

Europe after the Brits

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The Presidents of the Council, Parliament and Commission sign a joint declaration on the Conference on the Future of Europe, 10 March 2021. Credit: JOHANNA GERON / AFP

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Executive summary

The loss of the United Kingdom should prompt serious reflection about the constitutional direction of the European Union. The secession of a member state changes the context of European integration. Brexit leaves the EU weaker, smaller and poorer — but it can and should also spur reform.

The EU should aim to have major changes in place by 2029, including treaty revision. The most critical reforms should be: (i) a renegotiation of the Brexit deal leading to a new class of affiliate membership; (ii) completion of the constitutional framework for a fiscal union; (iii) a European Parliament fully legitimated by election from transnational lists; and (iv) a ‘European Security Council’ of defence ministers to span the divide between the EU and NATO.

The Conference on the Future of Europe may prove to be a useful democratic experiment. But it is not designed to address the important constitutional challenges that the Union faces. The author therefore proposes creating an expert reflection group to stimulate the full implementation of the Treaty of Lisbon as well as prepare the way for the next Convention which must be called to amend the EU treaties. More immediately, the reflection group should make proposals to settle the controversial matter of how to elect the new President of the European Commission in 2024.

Brexit II

The European Union has still to come to terms with Brexit. Clearly, the business of managing the secession of the United Kingdom has been very costly in terms of time and effort since 2015 when Prime Minister David Cameron launched his renegotiation of the terms of British membership. Brexit holds important lessons for the future of Europe. The unprompted departure of a rich and powerful member state marks the end of the EU's classic strategy of widening and deepening in parallel, first articulated at the summit of The Hague in 1969. Brexit has confounded the historic mission of the Union. An "ever closer union among the peoples of Europe" is now impossible.¹ The British remain a European people but have chosen the path of disintegration.

Brexit holds important lessons for the future of Europe.

During the Article 50 negotiations, many Brexiteers, including Boris Johnson, argued that no deal would be better than a bad deal. That was, of course, nonsense, and at the last minute, on Christmas Eve 2020, a deal was done.

But the Trade and Cooperation Agreement (TCA) turns out nonetheless to be a bad deal — for both parties.² It will not endure. Trade has shrunk. While there are no tariffs on goods, supply chains are badly disrupted by tightened rules of origin requirements, the imposition of border checks on tax and customs, and controls on health and safety. The problems of doing business across the Channel are compounded by the erection of a veritable frontier between Great Britain and the province of Northern Ireland, which remains inside the EU's

Affiliate membership

For the nostalgic, Brexit II will bring us back to Theresa May's Chequers proposals of July 2018, which were later overturned by her successor Johnson. The most reasonable outcome of the renegotiation will be a Ukraine-type Association Agreement based on a deep and comprehensive free area. This will be a big improvement on the TCA. Over time, however, even this may prove to be too meagre a basis for the partnership, especially if an appetite grows for closer political cooperation in security and defence.

There is no prospect whatsoever of a British application to re-join the EU as a full member state. But one might eventually expect the UK to seek a new form of affiliate

customs union. The TCA does virtually nothing for trade in services, for the mobility of people, or for cooperation in foreign and security policy. Fisheries remain a bone of contention, especially with France.

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Britain's relations with Europe are set to be rocky until such time as the sovereignty fetishists of Brexit have had their day. But their time will pass. By 2024, after the next general election, the UK is likely to ask the EU for a comprehensive renegotiation of its TCA. One may imagine that by then, the Conservatives will be turfed out of office — although the capacity for incompetence and internal division within the opposition parties in the House of Commons should never be underestimated. Nevertheless, even a new Conservative government would soon be back in Brussels as a *demandeur*.

The renegotiation agenda will be centred on measures to improve British access to the Single Market of the type that Michel Barnier scorned as cherry-picking. Renegotiation will give rise to the same thorny issues which complicated the conclusion of the initial deal. How will equivalence, reciprocity and mutual recognition be defined and applied to EU-UK trade in services? Can the new British regulatory framework be trusted by the European Commission across the spectrum of the internal market, from environmental protection to state aids? Will the cohesion of the EU27 survive yet another British renegotiation?

membership of the Union, involving at least partial engagement with the EU's institutions. As such an affiliation category does not exist under the present treaties, the request from London would add to the pressure on the Union to embark on a new round of treaty change.

The EU's enlargement policy has ground to a halt. All eligible candidates refuse the bait of full membership, and those that continue to seek membership are still ineligible as serious candidates. If the UK were to lead the way towards developing the concept of affiliate status, other third countries would surely follow, including Norway. Adopting a second tier of EU

membership would also make sense for the Western Balkans, Ukraine and, ultimately, Turkey. As further formal enlargement of the Union is looking to be practically and politically impossible, the addition of an alternative option of affiliate membership would relieve the Union of an intractable neighbourhood problem.

The prospect of treaty change terrifies the Union. But the departure of the irredeemably eurosceptic British makes it more feasible for others to move forward in a federal direction. Affiliate membership would act as a safe haven, like a *voie de détresse* on an Alpine pass, for any current member state which chose not to take the federal route. It would also provide a parking place for candidate states in preparation for full membership.

Fiscal union

The other main driver towards a federal union is the common fiscal policy which begins to emerge perceptibly in response to the devastating impact of the COVID-19 pandemic on the European economy. The EU's decision to raise common debt on a large scale to aid economic recovery is unprecedented and must be managed well.³ Both the revenue and expenditure aspects of the Next Generation EU recovery programme should be delivered in as federal a manner as possible. In particular, the Commission should only disburse the €672.5 billion Recovery and Resilience Facility — of which €312.5 billion is in the form of grants — to investments aimed at producing real added value with a European dimension.

The experiment in common debt issuance will be quickly discredited if the Commission surrenders to short-term, pro-cyclical projects favoured by national party politicians. The debt initiative has been sold to 'frugal' states as a one-off, never to be repeated. However, if the launch of Eurobonds on this scale is successful, there will be no reason whatsoever not to repeat it on a larger scale in the future.

Ideally, too, the holders of these Eurobonds should be paid not from the proceeds of the normal gross national income contributions of member states to the EU budget but only from genuine own resources raised by new streams of EU taxation. This change requires compartmentalising the EU budget into federal and confederal sections, a reform which will not only save national treasuries money but will also directly connect the EU citizen as a taxpayer with the

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government of the European fiscal union. An 'EU Treasury Secretary' will then be established within the Commission, leading logically to other necessary reforms to consolidate the banking and capital markets union, including the full integration under EU governance of the European Stability Mechanism. The job of the Commission will then be to run a common economic policy of the Union and not merely try to coordinate national economic policies, as it does now.

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There is no ducking the issue of enhanced executive authority in the governance of the Union. Greater centralisation in banking matters resulted from the 2008 financial crash. The Brexit crisis also forced the Commission to take centre stage. The current pandemic suggests the need for further concentration in the field of public health.⁴ The trend must be continued and codified in treaty form with regard to the fiscal rules of the eurozone. Fortuitously, there can be no better advocate for the completion of fiscal policy reform in the European Council than Italy's new prime minister, Mario Draghi.

A European Security Council

Radical adjustments are called for in the way Europe conceives and manages its international policies. Left to their own devices, neither the EU nor NATO has proved itself capable of delivering the effective, intelligent

security that Europe needs. Indeed, until today the division between the two Brussels-based organisations has made synergy impossible. Many people doubt that the EU will ever develop a coherent, autonomous common

foreign and security policy. The EU External Action Service continues to disappoint.⁵ NATO is still in search of a post-Cold War strategic concept and struggles to keep the Americans engaged. The election of President Joe Biden and the departure of the British from the EU open up an opportunity to think afresh about the architecture of Western security. The need for new institutions is self-evident: if EU enlargement has stopped, new organic linkages must be invented to cater for the security needs of the whole European neighbourhood.

President Emmanuel Macron has been the foremost critic of the present arrangements. If he is re-elected in 2022, he will be well positioned to propose an overarching security concept which breaks down the barriers between the EU and NATO. The North Atlantic Council and the European Council could decide together to establish a regular system of joint meetings of

defence ministers, including those from the US and UK governments. Jens Stoltenberg retires as NATO Secretary General in 2022. His successor should be an EU defence minister appointed as the permanent, dual-hatted president of the new ministerial body.

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A Conference on the Future of Europe

Such innovations for the European Union in the fields of affiliate membership, the fiscal union and defence policy will require significant amendment of the Treaty of Lisbon. That exercise must be well prepared. There is to be a Conference on the Future of Europe. It is to consult citizens — but in truth, there is little genuine agreement within the EU institutions, let alone between them, about the leadership, organisation or follow-up of such a Conference. The governance structure proposed for the Conference is clumsy and overweight, its deliberative processes confused and objectives unclear.⁶

The President of the European Commission, the conservative Ursula von der Leyen, seems incapable of giving consistent political direction to the Conference. Charles Michel, President of the European Council, appears preoccupied, happy to delegate the matter to the underpowered term presidencies of the Council of ministers (in 2021, Portugal and Slovenia). Despite the irrepressible Guy Verhofstadt, who will lead the European Parliament delegation to the Conference, Members of the Parliament (MEPs) lack a coherent strategy and have no comprehensive prospectus for EU reform. Needless to add, the constraints necessarily imposed by the pandemic will not help the Conference deliberate with the wider public. The imminence of the German and French elections over the next 12 months will further slow the pace of reform.

However well intentioned, the Conference seems singularly ill-equipped to undertake detailed reflection on the EU's complex institutional dilemmas. A small group of wise persons should be quickly established to supplement the business of the Conference, tasked with proposing some substantive improvements to the methodology for the election of the next Commission

President in 2024.⁷ The reflection group should also be charged with preparing a detailed catalogue of options for consideration by the next Convention which, courtesy of the European Parliament, must be called in any case to prepare the next round of treaty amendment.⁸ Such reflection groups have served the Union well in the past and nudged things forward.

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Setting the target date of 2029 for the new constitutional settlement to enter into force seems reasonable. That year will be the 50th anniversary of the introduction of direct elections to the European Parliament. Is it too much to hope that a number of MEPs will be elected from transnational party lists to sit for a pan-EU constituency to celebrate that occasion? Federal political parties are badly needed to render the new European polity well governed and fully legitimate in a democratic sense.⁹ The emergence of such EU parties will not happen by accident but is dependent on there being real electoral competition between political forces at the transnational dimension.

The European Parliament already enjoys the full right to initiate transnational lists, as well as to propose a formula for the reapportionment of the remainder of seats to be filled, as of now, by national and regional elections. MEPs have been slow to use their existing powers. There can be no case whatsoever for

extending the right of legislative initiative into other fields, as some MEPs are demanding, unless and until Parliament exploits the rights it already has. And only once electoral reform has rendered the Parliament authentically European should MEPs be granted the right to vote on the federal part of the Union's revenue.

Capacity to act

More generally, the Union needs its constitutional treaties to be less prohibitive and more permissive, enhancing the capacity of all its institutions to act decisively. Qualified majority voting in the Council and co-decision between Council and Parliament should be extended across the board, including to taxation. Use of the *passerelle* clauses of Lisbon could achieve this in most cases without further treaty amendment.¹⁰ But four special instances would require targeted treaty change. These concern decisions on own resources, on the Multiannual Financial Framework, on the 'flexibility clause', and on the deployment of Article 7 in cases of breaches of the rule of law.¹¹ The expert group should be asked to advise on all these amendments and elucidate their consequences for the government of the Union.

The reflection group should also be tasked with examining the effects of enhanced cooperation among a group of integration-minded states if the current 'last resort' conditionality were to be removed by treaty amendment.¹² Constructive abstention should also be encouraged, including at the level of the European Council.¹³ A variety of ways can be envisaged for the modification of the rule for treaty revision so as to liberate the Union from its present constitutional straitjacket of rigid unanimity. In particular, a threshold should be introduced to allow certain future treaty amendments to enter into force before all member states complete their ratification.¹⁴

Special attention must be paid to how the Commission is to wield its enhanced executive powers, subject to recall by the legislature. If the more complex, differentiated, wider Europe is to hold together, the centre in Brussels must begin to act and look like a federal government. A prerequisite for these transformations is to reduce the size of the college of Commissioners at the time of its next composition in 2024 — just as the Treaty of Lisbon prescribes.¹⁵ A smaller Commission will be both more talented and less ambassadorial, enjoying greater supranational autonomy. Of all the items crowding the Union's agenda achievable under the terms of the Lisbon treaty, this is the most pressing.

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The search for von der Leyen's successor should be starting soon. Neither COVID-19 nor the Conference must be allowed to delay or divert the institutions from restoring a sense of purpose to the Union now that the Brits have gone.

¹ Art. 1 Treaty on European Union (TEU).

² See also Wachowiak, Jannike and Fabian Zuleeg (2021), "[The EU-UK relationship: It is what it is](#)", Brussels: European Policy Centre.

³ See Pilati, Marta and Frederico Mollet (2021), "[Steady as she goes: Key takeaways from the Commission's new fiscal guidance](#)", Brussels: European Policy Centre.

⁴ See also Guagliardo, Simona (2021), "[Turning a new vision into reality: What next for the EU's role in health?](#)", Brussels: European Policy Centre.

⁵ See also Cameron, Fraser (2021), "[Give Lisbon a chance: How to improve EU foreign policy](#)", Brussels: European Policy Centre.

⁶ See Greubel, Johannes (2021), "[The Conference on the Future of Europe: Comparing the Joint Declaration to institutions' expectations](#)", Brussels: European Policy Centre; Emmanouilidis, Janis E. and Corina Stratulat (2021), "[The Conference on the Future of Europe: Mind the gaps!](#)", Brussels: European Policy Centre.

⁷ Declaration 11 to the Final Act of the Lisbon IGC.

⁸ Art.48(3) TEU.

⁹ See Duff, Andrew (2019), "[The European Union makes a new push for democracy](#)", Brussels: European Policy Centre.

¹⁰ The general *passerelle* clause is Art.48(6) TEU.

¹¹ Art.353 TFEU.

¹² Art.20(2) TEU.

¹³ Art.31(1) TEU.

¹⁴ Art.48(5) TEU.

¹⁵ Art.17(5) TEU and Declaration 10.

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