

# Dealing with the Neighbours: The case for an affiliate membership of the European Union and a new Security Council

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# Table of contents

<b>Executive summary</b>	<b>3</b>
<b>Introduction</b>	<b>4</b>
<b>Post-Brexit Britain</b>	<b>4</b>
<b>Governance</b>	<b>5</b>
<b>Northern Ireland</b>	<b>5</b>
<b>Repair</b>	<b>6</b>
<b>Renegotiation</b>	<b>7</b>
<b>The western neighbours</b>	<b>7</b>
<b>The eastern neighbours</b>	<b>8</b>
<b>Political stagnation</b>	<b>9</b>
<b>Affiliate membership</b>	<b>9</b>
<b>The EU institutions</b>	<b>10</b>
<b>A European Security Council</b>	<b>10</b>
<b>Global Europe</b>	<b>11</b>
<b>Endnotes</b>	<b>12</b>

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# Executive summary

Brexit is proving to be even more troublesome than expected, giving rise to a gradual softening of British public opinion towards the EU. Any future UK government is likely to want to renegotiate parts of the separation deal that Boris Johnson struck with the EU. Reconciliation between Britain and Europe will take time and need careful calibration, however. The EU should prepare for this constructively and use the opportunity of a British renegotiation to review all its other association agreements – none of which are without defect.

The question of governance lies at the heart of the problems which impair the EU's relations with its neighbours. The EEA and Swiss arrangements are in any case due for overhaul and upgrading. The EU's traditional enlargement policy to the east and south has foundered, and it would be better if this were admitted openly. Not only are candidate countries unable to meet the demands of membership but the EU itself is too weak to take on the burden of new members. Instead, a new category

of affiliate membership should be written into the EU treaties. Affiliation should allow the EU to develop close economic and cultural partnerships with its neighbours in a democratic fashion. Affiliate states would enjoy greater access to the EU institutions than is permitted under any of the current association agreements. Affiliate membership would also be available as an option for any current EU member state which, like the UK, chose not to adhere to the goal of ever closer union.

Such differentiated integration of the wider Europe will require the EU to build stronger federal government at the centre. The new structure should also be underpinned by the establishment of a European Security Council combining EU member and affiliate states with NATO – including Canada and the US – in regular strategic and operational decisions to protect Western security. The French presidency in the first half of 2022 should take the necessary first steps. The Conference on the Future of Europe might consider these proposals.

# Introduction

The secession of the United Kingdom from the European Union has been a messy and protracted business. What lessons can be learned from such disruption? The Brexit deal adds yet another type of neighbourhood agreement to the EU's pile of association and partnership agreements. What are the implications of this disintegration for the governance of the EU and for the way it deals with its wider neighbourhood?

In this paper I argue that when the British eventually turn again to Europe — as they surely will — they will need a new form of affiliate membership of the Union, underpinned by a European Security Council. That model will also suit the EU and its other neighbours better than perennial frustration over a failed enlargement policy.

## Post-Brexit Britain

First, a warning. Brexit is not over. The deal struck in the fraught circumstances of 2019-20 is not immutable. For the first time since the 2016 referendum, opinion polls show that a small but steady majority now regrets Brexit.<sup>1</sup> Corruption in the top ranks of the Conservative party, the patchy performance of Brexity ministers over the Covid pandemic, continuing rows with Europe over fisheries and Northern Ireland, and a failure to make good the promises of the Brexiteers all contribute to this shift in the public mood.

That is not the same, of course, as a swing in favour of re-joining the European Union. The public has not been asked what it thinks of joining the euro or the Schengen Area, or whether it can now embrace “ever closer union”.<sup>2</sup> It remains wary of uncontrolled immigration, especially by irregulars being trafficked across the Channel from France.

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No opposition party has promoted a coherent alternative policy to that of making the best out of Brexit. Although the Liberal Democrats are making up some lost ground, there is no big shift in the polls from Tory to Labour. Boris Johnson may well be brought down by his own party for blithering, mendacious incompetence and replaced as prime minister, but the next general election need not happen until late 2024. Even then, unless Labour, the Lib Dems and the Greens forge a German style coalition pact, another Conservative government beckons.

Nevertheless, the restlessness of the British electorate is significant. It reminds us that the hard Brexit into which the UK was bounced by Johnson in 2019 was not inevitable, that other softer interpretations of the referendum decision to leave the EU were available — and may become available once again. The Brexiteers have fallen out among themselves, not least by virtue (if that's the word) of the venomous Dominic Cummings who once led the Brexit campaign and who now likens the prime minister to an out-of-control supermarket trolley.

As the country struggles to come to terms with the economic shock of the pandemic, the adverse long-term consequences of Brexit will surface.<sup>3</sup> The economy shrinks while interest rates are rising. People notice that rising demand is unable to be met by falling supply of goods and labour. When the Brits return to travelling in mainland Europe they will discover higher prices and bureaucratic hurdles. Important service industries, notably travel, tourism and universities, are already staunch opponents of Brexit. Farming and fisheries will not be the only sectors to complain about broken promises.

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Elections in May 2022 for the Northern Irish and Scottish assemblies will remind everyone how Brexit has destabilised the constitutional settlement and integrity of the United Kingdom. Populist politicians and press continue to stoke bitter divisions over the future of the country. **Europe is the best available fall guy.** As anticipated, implementing the Brexit deal will increasingly be a litigious affair.<sup>4</sup>

# Governance

The issue of governance was central to the negotiation of the Withdrawal Agreement<sup>5</sup> and Political Declaration<sup>6</sup> by dint of which the UK eventually left the EU on 31 January 2020. Equally, governance dominated the negotiation of the Trade and Cooperation Agreement (TCA) which was concluded on 24 December 2020.<sup>7</sup>

The purpose of the TCA is to establish “the basis for a broad relationship between the Parties, within an area of prosperity and good neighbourliness characterised by close and peaceful relations based on cooperation, respectful of the Parties’ autonomy and sovereignty”.<sup>8</sup> Note that the normal lip service paid in EU association agreements to “the values of the Union” is conspicuous by its absence here.<sup>9</sup> As far as EU insiders are concerned, the TCA was defective from the outset.

The UK, for its part, seemed satisfied with the minimal agreement it had demanded and got, even though it had to accept the horizontal institutional framework insisted on by the Commission.<sup>10</sup> A joint committee, rather grandly called the Partnership Council, oversees the implementation of the Agreement and seeks to ensure legal certainty. It is assisted by numerous specialised committees and technical working groups. A consultative civil society platform is also to be established. The Council, working by consensus, has been co-chaired until now by Commission Vice-President Maros Šefčovič and David Frost who led the final stages of the Article 50 negotiations for the UK and has an elevated belief in national sovereignty.

The Partnership Council meets behind closed doors, lacks transparency and evades systematic parliamentary and media scrutiny. A joint Parliamentary Partnership Assembly

will meet for the first time in early 2022. The European Parliament has had long experience of mixed committees with third country parliaments and will take this new body seriously. Nathalie Loiseau, MEP from the centrist Renew group, will chair the European contingent of 35. How effective the engagement is from Westminster remains to be seen. It is at least encouraging that the UK co-chair of the Partnership Assembly will be Oliver Heald MP, a veteran Tory pro-European. The House of Lords, where Johnson’s government lacks support, will play an active part.

In the case of dispute about the interpretation or implementation of the provisions of the TCA, either party may request the setting up of an independent arbitration tribunal. Where one party disagrees with a ruling of the tribunal, it may suspend its own obligations across any sector. The deployment of cross-suspension measures, which can be challenged in an arbitration tribunal, is supposed to be proportionate and appropriate. The EU could impose tariffs or quotas as part of its retaliation, but the whole Agreement can only be suspended or terminated if there are egregious breaches of essential elements such as disrespect for fundamental rights or climate change commitments. Neither the UK courts nor the Court of Justice of the EU have any direct part to play in these enforcement mechanisms.

The Partnership Council may instigate a review of the balance of rights and obligations in trade from 2025 onwards. A joint review of the whole TCA will commence in 2026. The Northern Ireland Protocol to the Withdrawal Agreement faces a decisive vote about its continuation in the Stormont assembly already in 2024.

## Northern Ireland

Brexit is not a clean break with the EU legal order but a novel kind of differentiated disintegration which treats different parts of the UK separately. Northern Ireland is kept within the EU internal market for goods while Great Britain is kept out.

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The Northern Ireland Protocol has proved very controversial, especially among those who have never read it. The crux of the problem lies in the governance of the economic and legal arrangements for Northern Ireland. The sectarian politics of the province exacerbate matters. Although a majority of the Northern Irish electorate voted at the 2016 referendum to remain in the EU, the so-called Loyalists (to the British Crown) are bitterly anti-European and claim that the Protocol jeopardises the integrity of the UK as a sovereign state.<sup>11</sup> Most Brexiteering Ulster unionists detest the Good Friday Agreement of 1998 which was brokered — under the auspices of the US and EU — to allow the Republic of Ireland a significant say in Northern Irish affairs.

In fact, the Protocol is not a bad deal for Northern Irish consumers and businesses, allowing them access to the internal markets of both the EU and the UK. Recent

evidence suggests that this dual market is working well for Northern Irish producers.<sup>12</sup> The trouble the Protocol causes does not lie with the internal regime in Northern Ireland but that it creates a new regulatory border between Great Britain and Northern Ireland designed to prevent goods from flooding uncontrollably into the EU. The Commission has already proposed, within the terms of the Protocol, a lightening of the checks on certain goods transported from Britain to Northern Ireland. Johnson and Frost continued to peddle the issue of sovereign government, aiming to renegotiate the Protocol to exclude any direct role of the European Court of Justice.

Frost resigned unexpectedly on 18 December, but the threat to trigger Article 16 to suspend unilaterally the operation of either parts or the whole of the Protocol remains behind him. Foreign Secretary Liz Truss takes his place. Watch out for the veering shopping trolley.

The EU is very much alive to the possibility that the UK will continue to pursue its divergent path, not only over Northern Ireland. Johnson asks French President Macron

to break EU and international law on refoulement of refugees. Home Secretary Patel says France should close its Schengen borders to keep out immigrants. She intends to break the terms of the Withdrawal Agreement on the rights of EU citizens resident in Britain.<sup>13</sup> Jersey and Guernsey have been slow to licence the Norman fishermen who lay claim to their historic fishing rights. London's connivance in the AUKUS submarine deal has served further to sour relations with Paris. **France bashing is a popular pastime in England**, which Johnson exploits.

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## Repair

How to repair the relationship? There are many in Britain who will abhor the idea of going back to Brussels cap in hand — especially those who came to believe that even in this interdependent world it would be somehow possible for Britain to “take back control” of its own affairs. But sloganising about Global Britain is not really a valid alternative. Sovereignty zealots such as Frost may continue to argue that the UK should diverge further in a contrary direction from the EU, but it is a prospectus that hardly stands up to rational critique in the real world economy. The fact is that the EU continues to be Britain's largest and closest trading partner — and **growing European trade rather than conniving in its deterioration will surely become the priority political objective of a new British government** that is not run by and for a *galère* of nationalist ideologues.

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While we cannot foretell precisely what a new UK government will eventually ask for by way of a review of the TCA, it is certain to involve a closer trading arrangement for goods and services involving a higher degree of regulatory convergence and surveillance. London is likely to push for greater participation in certain EU programmes, notably Horizon, and some of its agencies, such as the European Medicines Agency, the European Aviation Safety Agency and the European Food Safety Authority. One option, which was previously supported (alas, at different times) by both the EU Commission and the government of Theresa May, would be to extend to the whole of the UK the trade regime that has been granted as a special case to Northern Ireland.

It is unlikely, at least in the short term, that the UK will want to re-join the EU customs union since it prides itself on having achieved through Brexit an independent commercial policy. Only if the glamour of slogging away at minor trade deals with third countries palls will the British reconsider what it lost when it escaped from the EU's international trade treaties.

# Renegotiation

The prospect of having to re-open negotiations with the UK will fill many in Brussels and other European capitals with alarm. For the new coalition governments in Germany and the Netherlands, the prospect of dealing with a British version of an AfD government is particularly unappetising. Since David Cameron's Bloomberg speech in January 2013, Brexit has been a constant, bad and costly distraction for the EU. It has risked disunity among the 27 member states, absorbed a huge amount of dispiriting work, and left the Union at the end of the day smaller, weaker and poorer.

The EU should only open the post-Brexit package if and when it is convinced that there has been a change of heart in London and that British interlocutors can again be trusted. A steady injection of common sense from Brussels is already badly needed to stem the deterioration of the relationship. The European Council leadership should make it clear that a yet more nationalistic Britain impeding European integration will never be a valid corresponding partner for the Union. The bloc must continue to hope that a more normal British government will someday emerge with which it can again do business.

## The western neighbours

Making sense of the recalcitrant Brits should impel the EU to review its relationships with the other western neighbours. Iceland, Norway and Switzerland which, with little Liechtenstein, compose the European Free Trade Area (EFTA), have been watching Brexit closely. During the Brexit process, the Commission was anxious not to concede to the UK something which it would then be bound to offer also to EFTA. Conversely, the EFTA countries were wondering if the UK would gain something they could then lay a claim to.

Iceland, Norway and Liechtenstein trade with the EU under the protection of the European Economic Area agreement of 1992 (EEA), although they are not in the customs union. A separate EFTA court works in a sisterly fashion with the European Court of Justice to resolve disputes according to EU law. There is no instance of major divergence between the EEA and EU, although the Commission complains of the late adoption of EU law by the EEA states.

Switzerland, having failed to accept the EEA, has been left with a free trade agreement dating back to 1972. Modernisation of the Swiss arrangement has been hampered by a weak Federal Council having to have everything endorsed by referendums. Given the fact that the Alpine Swiss are surrounded by the Schengen area, a certain pragmatism was inevitable — for example with veterinary, health and safety checks (SPS) and customs' controls — but discord persists on the questions of free

**As and when the Brits come knocking on the door again the Union must be well prepared to react constructively.** Although the EU may regret Brexit, however, there is no evidence that the EU would want the UK back as a full member state. In any case, Britain would be ineligible for membership unless it were to embrace sincerely, and on a bipartisan basis, the goals of political, economic and monetary union. The negotiation of a new form of association, on the other hand, is a perfectly viable goal. But what might it consist of, and how should it be governed?

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movement of people, the level playing field and state aid. In the institutional arena, the role of the European Court of Justice, the standing of the Swiss parliament and the size of the annual budgetary contribution to EU coffers (CHF 1.3 billion) have caused difficulties. 120 separate bilateral arrangements, sector by sector, spark litigation, and the protracted negotiations between Bern and Brussels have not been humorous. No further progress is expected until after Switzerland's next federal elections in 2023.

In the stalled framework agreement proposed by the EU, a Joint Committee would deliberate on the dynamic adaptation of Swiss law to conform to new EU law. The Joint Committee could refer disputes to an arbitration panel which, in turn, must refer any question concerning the interpretation of EU law to the EU Court (for a binding opinion). The arbitration tribunal would take a final decision on the case in question, binding on both parties. Should the Swiss breach their agreement, the EU could impose compensatory measures. An arbitration panel could review the proportionality of such measures.

Although no EFTA country is any longer a candidate for accession to the EU, each of them has to work hard to manage eurosceptic public opinion. Any fresh prospectus advanced from Brussels, especially one inspired by the example of post-Brexit Britain, would be met with suspicion. But there is growing dissatisfaction in EFTA that as EU integration advances via the Treaty of Lisbon into civic, police and justice matters, including asylum

and immigration, the democratic deficit grows. The extension of the EU's regulatory clout into digital market, energy supply and climate change policies presents new challenges. Now thirty years old, the EEA was and is a trading arrangement run by technocrats. The Swiss arrangements — weirdly touted from time to time by Boris Johnson as a model for Britain — are clearly unsatisfactory.

## The eastern neighbours

The Union's Eastern Partnership policy is predicated on speculation about enlargement. This has not proved to be a good strategy. For one thing, the EU's own attitude to admitting new members has been inconsistent — fluctuating between groundless optimism and needless pessimism. West European assumptions about the ease of the transition of ex-Soviet countries into stable liberal democracies have been frustrated by the facts. Wishful thinking about reconciliation in the Balkans has been confounded. The Union's interventions on its eastern borders have not stabilised the region or added to its own security — indeed, rather the contrary. In this context, the EU's lack of strategic coordination with its transatlantic allies has been woeful.

**A basic dishonesty lingers at the heart of the bloc's eastern strategy.** The EU pretends it will admit its eastern neighbours to full membership once they pretend to be ready. Several member states, traditionally led by Britain, have supported enlargement in the fond expectation that the newcomers would blunt the drive to deeper European integration of a federal type. Today's EU Commissioner responsible for enlargement, Oliver Varhelyi, is a eurosceptic from Viktor Orban's Fidesz party. Hungary favours Serbian entry as a buffer against the rest of the Balkans.

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President von der Leyen, meanwhile, continues to defend the line introduced by the European Council at Thessaloniki in June 2003, namely that its then Stabilisation and Association Process “will remain the framework for the European course of the Western Balkan countries all the way to their future accession”. Few believe her — certainly not the leaders of Serbia or Albania who are already, wisely, wondering how to better secure their own regional interests in spite rather than because of the EU. Aleksandar Vucic and Edi Rama know very well that if the Commission is ambiguous about enlargement, the Council presents an insuperable obstacle. It should

**The question will soon arise, if it has not already, about how a new model of a more democratic partnership might suit all parties better, including the UK.** This I will call affiliate membership of the European Union.

not be missed that the Western Balkans summit at Brdo in October 2021 could only agree to confirm support for the enlargement *process* — but not for actual enlargement.<sup>14</sup>

The accession of a new member is subject to a unanimous decision of all 27 member states ratified by 27 national parliaments or referendums.<sup>15</sup> This is a high hurdle, especially in these populist times when few governments will risk upsetting electorates fearful about the financial cost and social impact of enlargement. The truth, sad though it be, is that **there is presently no prospect of any new state acceding to the Union.** Instead of preparing seriously for further enlargement, the Union is now building a Fortress Europe — in many cases, such as on the Polish border with Belarus, quite literally out of ditches, razor wire and watchtowers.

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Current hostility among existing members to enlargement is unlikely to dissipate. All potential candidates suffer to a greater or lesser extent from political instability, endemic corruption, religious strife, antisemitism, ethnic tension and a compromised judiciary. Many are quarrelling with their immediate neighbours. None enjoys the conditions for steady economic growth. All are a long distance from meeting the increasingly tough eligibility criteria for Union membership — criteria which, as Macron has insisted, will be applied rigorously. The days are long gone when the theoretical Copenhagen enlargement criteria, first established in 1993, could be amiably ignored in practice.

At least two Balkan countries — Bosnia Herzegovina and Kosovo — have not yet achieved the competence of a modern independent state, let alone one capable of taking on the obligations of EU membership. Ukraine, Georgia and Moldova had association agreements in 2014 predicated on steady convergence with the EU *acquis* and their evolution into stable, secure liberal democracies.

Progress has stalled, however, and Russia promises further retaliation if it is resumed. Belarus under Lukashenko is an outlaw state. The two last members of the EU Eastern Partnership, Armenia and Azerbaijan, find it difficult to stop fighting each other.<sup>16</sup> And President Erdogan has long since placed Turkey beyond the pale.

Blame for the failure of the Union's enlargement strategy can be shared out impartially. It is not simply a matter

of the ineligibility of the candidates and their inability to meet EU demands. The fact is that **the Union itself is too weak to shoulder the burden of governing new members**. The interinstitutional circus of Brussels is clearly not up to the task of internalising the Balkan conflicts or of facing up to Kremlin aggression. EU leaders have failed comprehensively to address the rising tide of populist nationalism at home.

## Political stagnation

The disaffection of the British, deficient association agreements and the collapse of enlargement have not led to the radical reform of the EU itself. Beyond the immediate urgencies of crisis management, the political development of the Union has stagnated. Angela Merkel, German chancellor for 16 years, preferred cautious steps to bold measures. There has been no sustained effort at constitutional innovation since 2005.

The Commission remains deprived of some of the essential tools of a federal government, such as a common fiscal policy. Economic and monetary union remains incomplete. The European Parliament still suffers a problem of legitimacy and lacks political parties. The Council seems trapped in confederal mode and refuses to advance the use of qualified majority voting. The judicial authority of the European Court of Justice is under attack and the rule of Union law is jeopardised by at least two member states, Poland and Hungary. Experiments with enhanced cooperation have been few and far between.<sup>17</sup> Efforts to define a common foreign and security policy, not least with relevance for its immediate neighbourhood, are stymied by weak leadership from the European Council. Nobody agrees about how to solve the crisis over asylum and immigration.

Radical thinking about the future of Europe is now at a premium. One takes note of the Conference on the Future of Europe, an experiment in managed popular consultation. Ursula von der Leyen told the European Parliament, rather boldly, that she intends to follow up its proposals.<sup>18</sup> One also hopes that new governments in Berlin and Paris will bring fresh momentum to the integration process. If so, one aspect which must command a place on the constitutional agenda is how to deal with the neighbours. Indeed, the EU should reflect much more deeply than it has about why the British left — and what needs to be done to prevent any other member state being tempted down the Brexit road.

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## Affiliate membership

At present, Article 49 tells us how to join the Union as a full member state — with all privileges. Article 50 tells us how to leave it — with no privileges. There is nothing in between. Should there be? To fill the gap, the EU has invented association agreements of different types and intensities with numerous third countries. We have looked at the EEA, Switzerland and the UK, none of whom want to join the EU. We have discussed the eastern neighbours, none of whom can join the Union even if they really want to.

Any new neighbourhood arrangement should aim for stability based on political honesty and legal certainty. All Europe would benefit from putting an end to the pretences that pepper the rhetoric about enlargement.

Yet the EU must maintain, and where possible improve, its own contribution to the prosperity and security of its neighbours. The current association agreements are not an adequate vehicle for these purposes and are overdue for overhaul. **A new form of affiliate membership would be a more realistic target than the false hope of full accession** — as well as being a more assured conduit of EU assistance to those affiliated partners that need and deserve it.

Affiliate status should be regarded as a durable settlement and not as a springboard for full membership. Naturally, affiliation as a long-term partner of the Union should require genuine respect for the values on which it is founded — democracy, the rule of law and fundamental

rights — and a commitment to promote them.<sup>19</sup> Here it would depart from the TCA which exists solely under international law. But affiliated countries would not

be expected to sign up to the political objectives of the Union. The Copenhagen criteria should be retained by the EU as its benchmark for accession but not affiliation.

## The EU institutions

For those countries enjoying a current association agreement, promotion to affiliate membership (to be worth the trouble) must mark a significant upgrading of their political and institutional relationship with the Union. The present plethora of joint committees and partnership councils would need to adapt to the new condition of affiliation and the necessarily more dynamic relationship. A Commissioner should be appointed with specific responsibility for the affiliates. Access to all the relevant EU agencies should be guaranteed for affiliate states. Their ministers and officials should be included as consultant observers in regular Council business whenever their particular participation in the single market, customs union or trade negotiations is at issue. Such engagement should take place at every appropriate level, including the comitology through which the Commission manages the implementation of EU law within the member states. Likewise, parliamentarians from the affiliate states, especially rapporteurs, should sit as non-voting members in the legislative committees of the European Parliament.

Because the treaties of affiliation would fall under the jurisdiction of the European Court of Justice, the courts and lawyers of the affiliated states would be accorded privileged access to it. Affiliates would be empowered to approach the EU Court for preliminary rulings over the interpretation of the affiliation treaty or an action of the EU institutions or agencies.<sup>20</sup> In addition, an individual

citizen or legal entity in an affiliate state should be entitled to seek redress in the European Court if directly and adversely affected by an EU act.<sup>21</sup>

Certain individual rights should also be granted to the citizens of affiliate states — for example the opportunity to engage in a European Citizens' Initiative or to take part in popular consultations such as the Conference on the Future of Europe. Political parties and civil society organisations would naturally extend their activities to include the affiliate states. The right to vote and stand in an election to the European Parliament could be extended to affiliate citizens resident within the EU. Access to the EU Ombudsman could also be widened to affiliate citizens. The formal consultative organs of the EU, the Economic and Social Committee and Committee of Regions, should be fully opened up to participants from the affiliate states. The national central bank of an affiliate state could be formally connected to the European System of Central Banks. Likewise, affiliates should engage with the EU Court of Auditors.

The fabric of formal and informal connections between the EU and its affiliated states would be built up over time. Each situation would be tailored according to the degree of association attained. Ironically, the Northern Ireland Protocol provides something of a template to those neighbours seeking the most advanced form of integration short of full membership.

## A European Security Council

The insertion of a new category of affiliate membership must contribute towards and not detract from European peace and security. Fortuitously, NATO's new Strategic Concept and the EU's new Strategic Compass are being jointly developed with the common objective of strengthening Europe's resilience against hybrid threats, disruptive technology and climate change. I propose that the EU should combine with NATO to establish a new intergovernmental organisation, a European Security Council.

As things stand, NATO lacks strategic capacity and the EU lacks military capacity. **Neither the EU nor NATO can cater for contemporary or future challenges if left to its own devices.** The division between the two Brussels-based organisations — a division for which

France and the UK have been equally responsible — has left European defence in its present enfeebled state. The formula of a joint European Security Council would overcome the unfortunate split by marrying Emmanuel Macron's concept of strategic autonomy with the geopolitical imperative of keeping the US firmly attached to the mission of European defence. The new body should serve to orientate all its participants in the same direction, especially with respect to Russia and China.

Macron has a good opportunity during France's presidency of the EU Council in 2022 to launch the European Security Council with the support of President Biden. For the British, participation would not be a humiliating way back to engage with European affairs: security and defence is, after all, a sector where the UK

has at least something to offer. Germany, the weakest link in the military chain, should be reassured to up its own game. Iceland, Norway and the UK are founding members of NATO: their inclusion as affiliate EU members in the European Security Council would give them an important say in strategy and, where necessary, operations. The six EU states which are for historical reasons not also NATO members — Austria, Ireland, Finland, Sweden, Malta and Cyprus — should be exhorted to drop their inhibitions. From the Balkans, Albania, North Macedonia and Montenegro have been recently admitted to NATO,

albeit haphazardly. Serbia should also be encouraged to participate in the European Security Council.

Pro-Europeans in Ukraine, Georgia and Moldova will continue to pine in vain for NATO membership, but their countries' eventual inclusion as EU affiliates in the European Security Council would usefully underpin their status as neutral buffer countries, albeit combined with NATO protection and EU patronage. And if it agreed to join the new security arrangement, Turkey would usefully be affirming a western orientation.

## Global Europe

The introduction of a new class of subsidiary membership and its graduation as a security power is not without risk for the Union. Unless affiliate status is handled well by a self-confident central executive authority, it could lead to centrifugal dissolution of the *acquis communautaire*. The EU's constitution must therefore be reinforced in the federal direction. A strong Commission will be needed to hold the ring. It must be made effectively accountable to the European Parliament and Council. The Court of Justice should continue to move inexorably towards the status of a federal supreme court. In the case that a current member state were to reject the federal logic of ever closer union, relegation to affiliate status would always be available. **Article 50 need never be used again.**

Enlargement policy will be rendered more rational. Affiliate states will gain an automatic right to be consulted in the Union's constitutional negotiations — including membership of a future Convention.<sup>22</sup> A European Security Council involving all full and affiliate member states will inevitably have an impact on positions struck at the United Nations, in G20 and in other international treaty negotiations. A European Union more confident in its own region will be in a better position than hitherto to project its values and protect its interests across the globe.

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Upgrading the nexus of association agreements will serve to remind the EU of its duty towards the wider Europe. Making those agreements more substantive and democratic has an intrinsic benefit as the EU's regulatory pull increases. New mechanisms to manage Europe's differentiated integration will doubtless emerge.

Installing a new category of affiliate membership requires treaty change.<sup>23</sup> The item should be added to the catalogue of other constitutional amendments which is swiftly accumulating. Perhaps the Conference on the Future of Europe will recommend it.

Perhaps the United Kingdom will one day ask for it.

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- <sup>1</sup> “[In hindsight, do you think Britain was right or wrong to vote to leave the European Union?](#)”, *Statista*.
- <sup>2</sup> Article 1 TEU.
- <sup>3</sup> See, for example, John Springford, *The Cost of Brexit: October 2021*, Centre for European Reform Insight, 13 December 2020.
- <sup>4</sup> Andrew Duff, *Ceasefire: Managing divergence in post-Brexit Europe*, European Policy Centre Discussion Paper, 30 June 2020.
- <sup>5</sup> Official Journal L 029, 31 January 2020.
- <sup>6</sup> Official Journal C 034, 31 January 2020.
- <sup>7</sup> Official Journal L 149, 30 April 2021.
- <sup>8</sup> Article 1 TCA.
- <sup>9</sup> Article 8(1) TEU.
- <sup>10</sup> For a fuller description of the TCA, see Jannike Wachowiak and Fabian Zuleeg, *The EU-UK Partnership and implications for Differentiation within the EU and between the EU and third countries*, EU Idea Research Papers No 10, June 2021.
- <sup>11</sup> In Northern Ireland, 56% voted Remain, 45% Leave – compared to the overall UK result of 52% Leave, 48% Remain.
- <sup>12</sup> For example, “[Northern Ireland: post-Brexit utopia or region strangled in red tape?](#)”, *Financial Times*.
- <sup>13</sup> The Independent Monitoring Authority set up under the Withdrawal Agreement is taking the Home Secretary to court to uphold the settlement rights of EU citizens. See: “[Priti Patel rule creates extra hurdle for EU citizens to stay in Britain](#)”, *The Sunday Times*, 15 December 2021.
- <sup>14</sup> European Council, *Brdo Declaration*, 6 October 2021.
- <sup>15</sup> Article 49 TEU.
- <sup>16</sup> See [the Joint Declaration of the Eastern Partnership Summit](#), 15 December 2021.
- <sup>17</sup> Article 20 TEU.
- <sup>18</sup> Ursula von der Leyen, *State of the Union speech*, 15 September 2021.
- <sup>19</sup> Article 2 TEU.
- <sup>20</sup> Article 267 TFEU.
- <sup>21</sup> Article 263 TFEU.
- <sup>22</sup> Article 48(3) TEU.
- <sup>23</sup> Surely an Article 49a TEU.



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