative assessment in 2016 mentions solidarity repeatedly and states that Sweden will act in solidarity with other EU states in case of armed aggression and expect other EU states to do the same if Sweden is under attack (Herlin-Karnell, 2022). As shown above, the duty of solidarity means that other EU member states can be involved in any situation in Sweden that triggers Article 222 TFEU Treaty. In conclusion, it can be stated that there is scope for developing EU cooperation in security matters.

The important question is, as usual in international matters, whether there is a political will to invest in EU security cooperation, which in turn depends on how the world situation develops. Many questions remain unanswered such as *inter alia*, if the EU needs to adopt detailed legislation that clarifies the scope for using secondary legislation that explains Articles 222 TFEU and 42(7) TEU in relation to collective self-defence



and the interaction between the EU and NATO. Or if this issue is something that the EU Court of Justice should be asked about, something that has not happened so far. Furthermore, this raises the question as to the relationship between NATO and that of the EU as a global actor, as well as of future cooperation with the USA. In the unpredictable world situation that now prevails, it is difficult to predict the future. The EU has an interesting time ahead of it as an important global actor in maintaining peace in the immediate area.

### CONCLUDING REMARKS: FROM CRISIS TO SOLIDARITY?

In this chapter, I have discussed the Kantian legacy in terms of the design of the rules for security cooperation and the use of collective self-defence. It may be wise to remind ourselves of the categorical imperative that can serve as a compass in these matters, namely that states should act as they themselves wish to be treated. Kant also said that colonialisation is wrong and that larger states should not occupy smaller states or dominate them, something we see happening right now in Russia's war against Ukraine.

Various crises have long shaped the EU and will likely continue to do so. As it stands today, both the EU's security cooperation and NATO, as well as the cooperation between these two organisations, will be necessary for the security of Europe and the rest of the world. Climate change and cyber warfare attacks are other security challenges facing the EU. Moreover, the question of self-defence in EU law is very important. In light of the ongoing war in Ukraine, and the security situation in Europe, the various premises for using self-defence have gained in importance and will most likely be debated in some years to come.

The solidarity clause in the EU could be seen as a manifestation of collective self-defence. While the Lisbon Treaty refers to both mutual assistance and solidarity in cases of armed aggression and terrorist attacks respectively, the division of security cooperation and resort to collective self-defence seems at best a blurred one. It confirms a very dynamic relationship between the EU security framework and that of EU external relations amounting to a war model and where solidarity plays a key role.

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## What Can the EU Learn from Brexit?

*Pehr-Johan Norbäck*

European integration has advanced through increased cooperation among member states within a framework of supranational institutions. Starting with six member states forming the European Coal and Steel Community in the early 1950s, the European Community has since expanded into the European Union (EU), now comprising twenty-seven member states.

To date, only one major member state has left the European Union. In a referendum held on 23 June 2016, the UK voted to exit the EU, triggering the Brexit process on 29 March 2017 when Article 50 of the Treaty on European Union was invoked. This set a two-year deadline for the UK and the EU to negotiate a withdrawal agreement. After several extensions and the conclusion of a withdrawal agreement in October 2019, the UK officially left the Union on 31 January 2020 (CER, 2024). A last-minute trade agreement was reached just days before the final deadline, preventing a cliff-edge scenario in which trading arrangements would have defaulted to World Trade Organization (WTO) rules, potentially subjecting trade between the EU and the UK to tariffs.

Although the result of the referendum came as a shock to many, the outcome should not have been unexpected. Indeed, in his book

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*Britain and Europe in a Troubled World*, constitutional historian Vernon Bogdanor (2020) reflects on how British politics might have evolved without the European integration process. He notes that the question of how Britain should manage its relationship with the continent and European integration has poisoned British politics since the 1950s and destroyed or, at the very least, shortened the careers of many prominent British politicians. Conservative prime ministers such as Harold Macmillan (1957–1963), Edward Heath (1970–1974), Margaret Thatcher (1979–1990), and John Major (1990–1997) are all part of this group.

In 1981, a group of Social Democrats, disillusioned with the direction of the Labour Party, broke away to form the Social Democratic Party (SDP). This faction was led by prominent figures, including senior ministers Roy Jenkins and David Owen (Bogdanor, 2014). The split highlighted the deep divisions within British political parties over the European issue. The fear of a split within the Conservative Party was also a key factor behind Prime Minister David Cameron’s decision in 2013 to promise a referendum on the UK’s membership in the European Union during his Bloomberg speech, Cameron’s pledge was an attempt to appease the growing Eurosceptic wing of his party and to fend off the threat from the rising UK Independence Party (UKIP) under its charismatic and vocal leader, Nigel Farage (Bogdanor, 2024).

When the referendum was held in June 2016, a narrow majority of 52 per cent voted to leave the EU, leading to Cameron’s swift resignation the following day. His departure marked the beginning of a turbulent period in British politics. Since the referendum, and as of the writing of this chapter in autumn 2024, the UK has seen the resignation of six Conservative prime ministers.

Theresa May succeeded David Cameron and faced the monumental challenge of navigating the UK’s withdrawal from the EU. Her tenure was marked by intense parliamentary opposition and unprecedented defeats over her proposed Brexit deal. After three turbulent years, she resigned and was succeeded by Boris Johnson. Johnson, along with Nigel Farage, had been a leading figure in the Leave campaign. He secured a landslide victory in the 2019 general election with his slogan “Get Brexit Done”. Farage, now leading the Brexit Party—a party that was founded to campaign for a no-deal Brexit—played a crucial role in Johnson’s victory.

By choosing to stand down in many constituencies held by the Conservatives—while battling for seats in Labor Party strongholds—Farage helped the Conservatives secure many seats.

Boris Johnson's leadership was ultimately undermined by his controversial personal style and his pragmatic, sometimes cavalier, approach to laws, rules, and agreements—which led to his resignation in September 2022. Johnson was succeeded by Liz Truss, who advocated for a neoliberal version of Brexit: to jumpstart the British economy, the UK would leverage its newfound freedom by implementing tax cuts and deregulations, aiming to create a “Singapore on the Thames”. However, this vision was poorly received by the financial markets; interest rates soared, and the British pound plummeted. Truss became the shortest-serving Prime Minister in British history, resigning in October 2022 after just a little bit more than two months in office. Her main rival, Rishi Sunak—who had warned of the economic consequences of Truss's policies, but had been ignored—succeeded her.

Sunak's premiership marked the end of 14 years of consecutive Conservative rule. In the general election on 4 July 2024, the Labour Party won a landslide victory, securing 411 of the 650 seats in Parliament. Several factors contributed to the collapse of the Conservatives—including internal party conflicts, a cost-of-living crisis driven by post-lockdown demand surges after the Covid pandemic, and soaring energy prices following Russia's aggression against Ukraine (Griffith, 2024; Politico, 2024b). The UK's weak economic performance since the 2008 financial crisis—with over a decade of stagnant real wages—also played a significant role. Nigel Farage once again had a pivotal impact. In contrast to the 2019 election, Farage—now leading the Reform Party, a limited liability company in which he held a majority share—vigorously attacked the Conservatives over their failure to deliver on their Brexit promise of controlled migration, which had surged significantly since Brexit. Thanks in large part to Farage, Labour was able to win 63 per cent of the seats in Parliament with roughly 34 per cent of the vote.

As of fall 2024, Keir Starmer, leader of the Labour Party, has succeeded Rishi Sunak as Prime Minister. During Sunak's tenure, relations with the EU, previously strained by conflicts, disagreements, and breaches during the Brexit process, began to improve. Starmer—who voted for the UK to remain in the EU and later supported a second referendum on Brexit—is expected to further improve relations with the EU. While upholding

his red lines—no single market, customs union, or free movement—potential areas of increased cooperation could include security policy, a youth mobility scheme, student exchange, and a Sanitary and Phytosanitary (SPS) agreement. At the end of 2024, Starmer seems cautious about committing to closer cooperation (Politico, 2024a). A likely reason for this caution is the desire to avoid bolstering support for Nigel Farage’s pro-Brexit, anti-immigration Reform Party.

Why has Europe and European integration caused such significant political problems in the UK? Why has the UK, unlike any other European country, struggled so profoundly to find its place within the EU?

This chapter begins by examining why the UK initially chose to remain outside when France, Germany, the Benelux countries, and Italy launched the European integration project in the mid-1950s, and why the UK later reversed course and applied for membership. It then addresses the issues that arose due to the delayed entry and the challenges the UK encountered as a latecomer in the early 1970s. The chapter highlights the UK’s key contributions to the European project during the 1980s, particularly through the creation of the Single Market, but also how this progress generated new tensions as the EU moved towards monetary integration. Additionally, it explores how various economic crises fuelled the already present euroscepticism, which was further intensified by large migration flows following the EU’s Eastern Enlargement. After describing the process up to the referendum and the UK’s exit, the chapter concludes by discussing what lessons the EU can draw from the UK’s departure.

The UK, with its unique history, institutions, and geography, differs from other EU countries in many respects, and this makes it difficult to generalise from the British experience. Of course, the chaotic Brexit process—following the 2016 referendum—clearly illustrates how challenging and costly it is for a member state to leave the EU after many years of membership. But Brexit is perhaps more than just a cautionary tale about the “unwisdom” of leaving the European Union.

Brexit can be viewed as a protest vote, driven by growing mistrust, and as such it underscores the need to address broader economic and social discontent within the EU and its member states. Brexit also has wider implications for how the EU should approach future challenges, such as safeguarding its social model while increasing economic competitiveness, meeting climate obligations, and ensuring security and prosperity in a world marked by war and rising geopolitical tensions. Additionally, the EU must prepare for a future eastern enlargement, which could see



the union grow to 35 members. Tackling these issues in a coherent and unified way will require unprecedented levels of cooperation between member states.

The chapter emphasises that the unity demonstrated by the EU during the Brexit negotiations may serve as a valuable example. The cohesion and solidarity that followed Brexit gave the EU greater confidence in addressing severe crises, including the COVID-19 pandemic and Russia's invasion of Ukraine. This sense of unity should continue to guide the EU as it faces future challenges.

### THE BRITISH RELUCTANCE TO PARTICIPATE IN THE EARLY EUROPEAN INTEGRATION PROCESS

Over the span of just more than 70 years, Europe endured three major conflicts: the Franco-Prussian War (1870–1871), World War I (1914–1918), and World War II (1939–1945). After 1945, Europe lay in ruins once again, raising the critical question of how future wars could be prevented. The proposed solution was European integration. A key milestone in this process was the signing of the Treaty of Paris in 1951, which established the European Coal and Steel Community (ECSC), with France, Germany, Italy, and the Benelux countries (Belgium, the Netherlands, and Luxembourg) as signatories. The ECSC was the result of a plan devised by French diplomat and businessman Jean Monnet, who aimed to create a common market for the coal and steel industries of Germany and France, governed by a supranational “High Authority” dedicated to serving Europe's broader interests. Economic cooperation was intended to achieve the political goal of forming a European federation. This plan, known as the Schuman Plan, was presented by French Foreign Minister Robert Schuman on 9 May 1950. It laid the foundation for the ECSC and, ultimately, the European Union as we now know it (Baldwin & Wyplosz, 2022).

Instead of producing weapons and ammunition for mass destruction, the coal and steel industries would be repurposed for peaceful aims, laying the foundation for Europe's reconstruction. Increased trade and economic integration would unite former adversaries, France and Germany. Growing prosperity, in turn, would make future wars between the two nations unthinkable. Through international oversight and supranational institutions, Germany's heavy industry could be rebuilt without the fear of German rearmament posing a threat.

The reintegration of Germany into Europe was by no means self-evident in the years following the end of the war. For instance, U.S. Treasury Secretary under President Franklin D. Roosevelt, Henry Morgenthau Jr., supported a plan to deindustrialise Germany and turn it into an agrarian economy for the foreseeable future (Baldwin & Wyplosz, 2022). However, the plan was never implemented. Over time, it became clear that the greatest threat to peace in post-war Europe did not come from Germany, but rather from the Soviet Union. Under Joseph Stalin, the Soviet Union had occupied Eastern Europe and the eastern part of Germany.

During Harry S. Truman's presidency, the United States opted to support Europe's reconstruction through extensive economic aid, known as the Marshall Plan. However, to receive this aid, the Americans required the European states to dismantle their trade barriers, thus initiating the process of European integration.

The American leadership expressed a strong desire for the UK to assume leadership in European integration. However, this would have required British participation in the Coal and Steel Community, whose ambition was to create a European federation—a “United States of Europe”. The American requests were met with instinctive, almost emotional resistance. During a lecture at Columbia University in the United States in 1952, Anthony Eden, then Foreign Minister under Winston Churchill and later Prime Minister, encapsulated this British reluctance by stating, “This we know in our bones that we cannot do” (Bogdanor, 2020, p. 16).

British reluctance and resistance to becoming involved in the supranational European integration project were evident as early as in the 1950s, and this resistance, ultimately contributed to the outcome of the Brexit referendum in 2016. But how can we understand this deeply rooted reluctance? The historical and constitutional development of the UK has been significantly different from that of other European countries. Above all, the UK has experienced a long and stable evolution of its unwritten constitution. How could the British Parliament, with its near-unlimited power to make laws, reconcile with the supranational “High Authority” of the Coal and Steel Community? This authority, for instance, had the mandate to close coal mines without the approval of member states' parliaments (Bogdanor, 2013).

The British parliamentary system was seen as more democratic. British Members of Parliament (MPs) were directly elected and held the power to

remove the government (or individual ministers) if they were dissatisfied with its policies or the actions of specific ministers. This critique, which became a central British objection to the EU, has persisted over time. The representatives of the Union's institutions were often seen as technocrats and bureaucrats, with unclear mechanisms for their removal or for holding them accountable for their decisions.

As an island nation with geography on its side, the UK had never been occupied by a foreign power. Even when British forces were defeated on the continent, they could retreat to the island, protected by the sea. The Second World War—and the fact that Britain was never conquered and managed to withstand Adolf Hitler's aggression—fostered a strong sense of British self-confidence and optimism about the future. On the continent, the mood was quite the opposite: nations were forced to reflect on how fascism and Nazism had come to power—or how they had cooperated with such regimes. For these countries, it was easier to accept new institutions with more supranational authority and less national sovereignty (Bogdanor, 2020).

The legacy of the vast British Empire, which once covered a fifth of the earth's surface, also endured in the form of the British Commonwealth. In the 1950s, many in the UK felt a stronger connection to Commonwealth countries like Canada, New Zealand, and Australia, where English was spoken and where many Britons had family ties. In contrast, the European continent was home to different languages and was a place where many British soldiers—and soldiers from Commonwealth countries—had lost their lives during the two world wars (Bogdanor, 2013).

After the end of World War II, British foreign policy sought to balance three key relationships: the relationship with the English-speaking United States (which had been instrumental in defeating Nazi Germany and was one of the two global superpowers); the relationship with the Commonwealth countries; and the relationship with the nations on the European continent. Moving closer to the continent and participating in the Coal and Steel Community could potentially upset this delicate balance (Bogdanor, 2020).

## THE TURNAROUND

The delicate balance began to shift in the late 1950s, pushing Britain towards Europe and away from the Commonwealth. This shift had two primary causes (Bogdanor, 2020). First, the British economy was

stagnating, while the six nations of the Coal and Steel Community enjoyed stronger economic growth. Between 1950 and 1973—spanning the creation of the Coal and Steel Community, the European Economic Community, and later the European Community (EC)—these countries achieved an average annual growth rate of 4.2 per cent, compared to Britain’s 2.4 per cent (Baldwin & Wyplosz, 2022). One reason for the higher growth on the continent was the more intensive post-war reconstruction, as the war had destroyed more infrastructure and production capacity there. However, a more compelling explanation lies in Britain’s persistent labour market conflicts, the government’s weak stance on trade unions, and poor management practices in British businesses, which resulted in low productivity and competitiveness (Aldous, 2024).

The second reason for the shift was political. Over the course of the twentieth century, Britain’s global influence steadily declined, and it was no longer regarded as a great power. This decline was starkly revealed during the Suez Crisis in 1956, when Egypt’s President Abdel Nasser nationalised the Suez Canal, a vital route to Commonwealth nations in the Far East. Britain, along with France, responded by launching a military expedition to reclaim control of the canal. However, the United States opposed the mission, prioritising its relationship with the oil-producing nations of the Persian Gulf. The joint British-French effort ended in failure. In the wake of the Suez Crisis, France concluded that Europe must unite and become independent of the U.S. Europe was too weak and needed to unify to regain global influence. The British, however, took a different path and sought to strengthen their “special relationship” with the United States.

Emboldened by their economic successes, the six countries of the Coal and Steel Community sought to advance political integration through the creation of a defence community. However, when the proposed defence treaty was never ratified, the six nations reverted to their earlier strategy of economic integration. The idea was to first link member states economically, and then, once they were deeply interconnected through trade, agreements, and shared institutions, to gradually move towards political integration.

In the 1957 Treaties of Rome, signed at Capitoline Hill in Rome by the members of the Coal and Steel Community, economic integration was expanded beyond steel and coal to other sectors. The four freedoms were established, allowing goods, services, labour, and capital to move freely across borders within the European Community. To ensure fair

competition, rules were introduced to regulate competition and restrict state aid by member countries. The EC also became a free trade area and a customs union, applying uniform tariffs on imports from non-member countries. Additionally, a common agricultural policy was introduced.

The economic successes of the European Community (EC) countries made it increasingly clear that Britain's position outside the EC would come at a cost. Efforts to negotiate a free trade agreement between Britain, other European nations, and the EC failed after Charles de Gaulle became president of France in 1958. In response, Britain established the European Free Trade Association (EFTA) alongside the Nordic countries—Denmark, Norway, and Sweden—as well as Switzerland, Austria, and Portugal. EFTA was a much looser arrangement compared to the EC. Membership in EFTA required only the removal of trade barriers between members, allowing countries to maintain independent trade policies. Consistent with British preferences, EFTA had no supranational institutions and no ambitions for deeper integration among its members.

The increasingly integrated European Community (EC) bloc grew faster than the less integrated European Free Trade Association (EFTA) bloc. This outcome puzzled economists at the time. Classical trade theory, based on comparative advantage, explained why countries specialised in producing goods and services where they had an advantage—like Germany producing cars and France producing wine. Both nations would then benefit from trade: Germany would export cars and import wine—France would export wine and import cars. However, this was not the primary type of trade expanding during the early integration process. Instead, intra-industry trade flourished: Germans bought French cars, and the French bought German cars. To explain why intra-industry trade occurred, a new trade theory emerged, developed by economists like Paul Krugman, who would later win the Nobel Prize in economics for his work.<sup>1</sup>

The new trade theory demonstrated that the removal of trade barriers would initially lead to a sharp increase in competition, causing weaker companies to fail. The surviving firms grew larger and more sustainable as productivity improved through better utilisation of economies of scale in a larger, more integrated market. Consumers benefited from lower prices and a wider variety of goods and services. The theory also predicted

<sup>1</sup> Seminal papers are Krugman (1979, 1980). For a textbook treatment, see Feenstra and Taylor (2021) and Baldwin and Wyplosz (2022).

that the benefits of trade—higher productivity, lower prices, and greater product variety—would increase as more countries joined the integrated market. Since the EC bloc was larger and more integrated than EFTA, joining the EC became increasingly advantageous, making EFTA more fragile. As EFTA members left to join the EC, the EC became even more attractive, while EFTA's appeal weakened. This domino effect eventually led to all original EFTA members, except Norway and Switzerland, leaving the bloc.<sup>2</sup>

Conservative Prime Minister Harold Macmillan submitted the first British application for EC membership in 1961. It was believed that exposing British firms to competition from the continent, while gaining better access to the larger EC market, would revitalise Britain's stagnating industry. However, Macmillan's plans were blocked in 1963 when French President Charles de Gaulle vetoed the application in the Council of Ministers. De Gaulle's opposition stemmed from a deep divide between Britain and France over the Common Agricultural Policy (CAP). Britain, with its relatively small agricultural sector, had long relied on cheap food imports from Commonwealth countries like New Zealand and Australia. The British government supported its agriculture through direct subsidies funded by taxes, sustaining domestic production while enabling consumers to access affordable imports. On the continent, the agricultural sector was much larger. French farmers were guaranteed high prices and protected from the low prices of the world market by high tariffs—a system enshrined in the EC's Common Agricultural Policy. At the heart of the conflict was the fact that British voters, primarily consumers, sought low living costs, while French voters—farmers and landowners—wanted protection for their livelihoods (Bogdanor, 2020).

In the early 1960s, it became clear that the cost of British membership in the EC would be substantial, requiring significant adjustments. Beyond accepting a system of supranational governance that would diminish its sovereignty, Britain would also have to adopt the Common Agricultural Policy (CAP). Living costs would rise as more expensive European food replaced cheaper imports from the world market. Additionally, Britain would be compelled to impose tariffs on imports from Commonwealth countries, with which it had long maintained strong ties. Despite these

<sup>2</sup> See, Baldwin (1999).

challenges, the decision to seek membership was deemed necessary in light of the prevailing economic and political conditions.

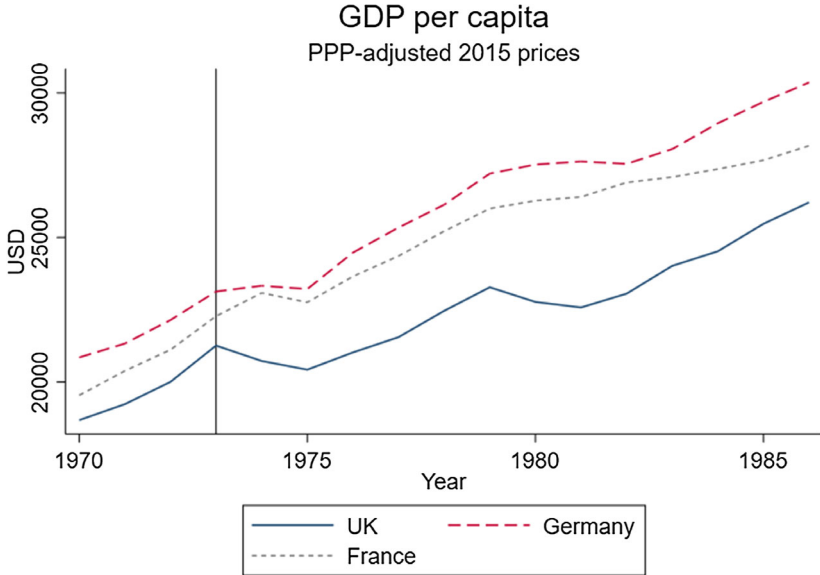
## DISAPPOINTMENT

Britain's membership in the EEC was finally secured in 1973 under the leadership of Edward Heath, the most pro-European Conservative prime minister to date. Georges Pompidou, who had succeeded de Gaulle as France's president, expressed his belief that Britain had become more "European" under Heath's leadership (Bogdanor, 2020, p. 27). However, as a latecomer to the community, Britain faced challenges in advocating for significant reforms.

A key obstacle was the so-called "Luxembourg Compromise", which France had secured under de Gaulle after boycotting Council of Ministers meetings for six months in what became known as the empty chair policy. As a result, no substantial changes affecting a member state's vital interests could be made without unanimous agreement. This effectively neutralised any threat that free trade-oriented Britain might have posed to the Common Agricultural Policy.

Britain's entry into the EEC did not deliver the anticipated boost to its economy. Figure 4.1 shows GDP per capita, a common measure of wealth, for the UK, France, and Germany from 1970 to 1986. The vertical line marks Britain's entry year in 1973. At that time, the UK had slightly lower prosperity compared to France and Germany. Following the entry, the gap between Britain and its continental counterparts widened. It was not until the late 1980s that Britain began to close this income gap.

Why did not Britain's entry into the EEC bring the expected economic benefits? Several factors played a role (Bogdanor, 2020). By the time Britain joined in 1973—over a decade after Macmillan's initial attempt in 1961—the post-war economic boom had ended. Large United States deficits from ambitious welfare programs and the costs of the Vietnam War had triggered rising inflation. The collapse of the Bretton Woods system, which had maintained fixed exchange rates, added further instability. Additionally, the Yom Kippur War in the Middle East led to a spike in oil prices, fuelling inflation. Labour disputes in Britain worsened, culminating in the turbulent winter of 1978–1979. Many Britons were also dissatisfied with the terms of membership, facing higher food



**Fig. 4.1** GDP per capita development in U.S. dollars from 1970 to 1986 for the UK, Germany, and France, adjusted for purchasing power parity at 2015 prices. The vertical line marks the UK's accession to the EEC in 1973 (*Source* OECD, n.d.)

prices due to costly European imports, and questioning how much they contributed to the EEC compared to what they gained.

Before Britain joined, changes were made to how tariff revenues from the Common Agricultural Policy (CAP) were distributed. These funds were allocated based on the size of each member state's agricultural sector. As Britain had many consumers but few farmers, it contributed significant sums, which were then used to support countries with larger agricultural sectors, such as France (Bogdanor, 2020). The issue of Britain's high net contribution was not resolved until 1984, when Prime Minister Margaret Thatcher successfully negotiated a rebate in the Fontainebleau Agreement.

Opening the British market to continental competition proved more challenging than anticipated. French and German firms had already adapted to the intense competition within the common market, which had forced them to become more efficient. British companies struggled



to keep pace with their continental rivals. This disadvantage was further exacerbated by Britain's entry into the EEC during a period of rising inflation and economic downturn, unlike the period of growth that had characterised the earlier years of EEC membership.

Despite these challenges, the 1975 referendum showed that a large majority of Britons still wanted to remain in the EEC. However, the pro-European sentiment in 1975 was not stronger compared to 2016. Instead, the campaign to leave in the 1970s was associated with more extreme politicians, such as Barbara Castle and Tony Benn on the left, and Enoch Powell on the right. Voters placed greater trust in their party leaders and centrist politicians, who advocated for remaining (Bogdanor, 2020).

By the late 1970s, significant political changes were underway. Labour could no longer manage the escalating conflicts in the labour market, paving the way for the Conservatives and their new leader, Margaret Thatcher, who had replaced Edward Heath. When Thatcher won the 1979 election, she began implementing a programme aimed at weakening the trade union movement, carrying out major privatisations, and reducing the state's role in the economy. As shown in Fig. 4.1, the British economy also began to recover during the 1980s. Although Margaret Thatcher later became increasingly critical of the federalist aspects of European integration, she initially started her political career as an enthusiastic supporter of Britain's membership in the European Economic Community (EEC). She also paved the way for deeper European integration, playing a key role alongside Commission President Jacques Delors in the creation of the Single Market.

The goal of the Single Market was to establish a truly unified market with the free movement of labour, capital, goods, and services. Since the Treaty of Rome in 1957, member states had worked to remove obstacles such as tariffs and import quotas that hindered trade between them. However, these barriers were increasingly replaced by non-tariff barriers, such as national standards and regulations, which made it more difficult for companies from other member states to compete with domestic firms. While some regulations were justified on the grounds of safety or worker protection, others were used to shield domestic industries from foreign competition. Approximately 300 such trade barriers were identified, and they could not be eliminated without introducing majority voting in the

Council of Ministers. If the national veto remained, individual countries—under political pressure from home—would always seek to retain some of these barriers (Bogdanor, 2014).

To ensure Britain could capitalise on London's role as Europe's financial hub, Margaret Thatcher aimed to eliminate barriers that hindered the export of British financial services. For this reason, she signed the Single European Act on behalf of the UK in 1986. This Act not only established the Single Market but also introduced majority voting in the Council of Ministers. In doing so, however, she weakened Britain's national sovereignty—an irony, given her later iconic status among Eurosceptics and Brexit supporters.

### THE 1992 ERM CRISIS: GROWING EUROSCEPTICISM

The preamble to the Single European Act included provisions for further European integration, aiming towards an economic and monetary union and the introduction of a common currency, the euro. The question of whether the UK would participate in this monetary union soon became a source of new tensions.

Discussions around a common currency began as early as 1970 with a report prepared under Luxembourg's Prime Minister, Pierre Werner. In 1979, the European Monetary System (EMS) was established. The EMS aimed to create a system of fixed exchange rates within the community, with the ultimate goal of introducing a common currency. This shared currency would provide stability and increase Europe's influence on the global stage. The common currency was also a logical extension of the Single Market. A unified currency would reduce transaction costs in trade by eliminating currency exchange costs, and the reduced uncertainty over future exchange rates would lower risks in commercial decisions, such as investment. Consumers could more easily compare prices, enhancing competition in the product market.

However, a common currency also required a common central bank with a unified monetary policy. A European central bank would face challenges in managing so-called asymmetric shocks. It would need to consider the economic conditions across all member states; for instance, lowering interest rates to counter a downturn in one member country could lead to overheating in another.

In the UK, the issue of monetary integration was particularly sensitive—should Britain give up the pound sterling? Margaret Thatcher was

firmly opposed, but others in her government were more pragmatic. Geoffrey Howe, her deputy prime minister, did not want to dismiss the euro outright, fearing that doing so would isolate Britain and diminish its influence. Others, like Chancellor of the Exchequer Nigel Lawson, argued for taking an initial step towards the euro by joining the European Exchange Rate Mechanism (ERM), where member states would keep their exchange rates stable for a time before adopting the common currency. The idea was that a fixed exchange rate would serve as an anchor to extinguish or at least control the high inflation that had plagued the British economy since the 1970s and 1980s. By pegging the pound to the strong German Deutsche Mark (DM), the British government would be forced into fiscal discipline. Firms and trade unions would also need to take responsibility for wage-setting, preserving the competitiveness of British companies in the process (Bogdanor, 2014, 2016).

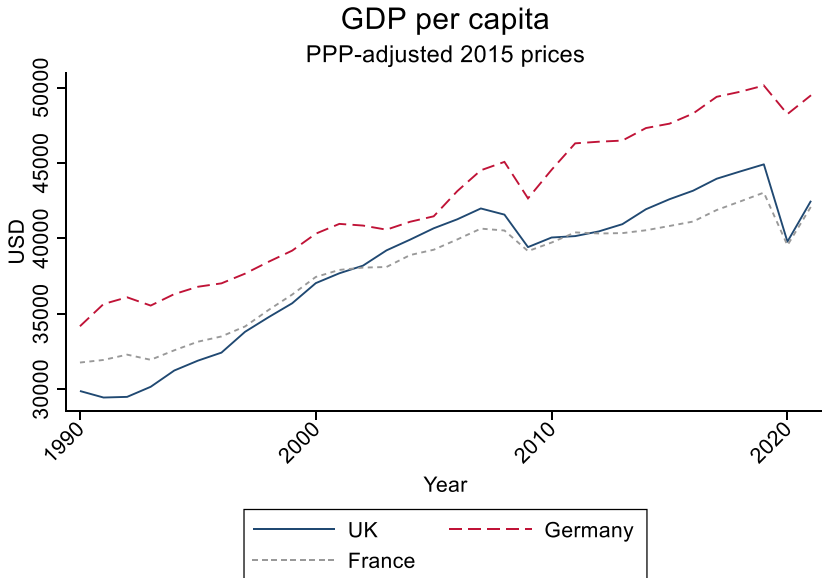
The conflict between Thatcher and her closest ministers intensified as she increasingly opposed the economic and monetary union, which she viewed as a covert attempt to establish a European superstate. This conflict weakened Thatcher's position, and a month before her resignation, she was forced to agree to Britain joining the ERM. John Major, who was then Thatcher's Chancellor of the Exchequer, succeeded her as Prime Minister. Through skilful negotiations, Major managed to secure an opt-out for Britain from the requirement to adopt the euro when the Maastricht Treaty was signed in 1992.

The UK entered the ERM in October 1990, but it soon became clear that the pound was overvalued, leading to widespread currency speculation. Speculation against the pound (and other European currencies) was exacerbated by uncertainty surrounding the ratification of the Maastricht Treaty, as well as the German reunification in 1990, following the fall of the Berlin Wall in 1989. Reunification created inflationary pressures, prompting the German central bank, the Bundesbank, to raise interest rates. In response, the Bank of England was forced to increase its rates from an already high level to prevent the pound from falling below the official exchange rate of 2.95 Deutsche Marks per pound. Through extensive intervention in the foreign exchange market to maintain the pound's value, the central bank lost a large portion of its foreign currency reserves. On September 16, 1992, known as Black Wednesday, the Bank of England was forced to capitulate, and the pound was allowed to float freely on the currency markets. The UK subsequently plunged into a financial and economic crisis.

In parallel with an earlier conflict over free trade in the 1870s, the ERM crisis sparked a civil war within the Tory party, with Eurosceptics now taking the lead. At the first party conference following the ERM crisis, former minister under Margaret Thatcher and former party chairman Norman Tebbit delivered a fiery speech to the delegates. He posed three questions: “Do you want to be citizens of a European Union?”; “Do you want a common currency?”; “Do you want other countries to control our immigration policy?” The delegates responded with a resounding “No!” to each of the questions (Bogdanor, 2020, p. 95). In this way, the ERM crisis set in motion the process that would eventually culminate in the Brexit referendum of 2016.

With a floating exchange rate and falling interest rates, the British economy recovered and grew rapidly throughout the 1990s, up until the global financial crisis of 2008, as shown in Fig. 4.2. However, John Major did not receive credit for the recovery and lost the 1997 election to Labour’s Tony Blair. Since the 1950s, Labour had been opposed to participation in the European integration process, partly because they associated European integration with capitalism, as Christian Democratic parties were strong on the continent after the war. There was also a suspicion that Europe’s supranational institutions could obstruct Labour’s plans to nationalise British steel and coal industries, hindering the introduction of socialism. Labour began to shift its stance during the presidency of Jacques Delors at the European Commission in the 1980s. Delors advocated for the Single Market to serve not only business and commercial interests but also to have a social dimension, with expanded rights and health protections for workers (see also Ann-Christine Hartzén’s chapter in this volume).

During Tony Blair’s tenure as Prime Minister, the issue of Europe diminished in importance. However, after the accession of Eastern European countries to the EU in 2004 and 2007, migration became an increasingly significant political issue. When the original six countries signed the Treaty of Rome in 1957, large migration flows were unlikely, as the member states were industrial nations at roughly the same level of development. After the Eastern enlargement, significant wage gaps existed between old EU countries like the UK and France, and new EU members such as Romania and Bulgaria. The UK became a popular destination for migrants from Eastern Europe. English was (and is) a global language which is relatively easy to learn. Furthermore, after Margaret Thatcher’s deregulations, the British labour market offered plenty of jobs, especially



**Fig. 4.2** The development of GDP per capita in U.S. dollars from 1990 to 2021 for the UK, Germany, and France. GDP per capita is expressed in purchasing power-adjusted 2015 prices (*Source* OECD, n.d.)

in low-skilled service roles, construction, and agriculture. Unlike several other EU countries, the UK did not apply the seven-year transitional provisions that allowed member states to limit migration from Eastern Europe. As a result, the number of EU migrants far exceeded earlier expectations. Since the UK, due to the EU's principle of free movement, lacked the ability to regulate immigration from other EU countries, the rising migration from Eastern Europe became an increasingly contentious political issue.

In 2010, David Cameron became Prime Minister, and the Conservatives regained power after three consecutive election losses. The global financial crisis of 2007–2008 had swept across the world, but decisive actions by governments and central banks prevented the collapse of the global economy. In response to the crisis, the Conservative government implemented austerity policies, significantly cutting public spending

and investment.<sup>3</sup> A few years after the financial crisis, the Eurozone crisis emerged, primarily affecting Southern Europe. While the Eurozone crisis did not directly impact the UK, which was outside the euro area, it had indirect effects. The near-depression-like downturn in Southern Europe created new migration flows, with unemployed Greeks, Spaniards, Portuguese, and Italians heading north searching for work.

The crisis in Southern Europe also highlighted the fragility of the European integration project, a point which the Eurosceptic faction within the Conservative Party capitalised on. For instance, British Foreign Secretary William Hague described the Eurozone as a “burning building with no exit” (The Spectator, 2011). Eurosceptics argued that the ERM crisis of the early 1990s was not a failure, but rather a stroke of luck, as leaving the ERM ensured Britain stayed out of the eurozone. Although John Major had secured an opt-out from the euro, Parliament still had the option to adopt it.

In 2015, the Syrian refugee crisis erupted, and terror attacks occurred in Paris and Brussels. These attacks were often linked to the refugee wave in the political debate, despite a lack of clear evidence supporting this connection (Politico, 2016). The already heated debate over immigration intensified, further fuelling support for UKIP under Nigel Farage.

It was against this backdrop that David Cameron, in his 2013 Bloomberg speech, promised a referendum on the UK’s membership in the EU (Bogdanor, 2020, 2024). After successfully keeping the United Kingdom together in the 2014 Scottish independence referendum, Cameron sought to secure the British public’s approval to remain in the EU under renegotiated terms, hoping to finally resolve the European issue. However, the gamble failed, and the result of the June 2016 referendum was that the UK would leave the EU.

## POST-BREXIT: A MORE UNITED AND EFFICIENT EU

After the initial shock from the result of the British referendum, significant uncertainty arose within the EU. Would other member states follow the UK’s example, and if so, which? Could the EU maintain a united front in the upcoming negotiations with Britain?

<sup>3</sup> Fetzer (2019) shows that the austerity policies implemented in the UK following the financial crisis may have influenced the outcome of the 2016 Brexit referendum.

However, it soon became clear that the remaining member states recognised the importance of safeguarding the Single Market and the EU's decision-making process. While bilateral agreements with the UK could offer short-term gains, the long-term costs would be substantial if the EU were to disintegrate or even collapse.

Brexit reminded EU member states of the value of the Single Market and prompted them to act efficiently in unity (see also the chapter by Nicholas Aylott in this volume). Michel Barnier, who became the EU's chief negotiator and, thereafter French Prime Minister, successfully fostered cooperation between the EU's major institutions. He also kept member states, and their parliaments informed with an unprecedented level of transparency (Laffan & Velde, 2023). With the 27 member states united and backed by the economic power and institutional resources of the union, the EU emerged as the stronger party in the negotiations (de Rynck, 2023).

Economic analyses, largely grounded in new trade theory, indicated that the costs for the UK of leaving the Single Market and Customs Union could be substantial (Chen et al., 2017; Felbermeyer et al., 2017). However, this information appeared to have limited influence on the British side, particularly among ardent Brexiteers. The economic forecasts came from experts, but trust in experts had eroded after the financial crisis. This sentiment was famously articulated by Conservative politician Michael Gove on June 3, 2016, when he declared on Sky News, "People in this country have had enough of experts".

A long period of globalisation and technological development had generated greater wealth but also growing inequalities, often with a strong regional dimension.<sup>4</sup> Large sections of the British population were dissatisfied and felt that Brexit could not worsen their situation.<sup>5</sup> Others argued that any short-term economic pain was a price worth paying for regained sovereignty, believing that the economic benefits of Brexit would emerge in the long term (see, for instance, Hannan, 2023).

<sup>4</sup> Autor et al. (2013) examine the effects of globalisation on the labour market and the distribution of wealth of by studying the impact of U.S imports from China. Autor et al. (2020) demonstrate how increased import competition from low-wage countries had consequences for the outcome of the 2016 U.S. presidential election, when Donald Trump was elected President of the United States.

<sup>5</sup> Colantone and Stanig (2018) shows that support for Brexit was higher in regions that had been more severely affected by economic globalisation.

Although the UK was expected to be more adversely affected by Brexit than the EU, smaller EU countries geographically closer to the UK—such as Ireland and Belgium—were projected to experience greater economic impacts compared to larger EU countries farther away (Simon et al., 2017). Despite these asymmetric effects, and despite significant fractions in several member states advocating for following the UK's exit, the EU countries remained united throughout the lengthy and complex Brexit negotiations (Laffan & Velde, 2023). An important lesson from Brexit is the reminder of what the EU can achieve when it stands together.

A comparison with the EU's handling of the Eurozone crisis in 2012 is revealing. During that crisis, the European Commission was largely sidelined, with decision-making shifting towards the larger member states in the Council of Ministers, notably Germany and France (Brunnermeier et al., 2016). Under pressure from Germany, the Commission was forced to cooperate with the European Central Bank and the International Monetary Fund, together forming the so-called “troika”. The crisis led to near-depression levels of unemployment in countries such as Greece and Spain and sparked a sharp confrontation between Mediterranean countries and northern Eurozone states like Germany and the Netherlands.

The unity and cohesion that emerged in the wake of Brexit gave the EU newfound confidence in addressing subsequent crises. During the COVID-19 pandemic, the EU remained resolute, launching significant support measures, including the landmark NextGenerationEU (NGEU) program, with the Recovery and Resilience Facility (RRF) as its centre-piece. A substantial portion of these programmes was financed through joint borrowing—an unprecedented move that would have been inconceivable, and, likely, unachievable had the UK remained in the EU (see also the discussion in Nicholas Aylott's chapter in this volume). The RRF also provided the EU with a new mechanism to exert influence over member states that violated the rule of law and other fundamental EU values. Furthermore, the EU demonstrated an (almost) unified front against Russia's invasion of Ukraine, adopting joint sanctions packages and even collectively financing military aid to Ukraine (Engelbrekt, 2024).



## COULD THE UK REJOIN A REFORMED EU?

Almost a decade after the Brexit vote, the European Union is experiencing a different type of crisis. Unlike the Euro crisis or the Covid crisis, this is a slow process which, in the long run, may impair the European way of life, lower Europeans' living standards, and diminish Europe's stance in the world. Europe is suffering from anaemic economic growth and low productivity, and it is losing its international competitiveness.

In 2024, within the span of just four months, two groundbreaking reports on the European economy were released, both calling for fundamental reforms of the EU. The first, authored by former Italian Prime Minister Enrico Letta (2024), focused on the Single Market, while the second, by former European Central Bank President and Italian Prime Minister Mario Draghi (2024), addressed European competitiveness.

Somewhat ironically, these reports echo arguments made by Vote Leave during the Brexit debate leading up to the 2016 referendum. Brexiteers emphasised the potential benefits for Britain in strengthening ties with the dynamic U.S. economy and forging new partnerships with fast-growing countries in South Asia. They framed this vision as a bold, forward-looking strategy, contrasting it with remaining in a stagnant and over-regulated European Union.<sup>6</sup> This narrative resonated with a British public that had, for decades, been exposed to a largely negative portrayal of the EU by the British press.<sup>7</sup>

On the continent, the slow growth of the European economy was seen more as an inconvenience than a crisis. The EU continued to benefit from trade with countries outside the Union. Still, the cornerstone of the European integration project remained the Single Market, with its primary goal of deepening integration among member states. The EU boasted the world's largest integrated market, and from this perspective, declining relative economic performance was perhaps less of a priority.

This situation has since changed. The EU can no longer rely on growing world trade within a stable, multilateral, rules-based system, and European firms are facing stronger international competition from both Chinese and U.S. companies, often supported by state subsidies.

<sup>6</sup> See, for instance, Hannan (2016).

<sup>7</sup> An iconic example is the front-page headline of the large tabloid *The Sun* on 1 November 1990: "Up Yours Delors". There are numerous other examples of the British press portraying the EU in a negative light (see Wring, 2016).

Following Russia's invasion of Ukraine, the EU is confronting a significant security threat from Russian revanchism and expansionism under President Vladimir Putin. The sanctions imposed on Russia have resulted in European industries losing access to a cheap energy source in the form of natural gas, further undermining their competitiveness.

There is in late 2024 a sense of urgency. Higher growth is essential to fund investments in decarbonisation, crucial for the EU's ambitious plans to combat climate change, and in digitalisation to close the technology gap with the U.S. and China, particularly in emerging fields like Artificial Intelligence (AI). Furthermore, increased growth is needed to finance investments in resilience, security, and defence as the EU faces new geopolitical risks in a world where it can no longer rely solely on the U.S. security umbrella. Robust growth is also vital for sustaining social welfare systems across the EU and for creating jobs for its citizens.

As highlighted in Mario Draghi's report (2024), boosting the European economy and increasing international competitiveness require Europe to make more efficient use of its resources, with a particular emphasis on increasing productivity. Strengthening international competitiveness is also a key priority in Ursula von der Leyen's agenda for her second term as President of the European Commission, which began in September 2024. If the EU succeeds in transforming itself into a more productive, resilient, and less regulated economy, could this prompt the UK to seek a closer relationship with the EU? In a world marked by increased regionalization rather than globalisation, if the UK's economic development is hindered by post-Brexit challenges, might the UK—as it did in the 1960s and 1970s—reconsider its stance?

As of 2024, economic research on Brexit has transitioned from model-based predictions to empirical analyses examining how the UK's economy has been affected by leaving the EU. However, empirical research on Brexit faces significant challenges. One issue is that the UK has only been outside the Single Market and Customs Union since 1 January 2021. Another is that the withdrawal process after the 2020 Trade and Cooperation Agreement (TCA) coincided with the pandemic lockdowns. Nevertheless, research has made some progress. Springford (2022) employs a statistical analysis to create a "synthetic UK" based on a group of developed countries with close economic ties to the UK.<sup>8</sup> This synthetic UK

<sup>8</sup> A growing body of literature addresses the economic consequences of Brexit as more data becomes available. Portes (2022) summarises the effects on goods trade, services

provides an indication of how the economy might have evolved had the referendum outcome been different. He finds that, compared to the projected development of the UK's GDP had it remained an EU member, the country's GDP was approximately five per cent lower in 2021. From the increase in non-tariff barriers on UK-EU trade, the Office for Budget Responsibility (OBR, 2024) estimates that the TCA will reduce long-run productivity by four per cent relative to remaining in the EU. These estimates suggest a significant cost of Brexit, but not the cliff-edge that was a concern during the Brexit debate.

The economic effect of Brexit on the UK economy might be thought of as a slow puncture—it takes time before it is noticed, but once noticed, it is hard to detect when and where the problem emerged. Still, the public in Britain seems to have sensed the negative effect of Brexit on the economy, as opinion has shifted since the 2016 referendum. In August 2024, a YouGov poll (YouGov, 2024) showed that 53 per cent of respondents supported rejoining the European Union, while only 33 per cent were opposed. However, support for holding another referendum may be more tempered, as the political and social disruption of the 2016 referendum still lingers in the public memory.

The EU is not the same union that Britain chose to leave in 2016. With ongoing reforms, the EU will continue to evolve. In his report, Mario Draghi estimates that the scale of investment needed to revitalise the EU economy and enhance its competitiveness would have to be nearly five times greater than that of the Marshall Plan, which helped rebuild Europe over seventy years ago. While private sector contributions could cover some of these costs, a substantial portion would still need to come from common EU-wide funding. Enrico Letta's report argues that the Single Market should be expanded to include strategic sectors such as energy, telecoms, and finance, which were excluded from its original framework. National governments would need to cede further sovereignty, mirroring the transformative reforms led by Margaret Thatcher and Jacques Delors in the mid-1980s when the Single Market was first created.

The European Union is also preparing for further Eastern enlargement, with Ukraine, Moldova, Georgia, and the Western Balkan countries as potential new members (see Mats Öhlén's chapter in this volume).

trade, international value chains, the labour market, and immigration. Dingra and Sampson (2022) conduct a similar review. Gudgin (2022) offers a critique of Springford's (2022) methodology of using a "synthetic UK" to estimate the economic costs of Brexit.

Enlargement will require enhancing the EU's functionality, including reforming the decision-making process with a broader use of qualified majority voting in the Council of Ministers.

Becoming part of an even more federal EU would be hard to accept for Brexiteers who fought to “take back control” of their money, laws, and borders.<sup>9</sup> Despite strong pro-European sentiment among some Labour MPs and widespread support for closer ties, Labour Prime Minister Keir Starmer is likely to proceed cautiously, avoiding significant changes to the UK's current relationship with the EU (as of autumn 2024). Notably, Reform Party leader Nigel Farage successfully unseated three Conservative Prime Ministers—David Cameron, Theresa May, and Rishi Sunak—over Brexit-related issues (Bogdanor, 2024). In conclusion, the UK is unlikely to rejoin the European Union in the foreseeable future, even if the EU advances its reform agenda.

It is worth noting that the UK has yet to fully capitalise on its regulatory freedom post-Brexit. The EU-UK Trade and Cooperation Agreement (TCA), signed in December 2020, includes provisions that regulate how the UK and the EU can diverge in terms of regulation, especially concerning fair competition and level playing field commitments. However, the TCA primarily focuses on maintaining a level playing field in sectors where there are established regulations and competitive implications, such as environmental policy, labour laws, and competition rules. It is less clear how the TCA applies in emerging sectors, where the regulatory framework is still evolving.

For example, in Artificial Intelligence (AI), the EU has adopted a risk-based regulatory approach, while the UK has opted for a more outcome-based, technology-neutral strategy. Should the UK's more flexible regulatory framework—supported by its world-class universities and London's financial hub—prove more successful in fostering innovation, it could serve as an inspiration. The emergence of regulatory divergence in new emerging sectors could present a new set of challenges for the EU, potentially weakening its appeal if other countries see the UK's path as a model.<sup>10</sup>

<sup>9</sup> The slogan “Take back control” is widely associated with Dominic Cummings, the campaign director for Vote Leave during the Brexit referendum.

<sup>10</sup> In the 2024 Global AI index (Tortoise Media, 2024), the UK is ranked highest of all European countries. Only the U.S., China and Singapore are ranked higher.

## WHAT CAN THE EU LEARN FROM BREXIT?

While the UK's decision to leave the EU was shaped by specific factors, its broader implications touch on challenges that resonate across Europe. What can the EU learn from Brexit and how can these insights shape its path forward?

### *Address Broader Economic and Social Discontent*

It is difficult to generalise why a country would choose to leave the union. The case of the UK with its unique history, institutions, and geography differs from other EU countries in many ways. However, Brexit still offers more than a singular case study. It can be seen as a protest vote driven by growing mistrust, which arose from the economic fallout of the financial crisis—characterised by stagnant real wages—and the long-term effects of globalisation and technological change, which eroded job security and deepened inequality. From this perspective, understanding Brexit is not just a matter of analysing one country's departure, but rather a vital lesson for the EU in addressing broader economic and social discontent across the continent.

### *Reforms for the EU Are Urgent to Increase Growth and Productivity*

If the new reform agenda of the European economy falters—if decarbonisation and the green transformation become a drag on growth rather than a catalyst, and if member states cannot agree on the necessary levels of cooperation, coordination, and investment—the EU's appeal may weaken. In a scenario of continued stagnation, the EU will face a “trilemma”: it will struggle to address climate change, bolster resilience and uphold security, and safeguard its social model simultaneously. The potential failure to deliver on core values—prosperity, equity, equality, peace and stability—could jeopardise European integration itself, further emboldening far-right Eurosceptic parties, which have gained significant ground in both the European Parliament and national legislatures in recent years.

### *EU Member Countries Must Cooperate on a Larger Scale Than Ever Before*

To raise productivity and increase growth in an increasingly competitive global environment, EU member countries must therefore cooperate on a larger scale than ever before. The unity demonstrated by the EU during the Brexit negotiations offers a valuable lesson. The cohesion and solidarity that followed Brexit gave the EU greater confidence to address subsequent crises, such as the COVID-19 pandemic and Russia's invasion of Ukraine. This renewed sense of unity should guide the EU in tackling its future challenges, including safeguarding the EU's social model, fulfilling climate obligations, and providing security and prosperity. Moreover, the upcoming Eastern enlargement, which could see the union expand to 35 members, will require reformed institutions to function effectively.

### *Encourage the UK to Find Its Place Within the European Community*

Finally, while the UK is not expected to seek re-entry into the EU in the foreseeable future, the evolving nature of the union could provide opportunities for renewed cooperation. In an expanded EU, with potentially different types of membership, the EU should encourage the UK and other European countries to find their place within the European community. However, this must be achieved without compromising the union's core principles, ensuring that any future relationship remains anchored in the values that bind the EU together.

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# The Brexit Effect: How Has British Withdrawal Shaped the EU's Development?

Nicholas Aylott 

## INTRODUCTION

People remember where they were on the morning of 24 June 2016, at the moment when they heard that, the day before, the British electorate had voted in a referendum to leave the European Union. It was a highly unexpected outcome. Opinion polls had underestimated the support for British departure from the EU, or “Brexit”. Yet a small but clear majority of the British electorate had voted for the conclusion of the country’s 43-year-old membership (Clarke et al., 2017).

The result caused shock across Europe, particularly among political elites. Even if Britain had been far from a typical member state, the referendum’s result raised fears about the EU’s future. Had the Union’s development and its members’ integration gone too far, too quickly, and without the necessary popular approval?

Perhaps Europe’s politicians should not have been so surprised. According to research undertaken by the European Parliament (Del

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Monte, 2022), 43 national referendums on issues related to European integration were held in 1972–2016. They included, for example, votes in aspiring member states on the terms of their accession to the Union, or in existing member states on new treaties or forms of co-operation. Of those referendums, 15, more than a third, resulted in a block on proposals for deeper integration. Aside from the Brexit vote, some of the most significant such events have been Norway’s disapproval of accession to the EU, in 1972 and 1994; Denmark’s vote against the Treaty on European Union in 1992; the Danish and Swedish rejections of the single currency, the euro, in 2000 and, 2003, respectively; and the French and Dutch votes against the Constitutional Treaty in 2005. Each of these decisions was against the wishes of the incumbent national government. The era of “permissive consensus”, during which Western Europe’s voters allowed their politicians and the EU’s bureaucrats to take decisions more or less as they pleased, clearly ended by the 1990s (Newman, 2006).

All those 15 referendum results were embarrassing for the governments concerned. Most required difficult and complicated strategies for subsequently navigating around public opinion (for example, Laursen, 1994). Some of the strategies made demands of other governments across the EU. In cases, the extant national policy frameworks simply continued to operate. Against this historical backdrop, the main question to be addressed in the current chapter is: what has the Brexit referendum, and Britain’s subsequent drawn-out departure, meant for the EU?

Everyday life was affected for many EU citizens, which required action from the EU. A good number of people from other member states were resident in Britain—perhaps as many as 3.5 million of them by the time Brexit was implemented (Lindop, 2021). No longer could they stay and work simply by dint of being EU citizens. Some applied to the British authorities to change their formal residence status. Some left.

Beyond the individual level, however, what about politics and governance? Has Brexit required concerted remedial action by the Union’s supranational political actors and member states? Or have operations just carried on largely as before, only with 27 member states rather than 28? In addition, has Brexit had a more indirect impact, stimulating new dynamics in European politics and power relations between actors at both national and supranational levels? And in what direction have any changes pushed the EU? Has Brexit promoted or undermined the integration of the remaining member states?

To answer these questions, a certain methodological challenge must be met. Since Brexit was finally implemented in January 2020, a great deal else has happened in and around the EU. Immediately afterwards, Europe and the rest of the world were struck by the coronavirus pandemic, which required an enormous mobilisation of public institutions and political will at all levels of government across the continent. Almost exactly two years later, Russia sought violently to conquer Ukraine. These events had considerable impacts on the EU. How, then, to disentangle the Brexit effect from these other effects?

In two later sections, I try to make a virtue out of a necessity. Focusing partly on those two crises, the pandemic and the war, and the policy fields in which EU responses to them occurred, I employ a simple counterfactual approach. Knowing what we know about the preferences of the actors within the EU and of successive British governments, I ask whether it is likely that much would have been different had Britain still been a member when those crises unfolded.

The focus on crisis is chosen deliberately, as many scholars have seen it as a facilitator of deepening European integration. One of the “founding fathers” of the EU, Jean Monnet, asserted that “Europe will be forged in crises” (Håkansson, 2024, p. 25; Jones et al., 2021, p. 1525). More recently, it has been suggested that the Union progresses by “failing forward”: first, by turning to ineffective responses via negotiation between member states’ governments; then by involving the supranational institutions to achieve more robust collective action (Jones et al., 2021). The logic draws on one of the classic theories of European integration, “neofunctionalism”, which proposes that piecemeal cooperation between European countries leads in time to the institutional integration of those countries (Hix & Høyland, 2022, pp. 19–20).

Before we turn to crisis, however, I adopt a more straightforward descriptive approach to the effects of Brexit on the EU. In the next section, I go through the changes to the legislative institutions and procedures that Britain’s departure induced. Then, after a discussion of the two crises, I look at political developments in some member states, particularly the fortunes and positions of the more EU-critical parties before and after Brexit. My general conclusion is that, far from impeding European integration, Brexit has contributed to its acceleration. However, the future remains uncertain. It is not inevitable that this integrative effect will endure.

## AN AWKWARD PARTNERSHIP

Britain had always been an “awkward partner”, to quote the title of a book by a British political scientist, Stephen George (1990), published three decades before Brexit was implemented. Nor was Brexit entirely unforeseeable. A chapter on British EU membership that was published in 2013 had the title, “Towards isolation and a parting of the ways?” (Allen, 2013).

For example, Britain had held an earlier referendum, as early as 1975, just two years after it joined the European Economic Community. The question put to voters was whether Britain should stay in. (They decided, by a comfortable margin, that it should.) British governments complained fiercely during the 1980s about what they felt was the country’s outsized contribution to the Community’s budget. It stood aside from the Schengen agreements in 1985 and 1990 on ending border controls. It insisted on being exempt from significant parts of the Treaty on European Union (the Maastricht treaty) in 1992, including the “social pillar” and monetary union—that is, the euro (Best, 1994). Britain legislated to instal a “referendum lock” in 2011, according to which any future adjustment to the EU’s treaties would require a confirmatory plebiscite in Britain. In 2012, Britain vetoed a proposed “fiscal compact” (formally, the Treaty on Stability, Coordination, and Governance in the Economic and Monetary Union), in which European institutions were to be given supervisory powers over national budgets. Once again, the other member states went ahead anyway, without Britain.

These were only the most serious of numerous conflicts in which Britain was at odds with most other member states and the supranational institutions. It could be reasoned, then, that Brexit would be good for the EU. Britain’s absence could have removed a brake on the Union’s development and thus facilitated a renewed bout of integration between its member states. In this context, it is worth noting that it was as late as the Treaty of Lisbon in 2007 that, for the first time, the EU adopted a formal path by which a member state could leave (Huysmans, 2019).

On the other hand, the effect could perhaps have been the reverse. The immediate effect of Brexit was certainly “disintegrative”—that is, damaging to the coherence of the Union. It is also conceivable that Brexit could have energised latent discontent with the EU among its various electorates (Lichfield, 2016). It is often argued that the EU is more popular among political elites than among the rest of the member

states' populations. Almost every other member state had at least one political party that was sceptical about or even hostile to the EU. For those parties and their supporters, Brexit could have been an inspiration and a stimulus. It could have made leaving the EU, a hitherto impossible proposition, feel like a realistic option.

These are the questions and the propositions that the current chapter will seek to answer and test, respectively. How has the EU been changed by Brexit? Has it promoted or impeded the integration of its member states into an “ever closer union”, the objective articulated in its founding treaties? In the last few years, a lot of research has focused on the causes and consequences of Brexit for the country that left (for example, Baldini et al., 2022; Cutts et al., 2020). This is probably because it is easier to understand a historical event than to discern the long-term future effects of that event. Here, however, I review some of the growing body of research on the effect of Brexit on the EU (see also Ville & Siles-Brügge, 2019). I look at changes that have already taken place, but I also reflect on the EU's direction of travel—that is, what sort of development is likely in the coming years.

## THE INSTITUTIONAL AND PROCEDURAL EFFECTS OF BREXIT

The EU is a unique political system (Hix & Høyland, 2022, p. 2), somewhere between a federation and a confederation. It has no government in the customary sense. Rather, it features a highly complex system of decision-making. The system involves two main types of institutions. First, there are intergovernmental bodies, in which the 27 member states are represented. Second, there are supranational institutions, such as a parliament, a bureaucracy, and a court, which are supposed to represent the collective interests of the entire Union. Negotiation between these various institutions is constant.

Balance is crucial. Just in respect to size, the variation between the member states is huge: the three biggest member states have populations of more than 58 million people each; the three smallest have fewer than 1 million each. This disparity has to be taken into account in decision-making procedures. Political ideologies, preferences and interests also vary widely, sometimes reinforcing other differences, sometimes cutting across them. Enlarging the Union, which has happened seven times since the 1970s, has forced adjustment to this complex mosaic in order to

retain a balance that more or less satisfies the most important actors. The departure of Britain, the Union's third-biggest country, naturally required something similar. In reviewing this re-balancing, and its possible consequences, we begin with one of the supranational institutions, the European Parliament.

The Parliament is elected by the citizens of the EU every five years. Because the electoral districts are based on national borders, candidates are nominated almost exclusively by national political parties. Brexit was obviously going to mean that the mandates elected by British voters would disappear. The member states, in the shape of the EU's Council of Ministers, decided how to address this change in 2018. However, by the time of the June 2019 elections to the European Parliament, after which the changes were due to take effect, there was a problem. Unexpectedly, Britain had not yet left the EU. So, in these strange and unusual circumstances, Britain took part in the election.

Britain finally departed at the end of January 2020. The 73 British members of the Parliament vacated their mandates. A little more than a third of them were immediately distributed to other member states, "thereby re-balancing the current imperfect application of the principle of degressive proportionality" between member states, as researchers from the Parliament put it (European Parliamentary Research Service, 2020)—meaning that there is only a rough connection between a member state's population and the number of mandates that it has in the European Parliament. Among the 14 member states that benefited from this reallocation, France and Spain did best, gaining five mandates each. Sweden got one. Most of Britain's mandates, however, were to be saved in case of future enlargements of the Union—or a change in the electoral system.

The redistribution of mandates also affected the balance between the party groups in the European Parliament, albeit not drastically. These party groups comprise the elected members from like-minded national parties. The loss of 17 British mandates was a significant loss for the liberal group, but it got back six—more than any other group—in the reallocation. The green group suffered a net loss of seven, the social democrats a loss of six; the Christian democrats enjoyed a net gain of five. But none of this did much to change the balance of forces in the European Parliament. The backing of the two biggest groups, the conservatives (including Christian democrats) and the social democrats, remained necessary but insufficient to secure any politically realistic majority. Broad ideological agreements remain the norm in the European Parliament, especially since

the conservatives and social democrats lost their collective majority in 2019 for the first time. (The British party that did best in 2019, the recently formed Brexit Party, did not affiliate to a party group.)

Of course, British politicians and officials left the other EU institutions, too. The serving British member of the European Commission, a career diplomat, left that role. His portfolio, related to security, was folded into that of the commissioner from Greece. Britain's representatives in the intergovernmental organs, the European Council, the Council of Ministers, and in the administrative committees (including the Committee of Permanent Representatives), also left. As in the European Parliament, this changed patterns of co-operation between the remaining actors within these institutions, but less transparently. Nevertheless, it is possible to gauge some of these effects, both in theory and empirically.

First, the effect on the power of other countries in the Council of Ministers is mediated by the complicated voting rules that were adopted in 2014–2017 (Hix & Høyland, 2022, pp. 72–79). Most decisions in the Council these days are subject to “qualified majority voting”. Normally, this demands that, to be approved, a legislative proposal must satisfy three criteria: 55 per cent the member states (that is, more than half of them) must support it; they must number at least 15; and they must have populations that are collectively equivalent to at least 65 per cent of the Union's total. To put it another way, a minority of states can block a proposal if it can ensure that any one of these criteria is not met—although the minority must also comprise at least four states. These rules did not change with Brexit. This meant that the biggest remaining EU member states could more easily contribute to a blocking minority. France and Germany, for instance, could together form one with the support of just two more countries, if one of those additional countries had at least a medium-sized population (Kleinowski, 2018).

Rules are one thing, however. At least as much depends on what member states want. What did Britain tend to want? Did it tend to have many allies? Let us here focus on economic matters, which have always been central to the EU's activity.

From the 1980s, Britain's ideological reputation, under both centre-left and (more often) centre-right governments, was as a member state that wanted free trade between the EU and the rest of the world, and that preferred limited public intervention in the domestic economy, including the EU's internal market (Allen, 2013, pp. 115–128). The British prime minister in 1979–1990, Margaret Thatcher, is remembered largely as a



fierce “Eurosceptic”—a critic of the EU. This was not always the case, however. She campaigned in the 1975 referendum for Britain to remain in the European Community. During the 1980s, her governments were keen supporters of European integration—or, at least, integration of a certain type. What they advocated was “negative” integration, in the sense of removing barriers to commerce, rather than “positive” integration, in the sense of establishing common EU rules, institutions and resources that offset market forces and allow the projection of political power in other ways.

Support for positive integration, by contrast, has most often been associated with France and other southern countries. Jacques Delors, a French president of the European Commission in 1985–1995, was often in conflict with the Thatcher governments. In many ways, the entire EU was founded on a deep partnership between France and the biggest member state, Germany. However, in economic debates, Germany often stood between the British and French poles. As the EU’s richest member state, Germany had a firm interest in maintaining strong control over the Union’s spending. This interest sometimes overlapped with Britain’s desire to limit the EU’s policy toolkit generally.

In various ways, it has been possible to track empirically the respective positions of the member states in discussions about how to regulate the EU’s internal market (Huhe et al., 2020). For instance, national experts attached to the Council of Ministers were asked, in several rounds of interviews in 2003–2015, about which other countries’ experts they tended to confer with informally when legislation was being proposed. (In such discussions, the member states’ experts can explain their respective positions and arguments to each other and explore the scope for common positions.) In separate research, on over 300 controversial pieces of legislation that arrived on the Council of Ministers’ agenda in the decade from 1998, Britain’s position could be compared with those of certain other states (Hix et al., 2016). Formal votes in the Council of Ministers are not always necessary. When they did occur in 2008–2015, however, member states’ voting behaviour could also be noted.

According to these measures, and with remarkable consistency, Britain belonged to a cluster of like-minded states that also included Denmark, the Netherlands and, above all, Sweden. There is evidence that these three states quickly began to form new ties with others after Brexit. Still, that probably means that they had to adapt their positions to others’ preferences. To put it simply, the sort of positions on market regulation that

the north-westerners tended to hold have been weakened by Britain's departure.

Moreover, Britain was also by far the biggest EU member state outside the eurozone. It could have been expected to shield Sweden—and maybe Denmark, too, despite Denmark's formal derogation from monetary union—from any possible pressure within the EU on recalcitrant states to adopt the euro. Now Poland is the biggest member state outside the eurozone. Poland is, of course, a smaller country than Britain. It is also a neighbour with which the Scandinavians have, at times, had much frostier relations (although a rapid thaw set in after the Polish election in 2023). No wonder Sweden generally saw Britain, after Brexit, as “an ally lost” (Braun, 2016).

So much for policy on trade and market regulation in the EU. Since Brexit, the EU agenda has been dominated by crisis management. We turn now to the two most acute crises and how the EU responded to them in Britain's absence.

## CRISIS MANAGEMENT AFTER BREXIT

For the EU, crises have come thick and fast over the last few decades. The financial collapse of 2008 triggered the Great Recession, which in turn threatened the survival of the eurozone. Seven years later, there was the wave of migration into Europe, caused in part by the Syrian civil war. Britain was, of course, still a member of the EU during these years. Yet it was relatively lightly affected by both crises. Britain did not adopt the euro, so stood at a safe distance when the single currency looked most vulnerable. Outside the Schengen zone, Britain had some insulation against the migration that spilled across other member states' borders, culminating in 2015.

Crisis affects the Union in different ways (Ferrara & Kriesi, 2022). Much depends on the nature of a particular crisis and what aspect of the Union it affects. The migration of 2014–2015 prompted member states to reintroduce border controls. It subsequently proved extremely difficult to agree on a common migration policy for the Union, even after Britain had left. Only in late spring 2023 could the European Parliament and then, under the Swedish presidency, the Council of Ministers agree on the positions that they would take into legislative negotiations with each other. The eurozone crisis, by contrast, led to a considerable empowerment of one of the Union's supranational institutions, the European

Central Bank, which decided suddenly in 2010 to change its policy and start purchasing sovereign bonds in order to allow the weaker eurozone countries to finance their public debts. This was a major expansion of the bank's activity. As Britain was outside the eurozone, it could not stop this development.

What can we say about the two more recent crises, the pandemic and the war on Ukraine? Let us look at each of them in turn (Anghel & Jones, 2023). How might they have been handled had Britain still been a member?

The pandemic arrived in Europe almost exactly as Britain departed the Union. There was a mix of initial responses from the EU. The first reactions were mostly at national level—and largely unco-ordinated. Member states scrambled to “re-border” the Union's territory. Crossing between countries became not just more difficult; it was more or less forbidden (Genschel & Jachtenfuchs, 2021). The member states also initially prioritised securing their own supplies of medicines and medical supplies. Some even banned the export of such items. In late February, Italy, the first European country to be badly affected by COVID-19, activated the Union's civil protection mechanism, in which a member state calls on its peers for help. The call “was met with silence” (Boin & Rhinard, 2023, p. 665).

As the pandemic progressed, however, this picture changed. The EU's main institutions, primarily the European Commission, and EU agencies, such as the European Centre for Disease Prevention and Control, became increasingly central policy-makers. In March and April, 2020, money was pumped into schemes such as the EU Solidarity Fund and the Emergency Support Instrument. The European Central Bank again began to buy sovereign bonds aggressively, thus implementing a powerful monetary stimulus in order to offset the economic contraction induced by the crisis.

It is hard to imagine that Britain, as a member state, would have done much to change the initial response to the pandemic in any particular direction. It would probably have acted much like the other member states. Later, it could not have blocked the Central Bank's intervention, even if it had wanted to. What might have caused more disunity was the procurement of vaccines when they became available at the start of 2021. As it happened, post-Brexit Britain gambled successfully by placing early orders for large stocks of different vaccines. The launch of Britain's vaccination programme, which came before the EU's joint effort, earned the

British government great credit domestically (at least for a while). No member state was forced to join the EU's vaccine procurement scheme. However, had Britain still been a member and nevertheless refused to join the scheme, it would certainly have caused controversy and disunity with its EU partners.

Still, these practical and political developments were of short-term significance. The difference between the vaccination programmes probably did not have much long-term political effect.

In one further respect, however, British membership might well have made a difference in the pandemic. By late March, 2020, some member states were pushing hard for fiscal support from the Union. They wanted the EU to sell "coronabonds". In other words, they wanted the EU to raise its own funds on the financial markets—and to take responsibility for repaying the debts to investors. That would have been a big new departure for the Union. Britain's old allies within the EU—Denmark, the Netherlands and Sweden, plus Austria—were strongly against what they saw as a major transfer of resources from the richer countries to poorer ones. They also insisted that any recovery fund should give out money in the form of loans, not grants.

The opposition of the "frugal four" countries, as they later became known, was initially shared by the German government (Bergsen, 2020). Yet over the next few months, Germany switched sides. The upshot, agreed by the European Council in July 2020, was "Next Generation EU", a huge EU investment fund of around €750 billion (Alcidi & Gros, 2020). Some of it was indeed to be raised by the sale of EU debt. Disbursement of its funds was to be in the form of both loans and grants, subject to strict conditionality and oversight by EU institutions of how the money was to be spent.

It seems unlikely that a British government would have agreed to Next Generation EU. The major empowerment of EU institutions through the sale of the Union's own bonds, and thus the enhancement of those institutions' financial autonomy from the member states, would probably have been unacceptable to Britain. It is also possible that the intrusive conditionality on the member states' use of these resources would have been difficult for the British to swallow.

Britain's opposition would not have been enough to block Next Generation EU in the Council, even if the frugal four and Finland, which also at times sounded frugal, had joined it. Still, if Germany had stuck with the frugal four, plus Finland and Britain, it would have been enough

for a blocking minority. Knowing this, it is possible that the German government would have faced greater pressure, both within the EU and domestically, to water down the recovery fund, or perhaps to secure stronger mechanisms to prevent it from becoming a precedent for future EU fundraising.

The pandemic was a “symmetric” shock to the EU: all the member states were subjected to it. Something similar could be said of the Russian full-scale invasion of Ukraine in February 2022, at least initially. Although the easternmost member states naturally felt most vulnerable to Russian aggression, the sense of shock at the attack on Ukraine was broadly shared.

This helps to explain the strong steps that the EU took in relation to the conflict. This time, the EU response was led actively by the Commission from the start (Håkansson, 2024). Numerous rounds of sanctions against the Russian state, Russian organisations and certain individual Russians were implemented. Sanctions against two Russian allies, Belarus and Iran, were also enacted. The EU devoted considerable resources to accepting Ukrainian refugees (through a “temporary protection directive”), to sending humanitarian aid and to supporting the Ukrainian economy. It is likely that, had it still been an EU member state, Britain would have backed these steps. From the start of the fighting in 2022, Britain was a keen and vocal supporter of Ukraine. As a longstanding supporter of EU enlargement, too, Britain would have also been positive towards Ukraine’s becoming a candidate for EU membership, a status granted by the EU in June 2022. Indeed, Britain had always hoped that “widening” the EU would make it harder to “deepen” the integration of its member states.

What might have been harder for Britain to accept after Russia’s attack on Ukraine was the EU’s enhanced military profile. Britain had never been entirely opposed to a more concerted EU voice in international politics. Yet the country has for decades envisaged its foremost means of influencing the world as running through its “special relationship” with the United States. The main institutional manifestation of that relationship has been NATO. Britain was thus usually wary of any step by the EU that might detract from the primary role of NATO in upholding the security of the Alliance’s European member states.

Having already voted to leave the EU, Britain did not participate when the dormant Permanent Structured Co-operation (PESCO) in the area of security and defence was activated by most member states in late 2017.

In the absence of Brexit, it is possible that Britain might have joined the other states in PESCO, but not certain. Nor is it clear that Britain would have agreed to the establishment in March 2021 of the EU's Strategic Compass for Security and Defence, in which one objective was the capacity to “deploy up to 5,000 troops into non-permissive environments” (European External Action Service, 2022, p. 11; Håkansson, 2024, pp. 11–14). Britain might, too, have balked at the European Peace Facility, an “off-budget instrument” to co-ordinate the funding of the EU's various “missions and operations” in Europe and Africa within its Common Security and Defence Policy (European External Action Service, 2023).

On the other hand, if the Peace Facility, or something like it, had come into being anyway, even if Brexit had somehow been aborted and Britain had remained an EU member state, the British government would probably not have obstructed the EU's use of the Facility to purchase equipment and supplies, including military supplies, for Ukraine. It might also have approved the EU Military Assistance Mission to Ukraine that was agreed in October 2022. No British government would have wanted to attract accusations that it was undermining European solidarity in the face of Russia's attack.

Rather like Next Generation EU, these measures to enhance the EU's support for Ukraine served to deepen the integration of the member states. They enhanced the power of the Union to formulate and project its power—its “actorness”. It is hard to imagine that this tempo of integration would have been possible without the Russian attack on Ukraine. Whether continued British membership of the EU would have made much difference is harder to judge. A reasonable estimation, however, is that the difference would have been fairly small, such was Britain's keen backing for Ukraine. Still, this strengthening of the EU's foreign and security policy would surely have chafed in Britain.

## BREXIT AND THE POLITICS OF THE MEMBER STATES

Although the EU's institutions have become ever more important, the most influential political arenas in the Union are still those at the national level—especially, of course, those in the biggest member states. When British voters decided in 2016 to leave the Union, there were fears in various EU governments that the EU-critical parties in their countries, and those parties' sympathisers, would be inspired to agitate for

something similar—that is, departure from the EU (Rosamond, 2016). There was speculation about popular pressure to enact “Frexit”, “Grexit”, “Italexist”, “Czexit” and other similar neologisms.

In the event, such fears were never realised. Why? I offer two main explanations. They involve the way in which the EU handled Brexit—and the way that Britain did. Below, I look first at the negotiations on the terms of Brexit, then at national political arenas.

Some scholars argue that the Union got its procedures right (Chopin & Lequesne, 2021; Laffan, 2022; Laffan & Telle, 2023). For a start, it refused to start talking with Britain until the formal withdrawal process had been activated. Then, in the negotiations over the terms of Brexit, the Union appointed Michel Barnier, a former French government minister and European commissioner, as a plenipotentiary negotiator. His mandate was set by the European Council and, in more detail, by the Council of Ministers. He was, therefore, the agent primarily of the 27 member states, although his staff were seconded from the Commission.

These decisions about procedure probably were indeed well-judged. Yet they were predicated on something even more fundamental—namely, political will. The most powerful member states, particularly France and Germany, which have invested so much in the EU over many decades, had a strong desire to drive a hard bargain *pour encourager les autres*, to use the French expression. If the EU had been too generous, and the economic costs to Britain of its leaving had thus been limited, other member states might have been tempted to take the same relatively pain-free path—or so it was feared. A tough EU line was thus needed, plus a clear and decisive representation of that line.

Early in the negotiations, which began in June 2017, there was concern among some observers that individual member states, perhaps those most worried about the economic costs to themselves of a rupture with Britain, might be tempted to defect from the joint line. Certainly, Britain hoped to split the remaining member states and bargain directly with their governments, Germany above all (Bale & Pike, 2024). This strategy seemed to be founded on several questionable British assumptions: that German export firms were desperate to maintain easy access to the British market; that they had considerable leverage over the German government; and that the German government could shape the negotiating stance of the entire Union. Yet these assumptions took all too little account of the deep political commitment to European integration that was shared by the entire German political elite. The German chancellor, Angela Merkel,

never wavered in her commitment to the joint EU position. Any other plausible German leader would probably have done the same.

Britain's management of the process was a very different story. In 2017, less than a year after the referendum result, the British Conservative government called a snap election. The Conservatives retained power. Indeed, they increased their share of the vote. However, the vagaries of the electoral system meant that the Conservatives unexpectedly lost their parliamentary majority (Prosser, 2018).

The new minority government, itself a rarity in Britain, then took more than a year to agree on its preferred form of Brexit. Even then, the ruling party remained badly split. That it was so hard for the British government even to decide what it wanted to achieve with Brexit was partly due to its gradually increasing insight into the complexity of the Irish border question, which it had initially underestimated. The recovery of full British decision-making autonomy, including on economic questions, was a declared British goal. Yet it was also committed to the maintenance of an open border between Northern Ireland, a British province, and the Irish Republic. How these incompatible principles were to be reconciled—in other words, how national policy autonomy was to be achieved without border controls—was a conundrum so tricky that it almost destroyed the entire process.

In autumn 2018, the British government did reach a rather rickety Withdrawal Agreement with the EU. Yet the government was unable to secure the endorsement of the British parliament, despite repeated attempts. Many Conservatives could not accept the concessions that the government had made. At the same time, the opposition parties felt no obligation to help the government by supporting the agreement.

During 2019, the British parliament became highly polarised (Aylott, 2020). Each pole in the debate felt that victory was within its grasp, so neither was prepared to compromise. One of these poles comprised a section of the opposition. It sought to stop Brexit altogether. At the other pole, some Conservatives declared themselves ready for Britain to leave the EU with “no deal”—that is, without any agreed terms of departure. Horror at the prospect of a “no-deal Brexit” stimulated the formation of a shadow cross-party parliamentary majority, which constrained the government from implementing any such abrupt form of departure. Yet this majority was insufficiently coherent to unseat the Conservative government or to sustain an alternative government. Deadlock, and a full-blown constitutional crisis, ensued. Twice Britain had to ask the EU to postpone



the date of its departure. Groups of rival demonstrators often gathered in London, outside parliament. It was a febrile time.

The constitutional crisis began to pass after a new Conservative prime minister, Boris Johnson, made a belated and spectacular concession on the Irish border in autumn 2019. (Put briefly, it meant that Northern Ireland would stay in the EU's internal market, despite remaining part of the British state.) This broke the deadlock. The path to the implementation of Britain's withdrawal became increasingly clear. By then, though, the reputational damage to the idea of leaving the EU had been done. To illustrate this reputational shift, we need only look at how the slow British withdrawal was reflected in public opinion and political-party behaviour in other European countries.

Migration and European integration had been distinct political issues, but they became increasingly connected in Britain after the turn of the century. The Brexit campaign, for example, really took off after a big wave of inward labour migration from the new Central and East European member states after 2004, which allowed British politicians to conflate these two sensitive issues. By 2013, the British Conservative Party, under increasing external pressure from an anti-EU challenger party, pledged to hold a referendum on continued EU membership if it should win the next election—which, to their own surprise, the Conservatives did.

At the time of Britain's referendum, it was reasonable to suppose that a similar conflation of issues might happen in other EU countries, albeit stimulated less by labour migration within the Union than by the flow of people from outside it seeking asylum. In the election to the European Parliament in 2014, radical challenger parties on both right and left, which were often coloured by various shades of Euroscepticism, made considerable gains. The culmination of the migration crisis in the EU in 2015 then gave a further boost to radical parties. By 2016, the Danish People's Party and a newly launched rival, the New Right, were pushing for a referendum on Denmark's continued membership of the Union. So were other radical-right parties, including the Dutch Party of Freedom, the Finns Party and the Sweden Democrats. In 2017, Marine Le Pen, leader of the National Rally, echoed the prime slogan of the successful British pro-Brexit campaigners, "Take back control", in her own effort to win the French presidency.

At the same time, "softer" variants of Euroscepticism—which involves criticism of specific EU policies, such as monetary union, or of political integration in general—became more vocal. In Germany, Greece, and

Italy, such arguments could be found on both the radical left and radical right. In several Central European states, Eurosceptics formed or joined governments (Taggart & Szczerbiak, 2018).

Yet the trend did not last (van Kessel et al., 2020). Even before the conclusion to her presidential campaign in 2017, Le Pen began to tone down her anti-EU position. As late as 2018, the Sweden Democrats were still calling for a referendum on continued Swedish EU membership. The following year, however, before the European election, they dropped that demand, albeit while reaffirming a critical stance towards the EU. The Danish EU-critical parties made similar retreats.

It is reasonable to infer that the most vehemently EU-critical parties discovered after 2016 that hardening their anti-EU positions did not actually bring them much electoral reward. The issue just never took off in domestic politics (Heinö, 2023). Direct indicators of public opinion, such as the EU's Eurobarometer surveys of EU citizens and residents, point in the same direction. In autumn 2016, a few months after the British referendum, the proportion of Eurobarometer respondents who thought that EU membership was a good thing was 53 per cent. Four years later, with Brexit having been finally delivered some months before (and towards the end of a transitional period, in which Britain remained within the EU's economic structures), that proportion had risen markedly, to 63 per cent. The proportion who thought that EU membership was a bad thing, moreover, fell from 16 per cent to just 9 per cent (Eurobarometer, various years).

The simplest and most persuasive explanation for these trends is that Brexit quickly lost its attraction as a policy option due to the political turbulence that leaving the EU induced in Britain (de Vries, 2023; Hobolt et al., 2022; Malet & Walter, 2023). Support for EU membership increases when the realistic alternative to it is perceived as less attractive. If the sort of alarming and humiliating political convulsions that Britain experienced in 2017–2019 were what a member state risked when it chose to leave, the idea of departure had clearly become a toxic one—as even the most strongly EU-critical parties in other member states came to understand.

## CONCLUSION: BREXIT—AN ACCELERATOR OF EUROPEAN INTEGRATION?

A feature that the EU has acquired over the last 30 years or so is a lingua franca, a common language. Geopolitical developments during the twentieth century progressively reduced the number of European countries in which anything other than English was taught as the primary second language. Thus, as the Union expanded, English gradually became its main language of internal and external communication. Brexit will not change that. In Ireland and Malta, English is one of two official languages. Far more importantly, English fulfils a crucial, perhaps indispensable, function in facilitating the constant negotiation through which the EU is governed.

More generally, the significance of Brexit can sometimes be overstated. It was, for sure, the first time a member state chose to withdraw. Yet the drama was limited and mostly confined to internal British politics. Over the last few centuries, there have been several examples of a constituent part of a federal country trying to leave the union to which it belongs. The upshot has often been violence. The EU, however, is not a state. It does not have its own military capacity, controlled by its own institutions, so it did not have the means to prevent Britain's departure. Nor did it have the will. Nothing like enough was at stake for the EU even to consider such drastic measures.

In fact, while it would be difficult to find many within the EU who actually welcomed Brexit, some of the biggest enthusiasts for European integration might, by late 2024, have been forgiven for thinking that Britain's departure was actually for the Union's best. In the 1960s, after all, the French president, Charles de Gaulle, initially refused Britain membership, as he feared the effect that it would have on the EU (George, 1990, pp. 7–9). Perhaps events many decades later have vindicated his view. Brexit—so far—has had an integrative effect on the EU, not a disintegrative one.

In this chapter, we have explored two main reasons for this integrative effect. The first is that, outside the EU, the British partner cannot be as awkward as it was for much of its time inside. Britain always preferred to retain as much autonomy as it could. It was also jealous of what it perceived as its special relationship with the United States. Sometimes, the EU's solution was to give special treatment to Britain, as with the Treaty on European Union. But the British presence made the EU

cautious. Plans for more ambitious integration were always presented in the shadow of expected British scepticism and obstruction. That shadow has now been lifted—which leaves remaining member states with similar preferences, such as Sweden, weaker and more exposed.

As we saw, it is likely that Brexit augmented the integrative impulse produced by the EU's response to crisis. The post-pandemic recovery fund, EU Next Generation, would probably never have seen the light of day had Britain remained a member. That the Union should raise its own funds in the financial markets might well have remained an idea rather than a reality. Nor might the conditions imposed on the member states in their use of those funds have been acceptable to a British government. Indeed, it is interesting to speculate about how Britain would have positioned itself in the bitter argument between, on one hand, the EU institutions and, on the other, Hungary and Poland over the extent to which those states' access to cohesion and pandemic-recovery funding should be withheld because of their alleged democratic deficiencies. The conflict between liberal-democratic principles and national autonomy might have been a delicate one for Britain to handle. Finally, it is possible that Britain would have insisted on different ways of channelling support for Ukraine, rather than those that have in practice served to boost the EU's security capacity.

The second reason for Brexit's integrative effect on the EU was the manner in which Britain left. In many ways, it involved a series of disastrous political miscalculations. The British Conservative Party leadership agreed to promise a referendum because it did not expect to be able to deliver its promise. Even if it did find itself able to deliver, it could not imagine that such a vote would lead to anything other than confirmation of British EU membership. There was thus no planning for how leaving the EU would actually be implemented. In the event, therefore, the process became subject to increasingly intense political battles in Britain. The country's democratic institutions are long-established and robust, and they eventually mediated a mostly peaceful resolution—*notwithstanding the murder, just prior to the referendum, of a British parliamentarian*. Yet the turbulent, tortuous process was anything but an attractive model to outside observers.

By 2024, moreover, Brexit could hardly be judged a success. Even its strongest British advocates were acknowledging as much (Politico, 2023). Although it is not easy to isolate the economic effect of Brexit from other

factors (Norbäck, 2024), it was certainly difficult to discern any direct benefit for Britain.

Politically, meanwhile, the associations with Brexit were, if anything, even more negative. Johnson's chaotic government collapsed in mid-2022, after an internal party revolt. His party took more than two months to choose a replacement, who then lasted 49 days as prime minister before her own authority melted down in chaos. The fall of neither Johnson nor his successor was directly connected to Brexit. Indeed, the continuing turmoil could be seen, like Brexit itself, as a symptom of deeper political and social change in Britain, the effects of which were refracted through Britain's unusual political institutions. However, it did appear that leaving the EU had brought nothing but misfortune for the political party that had done most to bring it about. In July 2024, the Conservatives crashed to a historic defeat in a parliamentary election. The party's proportion of mandates in the lower chamber collapsed from more than 56 per cent to under 16 per cent. Brexit had barely been mentioned in the preceding election campaign, which indicated that the matter had been, in effect, settled. That was scarcely any consolation to the Conservatives.

It must be concluded, then, that Brexit has served to accelerate European integration rather than inhibit it. Brexit boosted the EU rather than undermining it. Is it thus reasonable to draw a further conclusion, namely, that Brexit was a failure—perhaps even a disaster—for Britain, but an unexpected success, a blessing in disguise, for the EU?

Arguably, it is too soon to say. Post-Brexit Britain, while not exactly thriving, did not break down as a functioning state. By 2024, it seemed reasonably likely that the country would retain its territorial integrity and eventually experience improved economic performance, as its supply chains slowly adapt to its new position in international markets. There may yet be unforeseen advantages in Britain's recovered decision-making autonomy.

Moreover, the EU's relative cohesion is not guaranteed. Even after Brexit, the Union is very big and diverse. It already faces the dilemma of dealing with member states that, in the EU's eyes, do not live up to its professed values. If it expands further to take in countries like Ukraine and those in the Western Balkans, as it says it wants to do, it will become even bigger and more diverse, and upholding its values internally may become even harder. Yet refusing to expand its membership would stoke other problems.

The EU cannot assume that the painful British exit has permanently vaccinated the voters in the remaining member states against the idea of life outside the union. Some of the UK's ratification struggles could have been avoided with different decisions regarding political procedures at various points. In other words, it is not guaranteed that a future exit would entail the same difficulties in some other member state as in the British case. Anyway, the memory of the upheavals that Brexit caused in the United Kingdom may fade over time, much like the effects of some vaccines.

Moreover, the deeper integration between EU member states, as we have seen, can accelerate quite quickly under favourable circumstances. In such a case, it becomes even more important, but also more difficult, to ensure continuously that this integration has popular support. If Brexit were to contribute to a short-term impetus for deeper EU integration, which in turn resulted in a voter backlash against the process in the longer term, a certain historical irony might be discerned.

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## Union Citizenship: Towards a Deepened Legal Meaning

*Katarina Hyltén-Cavallius* 

Who are the “peoples of Europe”? The question, which alludes to the expressions about “the European peoples” and the “peoples” of the European Union’s (EU) Member States found in the preamble to both the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), was posed in an editorial in the *Common Market Law Review* (2023) (CML Rev). Said preamble also contain references to the “citizens” of the Member States and to the free movement of “persons.” The latter appears to be a broader concept that could include third-country nationals within the EU’s territory. From the EU legal perspective, the world, in a strict sense, is divided into these two categories of persons: Union citizens and third-country nationals. The first concept refers to an individual who is a national citizen of an EU Member State, and who therefore, among other things, has the personal right to exercise free movement to another Member State. The second refers to an individual who does not have the status of a national citizen within the EU, but in a state outside the Union; a so-called third country. Figures

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from the European Migration Network (2024) show that in 2022 there were about 24 million third-country nationals in the EU, making up 5.3 per cent of its total population.

The binary division into Union citizens and third-country nationals is nuanced by the fact that EU law distinguishes between different categories of third-country nationals, for example through the association agreements the EU has with certain countries in its vicinity. In addition, there is a strong territorial dimension that determines the individual's legal status in EU law. The borders of the EU's territory are of central importance with regard to Union citizenship in an "area of freedom, security and justice" (Article 3 (2) TEU) which is the space where the legal content of Union citizenship is to be realised. Similarly, it plays a decisive role for a third-country national's position within EU law whether they are within or outside the borders of the EU's territory.

The above-mentioned editorial in CML Rev deals precisely with the question of the legal status of third-country nationals within the EU. It advocates that more should be done at the EU level to include the millions of third-country nationals, who are legally resident within the EU, in the internal market. EU law could be used to give them a better opportunity to be covered by the rules of free movement that apply to Union citizens. For the EU to live up to the objective in Article 3 (1) TEU of promoting "the well-being of its peoples" within its territory, this goal should include not only Union citizens, but *all* persons who legally reside, work and live their lives within the EU.

There is an opportunity to improve the position of long-term resident third-country nationals in the internal market, among other things through the revision proposals to Directive 2003/109/EC (European Parliament, 2024). The revision of this directive should make it easier for third-country nationals within the EU to achieve formal status as "long-term residents" in the Member State where they live. This status means that the third-country national, if other applicable conditions are also met, has the right to exercise free movement of persons to another EU Member State. A legal exercise of freedom of movement, in turn, entails activation of the EU legal protection against discrimination on national grounds and a right to family reunification.

An expansion of the rights of free movement to more categories of persons than Union citizens also has the positive consequence that it leaves room for carving out a deeper meaning of Union citizenship itself. From a primary law perspective, not least through Article 25 TFEU, there

is a basis for building a constitutionally and democratically relevant Union citizenship that can be given legal content and effect also outside the context of the internal market and freedom of movement. When Union citizenship is detached from freedom of movement, its status can be filled with other legal and political content. At the same time, the goal of an effective regime of free movement of persons can be realised in the EU if more third-country nationals are included in the opportunities of the internal market and the EU legal protection of the individual's fundamental rights in an area of freedom, security and justice. A deepened meaning of Union citizenship together with a broadening of the rules on free movement of persons, is well in line with the political proposals for differentiated integration within the European cooperation, which have been re-actualized in connection with the plans for further enlargement of the EU.

There is reason to ponder how the EU's migration pact that the Member States accepted in 2023, the ever-increasing social policy ambitions at the Union level, and the potential expansion to up to 35 Member States, will be accommodated by the existing structures for Union citizenship, the rules for the free movement of persons and the position of third-country nationals in the internal market. This raises two questions, which are linked to this book's theme. What should be the depth of Union citizenship, in the sense of the legal meaning of its status? What should be the width of Union citizenship, in the sense of who should be included in its status or otherwise have access to its rights?

This chapter first discusses the link between Union citizenship and free movement of persons. Then the importance of Union citizenship as such, detached from the exercise of freedom of movement, and the possibility of deepening the legal meaning of the status, is highlighted. To this is added a discussion of who might be included in Union citizenship and how third-country nationals in other ways can gain access to free movement and its associated fundamental rights protection. Finally, a deepened meaning of Union citizenship is advocated, which more strongly ties the status to the EU's values, while the position of third-country nationals within the EU should simultaneously be improved in EU law.

## UNION CITIZENSHIP AND FREEDOM OF MOVEMENT

Union citizenship was formally established more than 30 years ago, through the treaty amendments at Maastricht in 1992. In its present form, Article 20 (1) TFEU states that “every person holding the nationality of a Member State shall be a citizen of the Union.” Article 21 (1) TFEU contains the Union citizen’s right, albeit conditional, to move and reside freely within the territory of the Member States. Free movement is generally considered to be the core content of Union citizenship. However, the relationship between Union citizenship as the status for all national citizens of the EU’s Member States and the conditions for a lawful exercise of free movement has proven difficult to reconcile. As Dougan (2004) has highlighted, the Member States’ interest in preventing “uncontrolled” migration movements between Member States and the concern for “social tourism” has clearly been reflected in the conditions for free movement and right of residence in the Free Movement Directive (FMD, Directive 2004/38). However, the restrictions in the directive should be interpreted against the importance of Union citizenship in primary law, which has proven to be a difficult balancing act for the Court of Justice of the European Union (the Court).

Spaventa (2017) and O’Brien (2021) respectively argue that the Court, through the interpretations it has put forward in its case law, has both “created” and subsequently “deconstructed” the legal significance of Union citizenship in the area of free movement. The deconstruction mainly concerns the link between the right to free movement in Article 21 (1) TFEU and the general prohibition of discrimination on grounds of nationality in Article 18 TFEU. The latter provision is a basis of a right to national equal treatment. This has played a major role, among other things, for Union citizens’ opportunities to access social rights, such as social assistance in a host Member State.

The legal development of Union citizenship since its introduction in EU law initially followed a linear progression (Thym, 2022). In its case law, the Court made ever expansive interpretations of Union citizens’ right to exercise free movement, with accompanying rights to national equal treatment and family reunification in a host Member State (CJEU, 2001, 2002, 2004a, 2004b). However, over the past decade, Union citizenship has shown an increasingly differentiated development. The tendencies in the legal development are now pulling in several different directions at the same time. From expansive interpretations, the case law

of the Court has moved towards a more restrictive stance regarding the conditions for the right of residence and equal treatment (Nic Shuibhne, 2015). The right to free movement has proven difficult to decouple from the economic rationale of the internal market (O'Brien, 2016). Therefore, freedom of movement has not become the fundamental Union citizen's right that there were hopes for at the beginning of the 2000s. Instead, the limiting premises of the FMD, which reflect the Member States' interests in protecting themselves against non-economically active Union citizens' exercise of free movement, have taken precedence in the Court's case law (CJEU, 2013, 2014c, 2015a, 2021).

### A CASE LAW DEVELOPMENT IN MAJOR AND MINOR

The Court declared in the *Grzelczyk* ruling (CJEU, 2001), that Union citizenship was destined to become the “fundamental status” of all citizens of the EU Member States. From this starting point, all Union citizens who are in a similar position should be able to receive the same treatment in legal terms, regardless of nationality, but taking into account prescribed reservations. This interpretation suggested a very far-reaching right to national equal treatment even for non-economically active Union citizens who were in a host Member State during their exercise of free movement. The *Trojani* case (CJEU, 2004a) further reinforced the importance of the principle of equal treatment. The Court found that a Union citizen who has any legal basis for his or her stay in a host Member State, whether this basis is found in either EU law or national law, should be covered by the right to national equal treatment in Article 18 TFEU. During the 2010s, and especially in the development period leading up to the United Kingdom's (UK) referendum and decision to leave the EU, there was a reversal in the Court's interpretation of the link between Union citizenship, the exercise of free movement and the right to national equal treatment. The Court indicated in several rulings, including the well-known *Dano* judgement (CJEU, 2014c), that Member States could indeed set economic conditions for a Union citizen's right to equal treatment through the specific purposes and provisions of the FMD. The message was that EU law does not sanction so-called “social tourism.”

From the current state of law, it is clear that free movement as such, with the economic conditions and other restrictions on both the right of residence and the right to national equal treatment that is given in the

FMD, does not have much to offer the most vulnerable Union citizens (Spaventa, 2017). The rights of free movement can best be enjoyed by people who are economically active. Mantu and Minderhoud (2023) have shown that the swinging pendulum in the Court's case law over the past decade has contributed to the deterioration of migrating Union citizens' access to social rights in the majority of Member States. Any aspiration that Union citizenship could be a legal instrument to promote equality among the EU's inhabitants has thus been weakened. In addition, there are several legal, administrative and practical obstacles for Union citizens to in practice enjoy the right to free movement and protection against discrimination on grounds of nationality in a host Member State (Hylén-Cavallius, 2018). It is not enough to simply claim one's Union citizenship for a host Member State to recognise a person's right of residence and a right to equal treatment with national citizens. Van den Brink (2019) has argued that Union citizenship as a status therefore cannot be said to add anything further to the rights and opportunities for free movement that the EU's population had before its introduction, simply by being national citizens of an EU Member State. Granger (2018) describes the legal development as a "divorce" between Union citizenship and the rules for free movement.

This divorce does not have to be only a bad thing. On the contrary, an acceptance of the economic conditions that apply to the right of residence and equal treatment in a host Member State can make Member States more willing to expand free movement to more categories of persons, beyond the Union's own citizens. This strengthens the argument that third-country nationals residing within the EU should more easily gain access to the rights and opportunities of free movement. Simultaneously, another, deeper legal meaning of Union citizenship could be developed in EU law. What, then, does Union citizenship as a status mean if it is detached from the rules for free movement and the right to equal treatment?

### THE MEANING OF UNION CITIZENSHIP—MORE THAN FREE MOVEMENT

Freedom of movement can rightly be said to be the primary origin of Union citizenship as an EU legal concept. However, it is a mistaken conclusion to believe that the significance of Union citizenship can be



completely eradicated by Member States' imposition of economic conditions and other restrictions on free movement. There are many tendencies in the legal development that suggest that Union citizenship has legal relevance even without free movement. Parallel to the legal development of free movement for persons, there has been an important legal development regarding the legal effect of Union citizenship in situations entirely without free movement (Hyltén-Cavallius, 2020). The status of Union citizenship, based on Article 20 TFEU, has among other things proven to have a tangible legal effect on the relationship between the individual Union citizen and their home Member State, i.e., the state where the Union citizen is a national citizen. Likewise, the political dimension of Union citizenship has been reinforced by the primary law amendments made through the Lisbon Treaty. This was confirmed in the Court's ruling in *Delvigne* (CJEU, 2015b). Here, the Union citizen's right to vote in elections to the European Parliament was found to be strongly protected by Article 14 (3) TEU. That provision obliges the Member States to hold direct elections in a free and secret ballot to the European Parliament, which is closely linked to the political rights of Union citizenship of Article 22 (2) TFEU. The applicability of these provisions in turn activates the Charter of Fundamental Rights of the EU (the Charter). The circumstances in *Delvigne* had no connection to any exercise of free movement. The question in the case exclusively concerned the protection of the EU political rights that should be guaranteed a Union citizen in relation to his or her home Member State. The case dealt with the French rules which, when it comes to serious criminal offences, limit imprisoned convicts' right to vote, including the opportunity to vote in elections to the European Parliament. The Court found that EU law was applicable in the case, by virtue of the link to Union citizenship's political rights. This resulted in the French rules having to be evaluated in the light of the Charter. Of particular importance was the Charter's Article 49, which sets out the principles of legality and proportionality in matters of criminal offences and penalties. The restriction on the right to vote in French law that was at question in *Delvigne* was judged by the Court to be legitimate and compatible with the requirements of EU law. At the same time, the ruling stands for something important regarding the significance of the status of Union citizenship. The right to vote in the election to the European Parliament is so far the only genuine Union citizenship right that the Court has attributed legal force to without there being any connection whatsoever to the exercise of free movement in the

actual legal case. However, the biggest steps regarding the legal meaning of the status of Union citizenship have been taken with direct support of Article 20 TFEU and through the rulings of the Court in *Ruiz Zambrano* (CJEU, 2011a) and *Rottmann* (CJEU, 2010) respectively, and in the legal development that has since followed.

## ARTICLE 20 TFEU: THE STATUS OF UNION CITIZENSHIP IN FOCUS

In a series of rulings, starting with the *Ruiz Zambrano* judgment, the Court, with the support of Article 20 TFEU, has developed a legal protection against a Union citizen being forced to leave the EU's territory against their will. The protection becomes applicable primarily when it concerns children with Union citizenship who risk being forced to leave the EU as a consequence of their primary caregiver, who is a third-country national, being deported. The rationale for this is that the rights that follow from the status of Union citizenship cannot be enjoyed outside the EU's territory. A Union citizen's right to reside within the EU must therefore be protected. In *Ruiz Zambrano*, the Court made the famous statement that: "...Article 20 TFEU precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union" (CJEU, 2011a).

In the case law that has developed after the ruling, it turns out that this jurisprudence is normally only applicable against the Union citizen's home Member State. It is this state that has the main responsibility for giving a Union citizen an effective right to live and reside within the Union's territory. Importantly, the *Ruiz Zambrano* doctrine is activated solely by the status of Union citizenship as such and when the rules on free movement are not applicable. A third-country national who is the primary caregiver of a minor Union citizen can then, provided that the conditions are met, derive a right of residence in the Union citizen's home Member State. The same can apply to a third-country national who is a family member of an adult Union citizen, if the latter has a very strong dependency on the third-country national in question. If the Union citizen instead exercised free movement to a host Member State, other legal norms would apply to achieve such a right to family reunification with a third-country national. Among other things, the economic requirements for the right of residence in the FMD would need to be met.

The dividing line between the right to family reunification according to Article 20 TFEU and the same according to the FMD is therefore very important. The conditions for a Union citizen's family reunification in their home Member State may be starkly different from those that would apply in a host Member State. A clear sign of the differentiated legal development in this area is the fact that the *Ruiz Zambrano* jurisprudence cannot be transferred to protect, for example, nationals of the states that make up the European Economic Area (EEA). People with national citizenship in any of the EEA states Norway, Iceland or Liechtenstein are not Union citizens, but are covered by a strongly developed right to free movement within the EU. This is because the EEA Agreement between the EU and these neighbouring states creates a close connection to the EU's internal market. Among other things, the conditions of the FMD are applicable to EEA nationals who want to move within the EU. The EFTA Court is responsible for the interpretation of the EEA Agreement and is obliged to make interpretations of EEA law that are homogeneous with corresponding provisions in EU law. In the EFTA Court's rulings on the free movement of EEA citizens, however, it has so far, not found that the *Ruiz Zambrano* line of case law may be transferred to EEA law. The reason is that this case law is exclusively built up by Article 20 TFEU. That provision establishes Union citizenship as a status for the national citizens of the EU Member States, but does not have any equivalent in the EEA Agreement. The case law that is based exclusively on Article 20 TFEU can therefore not be extended to apply to EEA nationals, who are otherwise covered by the rules of free movement in a way that is very close to what applies to Union citizens. The *Ruiz Zambrano* case law also cannot be applied to a third-country national who has been recognised as having the status of long-term resident in an EU Member State according to Directive 2003/109/EC (European Parliament and Council of the European Union, 2003). The doctrine thus marks a clear differentiation between the depth of the status of Union citizenship and the broader applicability of the rules on free movement of persons.

Another strand in the case law that stems from Article 20 TFEU is the Court's ruling in *Rottmann* from 2010 and a number of subsequent rulings. The *Rottmann* line of case law deals with the individual's protection in EU law against being deprived of their status as a Union citizen by the home Member State withdrawing their national citizenship. The Court has confirmed the competence of Member States to regulate

their respective national citizenship laws themselves. It is up to each individual Member State to determine the conditions for naturalisation or other incorporation of a person into the national citizenship. However, EU law is applicable to a Member State's withdrawal of an individual's national citizenship because a loss of national citizenship also means a loss of Union citizenship. The Charter is therefore also applicable to a Member State's withdrawal of national citizenship. Such processes must be compatible with the Charter's requirements for legal certainty and the EU legal principle of proportionality. The development of the *Rottmann* line of case law shows the significant legal force of Union citizenship for the activation of the protection of the Charter in situations that do not involve a direct exercise of free movement. The case law that stems from Article 20 TFEU aims to protect the legal core of Union citizenship, which the national citizens of the Member States can assert in relation to their home Member State. Just like the *Ruiz Zambrano*, the *Rottmann* jurisprudence is activated entirely without freedom of movement having to be exercised in the individual case. Against this background, there is clearly a possibility of going even further beyond issues of free movement and the internal market with the support of Article 20 TFEU to use Union citizenship to establish new constitutional depths in EU law.

### CHANNELLING THE EU'S VALUES THROUGH UNION CITIZENSHIP

Sharpston and Sarmiento (2017) has argued for linking the status of Union citizenship according to Article 20 (1) TFEU to a protection of the EU's values, including respect for the rule of law, as it is stated in Article 2 TEU. This idea is consistent with the one presented in a research article by von Bogdandy and others (2012) that the EU legal protection of the core of Union citizenship should include protection for fundamental rights. There must be a presumption that the EU Member States respect the protection of the rule of law and the individual's fundamental rights within their respective jurisdictions. If a Member State systematically acts in a way that clearly violates these values, von Bogdandy and others argue that this presumption should be considered broken. An example of this is a Member State like Hungary, which has moved in an increasingly authoritarian direction. In this situation, the EU must act to protect the Union citizens living in such a Member State. This would also be to measure up to what is stipulated in the TEU that the EU in all its activities shall

“observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies” (Article 9 TEU). There is thus a legal basis and potential to use Union citizenship as a tool for maintaining the EU’s values of Article 2 TEU and respect for the rule of law. The Court has already upheld certain important rule of law principles through Union citizenship, such as the right to judicial review in a transparent legal process, which is often emphasised in the interpretation of the *Rottmann* line of case law. In this way, the Court shows that it sees a clear link between the meaning of Union citizenship and the fundamental values of the EU. The EU legal protection of the core of Union citizenship can and should therefore include protection for much more than just the right to free movement.

Another case law development, pointed out by Iliopoulou-Penot (2022), is the trend creating a sort of “digital citizenship” at the EU legal level. This happens in a similar way to the legal development of the original Union citizenship, that is, through the Court’s leading and dynamic interpretations. Rulings such as *Digital Rights Ireland* (CJEU, 2014b) and *Tele2* (CJEU, 2016c) concern the strong EU legal protection of the individual’s fundamental right to privacy both in relation to heavy actors on the digital market and to the Member States’ authorities. Here, the Court has established a high standard of protection for the individual’s fundamental rights that must be respected by all digital actors operating on the internal market. However, the legal protection created in the Court’s practice regarding the individual’s rights on the digital market applies to *all* persons who are within the EU’s territory, both Union citizens and third-country nationals. The concept of a “European digital citizenship” thus covers a much broader group of persons than just Union citizens. Such an approach can be attributed to the old European idea of a common standard for fundamental rights that should apply to all individuals regardless of where they are within the EU’s territory, which the former Advocate General at the Court, Francis Jacobs, once expressed as *civis europeus sum* (CJEU, 1992a).

In summary, there are several dimensions of Union citizenship for the EU to strengthen and develop. To create direct links between Union citizenship and EU values through secondary legislation would currently be a groundbreaking development in EU law. However, such a direction would be in line with other trends that already exist in the Court’s case law, which can be reinforced through the adoption of new secondary

legislation. According to Article 25 (2) TFEU, the Council may, by unanimous decision in accordance with a special legislative procedure and after obtaining the consent of the European Parliament, “adopt provisions to strengthen or to add to the rights” of Union citizenship. The Treaties thus provide the process for and foresee the creation of more substantial rights and the strengthening of the existing legal meaning of Union citizenship. This could create a new depth in the constitutional significance of Union citizenship. It would also be a definitive detachment from the outdated view that Union citizenship can only be legally relevant through the individual’s exercise of free movement. Parallel to the question of the legal meaning of Union citizenship, the question of who should be included in its status, or otherwise covered by its rights, lives on.

### WHO SHOULD BE INCLUDED IN UNION CITIZENSHIP?

In the wake of the Brexit vote and the UK’s subsequent departure from the EU, the discussion about the possibility of an “autonomous” status as a Union citizen was revived. Can you be a Union citizen without being a national citizen in any EU Member State? In this debate, Garner (2018) has put forward arguments for so-called individual memberships in the EU, or a sort of “stateless Union citizenship.” He argues that it is necessary to make Union citizenship a selectable, and thus sustainable status at the individual level, regardless of a given Member State’s actions. This would be necessary if the Court’s statement about Union citizenship as the individual’s “fundamental status” were to have any real significance. During the Brexit process, Kostakopoulou (2018) argued that British citizens could be legally perceived as “associated Union citizens.” The basis for this would be the rights that individual British nationals have acquired through their exercise of free movement within the EU as Union citizens before the UK’s exit. However, the legal counterarguments put forward against autonomous or associated variants of Union citizenship are persuasive. Van den Brink and Kochenov (2019) have pointed out that EU policy and legislation are created by elected representatives from the Member States. It would be a democratically hollowing out of the EU legal and political system if stateless Union citizens were allowed to vote in elections to the European Parliament and enjoy a special legal status under EU law but were not allowed to vote in national elections in any of the Member States. They would thus not participate in the election of the heads of government and ministers who represent the Member States in

the EU. If the EU were to accept associated Union citizenship for British nationals who at the individual level want an affiliation to the Union it would simultaneously disqualify the British democratic process, which after all led to the decision to leave the EU. This view is also reflected in the interpretation of Brexit's consequences for Union citizenship that the Court has made in rulings such as *EP* (CJEU, 2022b) and *Silver* (CJEU, 2023). The Court here ruled that the UK's exit from the EU meant a definitive loss of Union citizenship for British citizens. As the treaties are designed, it is not possible to disconnect national citizenship in an EU Member State as the necessary basis for an individual's status as a Union citizen. For this, it would require that the EU's existing Member States first undertook treaty amendments. Therefore, as of February 1, 2020, British nationals, if they do not have dual citizenship in any other EU Member State, are to be considered as third-country nationals. However, Nic Shuibhne (2023) has argued for a more nuanced stance since British nationals are after all former Union citizens. This, she argues, should have significance for their legal status in EU law. When the Court has interpreted the EEA Agreement, citizens of the EEA states have been found to have a special status compared to other third-country nationals, which is very close to the actual Union citizenship. A similar legal discourse could be conducted regarding British nationals when the withdrawal agreement between the EU and the UK is to be interpreted and applied.

The legal aftermath of Brexit has clearly shown that to preserve or obtain the status of Union citizen, one of two things must happen. Either the individual is naturalised and acquires national citizenship in an EU Member State, or the state where the individual is a national citizen joins the EU.

## BECOMING A UNION CITIZEN

Union citizenship is a conferred status. It cannot be acquired directly in a process between the individual and the EU but is a byproduct of the person being or becoming a national citizen in an EU Member State. This follows from the wording: "Every person holding the nationality of a Member State shall be a citizen of the Union" (Article 20 (1) TFEU). The conditions for acquiring national citizenship, typically at birth or through naturalisation, are however a national competence for the EU Member States to regulate in their respective nationality laws. In its case law, the Court has stated that this national competence

should be respected by the EU. However, the Court has also made two things clear. Firstly, that the national competence regarding acquisition or loss of nationality must always be exercised in accordance with the Member States' obligations under EU law (CJEU, 2010, 2018, 2022a). Secondly, that the Member States are obliged to mutually recognise each other's respective legal systems for national citizenship. This principle of mutual recognition, which follows from the *Micheletti* judgement (CJEU, 1992b), is perhaps the most important EU legal principle of significance for the legal effectiveness of Union citizenship. For its status and rights to have any legal significance, it is not enough to be a Union citizen only in relation to one's home Member State. Equally important is to be recognised as such in relation to all the other EU Member States. Therefore, each Member State must recognise an individual's nationality if it has been issued in accordance with another Member State's legal system. With this background, the European Commission is currently pursuing a case against the Member State Malta in the pending case C-181/23, *Commission v Malta*. Through its national citizenship legislation, Malta allows third-country nationals to acquire Maltese citizenship and thus Union citizenship by making investments in the country. This is commonly referred to as investment citizenship, or "golden citizenship." The European Commission claims that Malta violates both the significance of Union citizenship according to primary law, as well as Article 4 (3) TEU, which stipulates the principle of sincere cooperation between the EU and its Member States. This is because Malta's sale of national citizenship to individuals without a "genuine link" to the Member State also makes these individuals Union citizens. By the right-bearing force of Union citizenship throughout the entire territory of the EU and by virtue of the principle of mutual recognition, all other EU Member States are affected by Malta's nationality scheme. If the Court gives the European Commission right in this legal process, it would mean that EU law takes another major step into the Member States' competence in the area of national citizenship. The *Rottmann* case law has shown that EU law places sharp demands on the Member States regarding their ability to withdraw national citizenship. From the European Commission's argumentation in *Commission v Malta*, it inevitably follows that also the granting of national citizenship must come within the scope of EU law. Any decision to naturalise an individual to national citizenship in a Member State must then be considered to affect all other EU Member States. In this way, EU law would directly challenge the Member States'



competence to design their own respective nationality law at all. The requirement that there must be a genuine link between the individual and the state would certainly, if the European Commission is successful in its case against Malta, be able to form the backbone for any future EU common criteria for naturalisation of third-country nationals. What constitutes a genuine link between an individual and a Member State, or an individual and the EU as a territorial whole, must then be filled with meaning in EU law. It is likely to be difficult to reach an agreement on this between the Member States. Of course, there may be political and ethical reasons for the EU to react against the occurrence of individual Member States offering investment citizenship, which often coincides with the occurrence of money laundering and other illegal activities. The question is still whether it is desirable for EU law to have such far-reaching applicability to the respective legal systems of the Member States for national citizenship. This would be a major consequence of an attempt to deal with a problem that is after all marginal in the larger context. As van den Brink (2022) has pointed out: at the EU level, it should be considered a larger societal problem that millions of third-country nationals live in the EU who, despite being able to say they have a genuine link to a Member State through long-term residence, family ties, work and more, still do not have access to national citizenship and thus are also cut off from the status of Union citizen. The under-inclusion in Union citizenship due to many Member States setting very strict conditions for naturalisation, should be discussed as more of a problem, argues van den Brink. The phenomenon of over-inclusion, on the other hand, that some wealthy third-country nationals can buy a national citizenship in Member States such as Malta or Cyprus, should be considered a relatively small problem.

In principle, it is still understandable that at the EU level it is perceived as provocative that some Member States exploit the attractiveness of Union citizenship and its legal rights. The potential to deepen the political and legal significance of Union citizenship for the populations of the Member States is diluted if the status is allowed to be easily sold to wealthy individuals. However, it is difficult to see how the European Commission can be successful in its case without the EU Member States being forced to accept further encroachments on their national competence.

With the migration pact that the EU agreed upon in 2023, the rule-making of the common asylum and migration policy will to a greater

extent likely take place through EU regulations (see Andrea Spehar's chapter in this volume). In light of this, there may also be a reason to discuss EU common norms for naturalisation of third-country nationals in the Member States. Many of the millions of third-country nationals living in the EU Member States today could get a more integrative path towards national citizenship and thereby the economic and political rights of Union citizenship. This applies in particular to the possibility of political representation at the European level. For example, the number of years of residence in an EU Member State required for naturalisation, which today varies between 3–5 years in Sweden to 7–9 years in countries such as Denmark and Austria, could be harmonised to create more equivalent conditions for third-country nationals to gain access to the status of Union citizenship regardless of which EU Member State they live and work in.

As a complement or perhaps a more feasible alternative to EU law gaining more influence on the Member States' respective nationality law, the EU can make more of the rights of Union citizenship available to a broader group of people within the framework of a differentiated European cooperation. This is yet another reason to strengthen access to the rights of free movement for third-country nationals who legally reside within the EU.

### FREE MOVEMENT FOR MORE PERSONS

Even though free movement constitutes a main aspect of Union citizenship, the reverse relationship does not apply (Cremona & Nic Shuibhne, 2022). That is, rights attributable to free movement may be extended to include more persons than Union citizens. Both the treaty text, several of the EU's association agreements and free trade agreements with neighbouring countries, as well as the case law of the Court, show that rights in the area of free movement have already been extended to apply to more categories of people than just the national citizens of the Member States. EEA law, as well as the EU's sector-specific agreements with Switzerland, have extended the protection of rights that free movement gives to Union citizens to in principle also apply to EEA citizens and Swiss citizens (Franklin & Haukeland Fredriksen, 2022; Idriz & Tobler, 2022). Through the EU's strong association with the EEA states and Switzerland, EEA citizens and Swiss citizens can be said to be covered by the rights and opportunities of the internal market to almost the same extent

as Union citizens do. This distinguishes EEA citizens and Swiss citizens from other categories of third-country nationals residing within the EU. The latter group faces greater hurdles for access to free movement rights than citizens from the EEA states or Switzerland do. In relation to Union citizenship, this can be perceived in two ways. First, that Union citizenship, in the same way as the internal market is open to external participants, includes a kind of openness for third-country nationals to, in varying degrees, be included in the enjoyment of its rights. Conversely, it can be said that the rules for free movement of persons may be detached from Union citizenship. EU law has already and may well continue to develop the rules on free movement of persons to include more categories of persons than just the national citizens of the Member States. Support for the latter view of free movement is already incorporated in the provisions of the FMD. Following the conditions of the FMD, third-country nationals, by virtue of being family members of a Union citizen, can derive a right of residence, equal treatment and right to work, etc. in a receiving Member State. This is also possible with the support of the worker regulation 492/2011 (European Parliament and Council of the European Union, 2011). A derived right of residence for third-country nationals who are family members of Union citizens can in some cases also be enjoyed in the Union citizen's home Member State. This is evident from the case law of the Court regarding the primary law provisions on free movement (CJEU, 2007, 2014a, 2016b). Through individual association with a Union citizen, a third-country national can thus be covered by far-reaching rights within the rules of free movement. These family members enjoy legal rights that are very close to the free movement rights of Union citizenship. It is likely that the Member States want to guard their national competence regarding nationality law. They thereby retain control over how third-country nationals might acquire their respective national citizenships and consequently Union citizenship. At the EU level, it is therefore more feasible to seek to improve the opportunity for third-country nationals residing within the EU to exercise the right to free movement of persons, regardless of whether they have first become national citizens of a Member State. The EU faces a great need for qualified labour immigration to solve its innovation challenges. In addition, there is a demographic challenge in the form of high numbers of pensioners. For several reasons, third-country nationals who are already legally resident within the EU should be given better opportunities to move freely on the internal market.

## IMPROVEMENTS TO DIRECTIVE 2003/109/EC

TFEU stipulates that “The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, [and] fair treatment of third-country nationals residing legally in Member States” (Article 79 (1) TFEU). On this basis, the EU Member States have adopted Directive 2003/109/EC on the status of long-term resident third-country nationals (Denmark and Ireland, however, have legal exceptions from this part of EU law). The revision that this directive is currently undergoing (European Parliament, 2024) could have positive consequences. Among other things, over time, all the millions of Ukrainian citizens who are currently residing within the EU on the basis that they have been given temporary protection under Directive 2001/55/EC could acquire the status of “long-term residents.” This status, in turn, entails the right to exercise free movement between Member States under protection against national discrimination. At present, residence time due to temporary protection is not counted as time that can qualify a third-country national for the status of long-term resident. Therefore, Ukrainian refugees cannot be covered by the opportunities that Directive 2003/109/EC gives third-country nationals to access the economic and social rights of freedom of movement. In addition, Ukrainian citizens can only become Union citizens through naturalisation to national citizenship in an EU Member State, or—which might still be a long way off—that Ukraine is made an EU Member State. From a rights perspective much could instead be done for Ukrainian citizens within the EU at the legislative level, through the revision of Directive 2003/109/EC. At the same time, the proposal for improvements of said directive has been criticised for still not sufficiently creating an effective right to free movement for third-country nationals with national residence permits in one of the EU Member States. Even with a revised directive, it is noticeable how the rules of free movement are more advantageous for the Member States’ own national citizens. One example is that a long-term resident third-country national must first achieve five years of legal residence in a first Member State in order to be able to apply there for the status of long-term resident. This, in turn, gives a right to exercise free movement to a second Member State but the status as such cannot be directly transferred to apply in a second Member State. It must again be acquired through fulfilment of the conditions for permanent residence in the second Member State. This affects the ability of the third-country

national to achieve family reunification with family members coming from outside the EU, which can be assumed to have a deterrent effect on third-country nationals' willingness to use free movement. Peers (2022) has expressed that the right to free movement that a third-country national can achieve through the revision of Directive 2003/109/EC is a kind of "poundshop free movement": a cheap imitation of the free movement rules that apply to Union citizens and EEA citizens. Yet, the Treaties do not give reason to limit the free movement of third-country nationals within the EU, but on the contrary state the goal to "facilitate the free movement of persons" (TEU preamble). As an additional point, if free movement is extended to include more persons, access to the EU legal protection of fundamental rights, which the exercise of free movement activates for the individual, will also be extended.

### FREE MOVEMENT AND THE CHARTER'S PROTECTION OF FUNDAMENTAL RIGHTS

Through the expansion of free movement to apply in an equivalent way to both EEA citizens and Union citizens, the protection of fundamental rights in the Charter has also become applicable to more persons. The Court has here linked a legal exercise of free movement with the protection of rights that should apply within the EU's area of freedom, security and justice. This is evident from the rulings in *Petruhhin* (CJEU, 2016a), which concerned a Union citizen, and *IN* (CJEU, 2020), which concerned an EEA citizen. *Petruhhin* dealt with the case of an Estonian citizen who was wanted in Russia for a criminal process of illegal drug trafficking. He was found in Latvia, which received a request from Russia for his extradition. A Latvian court then requested a preliminary ruling from the Court regarding the significance of the person being a Union citizen from another Member State, who was in a situation of free movement to Latvia. In its ruling, the Court did not find that the status of Union citizenship as such could activate the applicability of the Charter. There is currently no direct link in EU law between holding the status of Union citizenship under Article 20 TFEU and activation of the Charter's applicability. However, the risk of being extradited to a third country when being in a free movement situation to a host Member State constituted a deterring restriction on the exercise of free movement under Article 21 (1) TFEU. Through the activation of this provision on free movement,

EU law became applicable in the *Petrubhin* case and the Charter's fundamental rights requirements for a lawful extradition should be respected. Specifically, this meant that an extradition to a third country could not take place if there was a risk of a violation of the Charter's Article 19. This provision stipulates that no one "may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment" (Article 19 CFR).

In the subsequent judgment in *IN*, the Court established that EEA citizens are also covered by the same EU fundamental rights protection as Union citizens when they are in a situation of free movement to a host Member State and are put at risk of extradition to a third country. The protection that was considered to apply to the Union citizen in *Petrubhin* under Article 21 (1) TFEU, in combination with the Charter, was thus transferred to the EEA legal system for free movement of persons. As Franklin and Haukeland Fredriksen (2022) point out, the Court in *IN*, which concerned an Icelandic citizen who was in Croatia and risked extradition to Russia, marks that EEA citizenship is a kind of "differentiated Union citizenship." The ruling shows that the legal status of EEA citizens comes as close as possible to Union citizenship when it comes to the protection of fundamental rights within the EU's area of freedom, security and justice. In both *Petrubhin* and *IN*, however, an actual and legal exercise of free movement was decisive for the applicability of the Charter. It is clearly not Union citizenship alone that activates the protection of the Charter. Conversely, it can be said that the status of Union citizenship is not "needed", as the protection of fundamental rights can be ensured by EU law for all persons who are in a legal exercise of free movement to a receiving Member State. This is well motivated by the TEUs: phrasing that "the Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of *persons* is ensured ..." (Article 3 (2) TEU) (author's emphasis). The wording further supports separating Union citizenship from the rules on free movement, which can then more easily expand to cover third-country nationals.

## A LARGER EUROPEAN COMMUNITY THROUGH DIFFERENTIATED UNION CITIZENSHIP

In its current construction in the treaties, Union citizenship cannot be detached from its dependence on the individual holding national citizenship in an EU Member State. Therefore, the discussion should continue regarding how the opportunities for free movement and its accompanying protection of rights and protection under the Charter can be extended to an even wider group of persons. The EU already holds association and free trade agreements with neighbouring third countries for geographically expanding several categories of the EU's legal and policy areas, including the internal market, to include more than just the territories of the EU member states (Cremona & Nic Shuibhne, 2022). However, with the exception of the EEA Agreement and the sectoral agreements between the EU and Switzerland, these association agreements and free trade agreements, such as those with Turkey and Ukraine, usually contain significant exceptions regarding the free movement of persons. For example, Turkish citizens have no direct right to free movement of persons to or within the EU. Once they have achieved legal residence as workers in an EU Member State, they however are to some extent protected by the rules that apply to EU workers under Article 45 TFEU. This is in accordance with the interpretations of the EEC-Turkey agreement by the EU Court, for example in the *Ziebell* judgement (CJEU, 2011b). Depending on how strong a connection the EU wishes to have with a certain associated state, the association agreements thus reflect varying silhouettes of Union citizenship. The rights that the EEA Agreement creates for EEA citizens are, through both the Court and the EFTA Court's interpretations, those that most closely resemble the right to free movement that applies to Union citizens. As for the EEA states and Switzerland, their potential need to become real EU Member States has become almost non-existent thanks to their very strong connection to the internal market and their national citizens' enjoyment of free movement rights so closely alike those of Union citizens. One can imagine a development of more and different kinds of differentiated Union citizenship, which can include citizens in states in the larger European community that, for example, France's President Emmanuel Macron has called for between the EU and other neighbouring countries. In a 2023 report commissioned by the French and German governments on opportunities

to reform the EU, proposals were put forward for a European cooperation at four different levels of integration. In the innermost circle, the most closely associated EU Member States would cooperate. Here, the most profound collaborations would exist, such as Schengen and the Euro currency. This deepened level of integration would be surrounded by a second circle in which all other EU Member States would be included. These two innermost circles would apply Union citizenship as a status for their national citizens and be strongly integrated through the internal market. In a third circle, associated states, such as the EEA states, Switzerland and possibly the United Kingdom would be found. These states would have access to the internal market and the right to free movement of persons, but not to Union citizenship as such. Conversely, they would also have less influence and obligations regarding other policy areas. In the fourth and outermost circle, called the “European Political Community,” other associated states, including candidate countries such as Ukraine and Moldova, would be found. This broader European community would be linked to the EU through bilateral cooperation in mutually important geopolitical areas such as security, energy and climate, and through free trade agreements (Franco-German working group on EU institutional reform, 2023).

Regardless of how the EU develops its relations in the neighbourhood region, EU law could already today do more to extend the opportunities for free movement and legal protection to third-country nationals who live and work in one of the EU Member States. By detaching free movement from Union citizenship, the opportunity is simultaneously opened to deepen other dimensions of that status. This is of importance to the Member States that wish for a stronger, more integrative EU cooperation. A deepened legal meaning of Union citizenship, tied to the EU’s values and respect for the rule of law, should then be a tangible part of that cooperation. The protection of the rule of law could here be channelled through Union citizenship so that the EU can be a credible forerunner for this fundamental value.



### STRENGTHEN THE INTEGRATION OF THIRD-COUNTRY NATIONALS AND CREATE NEW LEGAL DEPTHS TO UNION CITIZENSHIP

The EU's objectives linked to various mottos about "the peoples of Europe" should include a larger group of persons than just the national citizens of its Member States. There is an opportunity to extend access to free movement to a wider category of persons while using Union citizenship to create new constitutional depths in EU law. In a future with perhaps more differentiated European cooperation, the legal meaning and effect of Union citizenship should be deepened and strengthened in the inner circles of EU integration. Specifically, the EU should guard the political rights associated with Union citizenship and affirm its status as a tool for channelling EU values. For the inclusion of a new Member State's population in the Union citizenship, it should be required by the Member State to have far-reaching EU integration and respect for the rule of law. On the other hand, access to the internal market can continue to be broadened to a larger number of associated states and candidate countries in the wider cooperation circles. Similarly, free movement of persons, with accompanying protection against discrimination on national grounds and activation of the Charter, can be broadened to more of the millions of third-country nationals who are currently legally resident within the EU. As part of this, the improvements to Directive 2003/109/EC should be adopted and implemented. If EU law does more to integrate long-term resident third-country nationals by strengthening their position in the internal market, Member States can continue to retain their national competence regarding who can become a national citizen and thus a Union citizen. At the EU level, constructive joint steps could be taken to facilitate the integration of long-term resident third-country nationals in the internal market. At the same time, a deepened legal meaning of Union citizenship would be an incentive for the national citizens of candidate countries to work for EU membership and the acquisition of this individual status.

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# Improved Working Conditions and Paths to Worker Solidarity in an Increasingly Diversified EU

*Ann-Christine Hartzén* 

## INTRODUCTION

Russia's war against Ukraine has engendered supportive action from the European Union and European citizens towards Ukraine and its people. Support for Ukraine was initiated quickly after the Russian invasion. Decisions on economic sanctions against Russia (Council of the European Union, 2022a, 2022b) and emergency assistance to Ukraine (European Parliament and Council of the European Union, 2022a) came as early as February 2022, followed in early March 2022 by the activation of the Temporary Protection Directive (Council of the European Union, 2022c) to quickly and efficiently offer people fleeing Ukraine residence permits and access to education and the labour market within the EU. Since then, both the sanctions against Russia and various support packages to Ukraine have been extended on an ongoing basis (e.g. European

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Parliament and Council of the European Union, 2024). The economic, political and humanitarian support that the EU and its citizens have provided to Ukraine can be seen as a clear expression of solidarity. With Ukraine and Moldova having also been granted the status of EU candidate countries in June 2022 (Council of the European Union, 2022d, point 11), it becomes increasingly important to reflect on the issue of solidarity between citizens of different EU Member States from a longer-term perspective. The issue of solidarity between citizens of different EU Member States has historically been contentious, with rich debate concerning the extent to which the development of EU law can be seen to promote or undermine the scope for such solidarity (e.g. Banakar, 2018; de Witte, 2012; Garben, 2022; Karageorgiou, 2018; Krunke et al., 2020; Sangiovanni, 2013).

I have previously analysed the issue of solidarity between trade unions and workers from different Member States (Hartzén, 2023; briefly in Hartzén & Pietrogiovanni, 2023) in relation to the process of adopting Directive (EU) 2022/2041 on adequate minimum wages (European Parliament and Council of the European Union, 2022b, hereinafter AMWD, or the Directive). The discussions that preceded the AMWD highlight how difficult the issue of solidarity is between citizens from different Member States in a Union with a strong focus on trade. In fact, the AMWD is the subject of an ongoing legal process (CJEU, 2023, *Kingdom of Denmark v. European Parliament and Council of the European Union*, pending after hearings on Sept 17, 2024, and AG opinion delivered on Jan 14, 2025) in which Denmark has brought an action for annulment before the Court of Justice of the EU (hereinafter CJEU). While the issue directly relates to the regulation of conditions for workers, it has indirect implications for EU citizens in a broader perspective, as working conditions to a large extent also reflect living conditions in a country. Since its founding, the EU's social objectives have included striving to improve living conditions for its citizens. Historically, the EU's social ambitions have been addressed in different ways, but the initiatives taken have primarily been concerned with improving working and employment conditions. These initiatives have also been subject to different forms of conflict of interest in relation to the development of the internal market and the importance of free movement in the pursuit of economic development and the reduction of trade barriers between Member States.



This chapter explains the challenges faced by the EU in building solidarity between citizens, primarily workers, from different Member States and discusses how the EU can act to mitigate these challenges. The question the chapter aims to answer is: How can or should the EU act to ensure that solidarity between workers from the different Member States can be preserved as the EU adds members and the differences in living and working conditions increase even more?

In spite of the fact that AG Emilio suggests to annul the AMWD (CJEU, 2023b), it serves as a good example of how the EU can navigate these issues. Current legal challenge notwithstanding, the Directive is unique in its nature and contains a form of regulatory technique that is novel in the field of EU labour law. However, in order to understand the solidarity challenges that the EU has to deal with, it is necessary to discuss how these challenges have arisen. Therefore, the first task is to explain the contrasts and tensions that arise from the mismatch between the EU's objectives in the field of social policy and its competences. This mismatch will be described through a historical review of how the EU's approach to social policy has oscillated between different degrees of activity and intervention. The discussion then moves to the issue of EU enlargements and how increased differences in both working conditions and labour market regulatory models between different Member States have created tensions and contributed to challenges in building solidarity between citizens from different countries in the EU. These challenges culminated in the management of the financial crisis and were further highlighted by Brexit, and this sequence of events is discussed in conjunction with the background of the AMWD. Following this discussion is an explanation of the design of the AMWD and how it can be considered a new form of regulatory technique. Finally, the chapter suggests ways to address the challenges of promoting solidarity between citizens, specifically workers, as the EU grows and differences in living and working conditions, as well as labour market regulation models, continue to increase between Member States.

## PROMOTING SOCIAL DEVELOPMENT IN A UNION BASED ON TRADE CREATES CHALLENGES

When the union we now know as the EU was created in the form of the European Economic Community, its aim was—in brief—to prevent future wars through more integrated trade between Member States.

However, trade and economic mobility were not the only objectives defined in the founding treaties. As early as 1952, Article 2(1) of the ECSC Treaty set out the objective of developing employment and improving living conditions for residents in the union. Article 3 of the same Treaty established improved working conditions and an improved standard of living for workers as one of the objectives of the Community institutions. In the development of policy for the coal and steel industries, the impact of change on workers and the management of that impact through active labour market policies and redeployment were important elements (Bercusson, 2009). In other words, economic and social development objectives have been part of the Community construction from the outset, but with focus shifting between them during different periods of development.

When the EEC was founded, social objectives were less in focus than economic objectives and the common market. The Treaty of Rome of 1958 did contain social policy-oriented articles, but they were narrowly defined and initially only led to legislation on the free movement of labour (Bercusson, 2009; Degryse, 2006). Even though Article 119 of the Treaty of Rome on equal pay for men and women can be seen as a social policy-oriented article, the reason for its introduction was to protect the French textile industry from low-wage competition from female workers in Belgium (Bercusson, 2009). In other words, the EEC initially focused on the economic aspects of the common market, with the prevailing view that a more integrated market that resulted in economic growth would eventually have positive effects on social issues such as working and living conditions, without the need for initiatives in this area (Hartzén, 2017). Likewise, initiatives within the framework of the European Social Fund focused on facilitating free movement, even though this also included free movement for redundant workers to find employment in other Member States (Bercusson, 2009).

The 1960s and early 1970s witnessed growing social inequalities, student protests, strikes and the emergence of trade union cooperation structures at the Community level. These developments led to a change of approach. Community institutions now emphasised the importance of focusing more on social policy, so that the Community would not be seen as a cooperation that only benefited those who were able to take advantage of the economic gains produced by the common market. A certain dissatisfaction with the lack of social policy initiatives also emerged in the dialogue with prospective new Member States, the United Kingdom,

Ireland, Denmark and Norway in the early 1970s (Bercusson, 2009). In addition, both Germany and France had new governments, with the German government having strong interests in pushing for social and labour law development and the post-de Gaulle government shifting the French stance towards a positive view of European integration (Degryse, 2006). This context facilitated social policy developments and laid the foundations for the 1974 Social Action Programme (Bercusson, 2009; Hartzén, 2017). The main objectives of the Programme were to achieve full employment, to improve living and working conditions and to involve the social partners more closely in Community decisions on economic and social policy. However, the Community's limited competence in the field of social policy meant that the directives adopted to implement the programme were based on Article 100 of the EEC Treaty (now Article 115 of the Treaty on the Functioning of the European Union, TFEU). This legal basis gave the Community the power to adopt legislation by unanimity to harmonise national laws in order to ensure the functioning of the internal market (Bercusson, 2009; Degryse, 2006). In other words, the strategy was a clear indication that the development of the internal market and the development of social policy development in the Community were linked and needed to be balanced against each other, like two sides of the same coin.

When a new Conservative government took office in the UK in 1979, the unanimity requirement caused a standstill, with the UK exercising its veto ability on every proposal presented (Dølvik, 1999; Hartzén, 2017). The policy strategy thus changed towards bolstering the budget for the European Social Fund. However, the macro-economic situation at the time did not make possible sufficient support packages for workers adversely affected by the development of the Single Market (Bercusson, 2009). Within the European Commission, work began on proposing Treaty changes to facilitate the completion of the Single Market: hence, the idea of introducing qualified majority voting for the adoption of legislation to promote the functioning of the internal market and for legislation in the fields of social policy and labour law. This idea was implemented when the Single European Act (SEA) was adopted in 1986, introducing the new Article 100A of the EEC Treaty (now Article 114 TFEU), which opened the door to qualified majority voting for the adoption of acts to harmonise national legislation to improve the functioning of the internal market. However, the sceptical UK government managed to get some restrictions into the article by adding a second

paragraph stating that matters of taxation, free movement of persons and employee rights and interests were excluded from qualified majority voting (Bercusson, 2009). The SEA also introduced Article 118A of the EEC Treaty (now part of Article 153 TFEU), which allowed qualified majority voting on minimum legislation to improve worker health and safety, especially in the working environment (Bercusson, 2009; Hartzén, 2017). On the basis of this article, the Working Time Directive (Council of the European Union, 1993, replaced with European Parliament and Council of the European Union, 2003) was subsequently adopted, and the article was reaffirmed as the correct legal basis for the adoption of such measures in the judgement by the CJEU (1996) *United Kingdom v. the Council* on the UK's action for annulment of the Working Time Directive.

The UK's reluctance to address labour law issues within the Community also spurred other ideas for advancing social policy and labour law, with the European social dialogue receiving increased attention and stimulation (Degryse, 2006; Hartzén, 2017). Structures for involving labour representatives in the development of the Community had existed since the ECSC, and when Jacques Delors took office as President of the European Commission, he built on these various practices for social dialogue. Delors was convinced that European social dialogue was a necessary cornerstone of both social policy and a well-functioning, integrated internal market (Hartzén, 2017). Article 118B of the EEC Treaty (also introduced by the SEA and now somewhat modified in Articles 154 and 155 TFEU) mandated the Commission to develop the dialogue between the European social partners (Bercusson, 2009). It also granted these parties the right to conclude agreements and, as such, represented a first step towards a formalised structure for social dialogue. By involving the social partners, with their capacity to influence opinion in the Member States through national interest organisations, Delors hoped to further the development of the social dimension in the EU despite the UK's opposition (Bercusson, 2009; Degryse, 2006; Dølvik, 1999).

Delors believed strongly in the social partners and their specific competence to determine how best to deal with labour market issues. His ambitions, and the social partners' willingness to cooperate, paved the way for the Social Protocol annexed to the Maastricht Treaty, which introduced a procedure that involved the social partners in the process of developing new labour laws (Hartzén, 2017). It obliged the Commission to consult the social partners in two stages, first on the need for

legislation and then on its direction. The social partners could inform the Commission whether they were willing to negotiate on the content of the legislation and, if they reached an agreement, could ask the Commission to submit their agreement as a legislative proposal (Dølvik, 1999). The social dialogue was thus formalised through the Social Protocol (Hartzén, 2017), but the UK, which remained opposed to Community action within social policy and labour law, chose to opt-out. Thus, the Community's new scope for action in the field of social policy was not comprehensive for the internal market. However, a change of government in the UK shortly afterwards provided the necessary conditions for the Social Protocol to achieve full Community coverage (Bercusson, 2009; Degryse, 2006). In 1995, the social dialogue was enshrined in the Amsterdam Treaty and the Community's ability to decide certain labour law issues by qualified majority made possible minimum legislation for the whole of the internal market (Bercusson, 2009). Over the next few years, the Commission would also actively create incentives to further develop social dialogue and cooperation between the social partners at the Community level. The basic idea behind this approach was that the social partners had the best knowledge and understanding of the labour market and were therefore best placed to decide how regulations should be designed (Hartzén, 2017).

Although reaching agreements among the social partners was not easy, the Commission actively used its role as initiator of new Community legislation to bring the parties—one of whom was usually a reluctant employers' organisation—to the negotiating table. Unless the parties negotiated and agreed, the Commission would put forward a legislative proposal over which they had no control (Hartzén, 2017). In this sense, the negotiations between the parties took place in the shadow of the law (Bercusson, 2009) and social dialogue as a regulatory system came to depend largely on the Commission applying an active legislative strategy in the field of labour law (Hartzén, 2017). When the Commission's strategy shifted to focus on improving the competitiveness of businesses, especially in terms of cost efficiency, and initiated a reform programme to simplify labour law legislation, the shadow of the law faded and eroded the incentive to negotiate (Hartzén, 2017).

The development of the Community's social dimension, in relation to citizens from the various Member States, has mainly been limited to issues of worker protection. This is hardly surprising, given that employment conditions and working conditions affect costs for companies and

hence their competitiveness (Hartzén, 2017, 2019; Hartzén & Hettne, 2021; Bercusson, 2009). Simply put, in the development of European integration, we find the economic objectives of the single market on one side of the coin and working conditions and labour practices on the other (Hartzén & Hettne, 2021). Since employment conditions and working conditions in the various Member States differ, both in terms of substantive content (what is regulated) and in terms of regulatory structure (how these conditions are regulated), disagreements between Member States on these issues also have multiple dimensions.

### INCREASING DISPARITIES IN WORKING CONDITIONS AND TENSIONS BETWEEN WORKERS IN THE COMMUNITY

The issue of pay and working conditions has been relevant in the Community from the start, with the principle of equal pay for equal work or work of equal value introduced to alleviate France's concerns about low-wage competition in the French textile industry (Bercusson, 2009). Thus, from the beginning, tensions existed between Member States regarding the competitiveness of companies in relation to different labour costs. With differing cost levels in different Member States and the development of an internal market, the issue of fair competition has continuously come to the fore, although the issue of competition has involved more aspects than just cost advantages. The fact that direct labour costs have differed between Member States has basically been accepted on the premise that companies in countries with higher labour costs generally have other competitive advantages, such as more cost-efficient production processes or a higher productivity level. However, the initial premises for competition in the internal market were largely based on conditions applicable to manufacturing industries, where the company's activities are carried out at a fixed location. The development of the internal market, with increasing cross-border activities by companies offering services in Member States other than the one where they were established, raised new competition problems (Hartzén & Hettne, 2021).

The question of what a host Member State could require from a visiting company that temporarily provided services by bringing employees to the host country was put to the test in the *Rush Portuguesa* case (CJEU, 1990). In this case, a Portuguese company had brought in its own employees to carry out contracted construction work in France. Put simply, the question was whether companies providing services in

France on a temporary basis were allowed to bring in their own staff, employed in their own country, to carry out the work. The Court held that the free movement of services means that companies are entitled to send their employees to other Member States to carry out work on a temporary basis without the host Member State being able to require that the company secure work permits and secure host country employment for its staff. However, the Court also permitted the host Member State to extend legislation or collective agreements to anyone carrying out work in the host country, even temporarily, regardless of where the employer was established (CJEU, 1990). Thus, the Court sought to balance the principle of mutual recognition regarding the free movement of services and the principle of non-discrimination for workers (Hartzén & Hettne, 2021). The free movement of services means that companies are entitled to provide services under the regulatory framework of their home country, even when the services are provided in another Member State. The principle of non-discrimination for workers means that workers carrying out work in a Member State should be treated equally, regardless of whether they come from different Member States. Thus, when workers are sent by their employer to temporarily perform work in another Member State, these two principles will generate different interpretations of what employment conditions should be applied. The principle of the free movement of services suggests that the rules of the home Member State should apply, whereas the principle of non-discrimination for workers suggests that the rules of the host Member State (Hartzén & Hettne, 2021).

In *Rush Portuguesa* (CJEU, 1990), the Court gave relatively strong weight to the Treaty's social objectives of improving living and working conditions. The Court's decision reduced the risk that workers in high-wage countries would have to compete against workers from low-wage countries in sectors where cross-border services are more common. On the other hand, the decision also undermined the idea that companies from countries with different cost levels could compete on a reasonably level playing field because they also had different competitive advantages. If the host country applied national employment conditions to posted workers from other Member States Service, providers from lower-cost countries could no longer use their main competitive advantage. With a growing services market, it therefore became important to establish a regulatory framework that would allow for fairer competition between companies from different Member States while ensuring a certain level

of protection for workers (Bercusson, 2009; Hartzén & Hettne, 2021). Legislation was needed to ensure a balance between fair competition and worker protection, to avoid the risk of social dumping.

The Posting of Workers Directive (European Parliament and Council of the European Union, 1996, hereinafter PWD) was developed with this balance in mind. The process of drafting the PWD was not straightforward, not least because the Community was being enlarged at the same time. With Sweden becoming a new Member State, the number of Member States where labour market regulation was handled primarily through collective agreements had increased. It became necessary to ensure that the PWD's objective—to protect employment conditions—could also be achieved in Member States where legislation was less detailed and wage issues were regulated through collective agreements only. The PWD thus introduced a specific and complete derogation, allowing Member States to specify by law that the most representative collective agreement in the sector would guide the minimum conditions to be guaranteed to posted workers. Sweden, however, chose not to implement this derogation in national law, relying instead on the social partners to deal with the issues, in accordance with the Swedish model (Hartzén & Hettne, 2021). This had consequences later in the *Laval* case (CJEU, 2007b), where the interpretation of the PWD's rules on employment conditions and Member State scope of action for ensuring conditions in accordance with the host country's regulations was put to the test. To help understand this issue in a broader European perspective, some brief background to the conflict may be useful.

Before the conflict in the *Laval* case flared up, an extensive eastward enlargement of the Community had taken place. This enlargement was preceded by a great deal of concern from the existing Member States about the risk of social dumping, since employment conditions and wages were considerably lower in the former Eastern European countries than in the existing Member States. As a result, existing Member States were given the opportunity to introduce transitional rules which, for a certain period, limited the possibilities for workers from the former Eastern European countries to access the labour market in those Member States. Although not all existing Member States implemented these transitional rules—Sweden, for example, did not—it is understandable that the new Member States and their citizens came to feel that they were not being welcomed into the Union with open arms (Hartzén, 2017; Schulten & Müller, 2021). The perception was established that citizens of the former



Eastern European countries were seen as second-class citizens, who had failed to ensure that they had adequate working conditions, regulatory systems or social safety nets. Tensions between the older Member States and the newer ones emerged, not least in the form of polarisation between workers from the different countries. While workers from the older Member States felt that their jobs and working conditions were under pressure from lower conditions, workers from the Eastern countries felt discriminated against by not being fully welcomed into the common labour market (Schulten & Müller, 2021; Smejlkova, 2021). In addition, labour market regulatory models became even more heterogeneous across the Member States. On the one hand, there were the strongly collectivist Nordic countries that used collective agreements as the main regulatory instrument; on the other hand, there were the newer Member States, where trust in trade unions was very low and legislation with individualistic protection was the main regulatory instrument. Although there were already some differences between the Nordic and the continental European Member States in this regard, the eastward enlargement further increased the differences (Hartzén, 2017).

The tensions between workers and the different regulatory models came to the fore during the construction of a school in Vaxholm, Sweden, to which workers employed by the Latvian company Laval had been posted. Swedish trade unions took industrial action to persuade Laval to conclude a collective agreement in order to start negotiations on pay and conditions for the posted workers. The industrial action generated a legal dispute in which the interpretation of the compatibility of industrial action with Community law and the PWD rules on working conditions was subject to review by the Court of Justice (CJEU, 2007b, *Laval*). The Court's judgement clarified that the balance between the free movement of services and the protection of workers' employment and working conditions was a complex issue. The dual purpose of the PWD—to ensure both free movement of services and adequate protection for workers—also needed to be balanced against the importance of respecting the national labour market models in the different Member States (Hartzén & Hettne, 2021). The Court concluded that the industrial action constituted an obstacle to the free movement of services and that the Swedish legal provisions which allowed the industrial action were discriminatory. This was because a Swedish company with a collective agreement could not have been subjected to industrial action in the same way under Swedish law. In addition, the existing collective agreement for

the Swedish construction industry, with its complex structure for negotiating wage regulations, made it impossible for the Latvian company to predict what wage levels would be applied. Taking industrial action to secure wage levels which the company subject to the industrial action was not in a position to foresee in advance was an obstacle that was disproportionate to the aim of the measures, even though the aim itself was justified (CJEU, 2007b, *Laval*).

The Court's judgement was a disappointment for the Nordic countries and those who had seen the PWD primarily as a protective labour law measure (Hartzén, 2017; c.f. Ahlberg et al., 2006). The complexity of various situations for which the directive was intended to create harmonised rules required further clarification. Therefore, additions were made to the PWD concerning the obligation of Member States to ensure access to information about applicable employment conditions for foreign companies (European Parliament and Council of the European Union, 2014). However, the conflict clearly left its mark, not least among Swedish social partners who, following the *Laval* case, have been consistent in claiming that developments in EU labour law have had a negative impact on the Nordic model based on collective agreements (Hartzén, 2023; Hartzén & Hettne, 2021).

## THE FINANCIAL CRISIS AND BREXIT HIGHLIGHT THE IMPORTANCE FOR THE EU OF FACING CITIZENS' NEEDS

In the aftermath of the financial crisis in 2008, the EU took measures that affected the countries hardest-hit by the crisis and impacted national collective bargaining systems (albeit not specifically the Nordic ones) (Bruun et al., 2014). When the financial crisis erupted, it quickly became clear that the economic situation of the Member States was problematic, although to varying degrees in different Member States. To address the problems, measures were initiated that focussed on restraining government spending and implementing policy changes to reduce costs for businesses. The scope and level of the requirements in these measures varied across Member States. To access the support packages initiated by the Union, the worst-hit Member States were subjected to strict and detailed requirements for fiscal austerity and regulatory relief for businesses. For example, Greece and Ireland were required to lower their

minimum wages and push for decentralised collective bargaining in order to give companies better prospects in negotiations with trade unions (Fischer-Lescano, 2014; Schmitt, 2014).

In the context of the European Semester, Member States not in need of support packages received recommendations to make changes that would reduce costs for both governments and businesses. Through the European Semester, the EU encourages coordination and learning between Member States in order to ensure financial stability without binding legislation. The process is based on regular reporting and feedback between Member States and the Commission. National targets are set; measures taken by the Member State are assessed, along with their results; and new national recommendations are identified. Following the financial crisis, many national recommendations within the European Semester focused on cutting costs and mitigating the effects of social or labour protection rules in order to help businesses survive (Michalski, 2013; Pecinovsky, 2022). In retrospect, critics have pointed out that the strong focus on economic aspects and the devaluation of social safety nets actually exacerbated the problems. The strategy adopted by the EU reduced purchasing power and thus generated more bankruptcies and higher unemployment than necessary (Deakin, 2014). In addition, it reinforced the image of the EU as focussed on improving opportunities for financial gain for capital-rich companies, rather than improving living standards for its citizens (Hartzén, 2017).

The Commission's reform programme aimed at simplifying the regulatory environment reinforced this perception of the EU. In the wake of this reform programme, legislative initiatives in the field of labour law came to a standstill, and the Commission has been criticised for hindering the development and improvement of both working conditions and social dialogue (Dorssemont, 2022; Dorssemont et al., 2019; Rainone, 2022). As a result, Euroscepticism gained momentum, and movements that saw the potential for increased support due to such sentiments took the opportunity to advance their positions. In the UK, right-wing populist movements took advantage of the situation and fuelled Euroscepticism even further by capitalising on the tensions that labour migration within the Union had created in the past (Banakar, 2018). The perception that workers from low-wage EU countries were coming to the UK and out-competing British workers for jobs in the UK gained traction in the campaign leading up to the Brexit vote and most likely contributed to the outcome (Young, 2020; Norbäck, this volume). Lessons learned from

the Brexit vote and the reactions to the financial crisis austerity measures seem to have generated a shift in strategy for the EU's social dimension (González Pascual & Torres Pérez, 2022; Hartzén et al., 2022; Krunke et al., 2020).

The EU's management of the COVID-19 pandemic demonstrated its willingness to help protect jobs and ensure its citizens had possibilities to earn a living despite lockdowns and trade difficulties, including through support programmes enabling short-term work (Hartzén et al., 2022). The adoption of the Social Pillar and subsequent initiatives to implement it have brought a significant increase in the focus of EU objectives on improving living and working conditions (Müller & Schulten, 2024; Ratti, 2024). The much-debated AMWD can be considered a result of this new direction. It is also a useful example that highlights the challenges the EU faces in promoting solidarity between workers from different Member States and generating support for the Union among its citizens. The AMWD is further interesting to analyse since its construction can be seen as a tool to address and reduce tensions between workers and regulatory models in different Member States. Let us first look at the background to its adoption, which sheds extra light on those tensions.

### THE MINIMUM WAGE DIRECTIVE: A CONCRETE SOCIAL POLICY INITIATIVE SAVOURING CITIZENS?

When Ursula von der Leyen replaced Juncker as President of the European Commission from Jean-Claude Juncker, she issued a clear promise that she would ensure the passage of legislation guaranteeing Union citizens a decent minimum wage (Garben, 2024). This promise must be understood in light of the implementation of the Social Pillar, Brexit and the EU's need to clearly demonstrate to its citizens that the Union is there for them and not just to promote free trade and economic development for businesses. The EU needed a clear social strategy that could deliver concrete and understandable results to citizens. Ensuring a decent minimum wage is such a concrete measure that it was a natural pledge to make in order to credibly assert the Union's social ambitions.

The issue had been discussed before, not least in the wake of the debate on the risks of social dumping in relation to various enlargements of the Community. However, no concrete initiative had ever been on the table and the debate that now arose clearly demonstrated the tensions that had long existed between different Member States. From some quarters there

was pressure to move forward on the issue; other quarters voiced clear opposition (Schulden & Müller, 2021). In the Nordic countries, resistance was massive, as wage setting is considered to be an issue entirely owned by the social partners, on which the legislator has no authority to intervene (Hartzén, 2023; Hartzén & Hettne, 2021). Some Eastern European countries instead expressed concerns about an excessively high minimum level that could completely overturn their economies. There was also fear that indicators for evaluating wage levels would not be adapted to the wage structures of these countries and would generate a minimum wage which does not provide a living (Schulden & Müller, 2021; Smejlkova, 2021). Added to this was the legally significant question of whether the Union has competence to act on wages at all, given that pay is exempted from EU competence in Article 153(5) TFEU (Garben, 2024).

These were the issues the Commission had to navigate when von der Leyden took office and was faced with implementing her promise (Schulden & Müller, 2021). The arguments in favour of legislating at EU level were rooted in the importance of taking action to reduce in-work poverty and had a clear social objective (Ratti, 2024). When the proposal for the AMWD was presented, it did not contain any fixed amounts but instead set out various indicators that Member States should consider when determining what constitutes a fair minimum wage in each country concerned. The indicators included reference values as a percentage of both the national median wage and the national average wage. Country-specific costs of living and productivity trends were also to be included as indicators, but it was not specified how these different indicators should be used. In addition, it was proposed that the articles concerning the process of setting the minimum wage should by no means apply to Member States where pay is exclusively regulated by collective agreements. Also proposed was an article clarifying that the directive does not require Member States without a statutory minimum wage to introduce legislation (European Commission, 2020; Hartzén & Hettne, 2021).

In other words, the main critique of and arguments against EU intervention strongly affected the design of the proposal. Countries such as the Nordics, with strong collective bargaining models and no laws regulating pay, would be allowed to retain their models. Concerns about fixed amounts or indicators that were not adapted to pay structures in the former Eastern European countries were met by customised indicators. The fact that the proposed directive did not specify exactly how the indicators should be used and did not define a fixed reasonable

minimum wage stemmed from the legal advice given to the Commission for avoiding violation of the exception in Article 153(5) TFEU (Di Federico, 2020; European Commission, 2020; Hartzén & Hettne, 2021; Schulten & Müller, 2021). According to CJEU case law, the exception from EU competences regarding pay in Article 153(5) TFEU is only applicable for decisions and measures that directly affect pay (CJEU, 2007a, *Del Cerro Alonso*; CJEU, 2008, *Impact*; Hartzén & Hettne, 2021). Matters that indirectly affect pay fall outside the exception, because otherwise it would not be possible for the EU to uphold, for example, the principle of equal pay for equal work or work of equal value and thus effectively combat discrimination (CJEU, 2007a, *Del Cerro Alonso*). The Commission's Legal Service concluded that the wording of the proposed legislation did not directly interfere with the setting of pay and should therefore not fall within the exception of EU competence (Council of the European Union, 2020).

However, the attempts to accommodate all interests involved were not entirely successful. In the Nordic countries, especially Sweden and Denmark, opposition remained massive. Their main argument was that the proposal exceeded the EU's competence because of the exception on pay—contrary to the interpretation of the Commission's Legal Services (e.g. Sjödin, 2021). They also emphasised that the proposal risked interfering with the Nordic model in a manner that threatened the model's very existence. The problems that the proposed legislation was intended to address should simply be solved by other means: certainly not by legislation at the EU level (Hartzén & Hettne, 2021). The tone of the debate was at times very heated, and among the Swedish social partners, things went so far that the Swedish Trade Union Confederation (LO) suspended payment of its membership fee to the European Trade Union Confederation (ETUC). Criticism that the Nordics were failing to show solidarity with workers for whom the proposal could bring about noticeable improvements had little effect, and their continued opposition was accompanied by a flat rejection of legislation on the issue (Hartzén, 2023). Within the former Eastern European countries, attitudes were more positive, and although some questions remained, these countries supported EU legislation in the area of minimum pay without question. The importance of indicators that would work in countries with few high-income earners and a large proportion of low-income earners was recognised (Schulten & Müller, 2021; Smejlkova, 2021).

What perhaps left a bitter aftertaste in these countries, however, were some elements that might not, beforehand, have seemed like obvious inclusions in minimum wage legislation. In addition to the issue of the minimum wage itself, including statistics and information on wage levels, the proposed directive introduced more issues. It required the keeping of statistics on collective agreement coverage and the development of action plans to strengthen national collective bargaining structures in countries where collective agreement coverage fell below a certain threshold. The reason for including these issues was, according to the Commission, the strong link between well-developed collective bargaining systems and good working conditions, including decent wages (European Commission, 2020). To achieve the Union's social objectives and ensure fair wages throughout the Union, it was therefore important to also strengthen national collective bargaining systems. The former Eastern European countries interpreted the Commission's inclusion of these issues as a criticism of their systems and felt they were being treated as second-class Member States (Smejlkova, 2021). Their dissatisfaction clearly demonstrated the challenging nature of reconciling countries with different regulatory models and building solidarity between workers from different Member States where these tensions are constantly emerging.

Nevertheless, the process moved forward and sufficient support to get a directive through was mobilised (Garben, 2024; Ratti, 2024). The Directive that was finally adopted was substantially the same as the proposal, with some modifications and linguistic adjustments made during the negotiations. The AMWD, as adopted, aims to achieve adequate minimum wages throughout the Union. For countries where minimum wages are regulated by law, it sets out certain requirements for measures to ensure adequacy (Chapter II, Arts. 5–8), but those articles do not apply to countries where minimum wages are regulated by collective agreements (Art. 1.4). It also contains articles requiring Member States to provide information and statistics on minimum wages for different categories of workers, on collective agreement coverage and on wage levels for workers not covered by collective agreements (Arts. 10 & 11). In addition, countries where the collective agreement coverage rate is below 80 per cent are required to draw up an action plan for strengthening national collective bargaining structures (Art. 4). The AMWD thus has a dual purpose of both ensuring adequate minimum wages in the Union and developing national collective bargaining systems (Müller & Schulten, 2024).

However, the dissatisfaction previously expressed in former Eastern European countries regarding the articles on collective bargaining systems was not reflected in the vote. Hungary abstained, but the only countries to vote against the directive were Denmark and Sweden.

The Danish and Swedish opposition remains firm, as clearly expressed in the application for annulment submitted by the Danish government to the European Court of Justice (Case C-19/23), along with a Swedish request to intervene in favour of the Danish government. The outcome of the case remains to be seen; hearings were held on 17 September 2024 and the opinion of the Advocate General is scheduled to be delivered on 14 January 2025. Considering the Court's argumentation in previous cases where potential infringements of competence have been examined, it seems unlikely that the case will lead to an annulment of the directive in its entirety (Garben, 2024). In the social policy area, the Commission's actions were judicially examined in the *Ueapme* case (CJEU, 1998) and the *EPSU* case (CJEU, 2021), and the United Kingdom brought an action for annulment of the Working Time Directive (CJEU, 1996). In these cases, the Union and its institutions were deemed to have acted within their competence and in accordance with their powers (Garben, 2024). Regardless of the outcome of the AMWD annulment case (CJEU, 2023) itself, there is an interest in reflecting further on the construction of the Directive, as it offers interesting lessons for the future and can be seen as a form of paradigm shift for the social dimension within the EU (Ratti, 2024; Schulten & Müller, 2021).

### A NEW REGULATORY MODEL TO STRENGTHEN SOLIDARITY BETWEEN WORKERS IN DIFFERENT MEMBER STATES

The AMWD possesses a few interesting characteristics in regard to the need to mitigate tensions between workers and regulatory models in different Member States. The first is the construction of its scope, whereby parts of the Directive do not apply to Member States with a particular form of regulatory model (Arts. 1.4 & 5–8 AMWD). The second concerns the articles that relate to information, statistics and follow-up in pursuit of the Directive's objective of ensuring adequate minimum wages (Arts. 10–11 AMWD).



To begin with the construction of the Directive, we can briefly note that the Directive is divided into different chapters. The first chapter (Arts. 1–4) contains general provisions on the content of the Directive, its scope, definitions and the promotion of collective bargaining on pay and applies to all Member States. The second chapter (Arts. 5–8) contains provisions on statutory minimum wages, compliance with the regulatory framework (including limitations on deviations from statutory minimum wages), and the involvement of the social partners in the process of setting minimum wages. It applies only to those countries where minimum wages are regulated by legislation. The third chapter (Arts. 9–13) contains horizontal provisions concerning, *inter alia*, the relation of the Directive to public procurement law, issues of data collection and information relevant to wage regulation and collective bargaining on pay, rights of appeal and sanctions. The fourth chapter (Arts. 14–19) contains final provisions on implementation and entry into force. These last two chapters apply to all Member States.

In other words, the articles that oblige Member States to take action to assure that wage-setting processes fulfil the objective of guaranteeing an adequate minimum wage are only applicable in Member States with a statutory minimum wage. Countries where wage setting is regulated by means of collective agreements are neither obliged to introduce adequate wage assessment criteria in compliance with the provisions in Chapter II AMWD nor required to introduce statutory minimum wages (Art. 1.4 AMWD). The Directive also highlights minimum wages in these countries as adequate *per se*, through Recitals 13 and 16 (Preamble AMWD), stating that minimum wage protection through collective agreements and strong collective bargaining systems contribute to the Directive's objective of achieving adequate minimum wages. This type of construction, with different approaches to achieving the aim of the Directive depending on the national regulatory systems of the Member States, is a novelty in the field of labour law. While there have been articles allowing for derogations in other labour law directives (e.g. Art. 18 Working Time Directive, Art. 3.8 PWD), those derogations have been designed to give Member States some discretion in how to implement the Directive within their national systems. Completely exempting certain Member States from the substantive legal content of a directive, in terms of measures to be taken to achieve the objectives of the directive, is new. The fact that the derogation from the substantive legal content is based on the regulatory model of the Member States also provides some flexibility. Future potential Member

States will be bound by the content of the Directive based on their regulatory model, and potentially the legal situation of a Member State could change as its regulatory model evolves and changes.

This type of flexibility is desirable for the future development of the Union's social policy model, in specific labour law. Within the EU we can discern two opposite (or at least highly diverging) models of labour market regulation, which are difficult to reconcile and fit into an overarching EU model. On the one hand, we have the individualistic model, which centres statutory protection of the individual worker and treats collective agreements more as a complement and a subject for further improvement. On the other hand, we have the collectivist model, which focuses on collective agreements and the autonomy and bargaining power of the labour market parties. Here, legislation is considered as an undesirable, but sometimes necessary, complement. Of course, there are countries where a mix of these two models exists, but future EU policy development needs to meet and accommodate the regulatory needs of both models. Otherwise, the tensions that exist at present, and were clearly brought to light during the AMWD legislative process, risk giving rise to greater conflicts, protectionism and increased Euroscepticism.

The current geopolitical situation makes evident the need to extend and deepen the EU's peacekeeping role. To that end, the Union's internal policy development needs to be supported and future risks of deadlock and conflict between Member States reduced. In relation to labour law, this goal will require a continued use of the form of regulatory technique we see in the AMWD, both for new initiatives and for revisions of existing legislation. In other words, future legal acts should be based on an overarching defined purpose but should also include options and possibilities for customisation of measures based on the national regulatory model. Within EU labour law, such an approach would provide a better basis for more constructive discussions and reduce the risk of deadlocks and conflicts resulting from Member States striving to protect their own national models.

The AMWD's requirements regarding information and statistics relevant to the objectives of the directive are also something to retain for future measures. The tension between the two extreme models of labour market regulation involves an assumption from each side that its own model provides better or stronger protections and doubt that the other model can ensure equally good protections. This lack of trust is counterproductive because it undermines the potential for building solidarity

between Member States with different regulatory models. Access to clear and relevant information on the results achieved in different Member States therefore contributes to better knowledge and understanding that positive developments can be achieved with different regulatory models. Such knowledge could help to reduce the risk of conflicts based on concerns that countries with a different regulatory model do not want to improve levels of protection in order to maintain competitive advantages in a nationalistic and protectionist way. In other words, the knowledge generated by the compilation of information and statistics could, in the long run, create better opportunities for stronger solidarity and trust between Member States with different regulatory models.

Future development of the EU's social dimension must be able to allow for the inclusion of more Member States while ensuring understanding and knowledge of how social improvements can be achieved through different national regulatory models. This goal requires that future policy proposals allow for development in accordance with the functioning of different national regulatory models and guarantee knowledge about the results achieved. The design of the AMWD does both. Regardless of the outcome of the case on its legality (Case C-19/23), this regulatory design should be used in future proposals for new legislation as well as in future revision of existing labour law directives.

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## How Well Can the EU Labour Markets Absorb Refugee Immigrants?

*Özge Öner and Hans Seerar Westerberg*

Between 2015 and 2021, the EU received over 6 million people seeking protection or asylum as their main reason for immigration, most of them from non-European backgrounds. This represents one of the largest demographic changes in Europe since World War II (OECD, 2015). However, the reception of refugees has been unevenly distributed among the member states of the European Union, with a significant concentration in a few countries. Over the course of the past decade, there has been growing public sentiment in favour of reducing refugee immigration and distributing the responsibility more evenly across the union's members.

The EU member states have faced varying degrees of success in integrating migrants into both the labour market and broader society, which continues to present a significant challenge for the European

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Union. Successfully addressing the needs of those seeking protection and unlocking their potential requires a delicate balance between immediate humanitarian efforts and the implementation of long-term, sustainable solutions. These solutions must not only provide immediate relief but also create clear pathways to social and economic inclusion for refugees.

While the number of asylum applications has decreased since the peak in 2015, the eruption of new conflicts in the EU's neighbouring regions, compounded by increasing geopolitical tensions and the growing impact of climate change, suggests that large waves of refugees will likely be an enduring reality. This new context underscores the importance of developing robust and forward-thinking strategies to receive and support refugees. A humane and efficient approach must prioritise the creation of jobs and opportunities for self-sufficiency, ensuring that those seeking refuge are able to contribute meaningfully to their host societies. Given the current dynamics, it is essential to reflect on and learn from the varied experiences of European countries since the 2015 refugee crisis. The success stories and challenges encountered by different member states in integrating refugees into the labour market offer valuable insights for shaping future policies.

In this chapter, we explore how EU member states have approached the integration of refugee immigrants into their labour markets, focusing on the key drivers and patterns that have emerged since the 2015 crisis. To gain a comprehensive understanding of this process, we have analysed publicly available data from Eurostat, the EU's statistical office, to compare and assess the labour market outcomes of individuals who immigrated to Europe primarily seeking asylum or protection (hereafter referred to as "refugee immigrants"). Our analysis covers 15 EU member states for which sufficient data is available, offering a nuanced look at the successes, challenges, and lessons learned in fostering economic inclusion for refugees.

Specifically, we present detailed figures on the employment status of refugee immigrants, breaking down how many are currently employed, how many remain unemployed, and how many are entirely outside the regular labour market. In addition, we provide a comparative analysis of the labour market outcomes of refugee immigrants relative to the general population within each country, highlighting key disparities or areas of convergence in employment, unemployment, and labour force participation.

The rest of the chapter is structured as follows. The next section provides an overview of the views on migrants in the EU, how they vary between different member states, and over time. In the section thereafter, we ask whether a common migration policy for the EU is possible. To answer the question we then present our labour market statistics for refugee immigrants in 15 EU countries. We proceed by analysing the responsibilities undertaken by various actors and conclude with policy recommendations.

## SHIFTING PERSPECTIVES ON MIGRATION

Migration to the EU in the twenty-first century has been shaped by a complex interplay of socio-political and institutional factors, reflecting diverse motives, challenges, and opportunities (Clemens, 2022; Hainmueller & Hopkins, 2013). The approach to migration has evolved rapidly, with many EU member states initially adopting generous policies towards refugees from the Middle East and Africa in the early 2010s. However, this openness diminished as the practical difficulties of managing large-scale migration flows became evident. The 2015 refugee crisis marked a turning point, as migration began to significantly influence political debates, particularly around border controls and asylum policies (Henrekson et al., 2020).

Public attitudes towards migration vary widely across EU member states, influenced by historical, geopolitical, and cultural factors, as well as the number of migrants and the success of their integration. The sharp increase in the number of refugee immigrants during the 2015 crisis ignited widespread public debate throughout the EU, with both welcoming attitudes and apprehensions about integration, security, and cultural identity emerging in various countries (Hatton, 2016). One striking example is the United Kingdom, where intense discussions about migration played a pivotal role in the lead-up to Brexit. Concerns over migration's effects on public services, housing, and employment became central themes, influencing the Brexit vote and ultimately leading to the UK's departure from the EU (Goodwin & Milazzo, 2017).

A report by Pew Research Center (2018) illustrates the polarized views on migration across the EU. Germany, as the largest recipient of refugees, faces the complex task of balancing humanitarian obligations with national interests. Similarly, Sweden, long recognized for its open and welcoming stance, shifted its policies after the 2015 crisis, tightening border controls

and revising asylum laws in response to concerns over the sustainability of its welfare system and the difficulties of integrating new arrivals (Ayoub, 2023; Zamboni, 2019).

Other countries have undergone a major decline in their willingness to accommodate refugees. Hungary has consistently adopted more restrictive policies, driven by concerns over national identity, security, and cultural differences, particularly regarding Muslim-majority refugee groups (Nagy, 2016). In a similar manner, Poland was hesitant to accept refugees in 2015, aligning with the broader European trend of scepticism, especially concerning refugees from Muslim-majority countries. This attitude seemingly shifted following Russia's invasion of Ukraine, as Poland opened its borders to a significant influx of Ukrainian refugees. However, Polish citizens grew increasingly resistant to allowing foreigners to settle in the country. This antipathy towards foreigners is primarily driven by concerns over preserving national culture when immigrants are of different ethnicities, while economic concerns dominate when immigrants are ethnically similar, with hostility being much stronger towards those of different ethnicities (Thérová, 2023). This shift underscores how proximity, cultural affinity, and geopolitical considerations can swiftly alter a nation's migration policy.

These examples reveal a potential reordering of priorities within the EU, where concerns over internal stability have, at times, overshadowed earlier commitments to humanitarian aid and international protection standards. While initial responses to the 2015 refugee crisis were marked by generosity, many member states faced significant challenges in integrating new arrivals, both socially and economically. The perceived failures of these integration efforts contributed to a more cautious approach, as countries reconsidered the feasibility of maintaining an open-door policy. This shift led several member states to pursue individual migration strategies, with EU-wide reform proposals notably absent. The diverse approaches and varying public attitudes across the EU have complicated efforts to establish a coherent and unified migration policy. External border agreements, such as the EU-Turkey deal, have drawn criticism for potentially compromising the rights of migrants and refugees, as they outsource responsibilities to third countries with less capacity to provide adequate protection (Yılmaz-Elmas, 2020).

The discord among EU member states regarding how to distribute the responsibility of managing large numbers of refugees has further

complicated the formation of a unified strategy. Some countries advocate for shared responsibility and mandatory redistribution quotas, while others staunchly oppose such measures. This fragmentation underscores the deep political divides within the EU and prompts a re-evaluation of the core principles guiding the union's migration policy framework. Despite calls for harmonisation, many remain sceptical about the feasibility of a coordinated migration agenda within such a politically diverse union, given the shortcomings of previous attempts to synchronize efforts and responsibilities across member states (Henrekson et al., 2020).

### SHIFTING POLICIES ON MIGRATION?

The wide range of public attitudes towards migration, as highlighted above, underscores the complexity of formulating a unified EU policy for refugee immigrants. Although the EU officially advocates for a common asylum policy, in practice, significant disparities exist in how asylum rules are implemented across member states. These differences are evident in several areas, including border control management, asylum application procedures, and the provision of economic benefits to refugees. While a harmonized agenda for refugee immigration remains an aspirational goal, it is becoming increasingly clear that the institutional and political differences between member states pose serious obstacles to its realization. As such, the idea of a unified asylum system across the EU may require a thorough re-evaluation, as the existing framework struggles to reconcile the diverse national approaches. A more realistic approach may involve flexible policies that allow for national variations while maintaining some core principles of protection and humanitarian responsibility (Henrekson et al., 2020; Zaun, 2018).

In the autumn of 2020, the European Commission presented a pact on migration and asylum with the aim of giving a fresh start to the reform work on migration. Since then, negotiations on the pact have continued with varying success. In June 2023, the Commission announced that most of the reform proposals had been agreed upon and following their adoption by the European Parliament and Council, the Pact entered into force on 11 June 2024. The central issue is the so-called crisis regulation, which governs how member states should act in the event of future crises, such as the 2015 refugee crisis. The main parts of this primarily concern the distribution of responsibility among the EU member states. These appear to have been rewritten to make the common ideas acceptable to

member states with a more sceptical stance towards a common refugee policy. This seems to have been handled by offering flexibility for states regarding the redistribution of asylum seekers. For example, EU countries should be able to agree on a compromise where everyone promises to contribute, but it does not necessarily mean taking in refugees. Instead, member states could contribute with, for example, personnel, equipment, and funding. While individual member states take the lead in formulating and implementing their own asylum and refugee policies, it is emphasized that the union still plays a significant role (Badell, 2020; European Commission, 2024).

Hence, the core principle remains that asylum applications should be processed in the country where the asylum seeker first arrives, but a flexible solidarity mechanism is introduced. This allows member states under migration pressure to receive support through redistribution, financial contributions, or capacity-building measures. Additionally, the countries have agreed on mandatory border procedures to expedite asylum applications at the external border, particularly for individuals from countries with low approval rates or those posing security risks. This is aimed at reducing the pressure from applicants without clear protection needs and facilitating returns. The reforms also include changes to the asylum process, setting time limits for registration, processing, and appeals. Moreover, changes to labour migration rules are proposed to attract talent, reduce skill shortages, and enhance EU competitiveness (European Parliament, 2024).

The proposals on the table, as they have been historically, assume that a number of states are still willing to voluntarily accept refugees and seem to be adapted to persuade reluctant states to continue being part of the system. This approach has consistently been the basis for such negotiations, relying on the assumption that states can be encouraged or convinced to participate despite persistent hesitations. However, it is not clear how more countries will be encouraged to take in refugees.

## STATISTICAL INDICATORS FOR THE LABOUR MARKET INTEGRATION OF REFUGEE IMMIGRANTS

Labour market entry is crucial for the social and economic integration of newly arrived refugee immigrants and is central to being able to handle the continued high number of people in need of protection.

However, presenting labour market statistics is a complex task, and selective reporting of figures in this case can easily lead us to the wrong conclusion about how well the labour market integration of refugee immigrants works in EU member states.

It is well known that refugee immigrants, especially those with non-European backgrounds, are more likely to be unemployed or outside the labour market compared to their native-born counterparts (Daunfeldt et al., 2019). However, how this looks depends on which population we study and a number of other factors, such as the functioning of the local labour market (Bornhäll et al., 2019). A common measure is to study all foreign-born individuals, which is a broad group that includes both refugees (refugees and economic immigrants) and labour immigrants. If we look at unemployment for this broader group of foreign-born individuals in 2022, the Czech Republic and Malta stand out with just a couple of per cent unemployment among foreign-born individuals. In contrast, we have countries like Greece, which showed the highest unemployment rate at almost a third of all foreign-born individuals, followed by Spain and Sweden, where unemployment among foreign-born individuals was about a fifth of the population. For people born within the European Union, Malta and the Czech Republic again had the lowest recorded level of unemployment, indicating that well-functioning labour markets with low unemployment can better handle the integration of new citizens. Similarly, Greece and Spain show the highest unemployment rates among native-born individuals, making it easy to conclude that high unemployment among native-born individuals leads to high unemployment among foreign-born individuals (Eurostat, 2024).

The differences would then indicate different labour market structures as an explanation for which countries can best absorb large refugee flows. However, it is not that simple since the population that includes foreign-born individuals can have very different demographic characteristics such as country of origin, age, and education level (Daunfeldt et al., 2019). Additionally, the proportion of unemployed says nothing about the number of individuals in each group. Another problem is that people who are not working sometimes only refer to the absence of work as a share of the labour force. This says nothing about how large a share is available to the labour market at all (Bornhäll et al., 2019). This can happen because immigrants in some countries have faster access to the labour market and are then registered either as working or as unemployed. In other countries, for various reasons, they may not participate

as an active part of the labour force and are then registered as out of the labour force. This means that a country with a high proportion of unemployed immigrants and a small proportion of them outside of the labour force may have actually managed labour market integration better than a country that has low unemployment among immigrants but a large proportion outside the labour force.

To provide a comprehensive picture of how EU member states have managed the influx of refugee immigrants since 2015, we analyse data for the population aged 20–64 across EU countries where information is available. Our analysis tracks developments up to 2021, the most recent data point from Eurostat concerning the labour market situation of refugee immigrants. Table 8.1 ranks the countries by the number of refugee immigrants received and includes key labour market indicators, including the proportion of refugees in the labour force (either employed or unemployed) and those outside the labour market. It is important to note that we are specifically focusing on refugee immigrants, a subset of the foreign-born population, which allows us to better understand the distinct challenges and outcomes faced by this group.

It's important to note that data is not available for all member states. For instance, we lack labour market indicators for refugee immigrants in Poland, Hungary, and Romania. Additionally, the figures do not account for individuals seeking protection from Russia's war against Ukraine. However, this omission is less critical for our purposes, as our focus is on the integration of refugee immigrants from earlier waves of migration.

As can be seen in Table 8.1, Germany, Sweden, and Austria received the largest number of refugees, both in absolute terms and relative to their populations. As illustrated in Table 8.1, these three countries remain among the seven EU states that received the highest numbers of refugee immigrants. In terms of labour force participation, Cyprus, Greece, Sweden, Austria, and Germany stand out. In 2021, refugee immigrants in Cyprus accounted for 11 per cent of the labour force, while in Greece, Sweden, Austria, and Germany, the share ranged between 5 and 6 per cent.

One of the most notable disparities is the difference in unemployment rates across countries. For example, Sweden and Cyprus exhibit exceptionally high unemployment rates among refugee immigrants, which are more than twice the rates observed in countries like Germany and the Netherlands. However, focusing solely on unemployment rates can be misleading. To get a more complete picture, it is essential to consider the



**Table 8.1** Labour market indicators for refugee immigrants in the largest receiving countries between 2015 and 2021 (%)

	No.	Share of labour force	Working	Unemployed	Outside
EU	5,610,480	2,7	57	12	30
Germany	2,106,530	5,1	55	9	37
France	762,385	2,6	57	10	32
Italy	519,620	2,1	67	12	22
Spain	392,820	1,7	68	16	16
Greece	336,120	7,5	53	17	30
Sweden	295,605	5,7	59	23	18
Austria	236,360	5,3	63	11	25
Netherlands	175,125	2	48	8	44
Belgium	172,955	3,4	49	12	39
Finland	57,680	2,2	50	15	34
Cyprus	52,385	11,3	39	24	38
Denmark	40,160	1,4	64	7	30
Luxembourg	14,460	4,5	59	14	28
Croatia	10,145	0,6	67	6	28
Portugal	9,750	0,2	75	9	16

Source Eurostat

proportion of individuals who are not working at all—whether unemployed or outside the labour force. This broader view allows for a more accurate assessment of labour market integration, especially when comparing countries with different labour market conditions.

To also take into account local labour market conditions, it may be valuable to compare with the total population's labour market indicators. According to Eurostat, about 78 per cent of the total population in EU member states was in the labour force in 2021, while the corresponding figure was 8 percentage points lower for the group of refugee immigrants. In terms of labour force participation, Sweden stands out with 88 per cent in the total population and as much as 82 per cent among refugee immigrants, while the corresponding figures for Germany are 82 per cent for the total population and 63 per cent for refugee immigrants. This means that a significantly higher proportion of refugee immigrants are in the labour force in Sweden compared to Germany. At the same time, Sweden has by far the highest unemployment rate among refugee immigrants (23

per cent), while it is relatively low in Germany and Austria (9 per cent and 11 per cent, respectively, as seen in Table 8.1).

One of the challenges when comparing labour market outcomes across countries is accounting for differences in labour market institutions. For example, how countries define unemployment and manage social support for those outside the labour market can affect the distribution of individuals between “unemployed” and “out of the labour force.” Therefore, comparing the gap between the proportion of refugee immigrants who are working versus not working, and how this compares to the total population, can provide a clearer picture of labour market integration. Table 8.2 illustrates this gap.

For most countries, between one-third and half of the number of immigrants are not working, with significant differences between the total population and refugee immigrants. In Germany and Sweden, for instance, the proportion of refugee immigrants not working is 20 percentage points higher than the total population, while in Austria, this gap is smaller, at only 12 percentage points. This suggests that Austria has been more successful in integrating refugee immigrants into the labour force compared to Germany and Sweden.

**Table 8.2** Proportion of refugee immigrants not working and difference from total population 2015–2021 (%)

<i>Country</i>	<i>Not working</i>	<i>Difference from total population</i>
EU	43	16
Germany	45	25
France	43	16
Italy	33	–4
Spain	32	–1
Greece	47	10
Sweden	41	22
Austria	37	12
Netherlands	52	34
Belgium	51	22
Finland	50	27
Cyprus	61	37
Denmark	36	15
Luxembourg	41	15
Croatia	33	1

*Source* Eurostat

Considering both the proportion of unemployed and the proportion that is not available to the labour market, the proportion of refugee immigrants who are not working is roughly between a third and up to half for most countries. Looking at the countries that are among the top accommodators of refugees during the 2015 crisis, the difference between the total population and refugee immigrants varies more and is 20 per cent lower for refugee immigrants than for the total population in Germany and Sweden, but only 12 per cent lower in Austria. The gap between native-born and refugee immigrants is thus significantly lower in Austria than in Sweden and Germany.

Cyprus, which has received the highest number of refugees as a proportion of its labour force, also has the highest proportion of refugee immigrants who are not working, at 61 per cent. Similarly, in the Netherlands and Belgium, over half of the refugee immigrant population is not working. These countries have some of the largest gaps between the total population and refugee immigrants, suggesting they have faced greater challenges in integrating refugees into their labour markets. In contrast, Italy and Spain exhibit relatively low proportions of refugee immigrants who are not working. In fact, the difference between the total population and refugee immigrants is negative, meaning that a higher proportion of refugee immigrants are working compared to the total population. This outcome is partly due to the overall high unemployment rates in these countries, which affect the total population more than refugee immigrants. In countries like Sweden and Germany, the larger gaps can be attributed to lower overall unemployment rates, with refugee immigrants experiencing higher rates of non-participation.

In summary, the figures show that a worryingly high proportion of refugee immigrants are not working, but focusing on individual labour market indicators does not show the whole picture. There is also nothing to indicate that countries that have taken the greatest responsibility for accommodating refugee immigrants do not necessarily have a higher proportion who are not working. Italy, Spain, and Austria stand out here in the sense that a low proportion of refugee immigrants are without work relative to other countries. In addition, the difference from the total population is small, indicating that refugee immigrants in these countries have been better able to adapt to the conditions of the majority population.

Even though the statistics presented above provide strong indicators of how well the integration of refugee immigrants has worked in each

country, we still know nothing about the quality of the jobs performed by refugee immigrants or how many hours they work. According to the EU's official statistics, for example, a person is considered to be working based on having worked one hour during a reference week. This definition can give an overly positive picture of an already depressing labour market situation. As indicated by figures from Sweden, low self-sufficiency and employment rates appear to be particularly prominent among individuals from Africa and the Middle East. Data suggests that it takes about a decade after immigration to Sweden before even half are employed, and even longer to achieve self-sufficiency (Bornhäll et al., 2019; Eklund & Larsson, 2020).

### WHAT DOES RESEARCH SAY ABOUT THE POSSIBILITIES OF INTEGRATING REFUGEE IMMIGRANTS INTO THE EUROPEAN LABOUR MARKET?

One significant challenge in integrating refugee immigrants into the labour market is the risk of labour market exclusion becoming entrenched over time. Employers may use relative measures of exclusion as a sorting criterion when hiring, which can perpetuate high unemployment rates among refugee groups. Research consistently shows that the social costs of long-term unemployment are severe, leading to increased risks of depression, anxiety, and low self-esteem. The longer refugees remain excluded from the labour market, the more their human capital deteriorates, further decreasing their chances of securing employment and integrating economically and socially (Daunfeldt et al., 2019).

Certain industries, particularly labour-intensive sectors like hospitality and healthcare, tend to hire a higher proportion of immigrants from non-European backgrounds compared to technology-driven industries. Firms with non-European-born managers are also more likely to recruit workers from similar backgrounds—over four times as many compared to companies led by native-born managers. This highlights the importance of social networks in hiring decisions, as employers often prefer candidates with demographic similarities. A critical mass of individuals with shared characteristics can thus play an essential role in labour market integration. Supporting this, research shows that refugee immigrants in large cities are more likely to be employed and self-sufficient than those in smaller cities. Larger cities appear better equipped to integrate newcomers, though

regions with larger non-European populations also tend to exhibit wider income disparities (Daunfeldt et al., 2019).

It is well known that immigrants who settle in Europe primarily settle in larger cities and that different immigrant groups concentrate in different areas in so-called ethnic enclaves. During large migration waves, where many refugee immigrants with low qualifications compete for the same types of jobs, this naturally results in poorer labour market outcomes. An unfortunate effect of this is that areas characterized by a high proportion of non-working individuals tend to replicate themselves, resulting in poorer labour market outcomes among second-generation immigrants and immigrants arriving in the area at a later stage. However, high concentrations of a certain group with the same origin, so-called ethnic enclaves, can go both ways. The quality of the enclave is crucial, where the presence of a sufficiently large population that works is at least as important as the size of the enclave in increasing the likelihood of newly arrived immigrants entering the labour market. The adaptation mechanism is the exchange of information within the enclave that can provide access to the labour market through information channels specific to the ethnic group in question. This has proven to be particularly important for individuals without previous labour market experience (Cutler et al., 2008; Edin et al., 2003).

A major area of research focuses on individual-specific characteristics such as education levels and competencies, examining how these align with prevailing wage levels and labour costs. Research consistently shows that increasing labour costs, such as higher taxes on employment or raising minimum wages, negatively impact those with weaker labour market positions. A report by the Swedish Retail Institute (Elert & Westerberg, 2023) summarizes this literature and demonstrates that countries with collective wage bargaining, such as Sweden, Denmark, and Italy, experience particularly negative employment effects from rising entry-level wages. The impact is strongest on groups like young people, immigrants, and those with limited skills.

## HOW CAN THE EU LABOUR MARKET ACCOMMODATE A LARGE AND GROWING POPULATION OF REFUGEE IMMIGRANTS?

The European Union operates on a framework of shared responsibility, particularly regarding internal migration between member states. However, when it comes to external migration, this structure is far less defined. Since 2015, a large influx of refugee immigrants from non-European backgrounds has sought protection within the EU, leading to shifts in political dynamics and social structures across member states. The statistics presented in this chapter illustrate significant variation in unemployment rates among refugee immigrants between member states. However, unemployment figures alone are a blunt measure of successful assimilation policies.

By considering a broader range of labour market indicators and each member state's capacity to absorb migrants into their local economies, we conclude that member states have largely failed to effectively integrate the large number of people seeking protection within the EU since 2015. Beyond the substantial social and economic costs of this failure, it also poses a threat to citizens' trust in the EU's ability to manage migration.

To unlock the potential economic benefits of migration, comprehensive strategies must address the diverse needs and potential of both migrants and receiving countries. Given the increasing geopolitical tensions in the EU's neighbouring regions, there is little indication that refugee immigration to the EU will decrease in the near future. As a result, a growing number of individuals, predominantly from non-European backgrounds, remain excluded from the European labour market.

To reverse this alarming trend, a well-thought-out supranational strategy is needed—one that combines skill enhancement programs with demand-stimulating measures tailored to the widely varying labour markets across member states. Only by taking these targeted steps can the EU begin to harness the full potential of migration and ensure more effective integration for refugee immigrants.

However, the EU faces a complex balancing act between competing interests, which makes migration policy particularly challenging. The political reality in 2024 exacerbates these difficulties, as migration is increasingly viewed through a negative lens in many member states. Rising concerns about national security, cultural identity, and economic stability

have fuelled political debates, making it difficult to find common ground on how best to address refugee immigration.

As a result, the EU's refugee policy has shifted towards a dual focus: limiting migration while attempting to distribute the financial and social costs more equitably across member states. This approach aims to alleviate the burden on frontline countries, such as Greece and Italy, which have shouldered a disproportionate share of refugee arrivals. At the same time, the EU seeks to offer long-term, sustainable protection to those in need, while also providing opportunities for economic and social inclusion for those seeking a better life.

The challenge lies in balancing the immediate need to control migration flows with the long-term goal of integrating refugees into European societies. Achieving this balance requires a coordinated effort from all member states, but political divisions and differing national priorities continue to hinder the development of a cohesive, comprehensive strategy.

There are reasons to systematically review and document the effects of the myriad of country-specific political support measures intended to create new jobs and increase employment among refugee immigrants. For example, since the turn of the millennium, it has been common for measures aimed at stimulating demand to be directed at companies in high-tech industries, as these companies are considered to be more innovative and offer high-quality jobs (Aghion et al., 2011). This type of policy direction, however, has a high opportunity cost because these companies are less likely to offer jobs to workers who have difficulties entering the labour market.

With a limited budget for the integration of refugee immigrants, it is essential to make strategic and, at times, uncomfortable decisions regarding resource allocation. Policymakers must carefully consider where investments will have the most impact. As our statistical analysis above has shown, in some countries, a significant proportion of refugee immigrants remain outside the labour market. Many within this group have low levels of education and qualifications that are difficult to align with European labour market standards. Attempting to educate this segment up to a level that meets labour costs, or implementing measures to lower labour costs, is likely not the most efficient or effective strategy.

However, there is another sizable group of refugee immigrants who still have many productive years left in the workforce and are much closer to entering the labour market. These individuals are often found among

those who are unemployed but actively seeking work or those who are employed but not yet fully self-sufficient. Most in this group possess at least a basic level of education, which makes them more receptive to targeted support and training programmes. Focusing resources on this group—those who are already on the verge of labour market participation—could yield quicker, more sustainable results, making it a more resource-efficient approach to integration.

By prioritizing the group that is closer to labour market entry, governments can achieve a more immediate and impactful return on investment, while simultaneously reducing the long-term social and economic costs of prolonged exclusion from the workforce. This strategy not only aligns with the reality of budget constraints but also provides a pragmatic path towards better integration outcomes.

### THE EU SHOULD INVEST IN THE UNTAPPED ABILITIES AND SKILLS AMONG REFUGEE IMMIGRANTS

The differences in labour market participation among refugee immigrants across EU member states highlight the potential for learning and innovation in labour market integration. Countries where refugees exhibit higher employment rates and self-sufficiency levels, comparable to the native-born population, offer examples of effective labour market policies and integration strategies. By carefully studying and adapting these approaches, other member states could improve the employment prospects and economic integration of refugees.

Harnessing the diverse abilities and untapped skills of refugee immigrants not only fosters inclusivity but also has the potential to boost the EU's overall economic competitiveness and drive innovation. To achieve this, there is a clear need for continued research and the collection of detailed labour market data to uncover the underlying factors behind these varying outcomes. By better understanding the barriers and opportunities faced by refugees, the EU can craft more targeted, effective policies that benefit both migrants and host societies.



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# The EU's New Pact on Migration and Asylum: Towards a Long-Term Sustainable European Migration Policy?

*Andrea Spehar* 

The phenomenon of human migration has had a profound and far-reaching impact on the evolution of European history, contributing to the way cultural, economic, and social structures have formed and developed on the continent. Currently, however, the way member states of the European Union (EU) have responded to, especially, displaced people turning up at their borders has become highly contested among the countries of the EU, with the potential to significantly undermine the stability of the union. Overall, migration is certain to show up on the top of any list of highly controversial political topics today, just about everywhere in the EU. In political practice, it remains deeply marked by a difficult-to-manage imperative shaping official responses to it, that of striking the right balance between, on the one hand, the decision-making power of the Union itself as a political body and, on the other hand, the

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autonomy of its member states in matters of migration and asylum policy (Boswell & Geddes, 2011; Guiraudon, 2017; Niemann & Zaun, 2018). To respond to this challenge, in 1999, the Common European Asylum System (CEAS) was introduced to provide the primary framework for cooperation among the Union countries on migration. Notwithstanding its possible merits elsewhere, it has, however, been widely criticized for its perceived inhumanity, ineffectiveness, and unfairness in practice (Parusel, 2015; Scipioni, 2018).

In 2015, the European asylum system was subjected to a particularly severe test. The early months of the year saw a series of lethal maritime disasters involving migrants crossing the Mediterranean Sea. A total of 3692 migrants perished due to drowning (International Organization, 2015). All the deaths and the travails of the journey, however, had little effect on the influx of refugees arriving on Europe's shores in increasingly large numbers. The Union's capacity to respond became strained, leading to a commonly recognized general 'crisis'. The number of refugees and migrants reaching Europe kept going up exponentially, with the majority of irregular migration taking place along the central and eastern Mediterranean routes. That year alone, a total of 810,000 migrants and refugees crossed into Greece by sea, with an additional 5000 arriving by land (International Organization, 2015). Overwhelmed by the massive scale of the problem, EU member states on the frontline began to disregard the CEAS Dublin principle of first country of entry, enabling migrants to proceed to their preferred destinations, primarily Germany and Sweden. The perception spread that the Union's migration system had become inadequate, and there was a discernible shift towards a more negative attitude toward migration and migrants in its member states (Agustín & Jørgensen, 2019).

In light of this *de facto* relinquishment of a pivotal tenet of the common EU asylum policy, Germany declared its intention to also officially suspend the Dublin Regulation, albeit on the part of refugees originating from Syria only (Niemann & Blöser, 2021). As the discrepancy between the legal EU asylum regime and the actual practice of its member states widened, the EU initiated a series of policy reforms aimed at addressing the issue. In May and September 2015, the European Commission put forth a series of proposals, collectively titled the European Agenda on Migration. The agenda included the establishment of a common list of 'safe countries of origin', the implementation of a more efficient EU return policy, and the formulation of strategies to address

the underlying causes of migration in Africa such as conflicts driving people to flee their homes (European Commission, 2015a). In 2020, the Commission, finally, initiated what it termed the European Union Pact on Migration and Asylum (hereafter the Pact), aimed at establishing a comprehensive framework for managing migration and asylum across the Union (European Commission, 2020). The Pact was adopted by the European Parliament in April 2024 and, formally, by the Council of the EU in May 2024.

Bringing with it a new mechanism for robust control of the Union's external border, a shared screening procedure for asylum seekers, a border procedure for rapid asylum determination, an increased emphasis on returns, and new partnerships with third countries, the Pact stressed the notion of mutual assistance among EU member states as its central, all-pervasive theme. According to it, each member state was now to be responsible for a designated proportion of the total number of asylum seekers, calculated based on economic, geographic, and historical criteria. In the event that a country refused to accept refugees, it would be required to pay a sum of approximately 250,000 euros per asylum seeker to the European Union. This payment is intended to support the countries that are taking on a larger share of asylum seekers and to ensure a fair distribution of responsibilities across the member states. The calculation of the payment per refugee is based on the number of asylum seekers that a country is supposed to accept according to the EU's distribution mechanism, rather than the exact number of refugees turned back. This mechanism considers various factors such as the country's population size, GDP, and past numbers of asylum seekers received.

It is this complex historical trajectory towards a unified asylum and migration policy that this chapter examines in more detail, assessing the extent to which the new Pact on Migration and Asylum can be said to succeed or not in addressing the fundamental challenges inherent in the common EU-wide migration policy. Ultimately, the question is of the extent to which a supranational entity like the EU might have the prerequisites and basic capabilities to devise and implement a coherent and sustainable common migration policy, and of what sort of challenges may need to be overcome to meet that goal. In our world where conflicts, war, and climate change increasingly render societies uninhabitable, forcing people to leave their homes and seek refuge elsewhere, the need for a well-functioning and well-managed all-European migration system has grown more pressing than ever. To better contextualize the question tackled, in

what follows I first outline the different phases of what can be identified as an EU-wide effort over several decades to create a unified policy on migration and asylum. After that, the chapter examines more in detail the EU's response to the 2015 refugee crisis, assessing its implications for any further harmonization of asylum and migration policy within the Union. The chapter concludes with a discussion of the research findings, followed by a prognosis of possible scenarios of what may happen next best to bring forth any sustainable common asylum and migration policy.

## THE EVOLUTION OF THE EUROPEAN LEGAL FRAMEWORK AND COMPETENCES IN THE AREA OF MIGRATION

Migration policy is a matter of high politics, with a strong connection to national sovereignty and the notion of nationhood (Geddes, 2003). The evolution of the European migration policy has taken place closely connected to the expansion of European integration, becoming, first, an integral component of the Justice and Home Affairs co-operation established by the Treaty of Maastricht in 1992. Soon thereafter, in the 1997 Treaty of Amsterdam, it was incorporated into the Area of Freedom, Security, and Justice, which addresses a range of cross-border issues, including the free movement of citizens, the safeguarding of fundamental rights, the combating of terrorism and organized crime, and matters pertaining to asylum and immigration. In order for a Europe without internal borders to function effectively and for the EU to have a unified external border, it is essential that the member states reach a consensus on a common policy regarding the admission of individuals into the Union, along with the rights and freedoms afforded to non-member-state nationals. The evolution of EU asylum and migration policy has thus been gradual, and it has become harmonized through a regulatory framework (Boswell & Geddes, 2011).

Over the past decades, the *acquis* in the area has grown, with the freedom of the member states to regulate their own migration policy becoming curtailed. The first concrete attempt to develop a common European migration policy was, however, already in 1985, when the Council of Ministers, following a proposal from the European Commission, adopted the document *Guidelines for a Community Policy on Migration* (Bulletin of the European Communities, 1985). Centring on the principle of free movement of European Union citizens, goods,

services, and capital, it also established common guidelines on living and working conditions for all migrants, including those from third countries.

The 1990 Dublin Convention, which delineates the responsibilities of the EU member states in examining asylum cases, constituted an important step forward in the development of a common EU migration policy. Two of the Convention's principal aims were to prevent the practice of asylum shopping, whereby asylum seekers submit applications in multiple member states, and deter unauthorized entry into the Union (Geddes, 2003). Moreover, it established criteria for determining which member state was responsible for examining an asylum application within the Union, with a view to avoiding parallel asylum processes. Established concurrently with the inception of the Schengen co-operation, the system has, however, subsequently been modified and reformed a number of times. In 2003, the Convention was incorporated into EU law as the Dublin II Regulation, which, furthermore, introduced Eurodac, a Union-wide database set up to collect rejected asylum claims and the fingerprints of asylum seekers. Its purpose was to help establish the identity of asylum seekers in order to ascertain whether they had previously applied for asylum in another EU member state: in keeping with the Dublin II Regulation's first country of asylum principle, asylum seekers who had previously applied for asylum in another EU member state were to be referred back to that country. The current form of the convention, adopted in 2013 as the Dublin III Regulation, places a greater emphasis on humanitarian considerations, such as the asylum seekers' right to family life and the rights of unaccompanied minors. From early on, however, the Dublin Convention was designed primarily with security-oriented considerations in mind, having the principal objective of curbing undocumented migration (Geddes, 2003, p. 134). As several scholars have argued, from the 1990s onwards there had been an increasing perception among European citizens and governments that asylum seekers were a burden on resources and constituted a threat to national security (Geddes, 2003). This led to the characterization of many asylum seekers as 'false refugees' or 'disguised economic migrants' (Martiniello, 2006, p. 304).

In 2004, the EU introduced the European Border Surveillance System (EUROSUR) which was to assume central operational responsibility for the co-ordination of the Union's external borders. Since 2016, it has been formally designated as the European Border and Coast Guard Agency Frontex (see, e.g., Pettersson Fürst, 2024). Following the evolving migration trends and the surge in asylum requests to EU member states since



then, its mandate has been gradually expanded and its budget increased. Commencing its operations with an initial annual budget of euro 6 million in 2005, by 2016 its budget had grown to euro 142 million, and by 2023 to euro 845 million. The EU frequently presents Frontex's work as a solution to both humanitarian and security crises.

## TOWARDS A COMMON ASYLUM POLICY

The large-scale forced displacement in Europe resulting from the armed conflicts in the Western Balkans, particularly Bosnia and Herzegovina, prompted the German government in 1994 to propose a model for a solidarity-based sharing of the asylum burden (Hatton, 2005). At the time, Germany was processing more than half of all the asylum applications submitted to EU member states. In the proposed model, asylum seekers were to be distributed among the member states according to a distribution key comprising three criteria, each of which was assigned equal weight: the size of the member state's population, territory, and gross domestic product. Faced with staunch opposition, especially from the United Kingdom, the proposal nonetheless failed to garner the requisite support. Yet, efforts to harmonize migration and asylum policies within the EU continued.

Indeed, the early 1990s' rapid increase in asylum seekers only led to a further intensification of efforts to harmonize EU asylum policies (Geddes, 2003). In research literature, the subsequent evolution of the EU asylum and migration policy is often attributed to the phenomenon of 'venue shopping' (e.g., Kaunert & Léonard, 2012), or the propensity of politicians to transfer decision-making on a specific issue to another political domain in order to circumvent opposition at the national level. Such political processes have been identified in the field of migration and asylum policy, too, where member states not infrequently seek to extend their competencies with the intention of overpowering or eluding legal and political constraints on their freedom of action in it (e.g., Guiraudon, 2000; Spehar, 2012). This has enabled them to promote more restrictive measures without having to engage with, and win over, national courts, the media, and non-governmental organizations.

One reason behind EU policymakers' efforts to achieve policy harmonization within the Union has been their desire to achieve a fairer distribution of the asylum burden among the member states and prevent

any drift towards the lowest common denominator in protection standards. Altogether, the European migration policy regime can be said to have undergone four significant developments following the 1997 adoption of the Amsterdam Treaty (see, e.g., Geddes, 2003). Firstly, the migration policy agenda has widened substantially. Secondly, there has been an increasing emphasis among the EU policymakers on joint international action. Thirdly, the protection of external borders has become a priority. Finally, the responsibilities of the various actors involved in the area have become more clearly defined in relation to immigration policy.

The most comprehensive policy package for EU asylum policy in the 1990s was adopted at the Tampere European Council, in the so-called Tampere Agreement of 1999. Indeed, the subsequent period is regarded as pivotal in elucidating the current EU asylum policy. The agreement saw EU ministers reaffirm their commitment to the Refugee Convention, which was meant to inform the development of common EU asylum policies. Furthermore, the principle of non-refoulement was recognized as a fundamental tenet in this context (Hatton, 2005). Importantly, moreover, also the European Commission acknowledged the importance of the Amsterdam Treaty and the Tampere Agreement Programme, describing them as pivotal moments in the EU's collective approach to immigration and asylum matters (European Commission, 2003). At the Tampere European Council, it was agreed that the Union was in need of a comprehensive approach to migration, one that would address political, human rights, and development issues in the countries of origin and during the transition. One of the main means to achieve this was partnerships formed with countries of origin, to combat poverty, improve living conditions, increase job opportunities, prevent conflicts, and consolidate democracy in the states in question.

Following the Tampere Agreement, a series of directives was adopted within the framework of the Common European Asylum System (CEAS). Between 1999 and 2005, six legislative instruments establishing *minimum* standards for asylum were adopted: the Eurodac Regulation, the Temporary Protection Directive, the Reception of Asylum Seekers Directive, the Dublin Regulation replacing the 1990 Dublin Convention, the Qualification Directive, and the Asylum Procedures Directive. The directives here addressed a number of key areas, including the reception of asylum seekers, asylum procedures, grounds for protection, mass displacement, and return. While, as directives, they constitute a form of framework legislation based on principles common to all EU member

states, the manner in which the objectives set in them are achieved is left to the discretion of each member state. Furthermore, in this domain, the focus was on establishing fundamental minimum standards; consequently, member states were left at liberty to adopt more generous policies if they so desired.

## MANAGING LABOUR MIGRATION

While discussions on the challenges and solutions related to asylum and refugee issues have dominated debates and policy-making within the EU and its member states, labour migration has also been an important area for the Union to address collectively (Boswell & Geddes, 2011). Since the 1950s, it has pursued a migration policy whose principal objective has been to facilitate economic growth through the promotion of mobility between member states. The European Commission has, furthermore, frequently asserted the Union's need for labour migration from third countries to ensure the availability of skills and enhance competitiveness in sectors experiencing a dearth of workers with suitable qualifications. In several member states, labour migration has been identified as a crucial component of any strategies addressing the challenges posed by negative demographic trends so as to sustain future growth and prosperity. In line with this, in 2005 the European Commission presented a document entitled *Communication on a Policy Plan on Legal Migration*, setting forth its intention to implement legislative measures to develop non-bureaucratic, flexible approaches ensuring fair, rights-based treatment for all labour migrants. This way, it was believed, conditions attractive to special categories of migrants in demand in the EU could be created.

The proposed measures comprised a framework directive delineating the rights of individuals arriving in the Union through regulated labour migration. There were also four more specific directives governing the conditions of entry and residence for highly skilled workers, seasonal workers, intra-corporate transferees, staff, and remunerated trainees. In May 2009, the EU adopted a directive on a single work and residence permit, known as the 'Blue Card', which enabled non-EU workers to seek employment within the Union (Council Directive, 2009). With it, the EU sought to compete with the United States, Canada, and Australia for highly skilled migrant labour. The blue card was geared for workers from outside the EU, not least Indian IT experts and engineers. To demonstrate the higher vocational qualification expected of the applicants,

they were required to have at least three years of professional experience in their field and be supported by an employer in the country where they wanted to find a job already when submitting their application. The number of Blue Cards issued by each individual EU country was left to its own discretion. To date, however, only Germany has gone on to issue them in any significant numbers. This may be attributable to the fact that German national legislation has to a large extent been aligned with EU regulations pertaining to Blue Cards (Eurostat, 2024).

### UNFINISHED HARMONIZATION OF EU MIGRATION POLICY

The overarching objective of the Common European Asylum System of 1999 was to reform the existing system in three major ways, by bringing about a uniform standard of reception for asylum seekers, a consistent approach to the processing of asylum applications, and a fair and equitable distribution of responsibility among participating countries. The establishment of such a more level playing field would enhance the legal security, efficiency, and promotion of co-operation on migration and asylum within the Union, benefiting asylum seekers and asylum systems alike. Contrasting with the express CEAS objectives and the self-understanding of its creators, many political actors and representatives of human rights organizations have, however, denounced the EU migration policy as unlawful and inhumane (Cabot, 2018; Doctors Without Borders, 2018), criticizing the system built by the EU as a *de facto* 'Fortress Europe'. According to the critics, the implementation of strict visa policies and increased border controls made it only more challenging for individuals to enter the EU legally to seek asylum or employment. Moreover, as extensive research in the area has demonstrated, EU member states have experienced significant difficulties in implementing the CEAS in accordance with its provisions (e.g., Lavenex, 2001; Maurer & Parkes, 2007). Yet, the efforts to harmonize the EU member states' diverse asylum policies have also been successful in some respects, such as in improving the reception conditions for asylum seekers in countries where they previously were inadequate and where the reception systems had been poorly designed (Zaun, 2015). This has been particularly true of some new member states in Eastern Europe that subsequently have been obligated to act on the quality and efficiency of their systems and practices.

Elsewhere, however, the process of harmonization has had an opposite effect. This has resulted in a convergence towards a minimum standard, resulting in many places in a less generous reception system (Thielemann & El-Enany, 2011). The effect is known as ‘regressive harmonization’. Relevantly here, Thielemann (2003) has put forth the argument that EU countries today are engaged in a competitive process, striving to present themselves as inhospitable to asylum seekers. The question is of a kind of ‘race to the bottom’, defined by the implementation of increasingly strict rules and provision of inadequate reception conditions for asylum seekers. Despite EU-level harmonization ambitions, reception conditions for asylum seekers still vary significantly from one country to another (see, e.g., European Migration Network, 2014), leading critics to describe the conditions for asylum seekers in some EU member states as incompatible with human dignity and the treatment of applicants as inhuman or degrading.

The EU is thus facing notable challenges in its efforts to develop and implement a more humane and fair migration policy. These challenges can be attributed to two main factors: the continued inadequacy of EU legislation addressing various forms of migration, and the lack of solidarity among member states. The Dublin system has not only failed to take into account the principle of equal reception but has actively worked against it. Insofar as the country responsible for examining an asylum application is the first member state in which the asylum seeker is registered, it remains inevitable that the member states at the external borders of the EU receive a disproportionate share of asylum applications. In 2020, approximately 80 per cent of all initial asylum applications were submitted in Greece, Italy, and Spain. The imbalance overwhelms national systems and leads to undignified conditions for asylum seekers, marked by overcrowding in refugee camps such as on Greek islands and express deportations at the EU’s borders, in violation of all international law.

The process of Europeanization, however, has had a significant impact not only on the development of policies related to migration; it has also affected the discourse surrounding migrants, and migration more broadly. As a number of studies have shown, the migration discourse in the EU has been notably focused on preventing migration from third countries in the interest of internal security concerns within the Union (e.g., Penninx, 2013). Terrorist incidents in several member states over the past two decades, along with the ensuing campaigns against terrorism, have played a major role in the formation and rise to dominance of this negative

view on migration (see Boswell, 2003). Opportunistic political parties, for their part, have been quick to mobilize claims about migrants' inability to integrate lack of that would then explain the various social challenges encountered.

According to Karageorgiou and Noll (2022), the EU's immigration and asylum policy as we see it today can ultimately be understood as not much more than a protectionist regime based on the control needs of the nation-state—a rather damning indictment of a system whose self-understanding is just the opposite, centred on supranational ambitions, commitment to expanding civic freedoms including freedom of movement, and the formation of post-national political identities. This system, moreover, was already in place at the time of the Union's inception in the 1950s. The ineffectual regulations governing migration and asylum ever since can thus be viewed as manifestations of nation-state protectionism, which, paradoxically, was then only fortified during the 2015 crisis year.

### EU'S INABILITY TO MANAGE THE 2015 REFUGEE CRISIS

In the summer of 2015, the European Commission claimed the Union to be confronted with the most serious and largest refugee crisis since the Second World War. The crisis, also referred to as the migration crisis, reached its zenith in Europe in the latter half of the year, when the largest numbers of migrants attempted to gain entry to the continent in order to seek asylum (Falkner, 2016). In the EU alone, 1.3 million asylum applications were registered, with the majority of the asylum seekers trying to reach Europe traversing the Mediterranean Sea from Syria and Afghanistan (European Commission, 2015b). The crisis revealed two major defects in the EU's asylum system. Most immediately, it became evident that a limited number of countries bore the burden of receiving and processing the majority of asylum seekers. Soon after, it was noted that asylum seekers were not treated equitably across all EU countries, leading to notable variations in where they sought asylum (Parusel, 2015).

The late summer of 2015 appeared to present a favourable opportunity for refugees to travel to Europe. At a press conference in Berlin on 31 August, German Chancellor Angela Merkel asserted her country to be capable of accommodating even a large influx of new refugees. As she herself put it (in German), 'Wir schaffen das' (We can do it; Bundesregierung, 2015, para. 27). At the same time, Merkel urged also

other countries to assume a greater share of responsibility for the distribution of refugees from war zones such as Syria. Her plea, however, was heeded by only a few countries. Among them was Sweden whose prime minister Stefan Löfven appealed to his people's sense of solidarity with refugees, describing the situation of those fleeing across the oceans as analogous to that of the Estonians in the 1940s, South Americans in the 1970s, and the refugees from the Balkans in the 1990s (Aftonbladet, 2015).

What the 2015 refugee crisis finally demonstrated was how inadequate the Dublin III Regulation was as an instrument with which to address situations such as the one now on hand. Not only was it revealed to have inherent deficiencies making it even formally unsuitable for its purpose, however; there also turned out to be a multitude of issues marring its implementation. One significant shortcoming of it was that it was an administrative instrument for determining which member state was to have the responsibility for processing the asylum application, rather than a mechanism for apportioning responsibility among them for offering refugees international protection.

In general, the refugee crisis gave rise to significant disagreements among member states, most immediately about where the asylum seekers were to be settled within the Union. Since the peaking of the refugee crisis in the autumn of 2015, EU heads of state or government have consequently convened numerous times, for both regular and extraordinary meetings, attempting to reach an agreement on how to approach the pressing questions of refugees and migration. All the same, the disagreements have persisted, in fact only intensifying. During the summer and autumn of 2015, the European Commission set about to attempt a more uniform distribution of asylum seekers across the member states. A preliminary proposal was presented in May, in which the Commission outlined its plan for the EU as a whole to receive 20,000 quota refugees (Council of the European Union, 2015). In addition, up to 120,000 asylum seekers currently in Greece and Italy, which up to then had received a disproportionately high number of refugees, would be relocated to other member states. The proposal was met with strong opposition from several member states. A number of countries, among them Austria, the Czech Republic, and Slovakia, had thus far accepted only a relatively small proportion of their assigned quotas, while Poland and Hungary had not received any asylum seekers at all (European Commission, 2017). In December 2017, the Commission therefore initiated legal proceedings

against Poland, Hungary, and the Czech Republic before the European Court of Justice (ECJ), accusing these countries of failing to accept their share of refugees to be redistributed from Italy and Greece. In April 2020, the ECJ ruled that the three states had violated EU law by refusing to accept refugees as jointly decided upon by EU member states (Carrera & Geddes, 2021).

The lack of solidarity and responsibility sharing among member states resulted in the suspension of the first country of asylum rule. Instead, refugees began to be directed to countries with more accommodating reception policies, such as Germany and Sweden. In 2014, 72 per cent of all asylum applications in the Union were submitted in no more than five member states (European Commission, 2015b, p. 13); approximately one-third of them were in Germany. The countries after it with the largest number of asylum applications received were Sweden, Italy, France, and Hungary, in that order. Relatively speaking, however, it was Sweden that took in the highest number (8.4 applicants per thousand inhabitants), followed by Hungary (4.3) and Austria (3.3) (Eurostat, 2015).

In response to the influx of asylum seekers criss-crossing the Schengen Area, several member states implemented temporary border controls at EU's internal borders (see, e.g., Niemann & Zaun, 2018). In the first place, these were erected to regulate the large number of individuals migrating, primarily on foot, from Greece via the Balkans up to Hungary and, further, towards Austria, Germany, and the Nordic countries. At the national level, the crisis also had far-reaching consequences in many EU member states. In Sweden, for example, which received more than 163,000 asylum seekers in 2015, a provisional legislative measure was adopted in mid-2016 with the objective of implementing a more rigorous asylum policy still in accordance with international and European legal frameworks (Bucken-Knapp et al., 2020). Similarly to several other member states, also temporary border controls were introduced at the country's borders. The diminishing sense of solidarity behind measures like these had a detrimental impact on the conditions of asylum seekers across the Union. Large numbers of asylum seekers were, for instance, confined to refugee camps severely lacking in basic amenities and resources required to meet their inhabitants' fundamental needs (Cabot, 2018).

As regards the diminishing sense of solidarity experienced across the EU, a certain shift in attitudes was brought about by Russia's invasion of Ukraine in the spring of 2022 (e.g., Carrera & Ineli-Ciger, 2023).



Prompted by the war and the events of 2015, the European Commission went on to publicize its view that the EU was now facing the biggest refugee crisis since the conclusion of the Second World War. While just shortly before, in 2015–2016, EU member states had moved to pursue increasingly restrictive asylum policies with detrimental effects on nearly all refugees, they now, individually and jointly as a Union, demonstrated an unforeseen, staunch attitude of responsibility and solidarity vis-à-vis refugees from Ukraine. In March 2023, shortly after the commencement of Russia's military intervention in it, EU's Mass Refugee Directive (also known as the Temporary Protection Directive), adopted in 2001 following the conflicts in former Yugoslavia, was activated by the unanimous European Council for the first time, to offer quick assistance and protection to all Ukrainians fleeing the war.

### EXTERNAL ACTION BY THE EU TO ADDRESS THE REFUGEE CRISIS

The attempts to reduce the number of refugees arriving at the Union's external borders and curb irregular migration have resulted in the strengthening and externalization of EU migration control (Longo & Fontana, 2022). By reformulating existing aid agreements and setting up special funds (such as the European Union Emergency Trust Fund for Africa), the EU has to a large extent transferred the management and control of refugees and migrants to third countries (Mlambo, 2020). Partner countries are eligible to receive aid provided that they co-operate with the EU in the return of their nationals having sought asylum in member states, or implement effective border management and migration policies (Longo & Fontana, 2022). The provision of aid thus serves as an incentive for partner countries to engage in collaborative efforts around migration. In 2016, these kinds of agreements were concluded with Ethiopia, Mali, Niger, Nigeria, and Senegal, with the aim of reducing migration to the EU from these countries.

In addition to the agreements related to aid, the EU has also adopted instruments integrating trade and migration policies, commonly referred to as 'compacts' (European Commission, 2019). Thus far, such have been concluded with Jordan and Lebanon, significant migrant-sending countries in the EU's neighbourhood. The most prominent agreement signed with a third country to reduce migration to the continent from it is with

Turkey, in March 2016. The official rationale provided for the agreement by the European Commission was that it would help establish a safe, legal pathway for refugees from Syria to reach the EU, while at the same time curtailing people smuggling en route. The agreement further stipulated that all new irregular migrants arriving from Turkey to Greek islands subsequent to 20 March 2016 were to be returned to Turkey.

As part of the agreement, the EU committed to providing 3 billion euro in assistance to Turkey, officially for the benefit of refugees in it. A further 3 billion euro was pledged until the conclusion of 2018. The funds were earmarked for specific purposes, such as the construction of hospitals, schools, and other concrete development projects. Following the implementation of the agreement, the number of refugees arriving in the EU via the Mediterranean has indeed declined. In the new situation, however, refugees have begun to pursue alternative routes into the EU, often assisted by human traffickers. The number of individuals undertaking the perilous sea journey via Libya to Italy, for instance, has increased markedly: according to data by Frontex, by 40 per cent in 2017 compared to the previous year (Frontex, 2017).

In February 2017, the EU then concluded an agreement with the government of Libya. According to it, EU countries would provide training and support to Libya (its coast guard), which in turn would do its best to prevent individuals from embarking from its territory on a journey to Europe through the Mediterranean Sea. Additionally, the European Commission committed 1.9 billion euro from the EU budget to bolster the capabilities of the country's coast guard. The arrangement has, however, resulted in the practice of detaining individuals in Libyan camps, where they are frequently subjected to maltreatment, earning complaints to both Italy and the EU by human rights organizations on the continent and internationally (e.g. Amnesty International, 2021).

In July 2023, the EU entered into a co-operation agreement with the Tunisian government, describing it as a 'broad partnership package' (European Commission, 2023). The primary objective with it was to enhance collaboration on migration-related issues, particularly to prevent migrants from Tunisia from entering the EU and combat people smuggling. The Union pledged 105 million euro in support of Tunisia's border security apparatus, especially to equip its coast guard with advanced radar systems and vessels. To secure Tunisia's participation, the agreement encompasses a multitude of additional domains, including investments in green energy generation in the country, expansion of trade relations

with it, and assistance with its fiscal affairs. Similarly to other agreements with third countries, the agreement has been subjected to criticism from human rights organizations such as the Human Rights Watch, which have accused Tunisia of inhumane treatment of migrants over the years (Human Rights Watch, 2023).

## THE NEW ASYLUM AND MIGRATION PACT

Following the failure of the 2015 European Agenda on Migration, particularly the Union's inability to implement a system of solidarity within the Dublin system allocating responsibility for the examination of asylum applications, considerable optimism has been invested in the Union's new Pact on Migration and Asylum, presented by the European Commission in 2020 (European Commission, 2020). Following more than four years of negotiations, the much-awaited Pact was finally adopted by the European Parliament on 10 April 2024, with 322 members of the European Parliament (MEP) voting in favour of it (mostly those from the centre, centre-left, and centre-right parties) and 266 MEPs against (mostly those from the further-left and further-right parties). The Pact presents a comprehensive approach to external borders and to asylum and return systems, the Schengen area of free movement, and the externalization of migration. From the start, it was welcomed by European politicians as a significant collective achievement. At the same time, however, civil society organizations, researchers, and experts in the area voiced concerns about what they saw as its detrimental impact on the right of migrants to claim asylum and on the overall functioning of the EU common asylum system (Human Rights Watch, 2024).

As a comprehensive and complex package, the precise scope and boundaries of the Pact on Migration and Asylum are difficult to determine, however. It covers a whole number of interrelated areas, including asylum, border management, legal migration, and anti-smuggling measures, with a particular focus on the external aspects of these policies. Juridically, it comprises twelve different legislative instruments: the Asylum and Migration Management Regulation (AMMR), the Asylum Procedures Regulation (APR), the Crisis and Force Majeure Regulation (which incorporates provisions from the proposed Instrumentalization Regulation), the Eurodac Regulation, the Reception Conditions Directive, the Qualification Regulation, the Resettlement Framework Regulation, a regulation establishing the European Union Agency

for Asylum, the Single Permit Directive, and the Blue Card Directive (European Commission, 2024). These can be broadly categorized into three key dimensions: an external dimension encompassing the establishment of partnerships with third countries outside the EU; an internal dimension establishing asylum rules within the Union; and a final dimension concerning the implementation of robust and effective control measures at the Union's external border.

A comparison of the new Pact with the EU's previous regulations on migration management reveals no evidence of any paradigmatic shift. The new elements added to the pact regulations appear to merely affirm and reinforce the prevailing migration control system already in place. To illustrate, the new Pact simply broadens the remit of Eurodac, the EU's biometric database for asylum seekers, to also encompass a collection of fingerprints, facial photographs, and biographical information for all individuals aged six and above (previously, the database only included fingerprints, and only for individuals over 14, with no accompanying biographic details). The new Pact also facilitates police access to the database, already possible in the old system. Of the various instruments comprising it, the AMMR retains the requirement already set forth in the Dublin Regulation that asylum applications be reviewed by the first member state entered by the asylum seeker, effectively ensuring that the majority of asylum claims will continue to be processed in Greece and Italy. However, what is new is that the regulation permits transfers to a third country on the grounds of the applicant's familial connections, previous residence, or educational history in another member state.

In addition, the new Pact formalizes the policy designating reception centres on islands off the coasts of Greece and Italy as 'hotspots' and transit zones not actually part of the territory of the EU. Excluding many Mediterranean islands from the EU territory this way prevents asylum seekers from fully enjoying their fundamental rights. Moreover, the Pact's Qualification Regulation revises the Union's asylum procedure with the express aim of accelerating the deportation of individuals to have travelled via a 'safe third country' or departed from a country with recognition rates below 20 per cent. Much for this reason, too, the new Pact has been subjected to broad criticism, relying as it is seen on group characteristics for fast-track deportations rather than individual review (Amnesty International, 2024). Additionally, there have been allegations that the reforms infringe upon the right of appeal by deporting individuals prior to the resolution of an appeals process and extending the scope of detention (Euractiv, 2024).

## FASHIONING A LONG-TERM SUSTAINABLE EUROPEAN MIGRATION POLICY

Overall, then, one can raise the question of whether the reforms brought by the new Migration and Asylum Pact can help to ease tensions within the Union over irregular migration, and whether they may prove sufficient for it to avert failures in responding to future migration crises. To answer these questions, one must first consider the issues of timing and implementation. The new system is due to take effect not until mid-2026. That it feels still very far away is not least because of the challenging geopolitical and international security outlook right now and the polarized political debates on immigration presently ongoing in many member states. It is probably fair to say that the new Pact will not be able to do much any time soon to influence the political and public discourses currently circulating on the nature of the Union's external border, particularly on whether this border should be welcoming or unwelcoming to those entering Europe via the asylum system.

In response to our research questions above, two potential outcomes can be hypothesized. The first of these promises an affirmative answer to them, in the form of effectively and efficiently functioning border procedures and diminishing secondary movements produced by the reforms. A renewed sense of trust among member states perhaps emerges, based on the perception that the new Pact represents a mutually beneficial compromise. The principle of solidarity among the member states then begins to inform practice, and the underlying atmosphere of crisis surrounding migration and asylum issues gradually dissipates. Ultimately, the pervasive transgressions of the EU law, such as the acceptance and even promotion of inadequate reception facilities, the prolongation of temporary internal border controls, and the implementation of pushbacks in contravention to the principle of non-refoulement, will all cease and are effectively and definitively prohibited.

The second scenario, however, sees the conditions only worsening as a result of the Pact's consequences. In this scenario, the new border procedures specified by the Pact cannot be completed within the tight time frame given for the task, 12 weeks. The inhuman and degrading conditions of reception in border centres persist, resembling of the current hotspots on Greek islands. Secondary movements of migrants and asylum seekers continue, with no solidarity among the member states to rectify or remedy the situation. On the contrary, an even greater distrust towards

one another develops as a result, contrary to the intended logic of the Pact. Disregard for the EU law persists, and northern member states seek to reintroduce internal border controls within the Schengen area to shield themselves against the influx from frontline states.

It is unclear which of these scenarios will ultimately become our reality, and it is also more than possible that the outcome will lie somewhere between the two. A clearly critical factor in the successful implementation of the new Pact is, however, the presence, or re-creation, of solidarity among the EU member states. One of the main challenges in the negotiations around the new Pact was to resolve the question of how to support member states now to be more involved in the refugee and migrant intake at the Union's external borders. The processing of asylum applications remains governed by the Dublin Regulation, which has shown significant shortcomings in practice. The new Pact on Asylum and Migration retains the main principle of the Dublin Regulation, namely that the asylum application is to be examined in the member state where the asylum seeker first arrives. However, the Pact also introduces the notion of 'flexible solidarity', which allows member states to assist those among them that experience migratory pressures. This they can do through migrant redistribution, financial contributions, or capacity building. The Pact proposes the creation of an EU-wide solidarity fund for the purpose, to facilitate the provision of support to member states according to their respective migration burdens. In this manner, the concept of solidarity is transformed in the EU law, and thus also political practice, from a mandated obligation to a voluntary option, something left to the individual member states' discretion. This rather pragmatic solution was likely a precondition for the Pact's being consented to by all, reflecting the continued inability of member states to reach a mutual agreement. Under the new Pact, each member state is to assume responsibility for a certain share of asylum seekers within the Union, with the allocation determined by a combination of economic factors, the country's geographical size, and the historical numbers of people received. In the event of a refusal by a member state to accept refugees, it will be required to provide financial compensation amounting to approximately a quarter of a million euros per asylum seeker. All in all, it could thus be argued that the proposed solidarity mechanism in the new Pact reflects the reality of a union based on two different (and incompatible) sets of values. One of these entails that member states accept asylum seekers on the grounds of not only a moral obligation, but also a legal obligation to fulfil the requirements of

international law. The other one proceeds from the view that member states are opposed to accepting refugees. The adoption of the Pact thus amounts to EU legislation that not just leaves room for, but also institutionalizes, guiding values that are inherently incompatible with one another, as the solidarity mechanism permits member states to continue implementing restrictive asylum and migration policies.

From the migration crisis of 2015–2016 onwards, sustainable migration has become the central goal of the EU migration policy. This raises the question of what such a sustainable EU migration would involve in terms of legislation and policies adopted. The term carries a positive connotation and is perceived as implying commitment to better law and policy-making for the future of the Union. Yet, from the New Pact regulations, it is not clear what such characteristics might look like, as the concept remains undefined in the agreement text. At a time of broader political disagreement, linking sustainability and migration served as a powerful tool used by the European Commission to create the political impetus necessary to drive forward the EU agenda on migration, with little change needed in the actual legal apparatus regulating migration. The adoption of the Asylum and Migration Pact of April 2024 serves as a case in point. With it, the EU's work to manage its asylum and refugee problem resulted in little more than a diversion of both resources and attention away from other strategic work on migration.

There is a shared understanding by all that migration will only increase in the coming years. The process of globalization gives rise to a whole host of urgent pressures—economic, political, cultural, and social—that will propel international, indeed worldwide migration. At the same time, migration has become a multifaceted transnational issue with major financial implications, generating hundreds of thousands of jobs worldwide; it is shaped by a complex network of individuals, agencies, and institutions with vested interests in the matter. The remarkable challenges of stemming, to say nothing of cancelling, a phenomenon of this magnitude and complexity does not, however, negate the continued relevance of national and international efforts to regulate and control it. Migration policies may well succeed in influencing the size and character of migration flows to particular destinations. Nevertheless, it seems doubtful that efforts to significantly reduce migration will turn out to be successful, given the powerful forces driving these flows. In the same way, it remains unlikely that the EU's new Pact on Migration and Asylum can offer tools with which to effectively manage future migration flows in a manner that

is sustainable in nature. For outsiders at least, it will more likely serve to reinforce the image of the EU as a Fortress Europe for which the primacy of borders and security remains untouched.

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# AI and Digitalisation's Impact on EU's Future Labour Market: Scenarios and Implications

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We are living in a time of wicked problems and turmoil. Global climate change, hunger, poverty, and ongoing wars are affecting the entire world's population, economy, and human living conditions. In times of such global unrest, international exchanges, multicultural encounters, and trade are on the decline. However, our research and that of others also point to the transformative nature of modern information technology (Teigland et al., forthcoming; Wiberg, 2004). Digital technology applications, such as virtual worlds and industrial metaverses, can open entirely new ways of communicating and connecting, while other digital technologies, such as the Internet of Things (IoT), additive manufacturing, and

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more recently generative AI, are expected to have a significant impact on the EU's workforce in the future.

The implementation of AI and digital technologies has implications for productivity and job relocation and creation, which has consequences for this book's theme—the European Union's depth and breadth. While many would like to paint a positive picture of a productive EU with a human-centred workforce and new industries creating a prosperous and sustainable future in the wake of AI, a more challenging and less rosy future EU is also emerging. This future is marked by increasing geopolitical instability, social polarisation, and a global climate emergency. Thus, we have decided to address the following overarching question in this chapter: *What impact will AI and digitalisation have on the EU labour market, and what might the consequences be for EU depth and breadth?*

During the past twenty or so years, considerable research has been conducted on the development, implementation, and use of digital systems. Numerous scholars have investigated the relationship between the use of digital technology and its effects on the labour market (e.g., Arntz et al., 2019; Bühner & Hagist, 2017; Vasilescu et al., 2020). However, there is still great uncertainty about where this development will ultimately lead. What will the EU look like a decade from now? What role will digital technology and AI play? And what alternative paths forward can we foresee? In this chapter, we aim to offer a glimpse into the future through a method known as “disciplined imagination” (Weick, 1989) where we first construct theories about the future and then present four possible alternative future scenarios.

This chapter is structured as follows. We begin with a background exploring the effects of digital technology on the EU labour market and industries. Next we present a scenario matrix with four alternative but equally plausible future scenarios for the year 2035. We conclude with some policy recommendations that we believe can lead the EU towards a more positive future.

## AI, DIGITAL TECHNOLOGY, AND THE EU LABOUR MARKET

Over the past few decades, digital technologies have driven a profound transformation across industries. In particular, the manufacturing sector has increasingly replaced human labour with robots. However, the overall impact of automation on the labour market has varied across countries. For instance, research in the U.S. has shown that each industrial robot

led to the loss of approximately six jobs and widened income inequality (Acemoglu & Restrepo, 2018, 2020). In contrast, a similar study in Germany found that only two jobs were lost per robot, with new positions—particularly in business-related services—compensating for these losses (Dauth et al., 2021). Germany's relatively neutral effect is thought to result from robust in-company retraining programmes and the nation's strong global market position, which allowed productivity gains to translate into increased world market shares (BMWK, 2022). These findings align with the broader view that, so far, technological advancements have adhered to Schumpeter's concept of creative destruction, wherein more jobs have been created than eliminated due to technological progress (Balsmeier & Woerter, 2019).

It is crucial to note the recent shift in the type of labour being augmented. During the industrial revolution, machines enhanced human physical labour, mechanising skills far beyond human physical limits. In the mid-2020s, however, we are amplifying cognitive, knowledge-based work through digital technologies, expanding the human mind's capacity far beyond its natural limits (Ramirez, 2023). Indeed, Professor Douglas Engelbart was an early visionary in this field. In the 1960s, he presented the scientific article "Augmenting the Human Intellect," in which he highlighted what could be achieved with computers (Engelbart, 2023). Fifty years later, a landmark study by Frey and Osborne (2017) analysed 702 US occupations and estimated that 47% of total employment was at high risk of automation within the next one to two decades. This study categorised jobs into four types: routine manual (e.g., welding machine operator), routine cognitive (e.g., bookkeeper), non-routine manual (e.g., personal care assistant), and non-routine cognitive (e.g., engineer). The key insight was that the implementation of digital technologies tends to lead to "routine-biased technological change," where routine tasks—both cognitive and manual—are more likely to be automated than non-routine tasks (Acemoglu & Autor, 2011; Spitz-Oener, 2006). Recent research, however, found a net positive employment effect from digital technology adoption in Switzerland as the increased demand for high-skilled workers more than offset the employment decline for low-skilled workers (Balsmeier & Woerter, 2019). This was primarily attributed to firms that implemented machine-based digital technologies, such as robots, 3D printing, and IoT, rather than those adopting non-machine-based technologies, e.g., ERP, e-commerce systems.

But what about AI and in particular generative AI? A study investigating customer service agents in the workplace found a 14% productivity increase due to the introduction of a generative AI-based conversation assistant, while an experiment-based study of management consultants found a 17–43% increase (Dell’Acqua et al., 2023). In addition to increasing productivity, AI may also create new jobs (Ernst et al., 2019; Petropoulos, 2018) and may even impact labour unions (Nissim & Simon, 2021). Further on, The World Economic Forum estimated that even though AI may replace 85 million jobs worldwide by 2025, it may also create 97 million new ones (World Economic Forum, 2020). A study of online vacancies in the US from 2010 to 2018 did find that AI is substituting humans in a subset of tasks; however, the study did not detect any aggregate labour market consequence. Still, it is too early for conclusive findings (Acemoglu et al., 2022), especially since generative AI has taken the stage with researchers suggesting that not only are highly educated, highly paid, white-collar occupations the ones most exposed (Felten et al., 2023) but that AI job and skillset replacement may already be occurring (e.g., Berger & Frey, 2016; Cazzaniga et al., 2024; Damioli et al., 2021; Gallego & Kurer, 2022).

Thus, the assumption that tasks of a more creative/more complex nature are in the low-risk category seems to no longer hold. Indeed, the jobs under discussion tend to involve tasks that non-machine-based digital technologies could substitute as jobs such as software engineers, media content creators, paralegals, market analysts, teachers, financial advisors, and customer service agents are all being transformed (Zinkula & Mok, 2024). Further, generative AI models and agentic workflows are being developed for advanced cognitive tasks within particular content domains, such as drug discovery, and in the future multi-agent systems may be able to prompt each other iteratively and autonomously. As of the mid-2020s, these jobs still require the human at the start to create and enter the correct prompt into generative AI models and at the end to evaluate and edit the AI-generated content. Thus, many are concluding that the need for humans will remain for some time as the focus moves from task automation to task augmentation. “AI is not going to replace humans, but humans with AI will replace humans without AI” and that perhaps creative generalists and those skilled at integrative sensemaking will be more embraced than specialists in one field (Lakhani & Ignatius, 2023).

The challenge is that this technologically induced change may lead to an increasing polarisation or “hollowing out” of the labour market,



as documented in the United States and Europe (Autor et al., 2008; Goos & Manning, 2007; Goos et al., 2009). Job polarisation is argued to have already started in the 1950s in the United States due to the decline in manufacturing with middle-wage workers losing both in employment and average wage growth compared to low- and high-wage workers (Bárány & Siegel, 2018). The primary argument today, however, is routinisation, i.e., that jobs that are of a more routine nature are more likely to be automated, and these jobs tend to be in the middle of the qualification and wage spectrum. More highly qualified people conduct more non-routine tasks, while those at the other end of the spectrum tend to be without any formal training and perform non-routine manual tasks that are either difficult to automate or routine ones that are too expensive to automate. As those who hold middle-wage jobs reallocate to low-wage sectors, there may be increasing pressure to keep wage levels low, leading to little economic incentive to automate tasks with existing technology or to innovate new technology.

Increasingly relevant to the situation of the 2020s is the argument that job polarisation is also due to structural transformation in which jobs shift from one sector to another—from agriculture to manufacturing to services, due to unbalanced technological progress across sectors (Bárány & Siegel, 2018). For example, between 1975 and 2010 in Germany with its heavy manufacturing focus, the percentage of the work force in the middle-wage category of production, operation, and crafts fell from around 55 per cent to 35–40 per cent with many jobs shifting to the service care sector (OpenMind, n.d.). As automation continues and increasingly replaces low-skilled service jobs, e.g., self-checkout kiosks, warehouse logistics, and customer service, the question is also to what degree this labour shift will influence income inequality due to lost wages. For example, over the last four decades in the United States, automation has accounted for more than half of the income gap increase between more- and less-educated workers (Acemoglu & Restrepo, 2022).

While AI and machine learning receive the most attention, other digital technologies are also influencing jobs and the labour market. In fact, we are moving away from an understanding of computing as a general-purpose technology (Balsmeier & Woerter, 2019; Brynjolfsson & McAfee, 2014) towards “particular-purpose technologies” where it matters how the technology is actually used in practice. In the mid-2020s, digital technologies are for instance used in various contexts for (1) connectivity and computational power through cloud technology,

internet-of-things, and quantum computing; (2) human–machine interaction through virtual and augmented reality, robotics and automation, and autonomous vehicles; and (3) advanced engineering in manufacturing and healthcare through additive and subtractive manufacturing (e.g., 3D printing), renewable energy, computational biology, and smart materials. Together these technologies may lead to entire professions disappearing over time while machines and AI will replace tasks formerly performed by humans. However, new professions and job tasks will emerge and may even lead to an enormous shortage of skilled workers, i.e., precisely the opposite of mass technological unemployment (Varian, 2020). For example, new jobs such as robot personality designer, cloud security guard, and DNA coach have been suggested. The hope is that similar to all previous technological shifts, aggregate labour demand will not show any technologically induced downward trend while a rise in labour productivity will translate into long-term increases in real wages and living standards. However, the challenge is how to avoid a mismatch in skills on offer and those in demand as well as to avoid continued rising wage and income inequality (BMWK, 2022). Questions abound such as which tasks will be replaced by digital technologies that were until the 2020s shielded, how can we ensure that the skills offered match those demanded, and finally how do we hinder job polarisation and income inequality?

All these questions are of relevance to the future of the EU’s labour market. However, it seems that either the time horizon on most politicians’ minds and that of others is a shorter one of two to three years that looks only at digitalisation’s direct effects and not within a greater, longer-term context or they are discussing the “end of the world” due to AI. To better understand the indirect effects of the influence of digitalisation on EU’s depth and breadth, it is thus important to enable a critical discussion at a collective level. One such means is through scenario thinking presented in the next section.

## YEAR 2035—FOUR SCENARIOS AND IMPLICATIONS OF AI AND DIGITALISATION FOR EU’S LABOUR MARKET

One means for organisations and individuals to prepare for the future is through a critical collective discussion of future scenarios. Scenarios enable envisioning a range of future potential alternative futures, and scenarios are particularly relevant in periods of significant uncertainty and change. One tool for developing scenarios is the scenario matrix—a  $2 \times$

2 matrix wherein each axis represents a critical uncertainty, i.e., a pivotal driving force of high uncertainty related to which direction the force will go while wielding the greatest influence over the unfolding of the future. A scenario matrix facilitates the development of four distinct yet equally plausible visions of how the world might evolve, prompting consideration of the opportunities and challenges inherent in each scenario. It is essential to recognise that there is no single “correct” scenario, as the actual future often incorporates elements from multiple scenarios. However, it is intriguing to apply this approach within this chapter to gain deeper insights into how various future scenarios could shape EU’s trajectory in terms of its breadth and depth and its labour market.

To create our scenario matrix, we project ourselves to the year 2035. Looking ten years ahead enables us to break free from the situation in late 2024, yet it is not so far into the future that it is difficult to predict. For the two critical uncertainties, we chose (1) the purpose of digital technologies with the axis ends as “technology for exploration” vs “technology for efficiency” and (2) the geopolitical will to integrate with the axis ends as “no will to integrate” vs “full will to integrate.” Together these axes create four distinct future scenarios that lead to significantly different EUs and thus four distinct labour markets.

As for the first axis of the purpose of digital technologies, we base this on the well-known concept of exploration-exploitation (March, 1991). The exploration-exploitation concept embodies a paradox as it entails a delicate balance between 1) exploration, i.e., embracing uncertainty and discovering innovative solutions by seeking new opportunities and experimenting with new ideas, and 2) exploitation, i.e., maximising efficiency through refining and optimising existing processes, products, and strategies by leveraging established knowledge and practises. This paradox highlights the challenge of simultaneously fostering innovation and efficiency as organisations must navigate between embracing uncertainty and leveraging established practices to survive in the evolving landscape. In our context, we suggest that organisations can choose to use digital technologies primarily for exploration or for exploitation, and these choices would greatly influence the future of work and the labour market. Further, digital technologies, such as AI, can enable trade in new products and industries, which are largely beyond the control of politicians (Sjöholm, 2023).

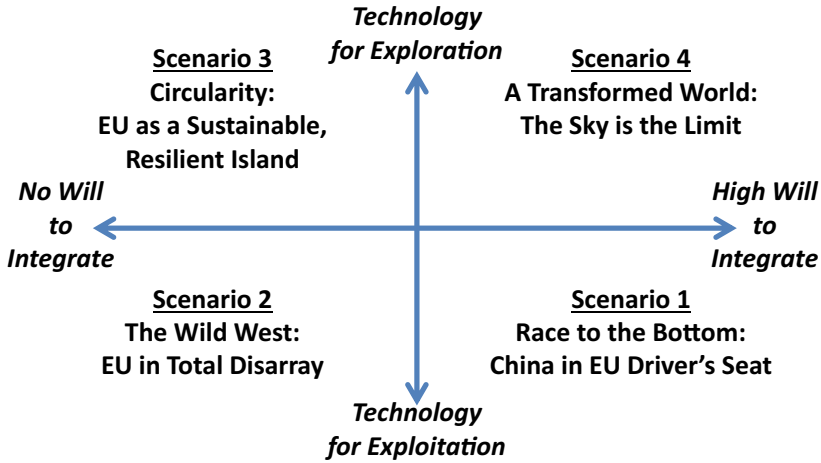
For our second axis, while there are many forces influencing the EU and the labour market, one of the most significant is the geopolitical

will across countries to integrate as this force influences the mobility of goods and services, capital, and labour as well as the emergence of cross-border industries and standards (Sjöholm, 2023). For example, due to international trade policy such as China joining the WTO, world trade increased exponentially during the past two to three decades. However, this increasing integration also led to a significant number of manufacturing jobs moving to low-income countries. For example, in the United States, import competition accounted for around 25 per cent of manufacturing job decline during 1990–2007 and falling wages (Autor et al., 2013). Since the financial recession of 2007, we have seen the geopolitical integration pendulum start to swing the other way as the world has experienced a decline of global trade from 60 per cent of world income since its peak in 2007 while foreign direct investment as a share of gross domestic product has fallen to below pre-1970 levels of around 0.5 per cent (Sjöholm, 2023; World Bank Group, n.d.). Contributing factors include the pandemic's aftereffects on supply chains, populist-driven manufacturing and trade policies, and war. Looking into the future, however, one could imagine that the climate crisis and the desire to create a sustainable future encourage the pendulum to swing back. As such, it is highly uncertain as to which way this force will go.

Combining the axes leads to four distinct scenarios (Fig. 10.1): (1) Race to the Bottom: China in EU Driver's Seat, (2) The Wild West: EU in Total Disarray, (3) Circularity: EU as a Sustainable and Resilient Island, and (4) A Transformed World: The Sky is the Limit. Below we present our scenarios grounded in current events that signal a possible trajectory towards a respective future.

### *Scenario 1: Race to the Bottom: China in EU's Driver's Seat*

In this scenario, all great and small world powers have realised that the only means to tackle global challenges is to align their efforts and ensure a focus on efficiency and economies of scale. China fulfilled its 2017 plan to become the world leader in AI by 2030, and it was able to influence the geopolitical scene and global ethics to move AI's development towards efficiency and surveillance. The EU with China and USA managed to encourage Russia to cease the Ukraine war and to agree to avoid conflict in the South China Sea. Further, China took the lead in tackling the threat of a global recession in order to avoid the growing civil unrest in



**Fig. 10.1** The year 2035: Four alternative futures for the EU

the urban population that had increasingly taken root, as in 2025, 21 per cent of individuals from 16 to 24 were unemployed.

As to climate change, countries began removing all waste throughout global linear supply chains. In 2025, huge resource inefficiencies existed, and 70 to 80 per cent of all resources extracted for the manufacture of goods, services, and food was wasted. To avoid depleting Earth's resources, the great AI superpowers of USA and China decided to "divide" the world and leverage AI to create extremely controlled and efficient centralised manufacturing systems to reduce waste in extraction, manufacturing, transportation, and mechanical recycling. USA focused on the Americas while China took control of Asia, Africa, and Europe.

One reason for this East–West division was that during the 2020s, USA and China outcompeted all other countries in the quantum computing race and developed significant computer processing power with real-time prediction. These two countries were the only ones able to access the necessary competence, data, and natural and financial resources to deploy quantum computing. Thus, China's long-term geopolitical influence in Africa paid off as it provided the country with control over natural resources, such as helium in Algeria that was used for cooling in quantum

computing, as well as with data due to China's extensive telecommunication and remote sensing satellite systems built up through international cooperation guided by the China Academy of Space Technology.

In Europe, Chinese companies grew exponentially due to the Chinese state's computing power and data and their ability to leverage AI to monitor, predict, and influence consumer behaviours. As a result, barriers to entry for new more innovative and productive companies continued to rise, and entrepreneurship became a thing of the past. Further, smaller European companies were outcompeted, forcing them to reduce headcount as they did not have sufficient financial resources to either build their own quantum computer systems or buy/rent from others nor did the EU manage to create a significant counterpart. Additionally, the larger B2B and B2C multinationals of the 2020s were squashed by Amazon and Alibaba that controlled a new era of semi-global production chains comprising extremely highly specialised independent manufacturers. China's extensive investment in autonomous, electric vehicles, e.g., trucks, warehouse forklifts, self-driving cars for the last mile, along with vehicle-to-vehicle communication and the required infrastructure and logistics services paid off in Europe. China and USA together also developed autonomous container traffic enabling sustainable transportation across global production chains, leading to increased global trade with countries trading more in inputs than in finished products.

Due to this focus on routine-biased change and AI-driven global efficiency, individual job losses resulted in the middle of the skill and wage scale without any new or complementary jobs being created in the middle. This led to long-term unemployment and an involuntary exit of many from the labour force. This hollowing out led to all new jobs being created in the high tech/AI content jobs or in low-skill jobs. As a result, job polarisation greatly accelerated across the EU with countries developing vastly different profiles due to the inability to mitigate a mismatch of labour within the EU. While many people in 2025 had predicted a labour shortage of competent tech skills, advances in generative AI had significantly improved the productivity of high tech/AI skill workers. Together this resulted in increased income inequality despite real wages falling across the EU. Thus, as predicted in the 2010s, the workforce was divided into two categories: those who command the robots and those who the robots command.

High-skill tech/AI jobs in the Nordics and Germany revolved primarily around mining and manufacturing and included tasks related to industry

6.0 for specialised manufacturing by medium-sized firms, autonomous vehicles for warehousing and logistics/transport, and data infrastructure for monitoring and predicting consumer behaviours. In Central and Southern Europe, high-skill tech/AI jobs revolved around using IoT, remote sensing, and advanced analytics for precision agriculture to reduce crop losses and disease. Due to rising temperatures, droughts, and the risk of fires, a considerable amount of agriculture had moved indoors to vertical greenhouses using autonomous farming and agricultural robot systems.

Those individuals not able to reeducate themselves or obtain jobs in the high-skill tech sector were forced to take low-skill service jobs in the healthcare and wellness sector caring for the EU's growing population over 65. For example, the demand for exoskeletons rose dramatically, and the elderly required help in assembling and putting these on their bodies. In addition, due to the sustainability focus, numerous people worked as field technicians in repair shops on wheels to extend the life cycle of just about every product. These individuals relied on AI and augmented reality steered by the mother companies in China to facilitate their tasks. While many tasks could be automated, the cost was relatively high compared to the sector's low wages. Governments also wanted to provide employment for this skill group to instil a sense of purpose for these individuals. The challenge was that to promote efficiency, there was a high degree of surveillance and workers were required to wear devices tracking their movements and that vibrated if they did not perform efficiently. Control was further exerted as certain aspects of China's social credit system were adopted in the low-skill sector that rewarded people who followed the rules and punished those who stepped out of line. As most of these jobs were of a physical nature, many individuals were forced to migrate across the EU to find a job.

Unfortunately, despite these efficiency efforts, the world did not manage to beat climate change. However, China and its insurance companies did develop the ability to monitor and accurately predict climate emergencies in real-time due to its extensive satellite and telecommunications network. These companies also implemented policies and collected extensive data to monitor and control people's behaviour to "encourage" them to act more sustainably.

*Scenario 2: The Wild West: EU in Total Disarray*

In the Wild West scenario, the world has fallen into total disarray due to a perfect storm of factors, and borders are more or less closed for all people, goods, and services. As a result, the world is quickly becoming poorer due to depressed GDP growth, severe inflation, and many countries defaulting on their debt. Individuals could not consume as much as before as real wages and welfare declined, leading to extreme poverty.

Since 2024, organisations across the globe vying to win the AI race launched one inexpensive generative AI tool after the other, which led to the rise of the disinformation industry and a tsunami of “spear phishing,” i.e., non-consensual image sharing, voice and video cloning. Digital falsehoods were created and spread on every social media platform imaginable, and individuals could no longer tell true AI-generated videos and audio clips from false ones. By the time a deepfake or cheapfake was potentially flagged, it had already been made viral by bots, cyborgs, trolls, and sock puppets out to spread conspiracy theories—many with the pure intention to create chaos and undermine democracy. As a result, elections across Africa, Europe, Mexico, India, and the US were all substantially influenced, leading to the end of democracy as the world knew it. Several countries became authoritarian states, led by the US. Further, US political polarisation, in which the democrats became more left-leaning and the republicans more right, spread to the EU and led to severe populism and political polarisation and the near dissolution of the EU.

Globalisation continued to decline after the WTO’s collapse due to highly protectionist economic policies implemented by most countries in complete disregard of any rule-based global trade. While world trade had peaked around 60 per cent of world income in 2007, it was now at pre-1970 levels. This decline was initiated by the US that placed high tariffs on all China and EU imports, which then countered and raised tariffs on US imported goods. Further, all countries increased government subsidies. For example, the USA Investment Reduction Act subsidised the development and purchase of electric vehicles, clean-tech production, and production of carbon-neutral fuels, exclusively for US producers, which severely damaged EU’s green sectors as several EU companies moved their production to USA.

The climate crisis and extreme weather events continued, and the prediction that “the world at + 4 degrees is uninsurable” was coming true. During the 2020s, most Global Fortune 500 multinationals had



continued to greenwash and completely disregard sustainability. The polarised political situation led to countries being unable to agree on how to tackle climate change through regulation while climate-denier social media campaigns led by multinationals out to increase shareholder value led to continued natural resource exploitation without any interest in sustainability efforts. Rising global and ocean temperatures, droughts and water shortages across Africa and the Middle East, fires across Europe and the Americas, and flooding and land rise across Asia made agriculture next to impossible. A severe energy crisis was occurring across the globe as not even developed countries could manage to finance large renewable energy projects while oil-rich countries hoarded their reserves for themselves or their closest allies.

As a result, global peacefulness rapidly declined, and the Global Peace Index fell each year since 2023 as the number of countries deteriorating rapidly outnumbered those improving in peacefulness. In early 2025, the USA diverted resources towards the increasing conflict with China in the South China Sea. Africa had entered a dark time as political instability and political terror led to many countries experiencing coup after coup. Under ex-Wagner rebels, many African nations violently took possession of numerous Chinese and Russian operations and their assets, such as telecommunications and energy infrastructures, oil and gas reserves, and cobalt, iron, uranium, and copper mines. Due to limited food and natural resources, Russia increased its expansionist activities across Eastern Europe after winning the Ukraine war. Due to increasingly diverse economic and political systems, the BRICS countries were completely disbanded. Meanwhile, other nations in Latin America, such as Mexico, had become mafia states due to systemic corruption and extensive organised crime. Transportation of goods was highly risky due to an increasing level of organised “pirate” activities.

The only thing keeping the EU together was national security due to increasing threats from outside as well as within, but this was increasingly challenging. Increasing numbers of refugees and migrants from Africa and the Middle East due to their dire state created considerable violence along Europe’s borders, leading to heavy militarisation by the EU. From within, polarised political factions waged war with each other on social media while political and climate activists and gangs instigated violent riots and property damage throughout Europe. To pave the way for mining natural resources such as lithium and high-grade iron ore, numerous cases of arson of agricultural and other arable land led to continuous

forest fires. No one and nothing escaped poverty, and most people turned to petty crime for income. Telecommunications, public transportation, and electricity companies were all under attack due to theft of copper cables as copper prices had risen astronomically, leading to considerable infrastructure damage and unreliable service. Likewise, the few people who still had cars spent considerable resources protecting them from thieves searching for lithium batteries and platinum in catalytic converters. Indeed, the organised theft of lithium batteries in electric vehicles, e.g., bikes, scooters, had led to the downfall of what once was an emerging industry—shared urban mobility. Meanwhile the online space had become one of continuous chaos due to the exponential rise of aggressive and confrontational cybercrime in areas such as online fraud, money and data theft, sexual extortion, and social engineering. While cybercrime initially started to grow during the Covid pandemic, it became increasingly organised as criminal gangs moved online and used generative AI to create ransomware, scareware, spyware, and phishing schemes and traded expertise in online communities. Further, China, Russia, Iran, and Brazil had stepped up their hacking efforts to steal technology and data from EU companies.

As a result, the digital transformation of society had waned, and private individuals and companies did a complete reverse on electrification and IoT as they began to understand how the “digitalisation of everything” increased their vulnerability to crime and disturbances in addition to being costly and difficult to service. The only industries in the EU that were growing were commercial security services and defence along with hardware and software suppliers to these industries. In security services, digital technologies combined with physical security systems enabled sophisticated security systems to deter threats in real-time, e.g., surveillance cameras with advanced image and facial recognition, access control systems with biometric identification, and drones and autonomous vehicles for monitoring large areas. AI was used for cybersecurity such as network vulnerability scanning and penetration testing to try to stay ahead of hackers trying to access private and organisational IT networks. Due to high equipment and electricity costs and the need for security, computer processing power and data, the EU experienced the consolidation of the security services industry as well as several cross-industry collaborations, e.g., ASSA Abloy, IKEA, and Deutsche Telekom.

However, hardware and software developers for commercial security services were primarily specialised SMEs operating within complex

defence supply chains across the EU that were governed by a handful of large system defence integrators. Realising the need to raise collaboration between the private and public sectors, the EU's defence industry increased support for these SMEs through financial investments and infrastructure to promote innovation. Further, the legal and compliance industries continued to develop and enforce regulation to promote efficient resource use and cross-border cooperation and to ensure that the defence and security industries did not overstep privacy boundaries too far. As a result, member states no longer invested in or bought only from their own national companies, enabling SMEs to scale across the EU.

While a very small percentage of people worked in high-skill jobs, job inequality was now at an extreme. Many jobs across all sectors had disappeared—however, not due to AI implementation or other digital technologies but rather due to the world falling into a deep recession characterised by political chaos and organised crime. Most people worked in low-skill, low-tech jobs—either in “mom-and-pop” establishments, e.g., food production, repair, or as waste pickers and day workers performing short-term gigs in the shadow economy within transportation and construction. As international trade had more or less ceased, the biggest industry within the low-skill, low-tech sector was the waste management industry, which naturally the mafia ran due to their decades-long global stronghold of this industry. However, instead of trafficking waste out of the EU, the mafia had now turned its attention to recycling within the EU due to high prices of and inability to access resources. Organised criminal gangs were now becoming material experts in order to efficiently clean, sort, and mechanically recycle. Due to the low cost of labour and high unemployment, the industry was defined by heavy manual labour. Trade was characterised by “cash is king” and barter leading to the official economy being squeezed out and the rapid erosion of the EU's tax base. Thus, the member states were having increasing difficulty financing their supporting infrastructure, especially as the defence industry demanded such high investments to maintain security on an EU level.

### *Scenario 3. Circularity: The EU as a Sustainable, Resilient Island*

Contrary to scenarios 1 and 2, while there was relatively little interest in global trade, in this scenario larger governments and their private sectors realised that to tackle global challenges, it was necessary to pull back from

a world focused more on shareholder capitalism driven by profits achieved through efficiency and resource exploitation as well as political conflict and aggression to gain resource access. As such, countries were turning inwards and investing within their borders so that they could become more sustainable and resilient. For example, the “Made in China 2025” strategy and the “Dual Circulation” strategy served as building blocks for Xi Jinping to move the country away from a market economy to one of state control and governance with a focus on increasing self-sufficiency and reducing dependence on the outside world. This became a strategy of necessity that the government took to avoid another great depression like the one in the late 2020s.

As the EU had several of the world’s most peaceful and innovative countries in the mid-2020s, the EU was able to channel its efforts towards resilience and self-sufficiency and to transform itself into a leading powerhouse of cutting-edge renewable technologies and sustainable practises. Inspired by China and USA’s place-based policies, the EU developed its active industrial policy initiated in the early 2020s whereby certain industries and companies were selected for special support and protection from competition. The EU focused on industries such as ICT, energy, food, healthcare, mobility, waste management, and manufacturing, and selected a handful of companies within each sector to lead development. However, these companies were not tasked with innovation. Rather, the EU decided that the best way to promote more radical innovation towards self-sufficiency was to revamp public funding schemes. During the 2020s, extensive time-consuming applications and onerous project governance processes had hampered innovative thinking as large organisations with deep pockets could “play the funding game” through inhouse or hired consultants, thereby excluding innovative startups and small organisations from receiving vital public funding. Inspired by Stanford University’s flash organisations, the EU developed an AI-enabled innovation tool that crowdsourced individuals from across the EU into relevant sustainability R&D projects, which then received a lump sum of start capital. Despite the innovation tasks being open-ended and complex and team members from different cultures and geographic areas, next generation genAI tools along with virtual worlds and augmented reality greatly facilitated digital collaboration. The Flash Innovation Tool enabled the flexible and continuous assembly and reassembly of project teams based on the required competences as the innovation project progressed, while smart contracts

ensured the automatic release of additional project funds and remunerated individuals for their completed tasks. The large organisations selected within each sector then took the innovations to market, and this process was greatly facilitated as their employees were generally selected by the Flash Innovation Tool to participate in various phases throughout development. These organisations oversaw integrated production chains with different components produced across different member states through specialised automated factories.

As a result, the EU was well on its way to becoming a self-sufficient region as member states increased their collaboration and regulations were harmonised, and other European countries joined. Great strides were made within ICT since hardware production had returned to the EU in the 2020s, and significant investment through acts such as the EU Chips Act had built up local semiconductor production capacities. The EU finally developed its own quantum computer; however, due to its high cost, applications were limited to chemistry and materials in order to develop improved batteries, fertilisers, and carbon capture. The energy sector witnessed transformative progress, with significant strides in areas such as ocean wind far out in the North Sea, bladeless wind turbines in urban areas, energy-harvesting trees, and 3D-printed solid-state batteries that were completely recyclable. In the food industry, as climate change had significantly reduced Europe's arable land, the EU decided to relax its regulations on gene-modified crops and lab-grown meats, leading to the development of high-yield, climate-resistant plants and more sustainable lab-grown protein grown in vertical greenhouses within closed systems. Related to healthcare, the EU worked diligently to encourage the development and implementation of personalised nutrition and predictive and personalised medicine. Waste management experienced significant leaps in material science and chemical recycling, while advances in generative design and additive manufacturing enabled the development of microfactories that transformed local waste streams into locally demanded products for the construction/building and consumer goods industries. Due to limited natural resources and high energy prices, privately owned cars were replaced with electric public transportation while goods were transported through a network of autonomous electric trucks. The entertainment industry developed reality-like virtual reality services that replaced leisure and business travel and enabled remote healthcare while augmented reality allowed anyone to be a technician.

As the innovation focus was exploration instead of exploitation, the implementation of digital technologies led to productivity increases across all sectors as opposed to job displacement. One driving force for this was the strikes within the creative industries that spread quickly to other professions. Thus, to meet changing labour demands, the EU leveraged generative AI and virtual worlds to continuously train and reskill individuals of all ages. These efforts served to avoid a labour mismatch and to reduce income inequality and the economic rural-urban divide.

#### *Scenario 4. A Transformed World: The Sky Is the Limit*

As the year 2035 unfolded, a world once plagued by divisions and protectionism had undergone a remarkable transformation towards a world of global equality and peace. In 2026, the seeds of change were sown as the most peaceful region of the world—the EU, leveraged its position to lead the World Trade Organisation’s efforts to change its name to the Global Sustainability Collaboration, which then expanded to include almost all countries. Working groups across nations began to tackle climate change through pooling knowledge, resources, data and computing power.

The world entered an era of unprecedented innovation as knowledge, ideas, and capital flowed freely with individuals continuously upgrading their skills through interacting with generative AI-based learning tools embedded in every device. Quantum computing was at the core of most advances as China, USA, and the EU overcame their differences and even collaborated on researching ultracold atoms in space and solving the helium shortage. Together they built large-scale, stable quantum hardware while training quantum programmers to create efficient quantum algorithms, leading to the quantumisation of everything. These efforts paid off as geoengineering innovations began to cool the planet by reflecting sunlight back into space and numerous solutions removing carbon from the atmosphere and ocean were advancing quickly. Even the challenges of cloud seeding were overcome, leading to the ability to modify weather and avoid extreme events.

To prevent a return to the climate challenges of the early 2020s, sustainability was at the core of everything. Renewable energy sources, including fusion, hydrogen, and space-based solar, along with advanced battery recycling and innovative energy storage solutions without batteries reduced the 2020’s heavy pressure on mining and all deep sea mining projects were halted. Manufacturing underwent a seismic shift towards

circularity and gone are the days of centralisation, economies of scale, and global supply chains. Due to advances in chemical recycling, nanomaterials, and additive manufacturing, most goods were now produced locally for local markets using 4D printing in which 3D printers produced objects of all sizes from intelligent recycled materials programmed to change shape, colour, and size on demand. Hunger was also eradicated due to innovative agritech solutions that decontaminated soil and created local food sources through the 3D printing of alternative proteins.

Healthcare transcended expectations due to the pooling of all medical data and quantum computing, which led to predictive medicine and designer drugs using nanoparticles for precision drug delivery. The few operations performed were done remotely by specialists around the world using body parts grown locally from stem-cells. Meanwhile, brain-computer interfaces were pushing the boundaries of human-computer interaction and even human-animal interaction, while robotics evolved beyond imagination, with general-purpose robots that could learn on the go and adapt to unforeseen scenarios, emulating human learning processes.

Collaboration, innovation, and sustainability were the driving forces behind this transformed world, and the once-feared job losses, polarisation, and income inequality along with humanity's destruction by AI were completely forgotten. Individuals lived in smaller self-sustaining communities, with all needs within a 15-minute walking distance, eradicating the private automobile industry while improving personal health. Networks of smaller autonomous vehicles provided transportation for local goods and mobile wellness, and the large warehouses from the 2020s were transformed into microfactories. The few goods that could not be produced locally were transported by autonomous hydrogen-fueled aircraft for longer distances and by autonomous electric drones for shorter distances.

Individuals enjoyed a three-day work week as AI and automation had enabled reskilling and greatly increased productivity while governments ensured equal wealth distribution through new business models. The leisure industry exploded with shopping malls turned into recreational and learning parks with their roofs serving as landing spaces for electric spaceplanes transporting individuals across the planet in a few hours. Even space exploration transcended frontiers, with ventures into mining and colonisation, clearly showing how humanity's collective endeavours have forged a path towards progress, unity, and a brighter future for all.

## WHICH FUTURE EUROPE DO WE WANT TO CREATE?

We began this chapter with the following question: What impact will AI and digitalisation have on EU's labour market, and what could the consequences be for EU's depth and breadth? With our four widely divergent scenarios (summarised in Table 10.1), we have painted pictures of future worlds with labour market implications. We have tried to create extremes to help us see where today's various trends could take us in the long term. By starting from the current situation in 2024 and pushing the development lines to their extremes, we open up critical discussions about which future we would like to see. Given these different future scenarios, policy recommendations are also needed to steer the EU towards the desired future.

## WHAT DOES THIS MEAN FOR POLICY DEVELOPMENT?

Policy work aimed at correcting current problems can, at best, improve the present situation, but it provides very little guidance for the future. That is why we have chosen an alternative approach. These images of possible futures around 2035 allow for the analysis of what challenges, consequences, and obstacles each alternative future might entail. Further, this chapter shows how each scenario would require different types of recommendations as a future promoting international exchange and cooperation requires different guidelines than a future based on borders, barricades, and territories.

We suggest, therefore, that the EU's policy development must consider which future scenario, or parts of a scenario, are most desirable. This means going beyond the short-term to adopt a more forward-looking approach, where strategic visions shape policy. This approach can help the EU anticipate potential challenges, avoid undesirable outcomes, and prepare for opportunities that will lead to a sustainable, productive, and equitable future for its labour markets and societies.

Our recommendation is presented at a meta-analytical level, where the central question must be: what overarching policies and guidelines should the EU develop in order to choose and shape a future scenario, or parts of a possible scenario, that it aims to realise? Ultimately, this is almost an existential question about what kind of society within the EU we would like to live in the long term and how we perceive the use of, or deliberate distancing from, digital technologies to create new opportunities



**Table 10.1** Four scenarios for EU's labour market in 2035

Race to the bottom: China in EU Driver's Seat	<p>Digital technology and quantum computers for global efficiency</p> <p>Chinese and American tech companies in the driver's seat and coordinating the EU labour market</p> <p>High job polarisation and significantly different work profiles across EU: Highly skilled tech/AI jobs in mining, manufacturing, and autonomous vehicles in Northern Europe and precision agriculture in Central and Southern Europe, alongside low-skilled service jobs in local healthcare and care sectors</p>
The Wild West: EU in Total Disarray	<p>Digital technology for security, both physical and online, due to deep global disorder</p> <p>EU held together by national security concerns against organised crime and widespread global unrest</p> <p>Labour market in total chaos due to severe economic downturn and shadow economy</p> <p>Some high-tech jobs within national defence and security in small and medium-sized companies, with remaining in low-skilled, day jobs</p>
Circularity: EU as a Sustainable, Resilient Island	<p>Digital technology for self-sufficient EU</p> <p>Significantly strengthened EU with an industrial policy creating high-tech jobs across all sectors,</p> <p>Innovation driven by AI and a labour market where individuals continuously reskill with help of generative AI</p>
A Transformed World: The Sky is the Limit	<p>Digital technology and quantumization for an entirely new world</p> <p>EU at the forefront globally, focusing on sustainability both on Earth and in space</p> <p>Three-day workweek in high-tech jobs or in an extensive leisure industry</p>

that would remove or replace existing practises. Moreover, it is a question of how the EU should evolve in relation to global trends, conflicts, and emerging living patterns. This becomes a matter of ethics, about how we relate to one another and to nature, a question of quality of life, and about how we can collectively work—on a global scale—towards a better

future. This is especially pertinent in a time when the future seems increasingly fragile and uncertain and the developments of the last decade may fundamentally redefine how we view global cooperation, nations, and the role digital technology can and should play in societal development.

Furthermore, since no scenario is more likely than another, “early warning signals” should be identified for each scenario, signalling which specific scenario may be emerging. The external environment should be continuously monitored for these signals to foster collective discussions about what these signals mean for future directions and the path towards a particular scenario.

Another recommendation we offer to policymakers and others is to collectively use “futuring tools,” such as the scenario matrix presented here. This framework allows space for structured, informal, critical, and collective discussions—especially with others who view the world through different lenses—so that decisionmakers can better understand potential scenarios (both positive and negative) and their implications. By using these futuring tools, we shift the focus away from short-term crisis management to daring to think further ahead—to consider possible futures and the potential long-term effects of current decisions.

### THE SKY IS THE LIMIT—STIMULATING DIVERSE THINKING AND NETWORKS BASED ON DIVERSITY

Europe and the world face many uncertainties, and how we will utilise digital technology in the future is also partly an unwritten story. However, this does not mean that the EU should shy away from this challenge. Instead, the challenge should be embraced, and a structured approach should be used to help the EU and its population, both individually and collectively, explore and discuss future scenarios and their consequences.

To facilitate this, we have taken a structured approach to look ahead and develop several potential future scenarios. We have questioned many of our assumptions about technology, the labour market, and even society itself, both within the EU and in relation to other countries around the world. Developing these scenarios has allowed us to engage in critical discussions about how the future may unfold—radically differently—depending on the trends and signals we observe going forward.

We believe that the best scenario for the world is Scenario 4: A transformed world: The sky is the limit. To achieve this, the EU needs to progress along both matrix axes—towards “technology for exploration”

and towards “strong willingness to integrate.” However, AI presents several challenges in moving in these directions. On one hand, concerns have been raised about how over-reliance on AI can lead to a loss of independent thinking and idea diversity. If decisions across the globe are made based on the same data, models, and algorithms, the result could be uniformity and herd behaviour. Furthermore, since models are generally trained on historical data and patterns, fewer new radical ideas may emerge. This could potentially lead us towards “technology for exploitation” as thinking converges on incremental ideas, while many others may choose to opt out due to feelings of learned helplessness or their inability to influence outcomes in a society increasingly governed by embedded algorithms. To move towards “technology for exploration,” we must avoid concentrating power in AI platforms and large tech companies, and consider regulations that not only prevent monopolies in AI model development and training data but also address the dangerous horizontal issue of companies in the same industry using the same base models for decision-making.

On the other hand, there are many signals suggesting that AI is leading us towards the “no willingness to integrate” end of the political axis. Social media algorithms encourage us to network with those who are similar to us, leading to polarisation, an inability to appreciate intercultural and other differences, and ultimately resulting in conflict and exclusion. As generative AI text, video, and audio tools become available and affordable to anyone with an internet connection, democracy and peace are also at risk. This is due to criminal activities, disinformation, and fake news facilitated by online bots and deepfakes, such as a person’s digital likeness. To move along the “strong willingness to integrate” axis, regulation of social media and other networking platforms should thus be at a global level, promoting AI use to encourage people to build networks with those who are different from themselves, while also preventing AI use for misinformation, fake news, and criminal activities.

Although the above reasoning represents an ideal scenario, and the EU may not be able to implement such measures on a global level, member states should continuously work collectively to achieve the next best scenario—Scenario 3: EU as a Sustainable and Resilient Island—by making decisions that actively move the EU towards this outcome. Failure to do so could result in the EU, and potentially the world, ending up in Scenario 1: Race to the Bottom or, worse, in the catastrophic Scenario 2: the Wild West.

By asking critical questions and posing “what if?”, we can improve our ability to identify opportunities and make better decisions. Hopefully, this is part of the initiatives required to set us on a course towards a more sustainable future.

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# Reconsidering the Depth and Size of the EU in View of Enlargement in a Time of War

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*and Lars Oxelheim*

## WHAT IS AT STAKE IN THE FORTHCOMING ENLARGEMENT?

President Volodymyr Zelensky submitted Ukraine's application for membership of the EU on 28 February 2022, only a few days after the Russian invasion. The wish of Ukraine to join the EU was warmly

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welcomed by the President of the European Commission, Ursula von der Leyen, who stated that “[T]hey are one of us and we want them in” (von der Leyen, quoted in Politico, 2022). Less than a week later, on 3 March, President Maia Sandu signed Moldova’s application for membership of the EU joining Ukraine in the process to become members of the Union. Since then, the EU’s institutions and most member states have given their unwavering support to the accession ambitions of Ukraine and Moldova, and breath new life into the enlargement negotiations that have been ongoing for many years with countries on the Western Balkans. On 25 June 2024, the EU held the first intergovernmental conferences with Moldova and Ukraine, respectively, to mark the opening of the accession negotiations for membership (Council of the EU, 2024a, 2024b).

At the end of December 2023, the European Council took the formal decision which marked the beginning of an enlargement process that may allow up to seven, and perhaps more, countries in Eastern Europe and the Western Balkans to join the EU in a not-too-distant future (European Council, 2023b). The question is therefore no longer whether the EU should once again embark on the long and difficult road towards enlargement, but how the EU will incorporate these countries. Without a doubt, the EU’s decision to engage in a wide enlargement was driven by strategic considerations. The link between enlargement and stability in the wider European region was made abundantly clear in the European Commission’s Communication on EU Enlargement Policy of November 2023 where it stated that “EU enlargement is a driving force for long-term stability, peace and prosperity across the continent. EU membership is a geostrategic investment in a strong, stable and united Europe based on common values. It is a powerful tool to promote democracy, the rule of law and respect for fundamental rights” (European Commission, 2023, p. 2). In the decision of December 2023 to open accession negotiations, the European Council adopted a similar language asserting that “enlargement is a geo-strategic investment in peace, security, stability and prosperity” building on the Granada Declaration of October 2023 (European Council, 2023a, 2023b, npn). Nevertheless, despite the fact that the EU’s decision was taken with vigour and in a spirit of solidarity, the process contains many pitfalls and there are reasons to believe that this enlargement will put the EU’s leaders and institutions to the test. As Mats Öhlén argues in this volume, the upcoming enlargement will exhibit many similarities with the Eastern enlargement of 2004 and 2007, but there will also be major differences.

### *A Geopolitical Enlargement*

Indisputably, the biggest difference from previous enlargements is the geostrategic context in which the EU membership negotiations are conducted. Indeed, the enlargement to Ukraine, Moldova, and the Western Balkan countries has already been labelled a geopolitical enlargement. Yet, all previous enlargements of the EU were also surrounded by strategic considerations as geopolitical shifts have triggered the EU to widen its membership in the past. A case in point is the dissolution of the Soviet Union in December 1991, which precipitated the EFTA enlargement in 1995 and was the precondition for the Eastern enlargement of 2004 and 2007 (Anghel & Jones, 2024; Michalski & Wallace, 1992). This time, however, the geopolitical implications of enlargement are profound as they are playing out against a severe lack of regional security, a waning American support for Europe's stability, a full-scale war, as well as a larger shift in the international system characterised by system instability and great power rivalry. Consequently, EU enlargement this time will take place in a very different international setting than the Eastern enlargement in the early 2000s when the rules-based liberal order ruled unchallenged international relations and robust international organisations infused stability into global governance.

The immediate and most significant geopolitical challenge to the EU enlargement process is Russia's war in Ukraine. Deciding to open accession negotiations with Ukraine despite an ongoing war is a clear departure from the EU's previous principles of insisting that candidate states must first resolve any outstanding border disputes or any other significant conflicts with neighbours before accession negotiations can be envisaged. Although the EU allowed a divided Cyprus to join the EU in 2004, the accession negotiations were conducted in close coordination with the UN and in the hope that a later UN-sponsored referendum would result in the unification of the island (Nugent, 2000). In the same spirit, the EU has been active in post-conflict resolution in the Balkans seeking to diffuse various ethnic and border disputes in Eastern Europe, which have been kept separate from the enlargement process but still seen as a precondition for a successful conclusion of accession negotiations (Cooley, 2018; Grillot et al., 2010). However, by opening accession negotiations with Ukraine, the EU has manifestly taken a much more significant role in a future peace settlement and the ensuing reconstruction of the country.

Russia's aggression in Eastern Europe is also directed at Moldova which since its independence in 1991 has seen multiple attempts of political influence and destabilisation leading to a situation of acute insecurity (Deen & Zweers, 2022; Shapovalova & Boonstra, 2012). The precarious situation was clearly visible in the referendum on EU membership on 20 October 2024 which produced a slim majority in favour of the EU against a backdrop of extensive external interference in the form of influence operations and voter bribery (Ivanova, 2024a, 2024b). Since the early 1990s, the break-away republic of Transnistria has received political, economic, and military support from Moscow in the form of subsidies and Russian peacekeepers stationed on the territory since 1992. Russian influence is also strong among the Balkan states where particularly Serbia has long-standing relations with Moscow partly grounded in a shared pan-Slavic identity, partly driven by political opportunism on behalf of Serbia and a sense of solidarity among autocratic regimes (Radeljić & Özşahin, 2023). Serbia's lack of alignment with the EU's foreign and security policy since Russia's large-scale invasion of Ukraine in 2022 has become a hurdle in its accession negotiations with the EU. In particular, Serbia's refusal to implement the EU's sanctions against Russia is seen as aggravating and damaging to its standing in Brussels. The High Representative of EU foreign and security policy, Josep Borrell, 2019–2024, warned in May 2023 after a meeting with Serbian representatives that “maintaining close ties with Russia is not compatible with its EU accession process and is also harmful for the national interest of Serbia” (Borrell quoted in Euronews, 2023).

Beyond the severe military and strategic instability in Eastern Europe, geopolitical challenges arise also in the Western Balkans where China's influence is especially strong. Albeit of a different kind than Russia's aggressiveness, China's involvement in the Balkans has political, economic, and strategic implications as it has been seen as a challenger to the EU in terms of undermining the Western Balkan candidate countries' adoption of the EU's Copenhagen criteria, including the *acquis*, and their alignment with the EU's foreign policy orientation. A previous commissioner of EU enlargement, Johannes Hahn, expressed doubts already in 2018 about China's influence in the region as the “combination of capitalism and a political dictatorship” might turn the Western Balkans countries into Trojan horses in the EU (Hahn, quoted in Politico, 2018). The challenge to the Western Balkan candidate countries' adoption of the EU *acquis* has centred on China's infrastructure investment

through the Belt and Road Initiative, chiefly in Montenegro and Serbia. In this context, concerns have been raised in particular regarding the influence of the EU's conditionality as expressed in the Copenhagen criteria as opposed to China's "no strings attached" policy (Jaćimović et al., 2023; Stanicek, 2022; Zweers et al., 2020). A research report from the European Parliament emphasises that the lack of transparency linked to public procurement, state aid and EU standards in conjunction to Chinese direct foreign investment, especially in public infrastructure projects, risks hampering the Western Balkan candidate states' integration into the EU (Stanicek, 2022, p. 8). Moreover, concerns have been raised regarding these countries' application of EU standards in health and safety for workers, the protection of the environment, and other issues in projects run by Chinese state-owned companies amounting breaches of the EU *acquis* (Stojkovski et al., 2021). Moreover, China's political influence in the Western Balkans is also troubling for the EU primarily due to its ability to act as an alternative partner which despite its "no-strings-attached" policy nevertheless demands political loyalty in return. The most conspicuous example is the China-sponsored diplomatic forum under the name of 14 + 1 (formerly, 16 + 1, then 17 + 1), comprised of nine EU central and eastern European member states, five Western Balkan countries, and China, set up in 2012. The ambition of China to set up this diplomatic forum was to create a framework of political support for its Belt and Road Initiative projects in Eastern Europe and ensure consensus among the participating countries on issues which might interfere with China's economic and political interests. However, diplomatic alignment with China among the countries in Eastern Europe has cooled considerably since the beginning of the 2020s as a result of China's punishment of Lithuania over its relations with Taiwan and the Chinese refusal to align with sanctions against Russia in the wake of the invasion of Ukraine (Kaczynski, 2022). Consequently, Lithuania, Estonia, and Latvia left the forum in 2021 and 2022, and the Czech Republic has been an inactive member since 2023. Nevertheless, EU members, such as Hungary and Serbia, which regularly undermine the EU's policy towards Ukraine and refuse to apply the EU's sanctions against Russia, respectively, want to attract Chinese foreign direct investments and therefore value good diplomatic relations. Their Chinese-friendly foreign policy was made abundantly clear during the official visit of the Chinese President, Xi Jinping, to Europe in May 2024 which, besides Paris, included stops

in Belgrade and Budapest, but not to Brussels thus shunning the EU institutions which China regards as unfriendly (Camroux & Wang, 2024).

Taken together, the geopolitical tensions in Eastern Europe and the Western Balkans, in large part due to Russia's military aggressiveness in Ukraine and destabilisation attempts in Moldova on the one hand and China's influence in the region on the other, constitute the backcloth against which the EU's Eastern European and Western Balkan enlargement is taking place. These tensions risk destabilising the candidate countries' political, economic, and social adaptation to the EU membership and seed distrust between them and the EU member states, varying according to the former's positions vis-à-vis Russia and China. At the same time, the geopolitical reality makes a transparent and predictable enlargement process all the more important.

These contextual factors are influencing the question how the enlargement will be carried out and whether strategic considerations should trump decisions regarding the candidate countries' fulfilment of the EU's membership criteria. Most of these countries have made the choice to embrace democratic values and governance, and turned away from the autocratic, corrupt, and arbitrary Russian political model, but others, particularly Serbia, appear to be playing an opportunistic game orchestrated by the populist right (Seebass, 2024). The EU enlargement process is vulnerable in the sense that it is based on a comprehensive Europeanisation of the state apparatus, form of government, and policy obliging these states to reform in line with a modern, democratic welfare state. This transformation will take a long time, challenge domestic elites, and is usually not able to deliver the material well-being that the population is hoping for quickly enough. From this perspective, the EU must find ways to tackle the geostrategic challenge at the same time as it seeks to prevent doubts about the EU's intentions and benefits of membership from getting the upper hand.

In this context, it should be noted that experiences from the negotiations with the Western Balkan countries, which in some cases have been going on for several years, have been far from unequivocally positive. As discussed above, alignment to the EU *acquis* has been problematic, as some countries, primarily Serbia, have repeatedly sought partnerships with China within the framework of the Belt and Road Initiative and maintained close links to Russian state-owned companies. On the EU side, there has been frustration and some EU member states have blocked the progression of the candidate countries with reference to obstacles that are

not motivated by alignment to EU laws and regulations, but by national particularistic interests. One example is Bulgaria's language and national identity demands in relation to North Macedonia, which adds unnecessary arbitrariness to the accession negotiations (see the chapter by Öhlén in this volume).

As mentioned earlier, in previous enlargements the EU insisted that candidate states address unresolved border issues with neighbours and settle disputes regarding ethnic minorities before becoming member of the EU as a way not to import intractable conflicts into the Union. In future enlargements, regional instability will be endemic and must be managed outside the accession negotiations in conjunction with allies in NATO and beyond. The decision to open negotiations on EU membership for Ukraine, well ahead of any peace agreement is even contemplated with Russia, shows that the EU will mantle some of the security implications arising from pulling Ukraine and Moldova increasingly tighter to its orbit. Nonetheless, EU membership cannot replace NATO membership when it comes to extending security guarantees to Ukraine and Moldova which is important in a context where NATO membership seems far from assured for these countries.

### *The Challenge of Heterogeneity*

Another difference compared to the enlargement of 2004 and 2007, albeit in degree rather than in nature, is the economic, political, and social development of the candidate countries compared to the EU average. Compared to the countries joining the EU in 2004 and 2007, the differences this time around are even greater. In terms of gross domestic product (GDP) per capita in 2022, Luxembourg was at the top at around USD 125,006, followed by Ireland at USD 103,983 and Denmark at USD 67,790. The lowest per capita GDP in 2022 for the current member states was in Bulgaria at USD 13,974. These figures can be compared with a per capita GDP of USD 4534 for Ukraine, USD 5714 for Moldova, and USD 6675 for Georgia (World Bank, 2024). This concerns Ukraine primarily, whose size and extensive agricultural sector would challenge the distribution of funding of the EU's current structural and cohesion funds and agricultural policy. Calculations show that all current net recipient countries of the EU's budget would become net contributors, and the biggest transfers would go to Ukraine. These calculations were made

on the Ukrainian economy *before* the war. The EU will also be responsible for organising the reconstruction of Ukraine and the cleanup of the environmental damage caused by the war with the participation of the international community. In addition to these economic factors, there will be institutional and political changes brought about by the next enlargement. On top of this, there will be an inevitable impact on the development of the EU's foreign and security policy, as countries with very problematic experiences of Russia, such as Ukraine and Moldova, will then be members. In the Western Balkans, World Bank (2024) figures on GDP per capita from 2023 present a somewhat better situation compared to Georgia, Moldova, and Ukraine, with Albania at USD 8367, Bosnia and Herzegovina at USD 8426, Kosovo at USD 5943, Montenegro at USD 12,016, North Macedonia at 8146, and Serbia at USD 11,361. Still, these countries' GDP per capita remain low compared to most current EU member states and therefore future financial transfers to new member states in an enlarged EU is an issue that will no doubt require serious negotiations among the member states. As a prelude to this debate, the political guidelines of the European Commission 2024–2029 emphasise the need for a reform of the EU budget and make some initial proposals to this effect (von der Leyen, 2024).

### *Rule of Law, Conditionality, and the Challenge of Unity*

Among the challenges of the forthcoming enlargement to the countries in Eastern Europe and Western Balkans are the intractable issues related to the candidate countries' democratic transformation, the fulfilment of rule of law, civic and political rights, the protection of minorities, and adherence to fundamental values as stated in the EU treaties. Ahead of the enlargement of 2004 and 2007 fears abounded that the candidate states of central and eastern Europe, which emerged after many decades of Communist regimes, would encounter problems in completing the twin transition to democracy and market economy (see, for instance, Pridham, 2002; Vachudova, 2005). The Copenhagen criteria of 1993 constituted the EU's response to these fears. They resulted in an expansion of the requirements for countries that seek to become members by strengthening the EU's conditionality in order to coax the candidates along the path towards economic, social and political transformation. The democratic criteria which required the candidate country to have "achieved stability of institutions guaranteeing democracy, the rule of law,

human rights, respect for and protection of minorities” before joining the EU were formulated with the central and eastern European countries in mind. Moreover, it was deemed important that the evaluation of whether or not the candidates fulfilled the criteria would be based on their implementation and enforcement of these principles on the ground (Kaldor & Vejvoda, 1999). The underlying idea was that the Central and Eastern European countries needed to not only amend old laws and enact new, but also set up the institutions required to implement democratic values and principles, as well as transform the national political culture to fully embrace liberal democracy. Yet, already during the first years of EU membership hybrid political systems emerged in Central and Eastern Europe merging experiences from the Communist rule with historical legacies, long-standing traditions, and regional identities to challenge the EU’s values and rule of law (Klingemann et al., 2006). The special brand of Eastern European political culture varied from country to country but tended to produce weak political parties, parliamentary instability, and a penchant for personalised politics spearheaded by strong leaders. Further, several countries experienced a gradual weakening of independent judiciary and minority rights. Although EU membership certainly worked as an anchor for the transition in Central and Eastern Europe, the strain of economic reform led to resentment towards Brussels for the perceived dictate of compliance to its rules and regulations. In certain new member states, such as Hungary under Viktor Orbán (in power since 2010), Slovakia under successive Smer-governments with Robert Fico and Peter Pellegrini as prime ministers, and Poland during a series of Polish Law and Order governments, 2005–2007 and 2015–2023, the unwillingness to observe democratic values and rights became apparent accompanied by an erosion of the rule of law and free media (Börzel & Schimmelfennig, 2017). During the 2010s and early 2020s, Hungary and Poland (up until the re-election of Donald Tusk in December 2023) have been monitored by the European Commission for their breach of EU values (Södersten, 2023). In the case of Hungary, the European Court of Justice has allowed the European Commission to withhold financial transfers and apply other punitive measures. Overall, however, the EU has struggled to prevent Viktor Orbán from blocking the EU’s financial support to Ukraine, the transfer of armament and the reimbursement of EU member states that have gifted arms to Ukraine (Thorpe, 2023). Hungary has also regularly prevented EU policy from going forward on a number of other matters linked, for instance, to the EU’s relations with China, human rights and



immigration. The growing contestation from within the EU on behalf of recalcitrant member states is an issue that the EU cannot allow to worsen in an enlarged and more diverse Union. Therefore, a strong emphasis on compliance with the rule of law and fundamental norms and values has been introduced in the reformed enlargement framework (see below).

### WHERE DOES THE EU STAND TODAY ON ENLARGEMENT?

In November 2023, the European Commission declared that the Union was ready to begin accession negotiations with Ukraine and Moldova; to intensify ongoing negotiations with Serbia, North Macedonia, Montenegro, and Albania; and announced that Georgia would become an official candidate country alongside Bosnia and Herzegovina, which was granted candidate status already in December 2022, as soon as the conditions were in place (European Commission, 2023). The Commission pointed out that the process concerning Kosovo, which applied for membership in December 2022, is problematic because not all member states recognise the country's independence and that the process has been slowed by internal unrest and tensions between its ethnic Albanian government and the Serbian minority. With regard to developments in Turkey, the Commission confined itself to noting that the country remains very far from resuming accession negotiations with the EU. The Commission's view on the situation and its proposals on how the EU should proceed was endorsed by the European Council in December 2023. As mentioned earlier, the EU's motivation for recommitting itself to a comprehensive and complex enlargement is primarily geopolitical. Yet, this does not mean that the EU intends to compromise on the demands placed on countries that want to be members. In reaction to the slow progress of the ongoing accession negotiations with the Western Balkan countries and the experiences gained during these negotiations regarding the candidates' adaptation to the requirements of membership, questions abound about the ability of the EU to successfully pull off this complex project without jeopardising its internal strength and cohesion.

In an effort to strengthen the process, the European Commission set out a number of principles for the enlargement in its November 2023 Communication drawing on the enhanced enlargement methodology (see below). The most important principle is that membership is granted on the basis of the progress made by the candidate country in adopting the EU *acquis*—a requirement recognisable from previous enlargement

rounds. However, the process of applying EU laws and regulations must be preceded by alignment with certain fundamental principles which, according to the Commission, relate to “the rule of law, fundamental rights, the functioning of democratic institutions, public administration reform and the economic criteria” (European Commission, 2023, p. 8). These principles are no different from those expressed in the Copenhagen criteria, but have been given a higher priority in the Commission’s Communication. This priority should be understood in light of the experiences of the enlargements in 2004 and 2007 (see above) and the recurrent breaches of certain member states of the EU’s fundamental values and principles, and concerns about democratic backsliding and a more general rise of populist right-wing parties in Europe. The emphasis on stronger conditionality reflects a dilemma the EU faces. Demands for reform and transformations can be placed on candidate countries until they become members, but after membership is completed, the EU loses that power. Once candidate countries become members of the EU, they can block measures aimed at obliging them to comply. Another principle reinforced in the Commission’s assessment of the candidate countries’ alignment to the EU *acquis* is that it counts as progress the observance in practice of reforms, not just the formal introduction of new laws and regulations; and that monitoring this may continue after the country formally becomes a member. Addressing prospective member states, the Commission stressed that the decision to join the EU is “a strategic choice” emphasising the assumption that “[P]artners must embrace and promote EU values firmly and unequivocally” and that “alignment with the EU’s common foreign and security policy is a more significant signal than ever of shared values and strategic orientation in the new geopolitical context” (European Commission, 2023, p. 2).

In February 2020, the European Commission launched an enhanced methodology for the enlargement towards the Western Balkan countries in order to strengthen the credibility of the process in terms of both candidate and member state undertakings (European Commission, 2020). In its communication, the Commission stressed the importance of a more predictable process grounded in positive and negative conditionality, based on real progress and stronger political involvement. Unlike previous enlargements, the negotiations now take place in six thematic clusters, where cluster 1 (the fundamentals) is dealt with first and last in the negotiations in order to maximise the EU’s ability to persuade the candidate countries to stick to their commitments to fulfil the criteria

regarding the rule of law, fundamental rights, the proper functioning of democratic institutions, and public administration reform. Positive conditionality includes support of various kinds, such as financial support for reforms and participation in the work of the EU's institutions, agencies, and programmes. In contrast, negative conditionality refers to the principle of reversibility, that is, that the enlargement process can be suspended, even terminated prematurely, if deemed necessary. The proposals contained in the 2020 Communication were at the time already applied in negotiations with the Western Balkan candidate countries. The fact that they are mentioned explicitly in the Commission's October 2023 Communication indicates that they will act as fundamental principles in the enlargement process with Ukraine and Moldova, as well as the remaining Western Balkan candidate countries.

However, what was not mentioned in the European Commission's 2020 Communication is its position on the EU's absorption capacity and the potential need for a reform of EU institutions, decision-making procedures, and financial frameworks. This being an ultimately political issue for the EU member states, the European Council addressed the question at its summit in December 2023 by stating that successful integration implies that the Union's policies are geared towards the future, that their financing is sustainable and that the EU institutions must continue to function in an efficient manner. In June 2024, the political leaders revisited the issue of future reforms and drew up a road map for the way ahead underlining "the need to lay the necessary internal groundwork and reforms to fulfil the Union's long-term ambitions" ... and preserve "its capacity to act in the face of a new geopolitical reality and increasingly complex challenges" (European Council, 2024). Further, the European Council advanced that the internal reforms should proceed in parallel to the enlargement process and to that effect, it foresaw in-depth policy reviews by the spring of 2025 building on the following elements:

- i) values, including tools and processes to protect the rule of law;
- ii) policies, to ensure inter alia the EU's long-term competitiveness, prosperity and leadership on the global stage and to strengthen its strategic sovereignty;
- iii) budget, including in the context of the next negotiations on the Multi-annual Financial Framework for which the proposal will be presented by 1 July 2025; and
- iv) governance. (European Council, 2024, p. 12)

On 18 July 2024, Ursula von der Leyen was re-elected president of the European Commission by the European Parliament for the period 2024 to 2029. Before the vote, the President-elect presented the political guidelines for the next European Commission (von der Leyen, 2024). Laying out her view, von der Leyen emphasised the “moral, political and geostrategic imperative to further complete our Union”, but also stressed that “[A]ccession to the EU will always be a merit-based process” ... where “each candidate will be assessed on its own progress towards meeting all criteria”. Further, she underlined that “[T]he rule of law and fundamental values will continue to be the cornerstones of the EU’s enlargement policy, and they will be the foundations of our reformed and enlarged Union in the future” (von der Leyen, 2024, pp. 25–26). In view of the work on the review to be presented by mid-2025, von der Leyen suggested that there is a need for reform of the EU budget, including the improvement of the member states’ respect for the proper use of financial transfers from the EU, and that, overall, the budget should become simpler, more focused and better targeted. In view of the task ahead, she also implied that new own resources, i.e. the sources of EU revenues, should be contemplated. On the subject of reforms to the EU’s functioning, von der Leyen stated, without giving away any specific measures, that she envisaged “proposals to enhance Europe’s capacity to act, looking at new formats and decision-making processes”, even if such reforms would entail reforms of the EU Treaties (von der Leyen, 2024, pp. 29–30).

### DEEPENING THE EU: WHAT MIGHT INTERNAL REFORMS ENTAIL?

The demand by the European Council to flesh out a road map for enlargement in parallel to enact the necessary internal reforms of the EU is a daunting task which will occupy the new European Commission, the European Parliament and the EU member states in the next decade. In the beginning of 2025, enlargement was firmly in progress in the framework of the accession negotiations with four countries on the Western Balkans, as well as Ukraine and Moldova. The process of internal reform is less advanced, but given the significance of the reforms considered necessary ahead of the next enlargement, the issue will be hotly debated throughout Europe. Before looking closer at these proposals, it is worth noting that the issue of internal reforms in view of expanding

the membership of the EU has been discussed at several moments in the history of the EU. A number of proposals to this effect have been put forward in the context of enlargement and constitutional reform, mainly probing the consequences of flexibility and alternative forms of cooperation as an alternative to political and economic integration (see, for instance, Bakardjieva Engelbrekt et al., 2023; de Búrca & Scott, 2000; Stubb, 1996; Lavenex, 2022; Warleigh, 2002). Prior research has discussed different forms of differentiated integration. Among the suggestions, we find integration *à la carte* which is based on a low level of ambition for common policies and allows countries to pick and choose, like on a menu, depending on which parts of EU policy they wish to participate in. Another variant—concentric circles—is instead based on the level of integration not being the same for all countries, and that countries group themselves into different levels (circles) based on the degree of policy/supranational integration they advocate. A supranational EU membership forms the inner circle and is surrounded by a series of concentric circles entailing less and less binding forms of cooperation. A third form of differentiated integration is based on enhanced cooperation, introduced by the Amsterdam Treaty in 1997 and practised in the EU ever since. It builds on deepened integration among existing EU member states in specific policy areas within the confines of the Union and involves the EU institutions. Moreover, areas of enhanced cooperation must remain open to member states which want to join at a later stage (see, for instance, Philippart & Edwards, 1999). Leading up to the Eastern enlargement 2004 and 2007 most discussion on internal reform of the EU was in the end centred more directly on the Union's functioning, more specifically on reforms of institutions, competences, and decision-making rules, including the extension of majority voting.

According to Italian political scientist Sergio Fabbrini (2023), proposals of this kind concern the core of the constitutional order of the EU as they regulate how relations between different constituent units should be organised, the degree of centralisation that should be allocated to the EU institutions *vis-à-vis* the member states, and what should actually be “common” within the Union. From such a perspective, Fabbrini advocates, in a similar way to the Franco-German report (see below), that in the future, the EU should develop into a multi-tier Union where the external tier is the European Political Community proposed by French President Emmanuel Macron in 2022 (Cohen, 2022). It would take the form of a European confederation and comprise cooperation with up to

40 or more countries based on common interests in different areas identified in intergovernmental agreements. The intermediate tier would consist of a community organised around the internal market in which the EU's institutions would have approximately the same responsibilities and functions as in the first half of the 2020s. The Community should include the EU's existing members, but with the distinction that countries that do not recognise the supranationality of EU law would no longer have a place in the Community,stead participate solely in the European Political Community. The core tier would be a union, a kind of European confederation, formed around the countries in the euro area which, through a constitutional pact, would render further power to a common federal government.

Although Fabbrini's model for a future political order for Europe is more of a thought experiment than a fully fledged plan, other reports (see below) also stress that the EU should consider combining the great enlargement to include countries to the East and in the Western Balkans with a major overhaul of the EU's structure. This perspective emphasises a staged accession in which the membership of existing EU countries may also be made conditional from policy, budgetary and fundamental rights perspectives.

A French-German group of academics and policymakers presented a report in 2023, commissioned by the French Secretary of State for European Affairs and the German State Minister for Europe and Climate, with more fleshed-out options for internal reform of the EU in view of enlargement (Franco-German Working Group on EU Institutional Reform, 2023). The report outlines various reforms to the EU institutions: (1) reducing the members of the College of the Commissioners, or, if that is not possible, at least organise it into groups where commissioners have different statuses as in the UK's system of ministers of state and junior ministers; (2) maintaining the number of members of the European Parliament at the current level, i.e. 751; and (3) the setting up new bodies, such as an Office for Transparency and Probity to strengthen the oversight of the correct use of the EU financial transfers in the member states, as well as a Joint Chamber of the Highest Courts and Tribunal of the EU for judicial dialogue between European and national courts. The report endorses the termination of the unanimity requirement in the areas still necessitating consensus among the member states for decision-making and, at a minimum, allow decisions to be taken by majority voting in the EU's Common Foreign and Security Policy.

In view of preparing the EU for enlargement, the strengthening of the rule of law in the EU, enhancing democracy, and preserving fundamental European values are seen as paramount. Some of these reforms suggested in the report can be enacted through a decision in the European Council while others necessitate a change of the treaties. A treaty reform is possible through a number of different venues: (1) the ordinary treaty reform process, preceded by a convention, an Intergovernmental Conference (IGC) and the ratification by the European Parliament and the EU member states; (2) an ordinary treaty reform process through an IGC; (3) a variation of the treaty reform process by encapsulating internal reforms in the accession treaties or, alternatively, a framework reform and accession treaty negotiated by an IGC; and (4) a supplementary treaty negotiated by the EU member states expressing the will to deepen integration among them in a new constellation at the heart of the Union.

Yet, the issue of treaty reform has been off the EU agenda since the ratification of the Lisbon Treaty in 2009, culminating a period of nearly a decade and a half characterised by a gradual deepening of the EU through the enactment of the Treaty of Maastricht (1993), Amsterdam (1997), Nice (2001), and the Lisbon Treaty (building on the failed Constitutional Treaty of 2005). As a reaction to the upheavals that the negotiation and ratification of these treaties caused the European leaders united behind a dictum of no more treaty reform. However, some 15 years later, in a radically different external context and with the perceived imperative of enlargement, European political leaders recognise that they are again forced to consider the necessity of treaty reform. The Franco-German report recognises the difficulties arising from an ever greater diversity in a larger Union alongside the lack of commitment to integration and unity among the current 27 member states. As a possible answer to this dilemma, it introduces the concept of differentiated integration according to a four-tiered formula based on an inner circle of member states around the eurozone, the Schengen border regime and other policies; a European Union largely comprising states which are willing to avail themselves of the level of integration currently in play; an outer circle constituted by associate members, such as the UK, Norway, and Iceland along with any current candidate states unwilling to commit fully to the EU; and, finally, the European Political Community based on a loose form of integration and alignment among states in the larger European region (Franco-German Working Group on EU Institutional Reform, 2023, pp. 41–42).

## BUSY TIMES AHEAD FOR THE EU: THE WIDER CONTEXT OF INTERNAL REFORM AND ENLARGEMENT

These suggestions regarding internal reform of the EU in view of the forthcoming enlargement inevitably raise questions about the future composition of the Union, the extent of its powers, and the scope of its policies. In the context of an enlarged EU, the contributions of the authors of this volume have shown that the principles of subsidiarity, the rights and obligations of membership, the balancing of the regulation of different industries and policy areas, and the development of the meaning of European identity and citizenship are once again topicalised.

In the debate on how to shape the EU's forthcoming enlargement to the east and to the Western Balkan countries, these themes are back on the agenda, albeit in a somewhat new guise. A fundamental theme is whether the necessary reforms of the EU's institutions and policies must be implemented before the Union can accept new members. This is especially true in a situation where external factors require the EU to enact a (relatively) rapid accession in the context of a war in Europe, an increasingly volatile geopolitical environment, and in which new member states may not be in a position to fulfil the obligations of membership, including the EU *acquis*. The problem is that extensive reforms are most likely to require a treaty change, which is time-consuming and fraught with great uncertainty. An extensive reform of the EU treaties could further jeopardise the enlargement and other pressing topics on the EU's agenda, such as social cohesion and integration of newcomers on the labour market, economic competitiveness, and the uptake of new technologies, including artificial intelligence. Nonetheless, the sensitive issue of regulating minimum wages, and how "free" the freedom of movement of workers *de facto* is, have after long negotiations been addressed in recent developments pertaining to EU labour law (see Hartzén and Hyltén-Cavallius respective contributions in this volume). Hopefully, this development may mitigate issues of dwindling social cohesion and promote the integration of a low paid worker force from new member states. In this vein, the Draghi's report from 2024 opened a debate regarding EU competitiveness and lack of innovation, possibly encouraging further integration of the internal market (Draghi, 2024).

Still, the EU is faced with a very difficult choice that includes major risks and challenges and ultimately the question of how many member states the Union may comprise before becoming unwieldy (Forslind &



Nyberg, 2020). Which alternative is seen as the least costly—enlargement with or without internal reform—is fundamentally linked to two competing views on the function of the enlargement. Is it essentially a tool—a means of achieving higher goals—such as peace in Europe and sustainable economic, social technological development on the continent? Or is it an existential question for the EU, tied to member states' compliance to the Union's fundamental values, rule of law, and democracy? The answer lies, as many times before, somewhere in-between, with the implication that the EU has no other choice than to handle challenges both from the widening and deepening of the Union and the broader societal developments. Yet, in our opinion, the EU should take a leap of faith. Enlargement should also be regarded as an opportunity for the EU to modernise the voting system and abandon unanimity where it is obsolete. To prevent new and old members from blocking the implementation of the Common Foreign and Security Policy would promote European fundamental values and stimulate continued economic development and expansion of the internal market.

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# INDEX

## A

Accession negotiations, 3, 23, 28–30, 33, 34, 38, 39, 252–254, 257, 260, 263  
Acquis Communautaire, 5  
adequate minimum wage directive (AMWD), 152, 153, 164, 165, 167–171  
Article 222, 49, 51, 52, 55, 57, 61, 62  
Article 42(7), 51, 55  
Artificial Intelligence (AI), 10, 17, 18, 88, 90, 224, 226–229, 232–234, 236, 237, 240–242, 245, 267  
Association agreement, 28, 29, 36–39, 124, 138, 143  
Asylum, 16, 17, 112, 137, 177–182, 198–210, 212–216  
Asylum seekers, 16, 182, 199, 201–203, 205–209, 213–215  
Asymmetric shocks, 80  
Austerity, 83, 84, 162, 164

## B

Balkans, 208, 209, 253, 254

Barnier, Michel, 4, 85, 110  
Blair, Tony, 82  
Borrell, Josep, 254  
Brexit, 4, 10, 12–15, 25, 32, 42, 67–72, 80, 82, 84–92, 98–104, 109–117, 134, 135, 153, 163, 164, 179  
Britain, 68, 73–81, 84, 87, 89, 97–100, 102–116

## C

Cameron, David, 68, 83, 84, 90  
Candidate status, 3, 23, 28, 29, 39, 260  
Change, 7, 27, 35, 41, 44, 58, 63, 77–79, 88, 90, 91, 98, 99, 101–103, 106, 114, 116, 154, 155, 157, 162, 163, 170, 177, 178, 182, 199, 216, 223, 226, 228, 235, 240, 241, 258, 266, 267  
Charter, 14, 59, 129, 132, 141–143, 145  
China, 26, 85, 88, 90, 230, 231, 235, 236, 238, 240, 254–256, 259

Common Agricultural Policy (CAP),  
9, 75–78

Common European Asylum System  
(CEAS), 198, 203, 205

Common Foreign and Security Policy  
(CFSP), 59, 62, 261, 265, 268

competence, 8, 51, 60, 131,  
135–137, 139, 145, 155, 156,  
165, 166, 168, 231

Conservative Party, 68, 84, 112, 115

Copenhagen criteria, 7, 26, 27, 254,  
255, 258, 261

Council of Ministers, 30, 76, 77, 80,  
86, 90, 102–105, 110, 200

Court of Justice of the European  
Union, 10, 14, 126

Covid-19, 13, 71, 86, 92, 106, 164

Crisis, 13, 14, 32, 38, 59, 60, 69, 74,  
81–84, 86, 87, 99, 105, 111,  
112, 115, 162, 178, 179, 181,  
187, 198, 207, 209, 212, 214,  
216, 230, 234, 235, 244

Customs Union, 70, 75, 85, 88

Cyprus, 34, 39, 43, 137, 184–187,  
253

## D

Deepening, 4–6, 8, 10, 14, 59, 87,  
99, 125, 266, 268

de Gaulle, Charles, 75–77, 114, 155

Delors, Jacques, 79, 82, 89, 104, 156

Digitalisation, 17, 88, 228, 242

Digital technologies, 17, 223–229,  
236, 237, 240, 242

Digital transformation, 236

Discrimination, 6, 124, 126, 128,  
140, 145, 166

Draghi, Mario, 87–89, 267

Dublin, 198, 201, 203, 206, 208,  
212, 213, 215

## E

Eastern Enlargement, 3, 5, 6, 8, 9,  
11, 25, 31, 41, 70, 82, 89, 92,  
252, 253, 264

Eastern Europe, 26–28, 36, 45, 72,  
82, 83, 205, 235, 252–256, 258,  
259

Eastern Partnership, 11, 24, 27,  
36–39, 41, 43, 45

economic development, 6, 88, 152,  
164, 268

Economic integration, 15, 36, 71, 74,  
182, 192, 264

Enlargement, 2–9, 11, 18, 23–35,  
38–45, 90, 125, 160, 161, 252,  
253, 256–258, 260–268

equal pay, 154, 158, 166

Equal treatment, 126–128, 139

EU accession, 254

EU enlargement, 5, 11, 23–25, 28,  
31, 35, 36, 45, 108, 153,  
252–254, 256

EU Enlargement Policy, 252

EU law, 9, 12, 14, 15, 49, 50, 52,  
57, 59–61, 63, 124–129,  
131–142, 144, 145, 152, 201,  
209, 214, 215, 257, 261, 265

EU membership criteria, 3, 29, 256

European Coal and Steel Community  
(ECSC), 12, 25, 67, 71, 154,  
156

European Commission, 2, 3, 8, 9, 15,  
16, 28–30, 32, 34, 40, 44, 58,  
61, 82, 86, 88, 103, 104, 106,  
110, 136, 137, 155, 156,  
164–167, 181, 182, 198–200,  
203, 204, 207–213, 216, 252,  
258–263

European Community (EC), 67, 74,  
75, 92, 143, 144

- European Council, 2, 3, 7, 23, 27, 29, 58, 103, 107, 110, 203, 210, 252, 260, 262, 263, 266
- European Court of Justice (ECJ), 61, 168, 209, 259
- European Economic Area (EEA), 131
- European Economic Community (EEC), 12, 74, 77–79, 100, 153–156
- European Monetary System (EMS), 80
- European neighbourhood, 2
- European Parliament, 29, 40, 44, 60, 62, 91, 97, 102, 103, 105, 112, 124, 129, 131, 134, 139, 140, 151, 152, 160, 162, 181, 182, 199, 212, 255, 263, 265, 266
- European Public Prosecutor's Office (EPPO), 9
- European security architecture, 2
- Euro scepticism, 4, 12, 14, 70, 112, 163, 170
- Eurostat, 16, 178, 183–185, 205, 209
- Exploitation, 229, 235, 238, 240
- Exploration, 18, 229, 240, 241, 244
- External border, 16, 55, 180, 182, 199–201, 203, 206, 210, 212–215
- Externalization, 210
- F**
- fair competition, 75, 90, 158, 160
- Family reunification, 124, 126, 130, 131, 141
- Farage, Nigel, 68–70, 84, 90
- financial crisis, 32, 69, 82–85, 91, 153, 162–164
- financial stability, 163
- Free movement, 9, 14, 49, 70, 79, 83, 123–134, 138–145, 152, 154, 156, 159, 161, 200, 212
- Frontex, 201, 202, 211
- Fundamental rights, 14, 125, 129, 132, 133, 141, 142, 200, 213, 252, 261, 262, 265
- Future, 2, 5, 10, 11, 15, 17, 18, 23–25, 31, 34, 36–38, 40, 42–44, 50, 54, 63, 70–73, 80, 90, 92, 97, 99–102, 108, 117, 137, 145, 153, 168–171, 178, 181, 190, 204, 214, 216, 224, 226, 228–231, 241, 242, 244, 246, 252, 253, 257, 258, 262–265, 267
- G**
- Geopolitical enlargement, 253
- Georgia, 2, 3, 36, 38, 39, 43, 89, 257, 258, 260
- Globalisation, 85, 91, 234
- Gove, Michael, 85
- H**
- Heterogeneity, 257
- Home Member State, 129–132, 136, 139, 159
- Host Member State, 126–128, 130, 131, 141, 142, 158, 159
- Human rights, 4, 26, 28, 29, 31, 36, 37, 59, 62, 203, 205, 211, 212, 259
- Hybrid warfare, 58, 61
- I**
- Immigrants, 15, 16, 178–192
- Implementation, 9, 29, 36, 62, 112, 164, 169, 178, 198, 205, 206, 208, 211, 213–215, 224, 225, 237, 239, 240, 259, 268
- Implications, 5, 17, 37, 70, 90, 91, 152, 200, 216, 224, 242, 244, 253, 254, 257



Innovation, 16, 90, 139, 192, 229, 237–241, 267

Integration, 3–6, 8–10, 12–14, 16, 26, 31, 42, 58, 67, 68, 70–72, 74, 75, 79, 80, 82, 84, 87, 91, 97–101, 104, 108–110, 112, 114–117, 125, 144, 145, 155, 158, 178–180, 183, 184, 186–188, 190–192, 200, 230, 255, 262, 264, 266, 267

Internal market, 4, 6, 7, 13, 15, 38, 42, 103, 104, 112, 124, 125, 127, 131–133, 138, 139, 143–145, 152, 155–158, 265, 267, 268

International law, 37, 38, 49, 50, 52, 53, 56, 59, 206, 216

Invasion of Ukraine, 1, 23, 35, 38, 39, 43, 49, 58, 61, 62, 71, 86, 88, 92, 108, 180, 209, 254, 255

Irregular migration, 16, 198, 210, 214

**J**

Jobs, 82, 88, 161, 163, 164, 178, 188, 189, 191, 216, 225–228, 230, 232, 233, 237

Johnson, Boris, 68, 69, 112, 116

Just war, 12, 52, 53, 56

**K**

Kant, Immanuel, 12, 49, 50, 52, 53, 63

**L**

Labour, 9, 17, 69, 74, 79, 82, 90, 112, 139, 151, 154–158, 162, 163, 169–171, 182–185, 187, 204, 224–228, 230, 232, 237, 240, 242

labour costs, 158, 189, 191

Labour force participation, 178, 184, 185

Labour market, 10, 15–18, 74, 79, 82, 85, 89, 153, 154, 156, 157, 160, 161, 170, 177–179, 182–192, 224, 226, 227, 229, 242–244, 267

Labour market barriers, 192

Labour market institutions, 186

Labour market outcomes, 178, 186, 189

labour market regulation, 160, 170

Letta, Enrico, 87, 89

Luxembourg Compromise, 77

**M**

Machine learning, 227

Macmillan, Harold, 68, 76, 77

market integration, 185

Marshall Plan, 72, 89

May, Theresa, 68, 90

Mediterranean, 25, 86, 198, 207, 211, 213

Migration and Asylum Pact, 214

Migration flows, 70, 82, 84, 140, 179, 191, 216

Migration policy, 15–17, 105, 137, 179–181, 190, 199–206, 216

minimum wage, 15, 152, 163–169, 189, 267

Moldova, 2, 3, 23, 36, 38–40, 43, 89, 144, 152, 252–254, 256–258, 260, 262, 263

Monnet, Jean, 71, 99

**N**

National citizenship, 14, 131, 132, 135–140, 143

Nationality law, 135, 137–139

NATO, 12, 35, 50–52, 55, 58, 62, 63, 108, 257  
 New trade theory, 75, 85  
 Next Generation EU (NGEU), 86, 107, 109

## P

Pandemic, 13, 69, 71, 86, 88, 92, 99, 106–108, 115, 164, 230, 236  
 Participation in Permanent Structured Cooperation (PESCO), 9, 108, 109  
 Polarisation, 161, 224, 226–228, 232, 234, 245  
 Policy recommendations, 17, 179, 224, 242  
 posted workers, 159–161  
 Posted Workers Directive (PWD), 160–162, 169

## Q

Quantumisation, 240

## R

Recovery and Resilience Facility (RRF), 86  
 Referendum, 4, 14, 67–70, 72, 79, 82, 84, 87, 89, 90, 97, 98, 100, 104, 111–113, 115, 127, 253, 254  
 Reform Party, 69, 70, 90  
 Refugee crisis, 15, 16, 32, 84, 178–181, 200, 207, 208, 210  
 regulatory models, 15, 153, 161, 164, 167, 168, 171  
 regulatory technique, 15, 153, 170  
 Research, 88, 97, 101, 104, 132, 188, 189, 192, 200, 202, 205, 214, 223–225, 255, 264

Right of residence, 126–128, 130, 139  
 Rule of law, 4, 7, 26, 28–31, 33, 36, 38–40, 43, 44, 60, 62, 86, 132, 133, 144, 145, 252, 258–260, 262, 263, 266, 268  
*Rush Portuguesa*, 158, 159  
 Russia, 1, 2, 13, 23, 24, 27, 35–40, 43, 45, 53, 58, 61, 69, 71, 86, 88, 92, 99, 108, 109, 141, 142, 151, 180, 184, 209, 210, 230, 235, 236, 253–258

## S

Sanctions, 2, 13, 26, 58, 61, 62, 86, 88, 108, 151, 169, 254, 255  
 Scenario matrix, 17, 18, 224, 228, 229, 244  
 Scenarios, 17, 18, 200, 215, 224, 228–230, 237, 241–244  
 Scenario thinking, 228  
 Self-defence, 11, 12, 49–57, 61–63  
 Single European Act (SEA), 80, 155  
 Single Market, 62, 70, 79, 80, 82, 85, 87–89, 155, 158  
 social development, 154, 257  
 social dialogue, 156, 157, 163  
 social partners, 155–157, 160, 162, 165, 166, 169  
 social policy, 125, 153–157, 164, 168, 170  
 Solidarity, 10, 11, 15–17, 39, 49, 51, 52, 55, 57, 60–63, 71, 92, 106, 109, 152, 153, 164, 166, 167, 170, 171, 182, 202, 206, 208–210, 212, 214–216, 252, 254  
 Stabilisation and association agreements, 32, 33, 36  
 Sunak, Rishi, 69, 90  
 Sweden, 9, 62, 75, 102, 104, 105, 107, 112, 113, 115, 138, 160,

- 161, 166, 168, 179, 183–189, 198, 208, 209
- T**
- Thatcher, Margaret, 68, 78–82, 89, 103, 104
- Third-country national, 14, 15, 123–125, 128, 130, 131, 133, 135–142, 144, 145
- Trade and Cooperation Agreement (TCA), 88–90
- trade unions, 74, 81, 152, 161, 163
- Transformation, 7, 30, 91, 224, 227, 240, 256, 258, 261
- Treaty on the Functioning of the European Union (TFEU), 9, 11, 49, 51, 52, 55, 57, 59, 61, 62, 123, 124, 126, 127, 129–132, 134, 135, 140–143, 155, 156, 165, 166
- Trilemma, 91
- U**
- Ukraine, 2, 3, 13, 14, 23, 36–43, 45, 53, 58, 60–63, 69, 86, 89, 99, 106, 108, 109, 115, 116, 140, 143, 144, 151, 152, 184, 210, 230, 235, 251–253, 255–260, 262, 263
- UN charter, 12, 50, 56
- Unemployment rates, 183, 184, 187, 188, 190
- Union citizenship, 14, 124–139, 141–145
- United Kingdom Independence Party (UKIP), 68, 84
- United Kingdom (UK), 4, 68, 70, 72, 73, 78, 83, 84, 91, 127, 144, 154, 168, 179, 202
- United Nations (UN), 253
- V**
- von der Leyen, Ursula, 2, 88, 164, 252, 258, 263
- W**
- wage competition, 154, 158
- Walzer, Michael, 53
- Welfare system, 88, 180
- Western Balkans, 11, 24, 27, 28, 31–36, 38, 39, 41, 43, 45, 116, 202, 252, 254–256, 258, 263, 265
- Widening, 3–5, 10, 11, 108, 268
- Work, 15, 16, 29, 30, 41, 75, 84, 98, 124, 137–139, 144, 145, 155, 158, 159, 164–166, 181, 183, 187, 188, 192, 202, 204, 216, 225, 227, 229, 241–243, 245, 262, 263
- workers, 10, 15, 17, 82, 143, 152–155, 159–161, 163, 164, 166–168, 188, 191, 204, 225, 227, 228, 232, 233, 237, 255, 267
- working conditions, 15, 152–155, 157–159, 161, 163, 164, 167, 201
- Working Time Directive (WTD), 156, 168, 169