

The Next Level of Europe

How the Pandemic and Putin's War Create a European Moment Which Offers New Ways Forward

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The Covid-19 pandemic and the Russian war against Ukraine have shown Europe's vulnerabilities and its lack of resilience and security. At the same time, prominent proposals have recently been made in order to reform the European Union, most importantly Macron's idea of a European convent and the Conference on the Future of Europe (CoFoE). The current unprecedented events and developments possibly define a European moment. It can be considered a European moment because it constitutes a tipping point for the EU, i.e., a point of time when current decisions could likely irreversibly predetermine Europe's future for quite a long period of time – for better or for worse. That in turn would have far-reaching implications for the future integration process as the focus would need to turn much more to external threats and challenges. More specifically:

- ▶ History is often a combination of opportunity and leadership. The current situation undoubtedly foreshadows a European moment that could allow for a big step forward.
- ▶ The pandemic has shown some unprecedented economic and social costs and structural vulnerabilities that call for a more resilient European Union. The war in Ukraine has revealed a significant lack in security, defense and strategic geopolitical positioning.
- ▶ Integrating Eastern Europe more closely and offering Ukraine the perspective of becoming a full member of the EU seems politically inevitable but would certainly change the European integration process and increase heterogeneity within the EU.
- ▶ What kind of model for the EU can address the need for external power as well as internal stability? A club of the willing as well as a broader political community allow for a more flexible inner balance and voting procedures, i.e., an integration model at a different pace. The core is getting stronger whereas the EU becomes more attractive for the periphery that can thereby be tied to the EU in both a closer and more flexible way.
- ▶ Re-balancing the trade-offs between unity and heterogeneity, power and subsidiarity as well as solidarity and accountability in the EU is nevertheless a very demanding institutional setting for which a broad consensus is required first.
- ▶ Letting such a European moment pass by could allow for a Chinese or other power's moment. Historical times require historical decisions regardless.

Content

1	Introduction.....	3
2	Is There A “European Moment” For A New Political Leadership?	3
2.1	The current state of the EU and its challenges	3
2.2	Rebalancing the internal trade-offs of governing the EU	5
2.2.1	Unity and Heterogeneity	5
2.2.2	Power and Subsidiarity.....	6
2.2.3	Solidarity and Accountability.....	6
3	New Institutional Paths for European Integration: Proposals from The Conference on the Future of Europe (CoFoE) and a European Convention	7
3.1	The Conference on the Future of Europe.....	7
3.2	Macron’s Ideas of a European Convention and a Political Community	10
4	Policy Response and Institutional Options: How to Bring up Europe to the Next Level.....	10
4.1	Different Models of European Integration.....	10
4.2	Goals of European Integration	11
4.3	Formal Treaty Changes.....	11
4.4	Existing Integration Options within and outside the EU Framework.....	12
5	Possible Ways Forward from Here	13
6	Conclusion	15

1 Introduction

Europe has always been pushed forward by a combination of historical opportunity and political leadership. Every generation has been confronted with the same question how peace and prosperity can be preserved and further enhanced. But the answers have been different depending on the challenges which have so far driven Europe to new levels of economic and political integration. Every crisis has broadened the common ground and created new paths for integration but also led to new problems and both economic and political conflicts. Thereby, the understanding and perception of Europe as a political idea has always changed in the light of contemporary challenges.

Undoubtedly, the pandemic as well as the war in Ukraine have raised pressing questions on the economic reliance and the geopolitical role of Europe. At the same time, the Conference on the Future of Europe combined with the proposals made by re-elected French president, Emmanuel Macron, have spurred discussions on how to proceed with European integration. By putting these developments into context and perspective, this paper ponders what should be the right policy response in order to bring the EU to the next level.

This paper aims to analyze the current situation in Europe involving a backdrop of multiple crises and to develop possible policy options. It argues that the current situation constitutes a European moment that, with proper political leadership, can be seized to bring Europe to the next level, but also involves the risk of pushing too hard. Differentiated answers should be given to complex and different types of questions. This certainly applies to the following questions:

- Should Ukraine be offered and accepted for full member status? What would then be the consequences for the European integration process?
- Should the EU provide greater financial resources to manage the recovery from the pandemic? What would that mean for long-term stability?
- To what external threats and challenges is Europe exposed and what does this mean for its relationship with China and the US?
- What would be the internal consequences and risks of pushing the EU to the next level?
- What would now be the right mixture of political leadership and precautionary rationale?
- What is the optimal integration path for Europe to follow and what are corresponding policy and institutional options?
- Is there enough common ground for moving forward with the next steps?

2 Is There A “European Moment” For A New Political Leadership?

2.1 The current state of the EU and its challenges

The pandemic as well as the return of war in the midst of Europe mark a “Zeitenwende” that divides history into “the before” and “the after”. Indeed, many elements concur to make the period we are living in a “European Moment”. First, the recently elected German government proclaimed its will to dare more European federalism in its “Koalitionsvertrag” called Dare More Progress. Second, Mario Draghi remained in power in Italy, counter to the short-lived belief at the beginning of the year that he might become president instead of prime minister, and since then has been very active on the international stage. For instance, he convinced Janet Yellen to freeze the Russian central bank’s assets and supported the path towards more European federalism. Finally, yet importantly, Macron was reelected

with a clear European agenda focused on strengthening its “sovereignty”, as he reiterated during his Pledge of Strasburg on May 9.

In which economic context does this reformist political constellation settle? Given the persistent inflation of commodity prices and the recessive effects of sanctions against Russia in the context of the war in Ukraine, the European Commission cut its growth forecasts from 4% to 2.7% for 2022.¹ This weakened European economy, associated with an expected tightening of the European Central Bank’s policy², could create new trouble with sovereign debts in the South of the euro area³ on top of triggering further difficulties for the Member States, which have to shift away from Russian energy supply.⁴

Hence, where will this “European Moment” lead us? After two years of the pandemic, resulting in strong increases in European public-debt-to-GDP ratios,⁵ with economic growth still seemingly slipping away in 2022, and with the war in Ukraine still unfolding, it is the right time to think about further European “consolidation”, especially in fiscal, energy and military terms.

A European fiscal consolidation could correspond to the establishment of a new European Debt Agency, which would manage the debt of EU countries contracted during crises (the Great Financial Crisis and the Covid-19 pandemic). It could also correspond to the adoption of further fiscal resources, such as a NGEU 2.0 recovery fund financed by further Member States resources and common debt. A European energy consolidation could result in an enhanced EU organization for energy production and supply, as the war in Ukraine has already proven possible. Finally, as Finland and Sweden seek to join NATO, a European military consolidation to face the Russian threat – which would essentially consist of respecting the 2% of GDP target of annual military spending set by NATO – would also be welcomed. In his “Zeitenwende” speech the German Chancellor Scholz already aligned with this new reality with his announcement of an increase of 100 bn € of the budget of the Bundeswehr for 2022, and then an engagement to maintain military public expenditures at 2% of GDP each year.

Nevertheless, if these aspects of deepened integration come first, it should not be forgotten that many other areas of European integration remain wide open and ready to be dealt with: A new European growth model based on the establishment of new European industrial champions and the ecological transition implied by the Green Deal agenda; the deepening of the EU Health Union; the reform of the Schengen area; the finalization of the European Banking and Capital Market Unions, etc.

Hence, many opportunities lie ahead to allow the European Union to be stronger than ever before. Challenges to this progress in European integration are real, but they can be put aside for a sufficiently long period of time to address the urgent need of European consensus which characterizes this “European Moment”.

¹ Le Monde, [Higher inflation, slower growth: the European Commission announces tweaked forecasts](#), 16.05.2022.

² Financial Times, [Christine Lagarde sends clear signal that ECB will raise rates in July](#), 11.05.2022.

³ Reuters, [Analysis: For some European states, rising debt costs rekindle crisis memories](#), 10.05.2022.

⁴ Financial Times, [EU ban on Russian energy would spark “sharp recession” in Germany](#), 13.04.2022.

⁵ Eurostat, [Government debt up to 100.5% of GDP in euro area](#), 22.07.2021.

2.2 Rebalancing the internal trade-offs of governing the EU

2.2.1 Unity and Heterogeneity

"United in diversity" has been the motto of the European Union since 2000. Although 22 years old, this motto is still relevant. It describes the challenge of uniting a group of heterogeneous states⁶ that agreed to cooperate on specific policy areas. The challenge of finding common solutions in these policy areas has become bigger in recent years, as the number of EU Member States has increased by 12 since 2000.⁷ Moreover, the number of coordinated policy areas among these states has increased since the Lisbon treaty entered into force in 2009. Today, 27 European states seek common solutions in numerous policy areas, including regulating artificial intelligence⁸, increasing the production of computer chips in the EU⁹ or imposing sanctions against third countries. This clearly shows that the challenge of finding common solutions nowadays is quite significant.

It will become even bigger once the states that currently want to join the EU are allowed to do so.¹⁰ Sooner or later, this will happen, as becoming an EU Member State can hardly be refused if a free nation that fulfils the accession criteria asks for it.¹¹ The war that Russia started with its invasion of Ukraine will most likely make the list of states that want to join the EU even longer. Furthermore, this war has also given new impetus to calls for more joint action, especially in foreign and security policy. So far, the EU has no legislative competence in these policy areas,¹² as heterogeneity among Member States is far bigger in these areas than in policy areas in which the EU already has a legislative competence, for instance, in the field of single market policy.

The dangers associated with this increasing heterogeneity are manifold. They range from not finding common solutions for current EU problems to additional Member States leaving the EU. The exit of the United Kingdom, which saw the measures adopted by the EU as unsuitable, is a warning that should be kept in mind.

To avoid the dangers of increased heterogeneity and remain "united in diversity," the Member States must consider carefully whether, and in which policy areas, increased coordination should be pursued. If heterogeneity among Member States is too big in a specific policy area this will threaten unity. Furthermore, the EU must develop more efficient procedures for reaching common solutions. The current procedure of compensating individual Member States – with money or concessions in other policy areas – will reach its limits once the number of EU member states increases.

⁶ Member States are heterogeneous for various reasons. They may have different national prerequisites, desires or face different economic and geopolitical dependencies.

⁷ 13 states joined the EU, while one state left the EU.

⁸ Kullas, M. and L. Harta (2021): cepPolicyBrief 27/2021 online: <https://www.cep.eu/en/eu-topics/details/cep/european-ai-act-ceppolicybrief-com2021-206.html>.

⁹ Vöpel, H. et al. (2022): cepAdhoc 2/2022, online: <https://www.cep.eu/eu-themen/details/cep/der-europaeische-chips-act-cepadhoc.html>.

¹⁰ At the moment, candidate countries are Albania, Montenegro, North Macedonia, Serbia and Turkey.

¹¹ Di Fabio, Udo (2022): Die Verteidigung eines freien Europas, <https://www.faz.net/aktuell/politik/die-gegenwart/ukraine-krieg-udo-di-fabio-zur-verteidigung-eines-freien-europas-17892748.html?premium&service=printPreview>.

¹² See Art. 24 TEU.

2.2.2 Power and Subsidiarity

“Acting united is more powerful than acting alone.” The EU enables its Member States to disseminate or defend their common values worldwide to an extent not possible for an individual Member State. This happens in numerous ways and in multiple policy areas, for instance, when the EU enacts rules, such as the General Data Protection Regulation, as such rules often become global standards. This kind of setting of global standards is known as the Brussels effect.¹³ Another example of the Brussels effect can be found in European rules on product safety, as these rules are often applied worldwide. Currently, the EU is trying to set a further global standard by regulating products that contain artificial intelligence.¹⁴

But the dissemination and defence of European values does not only occur by setting global standards; it also happens through international agreements, such as free trade agreements. The EU has much more negotiating power than an individual member state. Therefore, such agreements often reflect the values and interests of the EU. Finally, the EU defends European values when it imposes sanctions on third countries that do not respect European values such as freedom and democracy. The impact of these sanctions is multiplied many times when all Member States act jointly.

However, acting jointly can also have disadvantages for states. European regulations, for instance, are sometimes seen as inflexible, remote and bureaucratic. Often this is the case when a regulation does not take country-specific traditions or other characteristics into account.

Therefore, the EU always needs to decide whether a national or a joint regulation is the better option. In policy areas where the EU does not have exclusive competence,¹⁵ the principle of subsidiarity helps to answer this question. According to the principle of subsidiarity, the EU should only act "if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the member states [...] but can rather, by reason of the scale or effects of the proposed action, be better achieved at EU level".¹⁶ In other words, the EU may only act if it provides "added value".¹⁷ The principle of subsidiarity should also be the guiding principle for the EU's upcoming reforms, for this is the only way to ensure that the Member States benefit from the reforms.

2.2.3 Solidarity and Accountability

In any crisis that affects one or more EU Member States, solidarity is called for sooner or later. Member States that are affected by a crisis demand solidarity – often in form of financial support – from the other Member States. This was true for the Euro crisis, which was managed via the introduction of numerous solidarity-based instruments, such as the European Financial Stabilisation Mechanism, the European Financial Stabilisation Facility or the European Stability Mechanism. But it also applies to the Covid-19 crisis, during which the instrument for temporary “support to mitigate unemployment risks

¹³ See Bradford, Anu (2012): The Brussels Effect, online: https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=1275&context=faculty_scholarship.

¹⁴ Kullas, M. and Harta, L. (2021): cepPolicyBrief 27/2021 online: <https://www.cep.eu/en/eu-topics/details/cep/european-ai-act-ceppolicybrief-com2021-206.html>.

¹⁵ See Calliess, Christian (2022), in: Calliess, C. / Ruffert, M. (eds.), EUV/AEUV, 4th ed., Art. 5 TEU para. 28.

¹⁶ Art. 5 TFEU.

¹⁷ See Reichert, G. (2022): Why Europe? To Regain Energy Sovereignty!, online: <https://commongroundeurope.eu/blog/why-europe-to-regain-energy-sovereignty/>.

in an emergency” (SURE)¹⁸ and the fund NextGenerationEU¹⁹ were created. Both instruments are intended to share the burden of a crisis in a spirit of solidarity.

Although solidarity among Member States is essential, there is always a risk that solidarity instruments create wrong incentives by reducing a Member State’s efforts to avoid or overcome a crisis. The support to some Member States during the Euro crisis, for example, may have reduced the incentive to lower public debt levels and increase national competitiveness by implementing reforms, such as greater labour market flexibility or streamlining the civil service.

If new solidarity instruments should be created at EU level, they must not undermine national accountability. Each reform of the EU should consider that solidarity and accountability need to go hand in hand.

3 New Institutional Paths for European Integration: Proposals from The Conference on the Future of Europe (CoFoE) and a European Convention

3.1 The Conference on the Future of Europe

The Conference on the Future of Europe (CoFoE) opened with a ceremony on Europe Day 2021 and officially closed with a similar large celebratory session in Strasbourg on May 9, 2022. Since it could not be opened on the same date in 2020, the proceedings lasted exactly half of the originally planned time.

There was initial widespread skepticism²⁰ that this form of “new space for debate with citizens to address Europe’s challenges and priorities”²¹ could achieve concrete and assessable outcomes in such a short time, particularly given the persistence of the pandemic and an ill-defined final objective. However, such doubts were essentially contradicted by the results. Indeed, the final Report²², featured as the outcome of a “consensual” agreement, is extremely precise and in adequacy with the expectations raised by citizens for future actions to be taken by the European institutions.

The various steps taken to arrive at such a detailed single document, containing 49 proposals and objectives for the EU subsequently articulated in 326 concrete measures, were so innovative that they cannot be compared to any previous experiment of the kind conducted at a worldwide institutional level.

On the one hand, immediate participatory practices taking advantage of the Internet were combined with deliberative democracy techniques, involving groups of citizens chosen at random based on general criteria (at both European level and in some Member States). On the other hand, they pursued the direct involvement of representatives from European civil society as well as social partners (entrepreneurs and trade unions). During the various stages of the work²³ (particularly in plenary meetings

¹⁸ See Kullas, Matthias and Anja Hoffmann (2020): The EU’s “SURE Instrument”, online: <https://www.cep.eu/en/eu-topics/details/cep/cepinput-das-sure-instrument-der-eu.html>.

¹⁹ See Hoffmann, Anja et al. (2020): Das Aufbauinstrument „Next Generation EU“, online: <https://www.cep.eu/eu-themen/details/cep/das-aufbauinstrument-next-generation-eu-cepadhoc.html>.

²⁰ See also [cepAdhoc 1/2021](#).

²¹ See: [JOINT DECLARATION ON THE CONFERENCE ON THE FUTURE OF EUROPE ENGAGING WITH CITIZENS FOR DEMOCRACY – Building a more resilient Europe](#) – 10 March 2021.

²² [Conference on the Future of Europe – REPORT ON THE FINAL OUTCOME](#) – May 2022.

²³ See [CoFoE rules of Procedure](#).

and working groups), they were able to constantly confront and engage in dialogue with elected European officials as well as national, regional and local representatives.

The final report highlights the various phases of CoFoE's work, stressing how they often had to be adapted to various organizational requirements. The nine thematic working groups²⁴ provided a decisive contribution to the final document, which simply collects the results of the working groups. The only problematic aspect of this process is that rather similar proposals or measures can be found repeatedly in different parts of the final document.

During the proceedings, a large majority of the representatives of the various institutions reaffirmed their constant attention to listening without trying to influence or distort the opinions and ideas expressed by the “representatives” of European citizens inside the CoFoE, acknowledging that their direct participation constituted the real value added of the first truly transnational deliberative space, capable of counterbalancing the lack of a genuine, pan-EU political and media space.²⁵ Especially during the final stages, however, there was growing criticism about the “representativeness” of the participants and doubts about a genuine involvement of the European citizenship in the process.²⁶ Moreover, the war in Ukraine also created a special emotional context, with undoubted effects on some of the final positions.

Although the final document contained a wide variety of proposals, some general tendencies appear very clearly. The debate about increasing or decreasing competence for the EU was tilted towards the former – for health and energy policies, in particular. The unanimity requirement for several decision-making processes in the Council was identified as one of the biggest hurdles for the effectiveness of European action. There was also consensus that the EU should strengthen its autonomy and its foreign policy should prove more consistent with European values. Europe should also play a greater role in various aspects of social policies, including education, which should also aim to strengthen the development of a European identity. To overcome the lingering “democratic deficit”, EU institutions should be enhanced through adequate electoral practices and innovative instruments for direct citizen participation in the decision-making processes.

One aspect that representatives of the institutions consistently attended to was how to respond to “citizen proposals” whose implementation demanded amendments of the EU Treaties. In the Joint Declaration establishing the mandate for the CoFoE no precise guidelines in this regard were provided,²⁷ in particular due to the divergences on this issue between the Council and the European Parliament. As CoFoE's work was approaching its end, this fundamental topic resurfaced strongly. In

²⁴ The thematic working groups were set up on the following topics: 1) health; 2) climate change and the environment; 3) EU in the world; 4) a stronger economy, social justice and jobs; 5) digital transformation; 6) Values and rights, rule of law, security; 7) Migration; 8) European democracy; 9) Education, culture, youth and sport. They sorted and grouped the approximately 17,000 ideas that emerged from the Digital Plattform, the 179 recommendations of the 4 European Citizens Panels, the approximately 1.500 inputs coming from the National Citizens Panels of 6 Member States, in addition to the 20 main proposals of the European Youth Event (8-9 Oct. 2021).

²⁵ Alberto Alemanno (December 2021) [“Unboxing the conference on the future of Europe and its democratic Raison-d'être”](#) – European Law Journal.

²⁶ Several such criticisms emerged in the oral interventions during the CoFoE plenary meeting on 29 April and were also reiterated in the plenary debate in the European Parliament on May 3, 2020. Furthermore, the ECR parliamentary group, by declaring on 30 April 2022 the withdrawal of its representatives from CoFoE, summarised in a [statement](#) all its various concerns regarding the way CoFoE was conducted.

²⁷ Federico Fabbrini (13 August 2021) [“The Conference on the Future of Europe: Process and prospects”](#) in *European Law Journal*.

recent weeks, this issue became almost a “dividing line” both in the statements made by the various groups in the European Parliament and among the representatives of the Member States.

The quickest and most responsive institution was undoubtedly the European Parliament. In a resolution adopted as early as May 4, 2022²⁸, it announced that it would prepare a draft report to initiate the ordinary Treaty revision procedure under Article 48 TEU. The first draft of this report, drawn up by the EP Constitutional Affairs Committee with the intention of putting it to the vote already during the plenary session of 22-23 June 2022, identifies the need to amend at least 20 articles of the current Treaties, as well as to introduce in the Treaties or to issue under the form of protocols, at least 4 new provisions enhancing European integration.²⁹

Even if the European Commission was rather wait-and-see on this issue throughout the CoFoE work sessions, its President Ursula Von der Leyen announced, in her speech at the final CoFoE’s meeting on May 9,³⁰ that the Commission would start analyzing the proposals in order to take them into account as quickly and directly as possible, using the full potential of the Treaties, or amending them if necessary.

The Council, on the other hand, clearly demonstrated internal rifts among the Member States. For example, in his speech to the European Parliament on May 3, 2022³¹, the Italian Prime Minister Mario Draghi declared his openness to amend the Treaties, while the German government had expressed a similar position some time before. On the other hand, in a non-paper³² also circulated on May 9, 13 Member States opposed a rapid start of a Treaties reform procedure. Nevertheless, in his speech on May 9 the re-elected French President Emmanuel Macron outlined also quite different scenarios.

²⁸ [European Parliament resolution of May 4, 2022](#) on the follow-up to the conclusions of the Conference on the Future of Europe (2022/2648(RSP)).

²⁹ The actually draft list the following proposals to amend the Treaties: Amending Article 4 TFEU to include health and healthcare among the shared competencies between the EU and the EU Member States, Amending Article 6 TFEU to introduce shared competences in the field of education, Amending Articles 192 and 194 TFEU to allow for a genuine Energy Union in order to ensure energy autonomy for the Union, Changing unanimity decision making to qualifies majority voting in the Council — with the exception of the admission of new membership to the EU and changes to the fundamental principles of the EU as stated in Article 2 TEU and the Charter of Fundamental Rights of the European Union, by amending Article 7, 24 and 48(7) TEU, as well as Articles 113, 115, 153, 155, 223, 292, 329, 330, 333 and 353 TFEU; additionally an emergency clause should be introduced whereby the Council by QMV and the Parliament can empower the Commission to act with extraordinary competences and to mobilise all necessary instruments in case of major crises in fields such as security and defence, health or climate, Providing the European Parliament with full co-decision rights on the Budget, including on the revenues, by amending Article 311 & 322 TFEU, Providing the European Parliament a genuine legislative right of initiative by amending Article 225 TFEU, Introducing a EU-wide referendum, to be triggered by the European Parliament, in exceptional cases on matters particularly important to all European citizens, Introducing a Social Progress Protocol in the Treaties to ensure that social rights are fully protected and safeguarded in case of conflict with economic freedoms, Introducing a European citizenship statute providing citizen-specific rights and freedoms, which would make the European values and rights more tangible for EU citizens, the Treaties should be amended to create an associate membership, as already envisaged by the founding fathers of the Union, that would allow democratic European nations that adhere to our core values to find a new space for political cooperation, security, energy cooperation, transport, investment, infrastructure and movement of people.

³⁰ [Speech by President von der Leyen at the closing event of the Conference on the Future of Europe Strasbourg](#) – May 9, 2022.

³¹ [Italians prime minister Mario Draghi’s adress to the European Parliament](#) – May 3, 2022.

³² [Non-paper by Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Sweden on the outcome of and follow-up to the Conference on the Future of Europe](#) – May 9, 2022.

3.2 Macron's Ideas of a European Convention and a Political Community

During his address in front of the European Parliament in Strasbourg – which he coined the “Pledge of Strasbourg”³³ –, Macron said his vision for a wider circle of European states would provide a way of “docking” Ukraine and other peripheral countries, like Georgia and Moldova, to the European Union. This process would achieve faster results than full EU membership, which could take “years or even decades”.

He also suggested this looser *European Political Community* could be potentially open to “those countries which have left the European Union”, i.e., Greenland and the UK. Such a community would allow “democratic European countries which believe in our core values a new space for political cooperation on security, energy, transport, infrastructure investment and free movement of people, especially our young people”.

Macron's vision of a tiered Europe also extends to the existing 27 members of the EU. He called for the creation of a new convention to discuss reform of the existing EU treaty. He implied that, amongst other things, the countries belonging to the Eurozone and the Schengen no border area should have the right to discuss and decide policy separately from other EU states.

He also supported a more widespread use of qualified majority voting (to overcome vetoes), specific treaty commitments on the climate, pursuit of European full employment and social justice, as well as more powers for the European Parliament.

Macron's speech also recalled his previous appeals for EU common action to defend its own sovereignty and independence – including on defense. He said the aim should be a Europe “which chose its partners independently but did not rely upon them” – a reference to NATO and the US.

4 Policy Response and Institutional Options: How to Bring up Europe to the Next Level

4.1 Different Models of European Integration

Even though the process of European integration has always been one of competing interests and differing targets,³⁴ its main aim has always been that of reconciliation and cooperation between European countries.³⁵ It has always been clear though, that this integration process could not be achieved at once. As Robert Schuman predicted in his speech of May 9, 1950: “Europe will not be made all at once, or according to a single plan. It will be built through concrete achievements which first create a de facto solidarity.”³⁶ Through establishing the European Coal and Steel Community in 1952 as the first

³³ Présidence Française du Conseil de l'Union européenne, [Discours du Président de la République à l'occasion de la Conférence sur l'avenir de l'Europe](#), 10.05.2022.

³⁴ See Morgenthauer, G. (2018): [Wohin führt die „Verwirklichung einer immer engeren Union der Völker Europas“ \(Art. 1 EUV\)? Eine Analyse der möglichen Ziele und verfügbaren Mittel](#), p. 55 et seq.

³⁵ Ibid., p. 54.

³⁶ See European Union (2022): [Schuman declaration May 1950](#).

of the three European Communities³⁷, the Member States accepted and institutionalised their mutual dependence on one another³⁸ and initiated the first steps of the current European integration process.

Regarding the different models of European integration one can generally differentiate between two opposing “poles”: On the one side of the spectrum, there is the aim to establish a “United States of Europe”, which would command full internal and external sovereignty as a fully-fledged state. On the other side one can find the concept of a “Europe des patries” as envisioned by Charles de Gaulles in which the Member States would keep the essential features of their national sovereignty as far as possible.³⁹

4.2 Goals of European Integration

Throughout the 70 years following the establishment of the European Coal and Steel Community, the European integration process included revisions of the different European Treaties leading to “a new stage in the process of creating an ever-closer union among the peoples of Europe” [Art. 1 (2) Treaty on European Union, TEU]. *Prima facie*, this compromise formula depicts the goal of this process in a comprehensible manner: The target is an “ever closer union”.⁴⁰

Yet, even though this may be considered a great perspective, what is meant exactly is not clearly defined and instead left open for interpretation.⁴¹ An open discussion and debate on the question of how to further proceed is necessary.⁴² In other terms: one needs to consider how Europe ought to be brought to the “next level”.

4.3 Formal Treaty Changes

The current “constitutional” basis of the European Union is made up of the primary law⁴³ of the EU, i.e., especially three treaties concluded according to the rules of international law: Treaty on European Union (TEU), Treaty on the Functioning of the EU (TFEU) and the Charter of Fundamental Rights of the EU.⁴⁴ Surely, these European Treaties can be changed – if agreed upon by all Member States.⁴⁵

Yet, even in times of “Zeitenwende”, any attempt of formally changing the European Treaties will be anything but easy and it will take time – time Europe will most likely not have to take on current challenges. First, there needs to be political agreement of all 27 EU Member States on changing the treaties.⁴⁶ Second, any such formal treaty change comes with the risk of rejection in one of the 27 necessary ratification processes in the Member States. This was witnessed last in connection with the Treaty establishing a Constitution for Europe signed in 2004 which was rejected in national referenda in

³⁷ The others are the European Atomic Energy Community and European Economic Community; see European Union (2022), [History of the European Union 1945-1959](#).

³⁸ See Morgenthaler, G. (2018): [Wohin führt die „Verwirklichung einer immer engeren Union der Völker Europas“ \(Art. 1 EUV\)? Eine Analyse der möglichen Ziele und verfügbaren Mittel](#), p. 54 et seq.

³⁹ *Ibid.*, p. 53 et seq.

⁴⁰ Both models described earlier can be understood as a path towards “an ever closer union among the peoples of Europe”.

⁴¹ Morgenthaler, G. (2018): [Wohin führt die „Verwirklichung einer immer engeren Union der Völker Europas“ \(Art. 1 EUV\)? Eine Analyse der möglichen Ziele und verfügbaren Mittel](#), p. 55 and p. 87.

⁴² *Ibid.*, p. 89.

⁴³ See European Union (2020): [The European Union’s primary law](#).

⁴⁴ See European Union (2022): [Treaties currently in force](#).

⁴⁵ See Art. 48 (4) TEU.

⁴⁶ Which currently can be considered uncertain; see the “Non-Paper” by [Bulgaria, Croatia, the Czech Republic, Denmark, Estonia, Finland, Latvia, Lithuania, Malta, Poland, Romania, Slovenia, and Sweden on the outcome of and follow-up to the Conference on the Future of Europe from May 9, 2022](#): “While we do not exclude any options at this stage, we do not support unconsidered and premature attempts to launch a process towards Treaty change.”

France and The Netherlands in 2005.⁴⁷ The substance of the Constitutional Treaty was preserved by the Lisbon Treaty⁴⁸ – entering into force on 1 December 2009.⁴⁹ It has been the last overall revision of the European Treaties.

4.4 Existing Integration Options within and outside the EU Framework

Yet, apart from formal treaty changes, there are other options for further – differentiated – European integration. These exist within the framework of the European Treaties and outside the legal framework of the European Union on the basis of international law.⁵⁰

Regarding the options within the existing EU framework, the enhanced cooperation of Art. 20 TEU⁵¹ is of special relevance. It entails a procedure where a minimum of nine Member States further integrate in a particular political area covered by the European Treaties.⁵²

Such enhanced cooperation allows the participating Member States to speed up integration among themselves in policy areas generally covered by the competences of the EU.⁵³ The procedure allows for overcoming blockages set up by the veto power of one or more Member States. Formally, enhanced cooperation requires the participation of a minimum of nine Member States. It needs to be authorised by the Council with unanimous consent of all Member States as a “last resort”, on a proposal of the European Commission and after obtaining the consent of the European Parliament.

With regard to common foreign and security policy in general,⁵⁴ decisions must generally be taken by the European Council and the Council acting unanimously, if not provided otherwise in the EU Treaties.⁵⁵ However, the European Council may unanimously adopt a decision stipulating that the Council shall act by a qualified majority in specific cases (“passerelle clause”).⁵⁶ Specifically regarding enhanced cooperation on common foreign and security policy,⁵⁷ the High Representative of the Union for Foreign Affairs and Security Policy must give an opinion on whether the enhanced cooperation proposed by a group of Member States is consistent with the EU’s common foreign and security policy. Additionally, the Commission shall give its opinion in particular, on whether the enhanced cooperation proposed is consistent with other EU policies. The European Parliament shall be informed. The Council shall confirm the participation of the Member State concerned, after consulting the High Representative of the Union for Foreign Affairs and Security Policy and after noting, where necessary, that the conditions of participation have been fulfilled. Authorisation to proceed with enhanced cooperation shall be granted by a decision of the Council acting unanimously.

⁴⁷ See European Parliament (2022): [Draft treaty establishing a constitution for Europe \(not ratified\)](#).

⁴⁸ Yet, under the exclusion of all “constitutional” language; see the [Presidency Conclusions of the Brussels European Council \(21/22 June 2007\)](#), Annex I, General Observations, para. 3. See altogether Fabbrini, F. (2019), [The Conference on the Future of Europe – A New Model to Reform the EU?](#), p. 8.

⁴⁹ See European Parliament (2022): [The Treaty of Lisbon](#).

⁵⁰ See Deutscher Bundestag (2020): [Differenzierte Integration in Europa](#), p. 7.

⁵¹ In conjunction with Art. 326–334 TFEU.

⁵² See EUR-Lex (2022), [Enhanced cooperation](#). See further on this Wessels, W. / Gerards, C. (2018): [The Implementation of Enhanced Cooperation in the EU](#).

⁵³ Enhanced cooperation has been applied in the fields of divorce law, patents and financial transaction tax, and setting up the European Public Prosecutor’s Office (EPPO); see EUR-Lex (2022): [Enhanced cooperation](#).

⁵⁴ Art. 23–46 TEU.

⁵⁵ Art. 23 (1) TEU.

⁵⁶ Art. 31 (3) TEU.

⁵⁷ Art. 329 (2) and Art. 313 (2) TFEU.

Regarding the options on the basis of international law, such measures are regarded as “laboratories”⁵⁸, since they are firstly established outside the EU framework – yet they ultimately ought to be integrated into it.⁵⁹ One example is the Schengen Area.⁶⁰ After its initial establishment via international law, the Schengen acquis⁶¹ was then incorporated into the EU framework by the Schengen Protocol to the Amsterdam Treaty.⁶²

It comes to show that European integration has never been static. The current political momentum for further European integration generated by the Conference of the Future of Europe and the “Zeitenwende” could lead to a further step towards “an ever-closer Union”. Yet, it is far from certain. Apart from the question of political will, it was shown that there are different legal paths for further European integration. Which road should be taken needs to be decided after open discussion and debate on what exactly is necessary to bring Europe to the next level. Each way entails a variety of legal requirements that need to be ascertained on a case-by-case basis.

5 Possible Ways Forward from Here

A Concrete Proposal: European Integration on a Multi-level and Voluntary Basis as a Common Ground

Over time, several models of European integration have been theorised, distinguishing between those that envisage a contextual and equally intense involvement of all Member States and those that enable variable forms of integration, in which some Member States decide to intensify their partnerships in certain strategic areas, while leaving the overall Union structure unchanged for the rest of the States.⁶³

A uniform integration for all Member States without distinction would clearly be the most desirable option, as well as the one most consistent with the stated objectives of the Treaties themselves.⁶⁴ However, it has to be acknowledged that at the moment such a strategy would encounter enormous difficulties, especially since the current ongoing crises in the EU (an energy crisis, a military/war crisis, a migration crisis and a pandemic crisis, not yet eradicated) bring out different interests among the Member States, to which it seems extremely difficult to respond with a uniform integration process for all. Instead, a differentiated integration process, centred on the willingness of individual Member States to intensify their cooperation in specific sectors and with targeted modes of operating outside the EU framework, seems much more feasible at this historical juncture.

Concrete examples of such cooperation on the basis of international law are the two Treaties whereby France and Germany on the one hand, and France and Italy on the other, established a form of “special collaboration” within the EU framework.⁶⁵

⁵⁸ Meaning that cooperation is first tested in a smaller group of Member States in an intergovernmental forum; see Deutscher Bundestag (2020): [Differenzierte Integration in Europa](#), p. 7.

⁵⁹ Ibid., p. 7.

⁶⁰ See European Commission (2022): [Schengen Area](#).

⁶¹ See e.g. Federal Foreign Office of the Federal Republic of Germany (2022): [The Schengen Agreement](#).

⁶² See Deutscher Bundestag (2020): [Differenzierte Integration in Europa](#), p. 7, footnote 12.

⁶³ European Commission, (2017): [White paper on the future of Europe, Reflections and scenarios for the EU27 by 2025](#).

⁶⁴ Art. 1 (1) TEU.

⁶⁵ It should be emphasised that the special collaboration modality intended here is not to be confused with the enhanced cooperation envisaged in Art. 20 TEU and Art. 326 et seq. TFE. In the model contained in the two treaties of Aachen and Quirinale, France, Germany and Italy cooperate bilaterally (although the possibility of participation of other Member States is also envisaged) in full compliance with the obligations and division of competences set out in the *acquis communautaire*. Enhanced cooperation under the Treaties, on the other hand, allows a minimum of nine Member States to

With the Treaty of Aachen on Franco-German Cooperation and Integration, which entered into force on January 22, 2020⁶⁶, France and Germany committed to intensifying their cooperation in European policies “with the aim of strengthening Europe’s unity, performance and cohesion, while keeping this cooperation open to all EU Member States”.⁶⁷ With the Quirinal Treaty, signed in Rome by the President of the French Republic Emmanuel Macron and Italian Prime Minister Mario Draghi on November 26, 2021⁶⁸, France and Italy decided to intensify their bilateral cooperation based on the conviction “that their bilateral partnerships and cooperation contribute mutually to the deepening of the European project itself and can serve as a source of inspiration for new policies at Union level”⁶⁹.

The common feature of the two agreements is the flexibility and voluntariness with which France, Germany and Italy have decided, for the time being on a bilateral level only, to intensify their cooperation in a number of strategic sectors not only for their national dimension, but also for the EU as a whole. In fact, the intention to establish bilateral integration models that could, in the future, represent spaces of collaboration in which other Member States could also be involved, always on a voluntary basis and in a variable manner according to the needs of the individual States from time to time, is clearly present in both treaties. In other words, the two treaties represent (also) platforms where France, Germany and Italy can experiment with concrete forms of bilateral special collaboration, open to the participation of other Member States and, potentially, available to serve as a model to be adopted as a form of full integration for the entire EU, albeit for specific strategic sectors.

The special collaboration established by the Aachen and Quirinal Treaties appears to be compatible with the obligations laid down in the European Treaties, as there is no obligation in EU law for the Member States to implement only the forms of enhanced cooperation provided for in the European Treaties. On the other hand, Member States must pay special attention to the principle of loyalty to the Union. This requires, on the one hand, making use of the differentiated integration mechanisms provided for in EU law as far as possible and, on the other hand, not violating supranational rules and objectives of the Union in a flexible integration policy outside this framework.⁷⁰

A concrete example in this sense is the Declaration of Intent for Enhanced Cooperation in Public Administration, signed in the framework of the Quirinal Treaty by the Ministers of Public Administration of France and Italy Renato Brunetta and Amelie De Montchalin on March 8, 2022⁷¹. The declaration provides for: developing mobility and exchanges of civil servants between the two countries and more generally at the European level; strengthening of partnerships between the Italian and French National Schools of Administration; deepening of exchanges and sharing of good practices on public

establish advanced integration or cooperation in a specific area within the European Union if it becomes clear that the Union as a whole is unable to achieve the objectives of such cooperation within a reasonable period of time.

⁶⁶ [Vertrag von Aachen über die deutsch-französische Zusammenarbeit und Integration](#). The Treaty of Aachen consists of a total of 28 articles. The six main sections of the Treaty are entitled: 1. European Affairs, 2. Peace, Security and Development, 3. Culture, Education, Research and Mobility, 4. Regional and Cross-border Cooperation, 5. Sustainable Development, Climate, Environment and Economic Affairs, 6. Organisation.

⁶⁷ Aachener Vertrag, p. 2.

⁶⁸ [Trattato tra la Repubblica italiana e la Repubblica francese per una cooperazione bilaterale rafforzata](#). The treaty consists of eleven thematic articles referring to the different areas in which the countries intend to build a structured collaboration, namely: Foreign Affairs; Security and Defence; European Affairs; Migration Policy, Justice and Home Affairs; Economic, Industrial and Digital Cooperation; Social, Sustainable and Inclusive Development; Space; Education and Training, Research and Innovation; Culture, Youth and Civil Society; Cross-Border Cooperation; Organisation.

⁶⁹ Trattato del Quirinale, p. 3.

⁷⁰ Grabitz/Hilf/Nettesheim/Blanke, EUV Art. 20 Rn. 28.

⁷¹ [Dichiarazione di intenti](#) tra il Dipartimento della Funzione pubblica della Presidenza del Consiglio dei Ministri della Repubblica italiana e il Ministero della Trasformazione e della Funzione Pubblica della Repubblica francese sul Rafforzamento della Cooperazione Bilaterale nel campo della Funzione Pubblica.

transformation priorities in the two countries, in particular within the framework of their respective National Recovery Plans. This is a first case of special collaboration in a specific sector of bilateral interest to Italy and France, but it can certainly be taken as a possible paradigm for different and wider forms of collaboration, capable of also involving other States in the near future.

Some have called this model a “Flexible Europe à la carte”⁷², in which single States decide on a case-by-case basis on what, how and for how long to collaborate in an enhanced manner. In an EU composed of 27 countries, however, the scenario of an equal involvement of all Member States appears extremely complex, and the risk of failure due to the opposition and veto of even one of the 27 EU members is hard to exclude. Considering that the cooperation model proposed here keeps the current system of rights and duties for States intact, leaving those among them willing to act freely for a voluntary intensification of sectoral cooperation seems - according to the current conditions - the best strategy to guarantee flexibility and efficiency for the future of European integration.⁷³

6 Conclusion

The political and economic contexts strongly concur towards creating solid European unity for the hard times to come, which will be characterized by multiple and overlapping crises as well as paradigmatic technological and geopolitical shifts. Getting prepared to cope with all these challenges is essential. This in turn requires that the EU redirects its focus on the aforementioned threats and challenges. The EU must be strengthened where needed. Time is a crucial factor, as shone through with the pandemic, so is securing an energy supply. At the same time, the world is changing from a cooperative to a more non-cooperative regime as it fragments into different spheres of influence. To engage Member States and candidate states in the European idea and to keep the door open for a tighter integration is a vivid interest of the EU. Putting both requirements together, the next phase of European integration should be based on a differentiated multi-level model and voluntariness that allows for the varying speed of integration needed, in light of external challenges, as well as the possibility of addressing the specific needs and capacities of an increasingly heterogenous group of states and their interests. Unfortunately, this multi-speed balanced “model” of integration is the most demanding one both politically and institutionally. But with respect to the given European moment, it seems the most promising, if not the only way forward possible. But for its acceptance first a common ground and next a consensus must be built. Given the various dynamics, there is no time to lose because a momentum can easily pass and be wasted due to lack of political imagination and leadership. To do nothing could turn out to be the biggest mistake. In this sense, the current European moment can be considered a tipping point from which the future of the EU could be predetermined for a long period of time. What the EU will decide in the next weeks and months is of crucial importance for the way forward.

⁷² See Deutscher Bundestag (2020): [Differenzierte Integration in Europa](#), p. 7.

⁷³ Bruno De Witte, (2022): [Legal Feasibility Study of the Differentiation Options](#), Robert Schuman Center for Advanced Studies, p. 13 et seq.

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