THE FUTURE OF THE EU27

Federico Fabbrini[*]

This article examines the future of the European Union (EU) beyond Brexit, contrasting the unity of the EU27 in the Brexit negotiations with the disunity that emerged among the EU27 in the management of the euro-crisis, migration crisis and rule of law crisis. The article overviews the efforts to restore a European consensus that have been made in the context of the debate on the future of Europe, but underlines how the emergence of strong regional alliances – and the political polarization resulting from the recent European Parliament elections – have challenged this rhetorical exercise. As such, the article considers alternative scenarios for the future of the EU27 and suggests that, while the strength of path dependency cannot be underestimated, the EU may be moving towards greater differentiation, if not outright decoupling among its Member States.

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[*]   Full Professor of EU Law at the School of Law & Government of Dublin City University (DCU) and Founding Director of the DCU Brexit Institute.

I. Introduction

One of the most remarkable aspects of Brexit – the decision of the United Kingdom (UK) to withdraw from the European Union (EU) – has been the degree to which the 27 other Member States of the EU (EU27) have been united in their dealings with the UK. Contrary to the expectations of some, the EU27 have never divided during the Brexit negotiations. With the marginal exception of Italy's legal challenge against the EU Council decision to relocate the European Medical Agency from London to Amsterdam, rather than Milan[1] – the EU Member States have remained consistently united, delegating all Brexit talks to the ad hoc European Commission Article 50 Task Force, and backing the work of the Chief Negotiator Michel Barnier.[2] Yet, one would be mistaken to believe that the unity of the EU27 vis-à-vis the UK reflects a generally high level of harmony within the EU. In fact, during the two-year Brexit negotiations, tensions and contrasts among the EU27 have actually increased in a number of policy areas. Besides Brexit, the EU has recently faced several other important crises – from the euro-crisis, to the migration crisis, and the rule of law crisis – which have tested the integrity of the Union, and raised urgent questions on the future of Europe.

The purpose of this article is to explore the future of Europe beyond Brexit, examining the centrifugal pressures that recent crises have exerted on the EU27 and reflecting on the challenges that this poses for the future of European integration. In particular, the article focuses on the deep wounds that the euro-crisis, the migration crisis and the rule of law crisis have left in the fabric of the Union, highlighting growing divisions among the EU27 in

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[1]   See Regulation (EU) 2018/1718 of the European Parliament and of the Council of 14 November 2018 amending Regulation (EC) No 726/2004 as regards the location of the seat of the European Medicines OJ [2018] L291/3.

[2]   See European Council Conclusions, EUCO XT 20015/18, 25 November 2018, §3 (thanking 'Michel Barnier for his tireless efforts as the Union's chief negotiator and for maintaining the unity among EU27 Member States throughout the [Brexit] negotiations').

the key fields of Economic & Monetary Union (EMU), migration, and respect for EU foundational values. Moreover, the article evaluates the degree to which such cleavages have been overcome in the context of the debate on the future of Europe. In fact, shortly after the June 2016 Brexit referendum, the EU27 started a process of self-reflection designed to build consensus on a common vision of the future ahead. Nevertheless, as this article underlines, this rhetorical reaction has not been able to bridge fractures among the EU27 – a fact confirmed by the growing tendency of states to caucus in regional coalitions pushing conflicting policy agendas, as well as by the increasing polarization of citizens' views as reflected in the recent elections for the European Parliament (EP) on 23-26 May 2019.

This article considers several alternative scenarios for the EU's future. As the article points out, the impact of path dependency should certainly not be underestimated, meaning that a scenario in which the EU muddles through in its current format and resists all difficulties cannot be ruled out. Nevertheless, the article indicates that growing differentiation among the Member States – if not outright decoupling, with the creation to the side of the existing EU of a new, smaller union including only a minority of Member States – are possibilities which should not be excluded either. While the article does not seek to predict the future, which of course remains uncertain, it endeavors to conceptualize three alternative models of constitutional development in the EU, defining their features and highlighting the drivers of both continuity and change in the process of European integration. As such, the article is structured as follows. Section 2 examines three key crises recently challenging the EU – the euro-crisis, the migration crisis, and the rule of law crisis – and explains their centrifugal consequences on European unity. Section 3 looks at the efforts since Brexit to strengthen EU unity, underlining how the rise of regional alliances and political polarization has exposed continuing divisions within the EU27. Section 4 considers possible alternative scenarios for the future of Europe, and discusses path dependency, greater differentiation, or outright decoupling as three options. Section 5, finally, briefly concludes.

II. CRISES

Besides Brexit, the EU has recently been facing a plurality of other crises, which have tested the unity of EU27. In fact, since the start of the Brexit negotiations, tensions among the Member States have possibly even increased on issues such as the governance of EMU, the management of migration, and the respect for the foundational values of the EU. In particular, the euro-crisis and its legacy have caused a cleavage between Northern and Southern Member States; the migration crisis one between Western and Eastern Member States; and the rule of law crisis one between New and Old Member States. Hence, the united face of the EU vis-à-vis the UK effectively concealed a house divided, with multiple centrifugal pressures challenging the integrity of the Union.

1. *Euro-crisis*

The euro-crisis hit the EU well before Brexit. In fact, by the time of the Brexit referendum, the worst of the crisis had already been overcome: while the EU27 had reformed the architecture of European economic governance to tighten budgetary constraints and create mechanisms to financially support states,[3] the European Central Bank (ECB) had taken decisive steps to save the Eurozone.[4] Nevertheless, the crisis had a lasting legacy, tainting inter-state relations throughout the Brexit negotiations, and hampering efforts to deepen EMU, which to this day remains incomplete.[5] To begin with, from an economic viewpoint, the crisis left a trail of divergence in the macro-economic performance of Member States, and EMU remains fragile due to low growth and high unemployment in some countries.[6] This was evident in the case of Greece, which in 2018 ended with much fanfare its third bailout program but as part of the post-program surveillance framework was

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[3]   See further Federico Fabbrini, *Economic Governance in Europe* (Oxford University Press 2016).

[4]   See ECB President Mario Draghi, speech at the Global Investment Conference, London, 26 July 2012 (stating that the ECB will 'do whatever it takes to save the euro').

[5]   See Henrik Enderlein et al, 'Repair and Prepare: Growth and the Euro after Brexit', Bertelsmann Stiftung & Jacques Delors Institut 2016.

[6]   Kerstin Bernoth et al, 'Happy Birthday? The euro at 20', study commissioned by the European Parliament Economic Affairs Committee, January 2019, 6.

then forced by the Eurogroup to commit to maintaining 'a primary surplus of 2.2 per cent of GDP on average in the period from 2023 to 2060'[7] – a target which most observers regarded as impossible to meet.[8]

Moreover, from a political viewpoint, the crisis fueled recriminations and animosity between Member States.[9] In fact, perceived unfairness in the architecture of EMU propelled forward political forces calling more explicitly for exiting the Eurozone – particularly in Italy, the third largest Eurozone economy. Following parliamentary elections in March 2018, the two parties which had emerged victorious – the *Lega* and the *Movimento 5 Stelle* – joined in a sovereigntist coalition with an explicit plan to abandon the Eurozone.[10] Only the veto of the Italian President of the Republic forced the coalition parties to backtrack.[11] Yet the new Italian government clearly embraced a confrontational stand against the EU: in presenting its 2019 draft budget bill to the Commission pursuant to the procedure foreseen by the European semester, the government openly admitted that it was violating the EU deficit rules set out in the Stability and Growth Pact, which led the Commission to invoke for the first time ever its power to request a redrafting

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[7]   Eurogroup statement on Greece, 22 June 2018.

[8]   See Jeromin Zettelmeyer et al., 'How to Solve the Greek Debt Problem' Peterson Institute for International Economics Policy Brief 10/2018.

[9]   See also French President Emmanuel Macron, speech, Athens, 7 September 2017 (defining the euro-crisis as 'une forme de guerre civile interne [a form of internal civil war]') (my translation).

[10]   See Alessandro Trocino, 'M5S-Lega, il contratto di governo: uscita dall'euro e cancellazione del debito', *Il Corriere della Sera*, 15 May 2018 (reporting a leaked draft of the coalition agreement between the League and the Movimento 5 Stelle including a plan to exit the Eurozone).

[11]   See Italian President Sergio Mattarella, speech, Rome, 27 May 2018 (opposing the appointment as Minister of the Economy of a person 'che potrebbe provocare, probabilmente, o, addirittura, inevitabilmente, la fuoruscita dell'Italia dall'euro [who could provoke, probably or even inevitably, the exit of Italy from the euro') (my translation).

of the budget bill,[12] and to activate the excessive deficit procedure (EDP).[13] Mostly under the pressure of the financial markets, the Italian Government temporarily compromised and agreed to revise its budget bill by postponing some expenditure to reduce the deficit.[14] But this turned out just to be a stopgap and in June 2019 the Commission was again forced to threaten EDP sanctions against Italy for violating the debt criteria of the Stability & Growth Pact.[15]

Given the decreasing trust between states, it is unsurprising that major difficulties have been encountered on the road towards completing EMU, including by setting up a fiscal capacity and the last pillar of banking union through a common European deposit insurance scheme (EDIS).[16] In fact, while the efforts of French President Emmanuel Macron favored a convergence between France and Germany, which jointly proposed in November 2018 the establishment of a Eurozone budget with a stabilization function,[17] a coalition of Northern countries known as the Hanseatic League, which groups both Eurozone and non-Eurozone states, came out to rally against the Franco-German proposal, calling instead for a strengthening of the European Stability Mechanism (ESM)[18] as a 'police authority' on the

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[12] European Commission opinion of 23 October 2018 on the draft budgetary plan of Italy and requesting Italy to submit a revised budgetary plan, 23 October 2018, C(2018) 7510 final.

[13] European Commission report on Italy prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union, 21 November 2018, COM(2018) 809 final.

[14] European Commission letter to the Government of Italy, 19 December 2018, Ares(2018) 7351969 (welcoming amendments to the Italian draft budget law to assuage the Commission's fiscal concerns).

[15] See European Commission report on Italy prepared in accordance with Article 126(3) of the Treaty on the Functioning of the European Union, 5 June 2019, COM(2019) 532 final.

[16] See ECB President Mario Draghi, speech at the session of the plenary of the European Parliament to mark the 20th anniversary of the euro in Strasbourg, 15 January 2019 (stating that 'EMU remains incomplete').

[17] See Franco-German Proposal on the architecture of a Eurozone Budget within the Framework of the European Union, 16 November 2018.

[18] See Treaty Establishing the European Stability Mechanism, 25 March 2011.

Member States' budgets.[19] In December 2018, the Eurogroup in an inclusive format (that is also open to non-Eurozone Member States) eventually agreed on a package deal of reforms,[20] which the Euro Summit endorsed,[21] including boosting the ESM's authority and the creation of a limited Eurozone budget. However, the EU27 reached a minimalist consensus[22] and in June 2019 they unveiled a budgetary instrument only for competitiveness and convergence, but not stabilization[23] and failed to make progress on the EDIS,[24] suggesting that the North-South ideological divide between risk-reduction vs. risk-sharing remains a stumbling block towards completing EMU.[25]

2. *Migration crisis*

Like the euro-crisis, the migration crisis had peaked by the time of the Brexit referendum. Although fears of uncontrolled migration into the UK were cynically exploited by the Brexiteers in the referendum campaign, by 2016 the EU had succeeded in reducing the inflow of people moving into the Schengen free-movement zone, at the cost of outsourcing to third countries (with dubious human rights records) the task of controlling the EU's external borders.[26] Nevertheless, the management of the migration crisis has remained a point of contention among the Member States during the time of the Brexit negotiations and tensions over the functioning of the European

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[19]   Shared views from the Finance Minister of Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands and Sweden, 6 March 2018.

[20]   Eurogroup report to Leaders on EMU Deepening, 4 December 2018, PRESS 738/18.

[21]   Euro Summit statement, 14 December 2018, PRESS 790/18.

[22]   Eurogroup President Mario Centeno, remarks, 13 June 2019.

[23]   Council of the EU, Term sheet on the Budgetary Instrument for Convergence and Competitiveness, 14 June 2019.

[24]   See also European Commission Communication Deepening Europe's Economic and Monetary Union: Taking stock four years after the Five Presidents' Report – European Commission's contribution to the Euro Summit on 21 June 2019, 12 June 2019, COM(2019) 279 final, 10 (stating, with regard to EDIS that 'regrettably, the impasse that characterized the past several years has persisted and no tangible progress has been made').

[25]   See further Federico Fabbrini and Marco Ventoruzzo (eds), *Research Handbook on European Economic Law* (Elgar 2019).

[26]   See EU-Turkey statement, 18 March 2016, Press release 144/16.

Common Asylum System (ECAS) have in fact increased.[27] The EU migration policy had been developed in good time, but the Dublin regulation,[28] which identified the Member State responsible for processing asylum applications of third-country nationals, was particularly ill-designed to cope with a sudden surge of asylum applications. Yet, the EU27 were dramatically divided on the issue of how to handle this crisis, with Central and Eastern European Member States refusing any form of burden sharing vis-à-vis the coastal Member States, which had been the main points of entry for immigrants.

In September 2015, under the pressure of events, the Council adopted by majority a decision establishing a temporary relocation mechanism to the benefit of Greece and Italy, which foresaw the relocation of 160,000 asylum seekers to the other EU Member States pro-quota, with the aim of relieving Greece and Italy of the increasing workload resulting from the sudden inflow of migrants from the Middle East and North Africa.[29] Although this number was a drop in the ocean compared to the almost 4 million migrants who had entered the EU in 2015, Hungary and Slovakia challenged the Council decision in the European Court of Justice (ECJ). And although in September 2017 the ECJ ruled that the Council had acted legally in adopting the decision by majority,[30] the Visegrad countries (Poland, Hungary, Czechia and Slovakia) bluntly continued to refuse applying the Council decision. As the Commission had to acknowledge in June 2017 in its periodic report on the

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[27] See generally Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (Oxford University Press 2015).

[28] See Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, OJ [2013] L180/31.

[29] See Council Decision (EU) 2015/1523 of 14 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and of Greece, OJ [2015] L239/146 and Council Decision (EU) 2015/1601 of 22 September 2015 establishing provisional measures in the area of international protection for the benefit of Italy and Greece OJ [2015] L248/80.

[30] See Case C-643/15 and C-647/15 *Slovakia & Hungary v. Council of the EU*, ECLI:EU:C:2017:631

relocation system, progress in the implementation of the measure had been 'insufficient'.[31]

In fact, disagreement among the Member States within the Council paralyzed any efforts at reforming the ECAS and, despite the encouragement of the European Council,[32] the Commission's proposals to overhaul the system[33] – including by introducing a permanent relocation mechanism to increase its fairness – have gone nowhere. Furthermore, as in the case of EMU, the legacy of the crisis combined with the inequities of the system have fueled political movements which have explicitly called for drastic responses, including fully suspending Schengen and reintroducing national borders.[34] Ironically, this has happened not only in Northern Member States like Austria and Denmark, but also in coastline countries such as Italy and Spain, where xenophobic right-wing parties have gained momentum in national and regional elections. Nonetheless, the cleavage on the migration issue has mostly run on an East-West divide and the ideological conflict between EU Member States on how Europe should handle the migration crisis soured to the point that Luxembourg Minister of the Interior Jean Asselborn even suggested that Hungary should be expelled from the EU for the way it treats migrants.[35]

3. Rule of law crisis

Compared to the euro-crisis and the migration crisis, the third crisis got much worse in the midst of the Brexit negotiations. Even if the first signs of backsliding regarding respect for the rule of law in a number of EU Member States in Central and Eastern Europe were evident from the early 2010s, in the years after the UK voted to leave the EU the phenomenon known as the

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[31]   See European Commission Thirteen report on relocation and resettlement, 13 June 2017, COM(2017) 330 final.

[32]   See European Council conclusions 28 June 2018, EUCO 9/18, §12 (calling for a 'speedy solution to the whole package' of reforms).

[33]   See European Commission communication, A European Agenda on Migration, 13 May 2015, COM(2015) 240 final.

[34]   See European Commission communication, Preserving and strengthening Schengen, 27 September 2017, COM(2017) 570 final.

[35]   Madeline Chambers & Marton Dunai, 'EU should expel Hungary for mistreating migrants, Luxembourg minister says', *Reuters*, 13 September 2016.

rule of law crisis both deepened and widened.[36] Although Article 2 TEU proclaims that the EU 'is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities' several EU Member States, particularly among those that joined the EU in the 2004/7 enlargements, have experienced legal and political developments that have challenged basic constitutional principles such as the independence of the judiciary, separation of powers, and the fairness of the electoral process.[37] Such developments constitute a major threat to the integrity of the EU. Yet Hungarian Prime Minister Viktor Orbán proudly defended this path, explicitly arguing that his country was intent on establishing an authoritarian democracy.[38] The Hungarian example has increasingly served as a template for other new Member States which had joined the EU in the 2004/7 enlargements, notably Poland and Romania, but also Slovakia and Malta.[39]

Although arguably with excessive delay, the EU institutions have started to take action against this phenomenon with the support of several other Member States and the main European political parties. In particular, as part of the preparatory work for the next multi-annual EU budget, the Commission proposed to introduce a mechanism to freeze structural funds for EU Member States which failed to respect the rule of law.[40] In addition, in December 2017 the Commission activated the Article 7 TEU procedure against Poland, calling on the Council to determine that the country faced a

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[36]   See generally Andras Jakab and Dimity Kochenov (eds.), *The Enforcement of EU Law and Values* (Oxford University Press 2017).

[37]   See Laurent Pech and Kim Lane Scheppele, 'Illiberalism Within: Rule of Law Backsliding in the EU' (2017) 19 Cambridge Yearbook of European Legal Studies 3.

[38]   Hungarian Prime Minister Viktor Orban, speech at the XXV. Bálványos Free Summer University and Youth Camp, 26 July 2014 (stating that 'the new state that we are building is an illiberal state, a non-liberal state').

[39]   See European Parliament resolution of 28 March 2019 on the situation of the rule of law and the fight against corruption in the EU, specifically in Malta and Slovakia, P8_TA(2019)0328.

[40]   European Commission proposal for a regulation of the European Parliament and the Council on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States, 2 May 2018, COM(2018) 324 final.

clear risk of a serious breach of the rule of law.[41] And in September 2018 the EP approved a resolution to initiate the same process against Hungary.[42] Nevertheless, limited progress has been made by the Council in considering whether the situation in Poland and Hungary require an EU determination that corrective action is necessary. In fact, in the first semester of 2019, when the Presidency of the Council was held by Romania – a Member State which had been strongly criticized by the EP for its rule of law record and limited efforts to fight corruption[43] – the discussion of the Article 7 procedure against Poland and Hungary was even removed from the agenda of the General Affairs Council meeting.[44]

In this context, the ECJ was also involved in the matter. Seized through a preliminary reference by the Irish High Court, the ECJ held that backsliding regarding respect for the rule of law – if this resulted in the reduction of the due process rights of a convicted person, to be assessed cases by case – could justify a judicial decision not to execute a European Arrest Warrant toward Poland.[45] In addition, ruling in an infringement proceeding brought by the Commission, the ECJ enjoyed Poland from giving effect to a highly controversial law which altered the composition of the state Supreme Court.[46] Yet, while the ECJ has so far managed to command respect, its

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[41]   European Commission reasoned proposal in accordance with Article 7(1) Treaty on European Union for a Council Decision on the determination of a clear risk of a serious breach by the Republic of Poland of the rule of law, 20 December 2017, COM(2017) 835 final.

[42]   European Parliament resolution of 12 September 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, P8_TA(2018)0340.

[43]   European Parliament resolution of 13 November 2018 on the rule of law in Romania, P8_TA(2018)0446.

[44]   See General Affairs Council, Outcome of meeting, 8 January 2019, Doc 5039/19.

[45]   See Case C-216/18 PPU, *LM*, ECLI:EU:C:2018:586.

[46]   Case C-619/18 R, *Commission v. Poland*, Order of the Vice-President of the Court, 19 October 2018, ECLI:EU:C:2018:910 (ordering the immediate suspension of the application of the provisions of national legislation relating to the lowering of the retirement age for Polish Supreme Court judges); Case C-619/18 R, *Commission v. Poland*, Opinion of AG Tanchev, 11 April 2019, ECLI:EU:C:2019:325; Case C-

ability to halt the erosion of the rule of law based system at the national level is likely to face challenges in the long term, given the absence of EU coercive power and the growing rise of populism across Europe. In fact, while the rule of law crisis has mostly polarized Old vs. New Member States, the formation of sovereigntist, Euro-skeptic government coalitions in an ever greater number of EU Member States – including Austria and Italy – makes it unlikely the EU intergovernmental institutions will mobilize to respond to domestic threats to the rule of law in forms analogous to what was done at the time of the Haider affair,[47] casting dark shadows on the future functioning of the EU.

III. REACTIONS AND FRACTURES

Facing the first case of disintegration with a Member State intent on leaving the EU, the EU27 have since Brexit endeavored to reaffirm European unity with a number of initiatives designed to build consensus on a common way forward. However, this rhetorical exercise has run afoul of the reality of actions taken by groups of Member States caucusing in regional blocs: this has exposed conflicting strategies to deal with the EU's multiple crises and increasingly irreconcilable visions on the future of Europe. In fact, the cleavages cutting through the EU27 were ultimately reflected in the May 2019 EP elections, which revealed growing polarization among EU Member States and citizens.

1. The Debate on the Future of Europe and the Leaders' Agenda

While the EU27 had already reaffirmed their unity in the face of Brexit in September 2016,[48] the process of reflection on the future of Europe was formally started in connection with both the 60th anniversary of the Treaties of Rome and the UK's notification of its intention to withdraw from the EU.

619/18 R, *Commission v. Poland*, judgment of the Court, 24 June 2019 (finding the Polish law in breach of EU law).

[47]   Wojciech Sadurski, 'Adding Bite to Bark: The Story of Article 7, E.U. Enlargement, and Jörg Haider' (2010) 16 Columbia Journal of European Law 385.

[48]   Bratislava Declaration, 16 September 2016.

As described elsewhere,[49] in February 2017 the EP adopted a package of resolutions outlining its vision for the future of the EU,[50] in March 2017 the European Commission published a whitepaper on the future of Europe,[51] and in the same month the leaders of the EU institutions and Member States signed a declaration in Rome pledging their support for European integration and defining the 'Union [a]s undivided and indivisible'.[52] Along the same lines, the European Commission promoted a broad public deliberation on the future of Europe,[53] and the President of the European Commission Jean-Claude Juncker used his final state of the union addresses before the EP in 2017 and 2018 to call for a stronger, more united, and more democratic Union,[54] and to make the case for European sovereignty as a vision for the future.[55]

However, given the strategic nature of the challenges faced by the EU it has mainly been within the European Council – as the institution responsible for defining the general political direction of the EU – that efforts were made to address the EU's crises and chart a united way forward at 27. In October 2017, in particular, the President of the European Council, Donald Tusk launched a new working method known as the 'Leaders Agenda', which foresaw a more structured conversation among national leaders around thematic issues – including migration, trade, internal and external security, and economic affairs – with the aim of 'resolving deadlocks or finding solutions to key

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49   Federico Fabbrini (ed), *The Law and Politics of Brexit* (Oxford University Press 2017).

50   European Parliament resolution of 16 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty, P8_TA(2017)0049 and European Parliament resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union, P8_TA(2017)0048

51   European Commission, whitepaper 'The Future of Europe', 1 March 2017.

52   Rome Declaration of the leaders of 27 Member States and of the European Council, the European Parliament and the European Commission, 25 March 2017.

53   See European Commission, Citizens' Dialogue and Citizens' Consultations: Key conclusions, 30 April 2019.

54   European Commission President Jean-Claude Juncker, State of the Union Address 2017, Brussels, 13 September 2017.

55   European Commission President Jean-Claude Juncker, State of the Union Address 2018, Brussels, 12 September 2018.

political dossiers'.[56] In November 2017, the EU27 gathered in Goteborg, Sweden, to proclaim the European Pillar of Social Rights, a set of 20 non-binding principles designed to reaffirm the EU commitment to a social Europe. Moreover, under the leadership of the President of the EP, Antonio Tajani, the heads of state and government of the EU27 were invited to present their vision of the future of Europe in front of the EP plenary in the build-up to the EP elections. Starting with Irish Taoiseach Leo Varadkar in January 2018,[57] the 16 months before the EP election recess saw the Prime Ministers and Presidents of 20 Member States present to the EP their national priorities and programs for the future of Europe.[58]

This process of reflection culminated in a special summit held on Europe Day, 9 May 2019, in Sibiu, Romania where EU leaders approved a declaration on the future of Europe.[59] Days before the EP elections, the Presidents of the EU political institutions and the heads of state and government of the EU27 reaffirmed their conviction that 'united, we are stronger in this increasingly unsettled and challenging world'[60] and spelled out ten commitments 'of a new Union at 27 ready to embrace its future as one'.[61] The first among these

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[56] European Council, Leaders Agenda, 17 October 2017.

[57] Irish PM Leo Varadkar, speech Strasbourg, 17 January 2018.

[58] Croatian PM Andrej Plankovic, speech Strasbourg 6 February 2018; Portuguese PM Antonio Costa, speech Strasbourg, 14 March 2018; French President Emmanuel Macron, speech Strasbourg, 17 April 2018; Belgian PM Charles Michel, speech Strasbourg, 3 May 2018; Luxembourg PM Xavier Bettel, speech Strasbourg, 30 May 2018; Dutch PM Mark Rutte, speech Strasbourg, 13 June 2018; Polish PM Mateusz Morawiecki, speech Strasbourg, 4 July 2018; Greek PM Alexis Tsipras, speech Strasbourg, 11 September 2018; Estonian PM Juri Ratas, speech Strasbourg, 3 October 2018; Romanian President Klaus Iohannis, speech Strasbourg, 23 October 2018; German Chancellor Angela Merkel, speech Strasbourg, 13 November 2018; Danish PM Lars Lokke Rasmussen, speech Strasbourg, 28 November 2018; Cypriot President Nicos Anastasiades, speech Strasbourg, 12 December 2018; Spanish PM Pedro Sanchez, speech Strasbourg, 16 January 2019; Finnish PM Juha Sipilä, speech Strasbourg, 31 January 2019; Italian PM Giuseppe Conte, speech Strasbourg, 12 February 2019, Slovak PM Peter Pellegrini, speech Strasbourg 7 March 2019; Swedish PM Stefan Lofven, speech Strasbourg, 3 April 2019; Latvian PM Krišjānis Kariņš, speech Strasbourg, 17 April 2019.

[59] Sibiu Declaration, 9 May 2019.

[60] Ibid.

[61] Ibid.

commitments was a pledge, echoing the Declaration on the Reunification of Europe signed in Warsaw on 1 May 2019 by the 13 new Member States that had joined the EU since 2004,[62] to 'defend one Europe – from East to West, from North to South',[63] honoring the 30th anniversary of the fall of the Iron Curtain and the 15th anniversary of the major enlargement into Central and Eastern Europe. Furthermore, on the same day, the heads of state of 21 Member States (those with an elected president rather than a monarch) signed a joint call for Europe ahead of the EP elections, which stated that 'unity is essential and that we want to continue Europe as a Union'.[64]

2. Regional Caucuses and National Initiatives

Despite repeated rhetorical calls to unity, however, the EU has recently witnessed a growing tendency among Member States to caucus in regional groupings, pushing conflicting policy agendas. In particular, besides well-known formats such as the Benelux (Belgium, the Netherlands and Luxemburg) or the Baltics (Estonia, Latvia, and Lithuania), the Visegrad group (bringing together Poland, Hungary, Slovakia and Czechia) emerged as a powerful lobby to resist any form of burden-sharing in the management of the migration crisis.[65] In response, seven Southern countries (Portugal, Spain, France, Italy, Malta, Greece and Cyprus) established in 2016 the Euro-Med group, which met recurrently to call instead for greater EU solidarity.[66] At the same time, under the leadership of Austria, ten Balkan states – which included both EU and non-EU members (Bulgaria, Croatia, Slovenia, Albania, Bosnia, Kosovo, Macedonia, Montenegro and Serbia) but excluded Greece – met informally in 2016 to discuss how to halt migration via the South-Eastern European route. And, as mentioned, at the behest of the Netherlands, a group known as the Hanseatic League – which included both Eurozone and non-Eurozone members (Denmark, Finland, Sweden, Ireland,

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[62]   See Warsaw Declaration on the Reunification of Europe, 1 May 2019.

[63]   Sibiu Declaration, 9 May 2019.

[64]   Joint Call for Europe ahead of the European Parliament elections in May 2019, 9 May 2019.

[65]   See http://www.visegradgroup.eu/.

[66]   See https://www.southeusummit.com/about/.

Estonia, Latvia, Lithuania, as well as at times Czechia and Slovakia) – coalesced to resist EMU reforms.

In the context of this increasing regional fragmentation, an important counter-point was offered by the re-starting of the Franco-German integration engine, thanks to the effort of the new French President Emmanuel Macron. In January 2018, at the occasion of the 55th anniversary of the 1963 Elysee Treaty, France and Germany committed to an agenda of growing political, economic and social convergence,[67] and in June 2018 they concluded in Meseberg a declaration on the future of Europe with a specific roadmap to deepen integration in the fields of security and defense, migration and economic policy, including completing EMU.[68] On this basis, in November 2018 the Minister of Finance of the two countries brought forward specific proposals for a Eurozone budget,[69] which were followed by common positions in the field of digital tax[70] and competition policy.[71] And while the Assemblée Nationale and the Bundestag resolved to establish a joint Franco-German Parliamentary Assembly, designed to 'draft propositions on all questions of interest for franco-german relations with the aim to go towards a convergence of French and German law,'[72] renewed Franco-German cooperation reached its climax with the conclusion in January 2019 of the Treaty of Aachen, which paved the way for ever greater socio-economic and cross-border integration between the two countries as a way to push Europe forward.[73]

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[67]   See Déclaration conjointe à l'occasion du 55e anniversaire de la signature du Traité sur la coopération franco-allemand du 22 janvier 1963, 22 January 2018.

[68]   Franco-German Declaration, Meseberg, 19 June 2018.

[69]   See n 17.

[70]   Franco-German Joint Declaration on the taxation of digital companies and minimum taxation, 4 December 2018.

[71]   Franco-German Manifesto for a European industrial policy fit for the 21st century, 19 February 2019.

[72]   Accord parlementaire franco-allemand, 25 March 2019, Art. 6 ('formuler des propositions sur toute question intéressant les relations franco-allemandes en vue de tendre vers une convergence des droits français et allemande')(my translation).

[73]   Traité entre la République française et la République fédérale d'Allemagne sur la coopération et l'intégration franco-allemand, Aachen [hereinafter: Treaty of Aachen], 22 January 2019.

In fact, since his election in May 2017, French President Macron has emerged as the leading figure advancing an ambitious vision for the future of Europe. In particular, in his speech at Sorbonne University in September 2017, he made a passionate case in favor of true European sovereignty as a way for the EU to face the challenges of the new century,[74] a point he subsequently repeated in May 2018, when receiving the Prix Charlemagne,[75] and in November 2018, when speaking in the Bundestag on the occasion of the 100th anniversary of the end of World War I.[76] Yet, significantly for an initiative which was officially entitled 'For a sovereign, united, democratic Europe', President Macron admitted that it was unlikely that the EU27 could move in this direction together and clarified that if no state should be excluded, 'no country should be able to block those who want to move further and faster'.[77] In fact, Macron's vision, while supported by some,[78] has come to represent the target of public attacks by self-proclaimed populist leaders – including Hungarian Prime Minister Viktor Orban, Italian Deputy Prime Minister Matteo Salvini, and Polish leader Jarosław Kaczyński – who have advanced an alternative, sovereigntist plan for the future of Europe.[79]

3. European Parliament Elections

The clash between these conflicting visions of the future of Europe was vividly reflected in the elections for the 9th EP, which took place between 23 and 26 May 2019.[80] In the second largest democratic exercise in the world (after India) pro and anti-European parties fought explicitly on alternative

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[74]   French President Emmanuel Macron, speech at Universitè La Sorbonne 'Pour une Europe souveraine, unie, démocratique', 26 September 2017.

[75]   French President Emmanuel Macron, speech at the award of the Prix Charlemagne, Aachen, 11 May 2018.

[76]   French President Emmanuel Macron, speech at the Bundestag on the commemoration of the 100th anniversary of the end of World War I, Berlin, 18 November 2018.

[77]   Macron (n 74) ('aucun pays ne doit pouvoir bloquer ceux qui veulent avancer plus vite ou plus loin')(my translation).

[78]   See German Minister of Finance Olaf Scholz, speech Humboldt Universität, Berlin, 28 November 2018.

[79]   See Barbara Fiammeri, 'Salvini da Kaczyński: al via il 'progetto' sovranista in UE', *Il Sole 24 Ore*, 9 January 2019.

[80]   See 2019 European elections result, available at: https://www.election-results.eu/

visions of Europe. While French President Macron took up the leadership of the pro-European forces, addressing an open letter to all European citizens (written in the 22 official languages of the EU) *pour un renaissance européenne*,[81] sovereigntist forces made clear their ambition to take control of the EU machine and fundamentally weaken the system from within. In fact, during spring 2019 tensions between pro-European and Euro-skeptic forces soured to the point that they spilled over from the political to the diplomatic realm: In an unprecedented move, France recalled its ambassador from Italy after the Italian Deputy Prime Minister Luigi di Maio, leader of the *Movimento 5 Stelle*, met the self-proclaimed mastermind of the *Gillet Jaunes* movement, which had openly suggested staging a military *coup d'état* against French President Macron.[82]

The EP elections,[83] in which the UK also eventually participated, constituted a political watershed, confirming a sentiment that had been captured by the Spring 2019 Eurobarometer.[84] To begin with, for the first time since 1979, the two political families which had traditionally dominated the EP – the European People's Party (EPP) and the Socialists & Democrats (S&D) – lost a majority of 751 EP seats.[85] By contrast, the elections resulted in impressive gains for liberal democratic and environmentalist parties – which increased their EP seats, respectively, from 67 to 105, and from 50 to 69 – as well as by sovereigntist and populist forces. While pro-European parties managed overall to cling on to control of the EU institutions – mostly thanks to the sudden rise in electoral participation, which increased almost 10 per cent compared to 2014 – the vote strengthened the anti-European factions within

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[81]   French President Emmanuel Macron, Letter, 4 March 2019, available at: https://www.elysee.fr/es/emmanuel-macron/2019/03/04/pour-une-renaissance-europeenne.fr

[82]   See 'La France rappelle son ambassadeur en Italie à la suite d'« attaques sans précédent »', *Le Monde*, 7 February 2019.

[83]   See for all data 2019 European elections results, available at: https://election-results.eu/

[84]   Eurobarometer Spring 2019, 25 April 2019.

[85]   Corinne Deloy, 'La progression des populistes est contenue par la hausse des libéraux et des écologistes aux élections européennes', Fondation Robert Schuman, June 2019.

the EP, with conservatives, populists and nationalist parties now holding 63, 43 and 73 EP seats apiece.

Nevertheless, the election also exposed relevant national variation. In particular, in Hungary and Poland the governing right-wing parties, *Fidesz* and *PiS*, topped the polls with 53 per cent and 45 per cent of the vote respectively, while in Italy the *Lega*, a nationalist party lead by fire-brand Deputy Prime Minister Matteo Salvini won the national vote with 34 per cent support and 28 EP seats. By contrast, S&D parties performed well in Spain, Portugal and the Netherlands, and the EPP won the elections in Ireland, Greece and Germany, where *Die Grünen* (the Greens) emerged as the biggest electoral surprise, coming in second place with 20 per cent of the vote. Moreover, while in France President Macron's movement trailed Marine Le Pen's *Rassamblement nationale* (National Rally), pro-European forces overall secured a higher number of EP seats, thanks again to a surprising performance by environmentalist parties, which secured 13 per cent of the vote.

The fragmentation in the composition of the 10th EP, combined with the ideological and regional cleavages reflected in the elections, complicated the start of the new institutional cycle, with the appointment of new EU leaders and the adoption of a new strategic agenda for the EU. As regards the former, two meetings on 20 June 2019[86] and on 1 July 2019[87] were not enough for the European Council to reach a compromise on the nominees for the top EU jobs.[88] Regarding the latter, the EU27, with input from the European Commission[89] and the President of the European Council,[90] managed to map

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[86]   See European Council President Donald Tusk, statement, 20 June 2019.

[87]   See European Council President Donald Tusk, statement, 1 July 2019.

[88]   See European Council Conclusions, 2 July 2019, EUCO 18/19 (nominating Ursula von der Leyen as President of the European Commission).

[89]   See also European Commission contribution to the informal EU27 leaders' meeting in Sibiu Romania on 9 May 2019, Europe in May 2019: Preparing for a more united stronger and more democratic Union in an increasingly uncertain world, 30 April 2019.

[90]   See European Council, Leaders' Agenda: Strategic Agenda 2019-2024 – outline, 8 May 2019.

a strategic agenda for 2019-2024,[91] but this was so lacking in detail, as a condition to keep all Member States on board, as to look almost empty. In this context, it is worth noting that the liberal democratic group within the EP decided to rename itself 'Renew Europe', while the main sovereignist force has called itself 'Identity & Democracy', suggesting that a strong polarization will characterize the functioning of the EP in its 9th term.

IV. SCENARIOS

The crises described in section 2 have created centrifugal pressures challenging the unity of the EU. At the same time, the reactions since the Brexit referendum surveyed in section 3 have not bridged these cleavages: despite the rhetorical exercise of the debate on the future of Europe, the emergence of strong regional alliances, and the polarization in the EP elections confirmed the existence of strong fractures within the EU and of conflicting visions of integration. In this context, a number of scholars and commentators have started to reflect critically and constructively on several possible scenarios for the future of the EU,[92] many of which imply a greater differentiation among, if not outright decoupling between, EU Member States. Yet, one should not underestimate the dynamics of path dependency within the EU. In what follows, three possible competing models of future integration are outlined.

1. Path Dependency

One cannot exclude that, despite all the challenges the EU is currently facing, things may simply continue as they have done previously. After all, the EU is not new to weathering crises. In fact, crises have been a recurrent feature in the history of the EU, from De Gaulle's Empty Chair[93] to the failure of the

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[91]   See European Council Conclusions, 20 June 2019, EUCO 9/19, Annex I: A New Strategic Agenda.

[92]   See e.g. Ivan Krastev, *After Europe* (Penn Press 2017); George Soros, 'How to Save Europe', *Project Syndacate*, 29 May 2018; and Alberto Estella, 'EU Scenarios for 2027', Real Istituto Elcano WP 19/2018.

[93]   See Piers Ludlow, 'Challenging French Leadership in Europe: Germany, Italy, the Netherlands and the Outbreak of the Empty Chair Crisis of 1965-1966', (1999) 8 Contemporary European History 231.

European Constitution[94] and beyond. Hence, the EU may simply be able to resist yet another set of crises and muddle through. In fact, there are a number of policy areas where the EU is actually delivering – effectively – with its current governance and policy structures. In the field of international trade, for example, the EU has been able to achieve its objectives successfully. In the last five years, the EU has initiated a major free trade agreement with Japan[95] and started negotiations for new economic partnerships with, among others, Australia.[96] Moreover, despite a challenge by the Belgian region of Wallonia,[97] the EU Council signed a comprehensive economic trade agreement with Canada[98] and the European Commission received a mandate to start new trade negotiations with the US,[99] averting (so far) the threats of a tariff war with the Trump administration.[100]

The fact that the EU works – at least in some policy areas – is not irrelevant, as it strengthens the status quo and reduces the impetus for reform. In fact, as economists have shown, institutional systems follow a logic of path dependency, and reforms usually occur only when they are 'Pareto-optimal'. Path dependency means that once an economic process or a governance arrangement is in place over-time, it becomes locked-in and it will be difficult to change it, as institutional actors become accustomed to the status quo.[101] Pareto-optimality refers to a state of allocation of resources from which it is impossible to reallocate so as to make any one individual or preference criterion better off without making at least one individual or preference criterion worse off: this means that improvements to a given equilibrium can

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[94]   See Nick Barber et al (eds), *The Rise and Fall of the European Constitution* (Hart 2019).

[95]   See EU-Japan Economic Partnership Agreement.

[96]   See European Commission press release, 'EU and Australia launch talks for a broad trade agreement', 18 June 2018, IP/18/4164.

[97]   Opinion 1/17 on CETA, Judgment of 30 April 2019, (fining CETA's mechanism for the settlement of disputes between investors and states as compatible with EU law).

[98]   See EU-Canada Comprehensive Economic Trade Agreement OJ [2017] L11/23.

[99]   See Council decision of 15 April 2019 authorizing the opening of negotiations with the United States of America for an agreement on the elimination of tariffs for industrial goods, Doc 6052/19.

[100]   Joint EU-US Statement, 25 July 2018, STATEMENT/18/4687.

[101]   See Kurt Dopfer, 'Toward a Theory of Economic Institutions: Synergies and Path Dependency' (1991) 25 Journal of Economic Issues 535.

only occur if no one loses out of the change. Applied to the EU, these insights suggest that reforming the EU at 27 will be a daunting task if states and EU institutions are accustomed to existing governance practices, and if reform scenarios threaten to make some countries worse off, given the requirement that any amendment to the EU Treaties be made by unanimous consent.[102]

However, one cannot underestimate the novelty of the challenges the EU is facing today. Moreover, the ability of the EU to work in given areas, such as international trade, conceals the fact that this is a special domain where the institutional structures of the EU actually support effective governance. In fact, the EU treaties make the common commercial policy an exclusive competence of the EU,[103] vesting the power to handle international negotiations in the European Commission, subject to the mandate of the Council, which operates under qualified majority voting, and to the oversight of the EP.[104] Yet, in most other areas of high politics, the EU does not follow the same supranational logic. On the contrary, intergovernmental modes of governance generally prevail, with the European Council mostly in charge of decision-making. As is well known, this has led to paralysis and increased inter-state tensions, since intergovernmental institutions are unable to overcome the conflicting national interests of the Member States and thus solve the problems at hand.[105] In this context, it is not clear that states will have an interest in maintaining the status quo, or that the system will be strong enough to withstand pressures for change.[106]

2. Differentiation

It is for these reasons that an alternative scenario is one of increasing differentiation within the EU, a mode of integration which tries to reconcile heterogeneity within the EU by allowing Member States to participate in

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[102]   See Art. 48 TEU.

[103]   Art. 3 TFEU.

[104]   Art. 207 TFEU.

[105]   See Federico Fabbrini, 'Constitutional Crisis and Institutional Reform: The European Union at the Crossroad' (2017) 32 Connecticut Journal of International Law 285.

[106]   Dermot Hodson and Uwe Puetter, 'The European Union in Disequilibrium', (2019) Journal of European Public Policy 3.

specific EU policies on a voluntary basis.[107] Differentiation is by no means new to the EU, as it finds its roots in the Treaties of Maastricht and Amsterdam and the establishment of opt-outs (notably on euro-membership) and closer cooperation (including in the field of defense).[108] Nevertheless, in recent times differentiated integration has increasingly become a tool to deal with deadlock and diverging ideological preferences in highly salient policy areas.[109] For instance, the project of establishing a European Public Prosecutor Office (EPPO)[110] to investigate transnational crimes against the financial interests of the EU moved forward through enhanced cooperation with the support of only 20 Member States: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Estonia, Germany, Greece, Spain, Finland, France, Italy, Latvia, Lithuania, Luxembourg, Portugal, Romania, Slovenia and Slovakia. Not surprisingly, among the non-participating Member States are Poland and Hungary, two countries subject to the Article 7 procedure.[111] The efforts by the Romanian government to oppose the appointment of a Romanian anti-corruption prosecutor to lead EPPO[112] signaled how differentiation in policy areas connected to the area of freedom, security and justice is perhaps inevitable at a time when the rule of law is under threat in a number of Member States.

The idea of embracing differentiation as a strategy to pursue integration at challenging times has been officially endorsed not only by the Commission, as one of its scenarios for the Future of Europe,[113] but also by several states, including the Eurozone big four: Germany, France, Italy and Spain.[114] In fact,

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[107]   See generally Alex Stubb, 'A Categorization of Differentiated Integration', (1996) 34 Journal of Common Market Studies 283.

[108]   See Bruno De Witte et al (eds), *Between Flexibility and Disintegration* (Elgar 2017).

[109]   See also Maria Demertzis et al., 'One size does not fit all: European Integration by Differentiation', Bruegel Policy Brief 3/2018.

[110]   See Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office OJ [2017] L283/1.

[111]   See n 41-42.

[112]   See Kit Gillet, 'Ex Corruption Fighter in Romania, Shortlisted for Top E.U. Job, Faces Foes at Home', *The New York Times*, 10 February 2019.

[113]   European Commission whitepaper (n 51).

[114]   See Déclaration au Sommet informel Allemagne, Espagne, France, Italie à Versailles, 6 March 2017.

France recently launched a form of differentiation to break the deadlock at EU level in setting up a solidarity-based system to manage the migration influx, by striking a deal with 13 other EU Member States on a voluntary basis.[115] Even the EP, albeit with some reluctance, referred to differentiated integration in an ad hoc resolution in January 2019.[116] As it pointed out, differentiated integration 'has sometimes allowed for the deepening and widening of the EU to be pursued simultaneously'.[117] As a consequence, the EP underlined that 'one cannot oppose differentiation and integration, nor can one present differentiation as an innovative path for the future of the Union'.[118] Nonetheless, noting that differentiation 'is often perceived as a path towards the creation of first- and second-class Member States',[119] it concluded that 'that differentiation should only be conceived of as a temporary step on the path towards more effective and integrated policymaking.'[120]

Whatever the benefits of differentiation, it is well known that this strategy suffers from a number of difficulties, not least the risk of actually being unable to effectively differentiate. The case of cooperation in the field of defense is telling from this point of view.[121] Following the decision of the UK to leave the EU, the European Council eventually agreed for the first time in June 2017 on the need to launch an inclusive and ambitious Permanent Structured Cooperation (PESCO) in the field of defense pursuant to Article 42(6) TEU.[122] In December 2017, the Council formally approved the creation of PESCO on the understanding that Member States participating in the military cooperation 'shall make contributions which fulfill the more binding

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[115]   'Migrants: 14 pays européens s'accordent sur un 'mécanisme de solidarité'', *France24*, 22 July 2017.

[116]   European Parliament resolution of 17 January 2019 on differentiated integration, P8_TA-PROV(2019)0044.

[117]   Ibid., §E.

[118]   Ibid.

[119]   Ibid., §C.

[120]   Ibid., §3.

[121]   See Federico Fabbrini, 'Do NATO Obligations Trump European Budgetary Constraints?' (2018) 9 Harvard National Security Journal 121.

[122]   See European Council Conclusions, 22-23 June 2017, EUCO 8/17, §8.

commitments which they have made to one another'.[123] In March 2018, the Council gave its blessing to the first operational projects.[124] Nevertheless, the heterogeneity of the 25 participating Member States, all except Denmark and Malta, quickly diluted the impact of the project, leading France – the EU Member State with traditionally the greater strategic culture and military projection, as confirmed by its seat within the UN Security Council and its possession of the nuclear deterrent – to establish an alternative European Intervention Initiative.[125] This project, which involves only 10 countries (including the UK and Denmark), is designed to bring together EU states sharing a common vision regarding security concerns, thereby creating a framework for selective cooperation outside the structures of the EU. This may be a model to be used elsewhere.

3. Decoupling

It is in this framework that the scenario of decoupling – involving the outright separation of those Member States favoring more and those favoring less integration into two distinct organizations – has also conceptually emerged as a possible option for the future.[126] The idea that a subset of Member States could consolidate their cooperation through separated structures outside the EU has led some to suggest that the Eurozone should become the framework for the creation of a 'core Europe'.[127] In response to the euro-crisis, Eurozone states have adopted *inter se* treaties outside the EU legal order to deepen their integration, including by establishing a Euro Summit as an ad hoc body grouping the leaders of the Eurozone countries,[128]

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[123]   Council Decision (CFSP) 2017/2315 of 11 December 2017 Establishing Permanent Structured Cooperation (PESCO) and Determining the List of Participating Member States, OJ [2017] L 331/57, Art 3(1).

[124]   Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO, OJ [2018] L65/24.

[125]   French Minister of Defence Florence Parly, speech at the European Council on Foreign Relations, Paris, 28 May 2018.

[126]   See in particular Sergio Fabbrini, *Europe's Future* (Cambridge University Press 2019)

[127]   See especially Jean-Claude Piris, *The Future of Europe: Towards a Two-Speed EU?* (Cambridge University Press 2012).

[128]   See Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, 2 March 2012, Art. 12.

an ESM to assist failing states,[129] and a Single Resolution Fund to support failing banks.[130] But monetary union requires even greater federalization, particularly in order to establish a fiscal capacity, with the connected problems of taxation and representation.[131] In the future, if efforts to deepen and complete EMU were to succeed, therefore, this may lead to the consolidation – de facto to the side of the EU, through a web of separate international treaties – of a new organization, with its own institutions and governance rules for Member States of the Eurozone. In such a scenario, the EU27 would not disappear but it would be increasingly shadowed by a separate union for a smaller subset of Member States, those which decided 20 years ago to share a single currency, a hallmark of sovereignty.

However, the potential ability of the Eurozone to operate as a union within the Union faces two limitations. First, not least because Donald Tusk – who comes from a non-Eurozone state (Poland) – was in 2014 appointed as President of the Euro-Summit, ongoing debates around EMU reform have been extended to non-Eurozone countries and are thus now undertaken in an inclusive format.[132] While this catered to the interests of countries such as those of the Hanseatic League – which by involving non-Eurozone countries can restrict the dominance of France and Germany on Eurozone matters, including their shared ambition to complete EMU – it is clear that this weakens the ability of the Eurozone to operate as a platform to promote further integration between a core group of states. Second, the attacks of the populist Italian government against the EMU institutional architecture and fiscal rules suggest that this framework may actually be too inclusive to act as the springboard for a renewal of the EU project. As such, the feasibility of a scenario in which the Eurozone served to underpin greater integration among a subset of Member States is by no means certain, at least in the short term.

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[129]   See ESM Treaty (n 18).

[130]   See Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund, 21 May 2014.

[131]   See further Federico Fabbrini, 'A Fiscal Capacity for the Eurozone: Constitutional Perspectives', study commissioned by the European Parliament Constitutional Affairs Committee, February 2019.

[132]   Euro Summit, Leaders' Agenda, 23 March 2018.

If this were the case, then, efforts to push for further European integration might occur on an even smaller scale. In this regard, the recent conclusion by France and Germany of the Treaty of Aachen in January 2019 indicates a possible way forward.[133] In this bilateral agreement, the two core EU/Eurozone Member States committed to deepening their integration at all levels, including with the aim of achieving a 'franco-german economic zone endowed with common rules.[134] In fact, the Treaty also creates a new organizational structure for Franco-German cooperation[135] and a commitment to advance joint proposals on all major European issues.[136] While the Preamble of the Treaty affirms that the two countries are interested 'to deepen their cooperation in the field of European policies with the aim to favor the unity, effectienss and cohesion of Europe, keeping open this cooperation to all Member States of the European Union'[137] it is clear that it could represent the nucleus of a new Europe, decoupled from the EU, to which only a few other like-minded EU Member States could be associated. Nonetheless, this scenario has raised concerns, which Germany itself has sought to allay,[138] suggesting that its feasibility remains uncertain.[139]

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[133]   See Treaty of Aachen (n 73).

[134]   Ibid., Art. 20 ('zone èconomique franco-allemand dotée de règles communes')(my tranlation).

[135]   Ibid. Art.s 23-26.

[136]   Ibid. Art. 2.

[137]   Ibid. Preamble ('à approfondir leur coopération en matière de politique européenne afin de favoriser l'unité, l'efficacité et la cohésion de l'Europe, tout en maintenant cette coopération ouverte à tous les États membres de l'Union européenne')(my translation).

[138]   See Declaration of the Visegrad Group and the Federal Republic of Germany, 7 February 2019 (stating that 'There is no place for East–West, North–South, Old–New divides in the current European Union. [...] Unity is the key').

[139]   But see Hungarian Prime Minister Viktor Orban, Interview, *La Stampa*, 1 May 2019 (stating that 'oggi ci sono già tre Europe, ma fingiamo sia soltanto una [today there are already three Europes, but we pretend it is only one')(my translation) and Bundestag President Wolfgang Schauble, Interview, *Le Monde*, 26 May 2019 (stating that 'nous devons aller plus loin que le Traité de Lisbonne afin de render l'Europe plus efficace [we need to go beyond the Lisbon Treaty with the aim to make Europe more effective]')(my translation).

V. CONCLUSION

This article has analyzed three scenarios for the future of Europe beyond Brexit. As pointed out, while the EU 27 have been remarkably united in negotiating with the UK, they are heavily divided among themselves on crucial issues like EMU, migration and respect for foundational EU values. In fact, the euro-crisis, the migration crisis and the worsening rule of law backsliding in a number of EU Member States have left deep scars in the fabric of the EU. While rhetorical efforts have been made at the highest EU institutional level to chart a united way forward for the EU27 post-Brexit, Europe remains fractured along regional and political cleavages, as reflected in the the EP election. In this context, this article has outlined alternative scenarios for the future of Europe. As suggested, while the influence of path dependency in the functioning of the EU cannot be minimized, greater differentiation could become an inevitable response to Europe's current challenges. In fact, one cannot even exclude the possibility that, step by step, a new, separate organization of integration may emerge alongside the EU – either around the Eurozone or a smaller alliance of states championed by France and Germany, along the lines of the Treaty of Aachen – following a logic of outright decoupling.

None of these scenarios may be appealing for the future of Europe. An EU that simply muddles though the current difficulties will fail to address the citizens' calls for change,[140] made clear in the recent EP elections, a prospect which could be deleterious for the EU in the long-term, given citizens' growing expectations from, and scrutiny of, the EU.[141] Yet, if incrementalism may have reached its limits, an EU that differentiates with ever growing frequency will run into challenges of its own,[142] while the creation of an inner core of Member States pursuing deeper integration through a parallel organization would put an expensive geopolitical price-tag on the road

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[140]   See Ronan McCrea, 'Forward or Back: The Future of European Integration and the Impossibility of the Status Quo' (2017) 23 European Law Journal 66.

[141]   See Catherine de Vries, *Euroskepticism and the Future of European Integration* (Oxford University Press 2018).

[142]   See Bruno de Witte, 'The Law as Tool and Constraint of Differentiated Integration' EUI RSCAS Working Paper No 47/2019.

toward European federalism.[143] Nonetheless, this scenario could become a more attractive option if, for instance, the UK extends its membership of the EU for much longer, creating a greater need to differentiate tiers of membership internally.[144] In the end, the future of Europe remains to be written, but whatever happens with Brexit and the future relations between the EU and the UK, one can expect that the question of Europe's *finalitè*, and the consequential issue of its institutional set-up, will occupy the energy and attention of the EU27 in the near future.[145]

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[143]   See Hannes Hoffmeiser (ed), *The End of the Ever Closer Union?* (Nomos 2018)

[144]   See Fabbrini and Schmidt in this volume.

[145]   See also European Commission President-elect Ursula von der Leyen, 'A Union that Strives for More: My Agenda for Europe.' Political Guidelines for the Next European Commission 2019-2024, 16 July 2019, 19 (calling for a Conference on the Future of Europe in 2020 and indicating opens to Treaty change to reform the EU democratic architecture).