

# The Future of Europe: A Constitutional Political Economy Argument in Favour of “Variable Geometries”

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## Abstract

For decades European integration combined its deepening and widening in a mostly unitary fashion. A “one-size-fits-all” approach, however, seems little promising for a future EU of some 35 member states and an enlarged set of EU-competencies. To manage further deepening and widening of the EU, more flexible forms of integration of the “willing and capable” seem both realistic and desirable. A combination of Constitutional Political Economy, club theory and basic requirements of legitimacy provides relevant arguments for integration based on “variable geometries” that tend to be ignored by narrow perspectives of public finance theories of the optimal allocation of competencies.

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## 1. Introduction

“What does the European Union do?” – was the title of an influential paper (Alesina, Angeloni, and Schuknecht 2001), later expanded to a book chapter (Alesina and Spolaore 2003, chpt. 12) and a book (Alesina and Giavazzi 2006). The short answer already back then was: a lot. The more complex answer is: both too much and too little. The basic idea behind the reasoning of Alesina, Angeloni, and Schuknecht (2001) is quite simple: economic theory demands that supra-national organisations should – only – become active when economies of scale in the production of common public goods or spillovers (externalities) between member states are high and preference asymmetries between citizens in different member states are low. If that is not the case, economic rationality demands allocating political competencies at a lower (national or even regional) level.

The reasoning is quite compelling. But it offers little practical advice on how the EU’s ideal of “unity in diversity” can best be institutionalised. Alesina’s analysis of

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the allocation of competencies very much adheres to “standard economic tools of optimization ... of general welfare and that given certain constraints” (Alesina and Spolaore 2003, 7). Whereas this approach yields many interesting insights, it misses some important aspects. These were highlighted by James Buchanan: “Once the format has been established in allocation terms, some solution is more or less automatically suggested. Our whole study becomes one of applied maximization of a relatively simple computational sort” (1979, 24). Buchanan’s “constitutional political economy” (e.g., Buchanan 1990) departs from this view by making the constraints themselves endogenous (turning from “choices within rules” to “choices of rules”) and by stressing alternative procedural rules for collective action instead of given optima under given institutions and given preferences (see Wegner 2012, 40 ff).

The present article is not about methodology, however. In putting forward arguments for a Europe of flexible integration in the form of “variable geometry”, I undogmatically combine some of Alesina’s “optimisation/allocation” logic with Buchanan’s “procedural/contractual” perspective. It proceeds as follows: In part 2, I briefly sketch “Europe’s challenge” created by both the impending enlargement of the EU and the growing demands to further increase the scale and scope of European integration. As major “constraints” I identify (a) “decision-making costs” and “external costs” that are bound to increase even further within the EU and (b) “legitimacy and solidarity resources” that have been already quite substantially exhausted during the last decades of integration. Part 3 provides some club-theoretical insights on the EU as a “multi-purpose club” to show that the EU is both “too large” and “too small” depending on policy purposes. In part 4, I illustrate some basic scenarios or strategies put forward by the EU itself for the “future of Europe”. Part 5 digs deeper into different models of “flexible integration” both internally (within the EU) and externally (with third countries). Part 6 provides a short outlook.

## 2. Europe’s Challenge

It is as common as it is unjust to equate “Europe” and the EU. Whenever EU-officials talk about the need for “Europe” to act or call for “more Europe”, they usually mean more involvement or power of the European Union. Not only may people in Switzerland, Norway or Liechtenstein feel sidelined or even verbally colonised; the EU itself is quite aware that there is some significant “Europe” beyond its own legislative realm. A most pressing case is the Ukraine. But that also applies to Moldova, Albania, Bosnia and Herzegovina, Montenegro, North-Macedonia, and Serbia who are all official candidate countries; Georgia and Kosovo are potential candidates (Costa *et al.* 2023, 11). The main reason for the topicality of EU-enlargement is geopolitical. All (potential) candidate countries are internally fragile democracies, they all suffer from an unhealthy mix of autocracy, corruption, and weak rule of law. It is why there has been considerable “enlargement fatigue” for decades – until Russia’s (second) invasion of the Ukraine in 2022.

“The war in Ukraine has changed the calculus. ‘Enlargement used to be driven by hope; now it is driven by fear,’ as a diplomat from an aspiring country puts it. Strung along for years with promises of accession, some countries have turned to new pa-

trons, including Russia, Turkey and China, which have showered the region with aid and investment. That used to be merely annoying for the EU. Now it is an intolerable incursion into its back yard” (The Economist 2023). Hence there are good reasons why the EU wants to extend its sphere of influence before others do – to defend European security and European (or: Western) values. In its latest Communication on EU enlargement policy (COM (2023) 690 final) the Commission makes clear that enlargement is to be seen as a “geostrategic investment in peace, security, stability and prosperity” (*ibid.*, 4), a “response to Russia’s war of aggression” and “a powerful tool to promote democracy, the rule of law and respect for fundamental rights” (*ibid.*, 2).

At the same time there is a justified fear that present members of the EU might have a lot to lose in a future EU-35. Under current rules, the biggest parts of the EU-budget (common agricultural policy, cohesion und regional funds) would be soaked up by the newcomers. Unless existing policies are overhauled, “quite possibly all today’s members would become net contributors” (The Economist 2023). In addition, the growing demands on the present EU-27 in fields such as financial stability, health, energy and decarbonisation, digital and research, or defence and security have created new demands on EU funding. Additional areas of policymaking that the EU wants to deepen (*e.g.*, foreign policy, economic sanctions, policing matters and taxation) may not weigh as much on the EU budget, but they are already now quite controversial, and must be agreed unanimously by all EU member states.

Hence, officials and commentators in the EU and members states are aware that EU enlargement necessitates EU reform. The debate is mostly on procedural and institutional matters. Reform proposals centre on decision-making rules in the Council (replacing unanimity by qualified majority voting – QMV – in most remaining areas), the composition of the Commission (reducing the size of the College) and of the European Parliament (keeping or lowering the already high number of 751 members), and on the size of the EU budget (increasing it via QMV or “own resources” such as EU taxes and EU debt).<sup>1</sup>

These considerations go well beyond the “pure” allocation logic of competencies used by Alesina, Angeloni, and Schuknecht (2001), but they still tend to ignore or sideline important constitutional political economy issues. These additional or more fundamental issues should therefore be shortly presented here.

### *Costs of Collective Action*

The EU reform debate on how to reconcile deepening and widening has always been focussed on “decision making costs” of collective action. The *Calculus of Consent* by Buchanan and Tullock (1962, 45 ff) – a founding document of Constitutional Political Economy – is much more balanced. It weighs up (1) the risk of political measures not being undertaken that could serve the common interest of most citizens but are taken hostage by veto-players in the case of unanimity or large majority requirements (decision making costs), and (2) the risk of political measures being undertaken that run against the interest of a part or all the citizenry (external costs).

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<sup>1</sup> For details, see the report of the working group convened by the French and German governments (Costa *et al.* 2023), but also the recent “Draghi Report” (Draghi 2024).

Applying these considerations to the EU yields some obvious conclusions regarding the consequences of a larger and more heterogeneous EU (Wohlgemuth and Brandi 2006): For any given collective choice rule, *decision-making costs* will be higher in units with a more heterogeneous population than in those with a more homogenous one: enlargement will raise the costs of decision-making in the EU by increasing the number and heterogeneity of decision makers (especially in the Council). Moreover, for any given collective choice rule, *external costs* will also be higher in more heterogeneous units owing to a larger number of people having to live with a centralized decision made on the EU-level of policymaking which does not comply with their order of preferences. As a result, given that every additional member tends to make the EU more heterogeneous, EU enlargement causes *both* decision-making *and* external costs to increase.

### *Legitimacy Resources*

Political actors and commentators tend to be most concerned about the consequences of EU enlargement in terms of the “workability” of decision-making units in the EU. External costs or preference costs are often ignored. However, they are just as crucial for the future of EU integration since they relate to basic issues of legitimacy of supranational decision-making. Here it is useful to shortly refer to the categorical distinctions that Fritz Scharpf (e. g. 1999, 49 ff) made between “input-” and “output-legitimacy” as well as “negative” and “positive integration.”

According to Scharpf the early stages of European integration were (mostly) marked by “negative (economic) integration” – the removal of tariffs and other barriers to trade and anti-trust policy to remove barriers to entry to the Common Market. By enlarging markets and thus creating mutual gains from trade, the European Communities were creating benefits for all, legitimising their existence by results or: “output.” More and more, however, European integration turned towards “positive integration” by ways of prescriptive regulations and “harmonisation” (e. g., social policy, consumer protection, environmental and labour standards). “Positive integration” is not as likely to yield win-win results but may well create winners and losers – not least in terms of preference costs and compliance costs that may put less “progressive” member states (and their businesses) at a competitive disadvantage. Hence positive integration affords a higher degree of “input legitimacy” – of democratic procedures ensuring that bureaucratic decisions reflect the informed will of citizens.

This demand, however, is very difficult to meet on the EU level, as Scharpf admits by referring to a three-fold democratic deficit: “the lack of a pre-existing collective identity, the absence of pan-European political discourse and the absence of a pan-European institutional infrastructure of political parties and common media that could ensure the political accountability of office holders to a European electorate” (*ibid.*, 167, my translation). Therefore, Scharpf warns: “If ... European competences were extended beyond the existing stock of consensual tasks into the areas of controversial policy, and if it were then possible to actually decide controversial issues by majority vote through the dismantling of veto positions, the weak basis of legitimacy of European policy would be overburdened” (*ibid.*, 180, my translation). Current attempts to regulate member states’ public finances or global warming and energy policies, to harmonise taxes and labour markets (including wages), to distribute refugees amongst

member states, or to find common grounds on geopolitical conflicts have drastically expanded the realm of controversial, but also pertinently European issues (so also Scharpf 2017).

Precisely these stress tests are likely to have already led to a critical overloading and erosion of the legitimacy and solidarity resources of European politics. Graf Kielmansegg defines these as follows: “The EU has legitimacy resources at its disposal to the extent that the European peoples recognise, or at least do not deny, its right to make law for all member states and their citizens. Solidarity resources are available to the EU to the extent that the European peoples are prepared to accept or at least tolerate redistribution at their own expense beyond the borders of the nation state by the EU” (2016, 2, my translation).

This, too, must be taken into account when considering models of flexible integration in the following chapters. Concentrating further integration steps on the “willing and able” is not least a way of using and conserving limited legitimacy and solidarity resources.

### 3. Club-Theoretical Considerations

Most considerations on the distribution of competences between the EU and member states try to define which policies should be decided and provided at “*the EU level*” and which at the level of “*the nation state*.” It is easy to lose sight of the fact that the integration of some policies makes sense for some combinations of states, but not for others, and that there is something like an “optimal club size” of integration that varies for different policy areas. It would be a strange coincidence if the optimal number of states participating in all the EU’s “public goods” were exactly 27 in every case today (or 35 including the states presently considered for accession). In fact, from a public finance perspective, what the EU provides are “club goods” rather than (pure) “public goods.” Hence not all the EU does is “good” (only) for all its members.

Clubs are usually defined as voluntary associations of members who pool resources to achieve common purposes (the production of a club good).<sup>2</sup> Club goods (or “toll goods”) are neither purely public nor purely private goods: there is – as with the public good – no rivalry in consumption up to a certain intensity of use; but others, non-members, can be excluded from use, as with a private good. Unlike in the case of a purely private good, a pooling of resources is necessary for the production and use of the good; unlike in the case of a purely public good, the free-rider problem (shared use without contribution) can be solved by exclusion; and unlike in the case of the commons, an optimal number of users can be enforced by the club members in the event of overuse of the club good (see Buchanan 1965).

The EU, however, is an extremely complex multifunctional club. It offers highly diverse “club goods” to its members and “guests”: the four fundamental freedoms, common competition rules, product standards and much more for 30 members of

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<sup>2</sup> Cf. Ahrens *et al.*: “A club may be defined as a voluntary association of actors which jointly produce a common good, share production costs and share the benefits of this excludable good which cannot be enjoyed by non-members” (2005, 418).

the European Economic Area (EAA) which includes all EU members and the EFTA members Norway, Iceland and Liechtenstein; a common agricultural policy, trade policy and much more for all of the EU-27 members (and in parts also for Turkey as member of the Customs Union); a common currency for 20 members of the EU; freedom of movement for 27 members of the Schengen area (excluding EU-members such as Ireland and Cyprus, but including non-EU members such as Switzerland or Liechtenstein) and many more partly overlapping integration circles. Hence the “variable geometry” of different integration clubs is not an academic vision, but a European reality. Nevertheless, from the economic point of view and that of democratic theory, it cannot be claimed that the EU as such and its various integration circles each have an “optimal club size.” On the basis of criteria such as spillover effects, economies of scale, heterogeneity costs, or legitimacy resources, one can argue that for central policy areas of the EU the respective club size is either too small or too large. This is briefly illustrated by four examples.

#### *The Free Trade Club*

Free trade is best understood as a “disarmament” agreement that seeks to realise “mutual gains from joint commitment” through binding agreements (Vanberg 2011). Mutual access to the “peace dividend” of the internationally liberated division of labour and of knowledge can be defined as a club good; and with the number of new club members, the benefit for each existing member also increases. There is thus no “rivalry in consumption” here, but on the contrary: economies of scale in use. If the EU were a pure free trade area, the club would be too small: its optimal group size would be infinite.

The provision costs of a club simply prohibiting political barriers to trade (“negative integration”) should be low and hardly increase with the size of the club; the average costs should rather decrease. After all, the same applies here as to “negative” rights against undue state interference under the rule of law – and in contrast to positive (social) rights or claims on (welfare-) state provisions: “*Unterlassen ist nicht knapp*” or “omission is not scarce” (Grimm 1991, 47). Respecting and enforcing fundamental freedoms as negative rights of citizens is hardly dependent on scarce financial, legitimacy and solidarity resources or the equally scarce (steering) knowledge of politicians and bureaucrats.

#### *The Internal Market Club*

The situation is somewhat different with the positive regulations, which can also benefit the internal market: common competition policy, consumer protection, product standards, and common trade policy. Here, more or less actively shaping centralised collective decisions (“positive integration”) are necessary. Political preferences and capabilities, however, are diverse already within nation states and much more amongst the EU-27. Consequently, decision-making costs increase. These costs are kept low in the EU by delegation to the Commission and/or qualified majority voting in the Council. However, the natural centralisation and harmonisation drive of a central administration can lead to rising external costs with an increasingly heterogeneous club size. A “completed” internal market club according to Brussels’ definition will thus also have a finite optimal group size, as the struggles of the British or the Swiss

with freedom of movement clearly show. In short: the more regulatory *acquis communautaire* sails under the flag “internal market,” the more finite the optimal club size.

Specific considerations can be made both from the perspective of neoclassical public finance allocation theory as well as constitutional economics and club theory with regard to the free movement of labour in the internal market. Some authors (*e. g.* Pisan-Ferry *et al.* 2016, 5–6) argue that, from an economic-functional point of view, efficient market integration only requires a single market for goods, services and capital, even without the free movement of labour. Behind it are models of “pure” foreign trade theory. Mundell (1957) already argued that migration and free trade are largely substitutes in terms of economic effects and the welfare gains that result from them. Others, like Markusen (1983), conclude that factor movements and trade in goods tend to be complementary.

From a constitutional economics club theory (or “freedom of association” perspective) some more relevant distinctions can be made, *e. g.*, between the free movement of workers or service providers and free immigration or the granting of citizenship rights. As long as the EU is no (“super-”) state of its own, with its legitimacy derived directly from European citizens, but a federation (club) of sovereign states, these member states – viewed as clubs in their own right – retain basic rights to define their own terms of citizenship (see Buchanan 1995; Wellman 2008). Whilst this is still mostly accepted in EU law, other questions are highly controversial – and become even more so after a second wave of Eastern enlargement. Free movement can give rise to a “rivalry in consumption” through immigration into social welfare systems: at least when citizens of other member states and thus different welfare systems (health, pensions, basic income) receive equal rights to use such systems in the host country without previously having been able to contribute to the solidarity pool (club good). Basically, the question arises: should citizens, as is natural in any private club, have the right to decide which new members they are willing to accept and according to which criteria?

Such questions go beyond the scope of the present article (see Viktor Vanberg (2008) for a principled discussion). But one can summarize that the single market is the EU’s most successful project; as a pure free trade area, the optimal “club size” would in principle be infinite: here the EU is “too small.” As an integration project with numerous regulations and unclarified access to social welfare systems, the internal market with its four basic freedoms becomes finite again in terms of optimal club size; however, a mutually beneficial size is very likely to include far more than the current 30 members of the EEA.

### *The Euro Club*

In principle, the club good common currency has many advantages: lower transaction and currency hedging costs and thus more trade, more competition. Solely in terms of a medium of exchange a single currency also comes with clear economies of scale: the more members use it, the better it is for old and new members (further reduction of transaction costs for citizens, further gains from trade, better transparency in markets, *etc.*). But common money also means: uniform monetary policy, interest rates and exchange rates.

Heterogeneity thus becomes a problem again. It increases the likelihood that endogenous and exogenous shocks will affect the economies differently and that a uniform monetary policy cannot suit everyone. All this was known to the founders of the monetary union and was standard knowledge in the economic models of an “optimal currency area” (Mundell 1961; a specific application of club theory). Fatally, however, the currency issue was declared a “political project,” which led to too many members forming a political club too quickly – including those who did not meet the requirements of the club statutes (“Maastricht criteria”) or did not take their rules (“no bail-out”) seriously. Moreover, there was a failure – for political reasons – to include withdrawal rights or obligations in the club statutes: for those who no longer wished to be members or those who caused damage to the club and its rules. Also in terms of democratic theory “today’s Eurozone must appear to be an aberration. It has become too large and too heterogeneous for its members to be able to decide on common policies of their own free will and with democratic legitimacy” (Scharpf 2017, 206–7, my translation).

#### *The CAP Club*

From an economic perspective, inefficient and even globally harmful policies such as basic parts of the Common Agricultural Policy (CAP) have an optimal club size of zero. However, if one assumes culturally shaped preferences of a majority of the citizens of a country (say, France) for such a policy, one can also regard one as the optimal “club size” – the country in question would then have to pay for its political/cultural preferences from its own resources, as long as it does not endanger undistorted competition within the internal market club. In any case, it can only be explained by the “ratchet” effect of former log-rolling and package dealing that even today a sector employing less than four percent of EU citizens is subsidised with almost 40 percent of the EU budget (Wohlgemuth 2018, 62 ff).

These few examples alone show: The European Union is “too small” in some areas, in others “too large” (and “too deep”). Different policy areas (club goods) or different policy intensities would, from the point of view of efficiency and of democracy theory, rather require different club compositions to be able to meet the respective and, moreover, variable needs and possibilities of the individual member states. How could such flexibility and variability be achieved? Again, the issue is complex.

### **4. Alternative Scenarios for European Integration**

Just like subsidiarity, flexible integration of the “willing and capable” has been discussed in the EU reform debate for decades. As indicated above, some flexibility is also practised – more or less successfully – in important policy areas: both amongst EU members (*e.g.*, Eurozone, Schengen zone) and beyond (*e.g.*, EEA and again: Schengen zone). Due to the economic divergence (mostly a north-south divide within the Eurozone), but also the political divergence (mostly a west-east divide between old members and new ones such as Hungary and Poland) the question arises as to how the EU should react.

Just in time for the celebrations of the 60th anniversary of the Treaties of Rome, the former Commission President Jean-Claude Juncker presented the Commission's White Paper: *The EU of 27 in 2025 – Reflections and Scenarios* (European Commission 2017). It aimed to stimulate an “honest and wide-reaching debate” (*ibid.*, 26) on the direction in which the EU could – and should – develop in the future. It recognised that the question “more or less Europe? ... is misleading and too simplistic” (*ibid.*, 15).

One can detect that the Commission considered more EU competences in areas such as defence, security or digital affairs to be necessary and sensible, but in others such as social, regional or fiscal affairs, less Brussels regulation, funding and paternalism was at least conceivable. The “gap between the promises on paper and the citizens' expectations” (*ibid.*, 16) and thus the danger of EU policy disenchantment consistently serves as a criterion for evaluating the five scenarios presented in it. This new realism may also have been contributed to by the fact that, as the White Paper (*ibid.*, 12) acknowledges, trust in the EU has declined significantly since 2008. The Paper (*ibid.*, 15) rightly notes that the five scenarios (a) are “not detailed blueprints”, (b) “make no mention of legal or institutional processes” – especially the question of necessary treaty changes – and (c) that there are “many overlaps between each scenario.” The scenarios are only briefly outlined here; scenario 3 is particularly relevant for our study.

“*Carrying on*” (*Scenario 1*): It describes the reality of reform attempts and promises in small, and long agreed in principle, steps. Working off the Bratislava 2016 agenda (including strengthening the single market for digital and energy, coordinating on defence and security issues and securing the external border) is today still unfinished business. But none of the agendas since then made the EU more competitive, flexible or democratic.

“*Nothing but the single market*” (*Scenario 2*): The scenario is recognisably presented as a deterrent relapse option that could occur if member states “cannot agree to do more in many policy areas” (*ibid.*, 18). However, it also betrays an understanding of the “single market” that contradicts existing EU law: public subsidies would be less controlled by the EU than before and “the free movement of workers and services is not fully guaranteed.” Exactly what would be necessary to complete the internal market would not happen here.

“*Those who want more, do more*” (*Scenario 3*): The scenario would offer the welcome overcoming of the combination of two fallacies: the choice between “more or less Europe” for “all or none.” The option is presented under the condition that the EU27 “proceeds as today” (*i.e.*, scenario 1), but where “certain Member States want to do more in common, one or several ‘coalitions of the willing’ emerge to work together in specific policy areas” (*ibid.*, 20). In the media, the scenario was predominantly described as an option for a “multi-speed Europe” and, what is more, as what the governments in Germany and France had agreed on as their favourite model. However, the scenario deliberately does not speak of a multi-speed EU. One could rather speak of an EU of different depths, and – in contrast to the concentric “core Europe and periphery” model – the EU would be differentiated by policy areas and not by countries. Such models of flexible integration are analysed in more detail below.

*“Doing less more efficiently” (Scenario 4):* This option, which can actually be combined quite well with scenario 3 against the background of the subsidiarity principle, could best fulfil the promise of “closing the gap between promises and results”, as the White Paper itself notes. There would be clearly agreed priorities; here the EU could act “much quicker and more decisively” by leaving decisions (as it already does in competition policy or banking supervision) to the EU institutions. Whether all areas of “innovation, trade, security, migration, the management of borders and defence” (*ibid.*, 22) are suitable for such a delegation, is highly questionable, however. At the same time, there are also policy domains where the EU is perceived of “having more limited added value, or as being unable to deliver on promises” (*ibid.*). In these places, the EU would withdraw completely or at least partially. It is interesting to note which policies are mentioned in the White Paper itself as candidates for orderly withdrawal: “regional development, public health, or parts of employment and social policy not directly related to the functioning of the single market” (*ibid.*).<sup>3</sup> But why a re-nationalisation of “state aid control” is also added in this scenario does not make sense from an “Ordnungspolitik” point of view. After all, subsidy control is extremely relevant for the functioning of the single market. But as in scenario 2, the EU Commission seems to have strangely confused ideas about what is (not) necessary for a single market from a regulatory perspective.

*“Doing much more together” (Scenario 5):* In this scenario, the member states would decide “to share more power, resources and decision-making across the board” (*ibid.*, 24). This would not yet be the European superstate, but it would be the wishful thinking (of then Commission President Juncker and present President von der Leyen) that the EU would one day speak “with one voice” (*ibid.*) on all “European” issues. Interestingly, only here is the *Five Presidents’ Report on the Future of Economic, Financial and Fiscal Union* (European Commission 2015) explicitly mentioned as an element: only here would the EU have “own resources” (its own taxes) and a “fiscal function for the euro area” (or a European Monetary Fund). And only here is reference made to the “risk of alienating parts of society which feel that the EU lacks legitimacy or has taken too much power away from national authorities” (European Commission 2017, 25).<sup>4</sup>

## 5. Alternative Models of Flexible Integration

In the following, scenario 3 “Those who want more, do more” will be examined under the guiding question: How can a more flexible, economically, and politically efficient form of integration be found that corresponds to the heterogeneity of economic structures and capabilities as well as political, social and cultural traditions and preferen-

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<sup>3</sup> This roughly corresponds to the arguments put forward by Alesina, Angeloni, and Schu-knecht (2001). Obviously, the White Paper was written before the Corona pandemic. Today, at least the coordination of public health policies ranks higher on the list of EU priorities.

<sup>4</sup> On the problem of the legitimacy of a “political union” of the Eurozone, see Wohlgemuth 2017.

cases? Different models/scenarios of flexible integration of the “willing and capable” can be distinguished.<sup>5</sup>

It is no coincidence that these models were repeatedly brought into political and academic discussion when EU (or EC) enlargements were pending, and the question arose of how to manage enlargement and deepening at the same time. The trade-offs between “efficiency benefits and heterogeneity costs” (Alesina, Angeloni, and Schuknecht 2001), between “decision-making and external costs” (Buchanan and Tullock 1962), and between “input and output legitimacy” in the context of “positive and negative integration” (Scharpf 1999) each refer to the number and heterogeneity of members of the EU “club.” However, diversity is not problematic in itself: European history shows that it is valuable in principle if it comes in the form of a diversity of knowledge, skills, ideas, practices and problem-solving alternatives that can be voluntarily chosen and used in open competition (Wohlgemuth 2008). The market-mediated exchange of goods, services, capital and people can cope with and productively utilise a tremendous amount of diversity. Diversity becomes a potential for mutual gains from trade and evolutionary learning processes (Wegner 2008); it may even increase a social system’s resilience (Wohlgemuth 2023, 20 ff).

As argued above: The optimal club size for the club good of open markets, for international market-mediated division of labour and of knowledge is virtually infinite. The situation is different in the area of “positive integration” or “political union”: in the production and enforcement of law, regulations and policy programmes that set common standards and collective goals for all. Here, diversity of ideas, preferences and opportunities among (citizens of) member states generate costs – both costs of decision-making and (external) costs of tolerating decisions by others. Here, heterogeneity becomes a challenge to the limited “solidarity and legitimacy resources” and an imposition both for those who are willing and capable to integrate further, and for those who do not want to or cannot take on more *acquis communautaire*. Hence the argument for flexible or differentiated integration.

### 5.1 Flexible Integration amongst Member States

The political discussion on flexible integration has produced a bewildering variety of terms to describe alternative forms of “flexibility.” Groenendijk (2012, 96) lists some fifty, including: multi-speed Europe, European vanguard, pioneers’ clubs, core Europe, variable geometry, Europe *à la carte*, differentiated Europe, multi-tier Europe, concentric circles, eccentric ellipses, opt-in arrangements, opt-out arrangements, constructive abstention, transition periods, derogations, or pelotons. In the following, three basic types of flexible integration will be distinguished:

- (a) Temporal flexibility (multi-speed Europe)
- (b) Country group flexibility (concentric circles)
- (c) Policy field-related flexibility (variable geometry)

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<sup>5</sup> For more details, see Warleigh 2002; Stubb 2002; Wohlgemuth (2018, 81 ff).

### *Multi-Speed Europe*

Already on the occasion of the first enlargement of the EC to include Great Britain, Ireland and Denmark in 1973 and the granting (or imposing) of transitional phases for the new members, the German Chancellor Willy Brandt opened the discussion on a two-speed Europe. The desire of those willing and able to reach the goal of encompassing communitarisation more quickly was clear. Their pioneering role was, however, linked to the desire that latecomers should follow the vanguard as soon as possible. The “multi-speed” approach thus remains faithful to the notion of the same “finality” of European deepening in the form of a common level of integration; lagging behind remains temporary and exceptional. Flexibility remains reduced to a period of implementation of a depth of integration specified by the pioneering group. Both the goal of “ever-closer union” and the method of “one-size-fits-all” ultimately remain.

Especially in the course of integrating new members who have not (yet) reached the level of economic development or administrative capabilities of the old members, transitional periods are often provided with convergence criteria, financial and administrative assistance. At the same time, the old members are allowed to protect themselves from free immigration for a transitional period. The political-economic perspective, of course, also allows for an even less benevolent interpretation of the concern of the pioneers: “raising rivals’ costs.”<sup>6</sup> In the multi-speed model, the front-runners often enough have both motive and opportunity to negotiate the agenda of deepening largely among themselves. If they (helped by an extensive interpretation of the law by the ECJ) succeed in imposing these terms as *faits accomplis* on the laggards in form of a new *acquis communautaire*, they have a good chance of raising a regulatory density and depth to a future standard that may correspond to their own preferences and abilities, but for others becomes a cost-driving burden on their development.

### *Europe of Concentric Circles (“Core Europe”)*

The idea (or terminology) dates to the mid-1990s and thus in view of the imminent eastward enlargement of the EU. However, it has recently been seen as extremely topical again in connection with the crisis of the monetary union, the exit of the United Kingdom, or the need for a more robust European defence strategy. French Prime Minister Eduard Balladur first thought aloud about core Europe in 1994, and the famous “Schäuble-Lamers Paper” (1994) elaborated details. Indeed, the analysis of Schäuble and Lamers is reminiscent of current descriptions of crises:

“The European unification process has reached a critical point in its development. If it is not possible to find a solution to the causes of this dangerous development in the next two to four years, then the Union will, contrary to the objective of growing ever closer together invoked in the Maastricht Treaty, inexorably develop into a loose formation with various sub-groupings, essentially limited to some economic aspects” (*ibid.*, my translation).

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<sup>6</sup> Cf. Bernholz and Vaubel 2007. The basic idea of “raising rivals’ costs” generalises at the political level the theory of Stigler (1971), who shows that it may well be in the interest of powerful and large companies to demand a great deal and complex regulation in the political sphere – to make it more difficult for competitors to compete and enter the market.

The causes of the crisis include:

- “increasing divergence of interests, based on different levels of socio-economic development; [...].
- Increase of a “regressive nationalism” in (almost) all member countries, which is the consequence of a deep fear – caused by ... external threats such as migration. The fears tempt one to seek, if not solutions, then at least shielding in a return to the ... nation-state; [...].
- the open question – at least with regard to the essential “when” and “how” – of the inclusion of (East) Central European states in the Union, which represents a challenge and test not only for the material capacity and willingness to perform, but also for the moral self-image of the current members.”

On the one hand, the authors call for a “realisation of subsidiarity including the transfer of competences back” (*ibid.*), even if it remains unclear which these should be. At the same time, they consider it crucial that “countries that are willing and able to go further in their cooperation and integration than others must not be blocked by veto rights of other members.” The countries with a “motor function” include Germany, France and the three Benelux countries. These are to form the “solid core of the Political Union ... initially only in a smaller circle” and for this purpose coordinate their monetary, fiscal, economic and social policies even more closely than before. Italy, Spain and Great Britain would be “included as soon as they have solved certain current problems and as far as their willingness to engage ... extends” (*ibid.*).

Here we find a politically desired centre of gravity; however, the degree of intensity of European integration is not necessarily predetermined for all. Circles of lesser depth of integration may form around the core of Europe, with nations that want to (or should) remain permanently on the “periphery.” Again, however, it cannot be ruled out that a “raising-rivals-costs” dynamic is at least indirectly intended. One may have speculated that government leaders (and perhaps citizens) might be embarrassed to be permanently counted among the “periphery” rather than the “vanguard,” whose policies, moreover, one cannot directly influence, although these are likely to have an impact on their own economies.<sup>7</sup> Future governments may be inclined to join the centre, but would have missed out in shaping its policy.

#### *Variable Geometry (“Europe à la carte”)*

The idea of “variable geometry” dates from the 1970s and was also favoured by the German-British sociologist Ralf Dahrendorf (1973, 83 ff; 1979). It is not a flexibility related to countries, but to policy fields. Here both new and old members and even non-members are free to join specific European projects or to remain permanently outside by using an opt-out, if they wish. They would thus not prevent others from wanting to cooperate more closely. For EU members, the “core” of the internal market should, however, be considered a given (Groenendijk 2012, 99–100). Beyond that

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<sup>7</sup> Cf. Scharpf: “In its fixation on the ‘core’, it [the Schäuble-Lamers paper, MW] ignored the interests of the countries that, from the German perspective, should not be part of it .... In any case, there was no concept in the paper for considering the legitimate interests of the ‘periphery’ in relation to the core” (2017, 207, my translation).

(and political standards as laid out in the Copenhagen Convention), the options for policy area-related “integration clubs” are greater – and in principle open to all members of the EU, but also non-EU members if applicable.

As mentioned above, some variants of variable geometry already exist (the Schengen Agreement, the Economic and Monetary Union and its institutions such as the “European Stability Mechanism”). More recently an exemplary form of variable geometry has gained significance: PESCO – the “Permanent Structured Cooperation” of EU states in the field of defence, agreed in December 2017. PESCO is a rare example of an integration model that could also be called “Europe à la carte” (Andersen *et al.* 2018, 61). It was introduced with the Lisbon Treaty of 2009 (Art. 61 TEU) for member states which fulfil more demanding criteria in terms of military capabilities and seek more extensive commitments among themselves. But it was only in 2017 that 25 member states (the UK, Denmark and Malta were not among them) joined PESCO, and in highly diverse ways. PESCO offers a menu of 68 cooperation projects in areas such as procurement, training, capability development or operational readiness, from which any number of projects can be freely chosen by any member states (a process otherwise referred to as “cherry-picking”). Membership in PESCO is open only to EU member states, but third states (such as NATO partners) can exceptionally be invited to participate in PESCO projects.

Not only in the context of both the ante- and the post-Brexit negotiations, but already with the previous exemptions from primary law community tasks for the United Kingdom, the term “Europe à la carte” has established itself as a term of abuse denoting the unsolidary, obstinate variant of (all too) variable geometry (Groenendijk 2012, 101). But even before that, Dahrendorf made an interesting plea in defence of “Europe à la carte”:

I have often been struck by the prevailing view in Community circles that the worst that can happen is any movement towards what is called a Europe à la carte. This ... illustrates that strange puritanism, not to say masochism which underlies much of Community action: Europe has to hurt in order to be good ... [S]uch a view is not only wrong, but in fact an obstacle to further European integration. To be sure, certain decisions have to be common. ... however, there is wide scope for action à la carte, and more often than not such action will in the end lead to common policies ... Europe à la carte, that is common policies where there are common interests without any constraint on those who cannot, at a given point of time, join them, must become the rule rather than the exception, if European union is not to get stuck in a mixture of incomprehensible technicalities, systematic cheating on the part of some, demands for exceptions which destroy overly complex systems, and a sense of frustration and misery all around (1979, 19 ff).

An interesting procedure for the flexible integration of a sub-group of members in specific policy areas, which is explicitly regulated under EU law and thus (only) open to EU members, is offered by the instrument of “enhanced cooperation.”

*Enhanced Cooperation*

Art. 20 TEU and Art. 326–334 TFEU allow and regulate the use of “enhanced cooperation” by a group of Member States under EU law (and thus also under ECJ jurisdiction). The requirements are quite strict:<sup>8</sup>

- it must not be a policy within the exclusive competences of the EU;
- at least nine member states must be involved;
- the EU Commission may refuse to propose cooperation;
- the Council must, given the “consent” of the European Parliament, give the authorisation to engage in enhanced cooperation either by qualified majority or – in the area of the Common Foreign and Security Policy – unanimously.

This instrument of circumventing the strategic obstinacy of veto players (Tsebelis 2002) as well as reducing decision-making and external costs (Wohlgemuth and Brandi 2006) has been available since the Treaty of Amsterdam (1997); but it has hardly been used so far. For the first time in 2010, a group of countries (currently 17) agreed on a common regulation allowing spouses from different Member States to choose the divorce law of the respective country. In 2013, following the enhanced cooperation procedure, the unitary patent protection entered into force (currently with 26 members except Spain and Croatia). In October 2017, 20 countries adopted the regulation establishing the European Public Prosecutor’s Office to prosecute crimes detrimental to the Union’s financial interests. Enhanced cooperation in the fiscal areas of a financial transaction tax and harmonisation of the definition of the tax base for corporate taxes have been in preparation for years. The surprisingly rare use of the procedure according to Art. 20 TEU may on the one hand be due to the narrow procedural requirements. But there are also political-strategic reasons.<sup>9</sup> The establishment of an integration club of enhanced cooperation can create “first-mover” advantages for the participants and rivals’ costs for the laggards, as described above for the “two-speed EU” approach. Even if member states that are not (yet) willing or able do not have to join the group, they may nevertheless have an interest to be involved in the formulation of the “club constitution” – rather than joining later (possibly with a different government) on terms that they themselves were unable to shape. In this way, even the threat of initiating enhanced cooperation can lead to blockades being resolved and, in the end, agreement being sought for an EU-wide initiative – if necessary, under protracted negotiations on package solutions and “side-payments” – the preferred method of reaching “agreement” by EU member states in the Council (Wohlgemuth 2018, 62 ff).

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<sup>8</sup> See Blanke and Böttner (2022) for an in-depth legal analysis of enhanced cooperation. I want to express my great gratitude to Hermann-Josef Blanke, who offered most valuable comments on this paper and my presentation in Erfurt. He sadly passed away in January 2023.

<sup>9</sup> See Groenendijk (2012, 106); Bordignon and Brusco (2003).

## 5.2 Flexible Integration vis-à-vis Third Countries

All three basic strategies of flexible integration outlined above (multiple speeds; concentric circles; variable geometry) can also be found in the EU's relationship with third countries.

*Temporal flexibility* (“multiple speeds”) was and is granted to EU accession candidates who need time to transpose the entire *acquis communautaire* into national law, and often also to establish rule of law and democracy standards set out by the Copenhagen criteria. This temporary flexibility was allowed within the framework of the last EU enlargements, even after formal EU membership. And it applied not only to the new member states, but – and above all – also to the old members of the EU and EEA, who were allowed to impose their own restrictions on the free movement of workers from Central and Eastern Europe to their countries for a period of up to seven years.

*Country group flexibility* (“concentric circles”) is equally characteristic of the EU's neighbourhood and association policies with third countries. The model is most recognisable within the European Economic Area (EEA), which forms the closest circle of integration around the EU. Since here there is an agreement between the EU and the three EFTA states Iceland, Liechtenstein and Norway that allows little sector- and country-specific flexibility and also requires the EEA/EFTA side to “speak with one voice,” the arrangement fits best into the category of concentric circles. In this context, the EEA Agreement provides for equal (and equally committed) participation of the three EEA/EFTA states in the “core” of European integration – the internal market and its four fundamental freedoms – but it also largely excludes some areas of it (agriculture and fisheries; trade policy), while at the same time including cooperation in specific other policy areas above it, some of which is quite extensive (see Wohlgemuth 2018, 105 ff). Thus, the EEA also exhibits features of “variable geometry” – only this can hardly be chosen individually by the nation-state.

Much wider circles including EU member states as well as many European neighbours are the Council of Europe (CoE, established in 1949; currently 48 members) and more recently the European Political Community (EPC, established in 2022; currently 45 participants). Both are much less formal organisations than the EU, the EEA or Schengen; they cannot pass laws, but are mostly declarations. Still, the CoE can push for the enforcement of select international agreements reached by member states mostly in the area of human rights and adequate political standards. It also hosts the European Court of Human Rights. The EPC is even less formal at this early stage; but it tries to demonstrate that there is a minimal consensus on European values and some common geopolitical interests in the face of aggressions from foreign powers (Russia).

*Policy area-related flexibility* (“variable geometry”) is a natural field of application of bilateral (occasionally also multilateral) association, customs or (more or less “deep”) free trade agreements of the EU with third countries according to Art. 37 TEU/Art. 216 TFEU. Here, “tailor-made” agreements are concluded for the various countries according to the specific circumstances and mutual interests in selected policy areas. Within the framework of the EU's neighbourhood policy, the third countries

(especially those with accession prospects or aspirations) are naturally the supplicants and the EU the donor as the continental hegemon with the largest market. Negotiations are not least about which parts of the EU *acquis communautaire* are to be adopted, whether and how dynamically the adoption of new EU rules is to take place, and how the agreements are to be monitored.

The variety of options for flexible integration of Europe beyond full membership in the EU is quite impressive; it also corresponds to the historically grown diversity of the peoples and nations of Europe. For the first time since the founding of the EEC/EC/EU more than 60 years ago, the decision of the citizens of Great Britain to leave the EU now raises the question in reverse: as a challenge of “flexible dis-integration.” In principle, this question must be answered in a mirror image of the flexible integration of third countries. I have laid out various post-Brexit options of partial (re-) integration elsewhere (see Wohlgemuth 2018, 136 ff). At the moment, there seems to exist little appetite on both sides to explore bolder arrangements that would go beyond the EU-UK Trade and Cooperation Agreement finally concluded in April 2021, although this agreement leaves many opportunities for “mutual benefits of joint commitment” unexploited (e. g., in research and education, defence, banking, freedom of movement). As argued above, much higher on the EU’s agenda are the (geo-)political questions of enlarging the Union on its eastern borders. As of November 2023, there are deep debates within EU institutions on how to organise the accession of new member states to the EU and how to re-organise the institutions of the EU itself in order to be able to cope with a prospect of an EU-30+.

## **6. Outlook: Concentric Circles and Variable Geometry as Ways Forward**

All three ideal-type propositions of a differentiated deepening and widening of the EU outlined above shape today’s academic and political discourse. The most prominent was published by an academic “working group on EU institutional reforms” convened by the French and German governments in September 2023 (Costa *et al.* 2023). Their report reflects some *prima facie* overlapping consensus between well-known positions of the two governments. Again, the focus is mostly on “decision making costs” or the capability to govern “effectively.” Hence the repeated call for also making QMV the norm for foreign policy, budgetary or tax issues; for reducing the numbers of Commissioners or parliamentarians to reasonable proportions; and for increasing the EU budget contributions in relation to GDP as well as enabling the EU to issue common debt.

Whether such reforms could rely on already strained “legitimacy and solidarity resources” stressed above, how “external costs” can be reduced, or “input-legitimacy” increased, is largely ignored by the authors. Instead, they point at two “windows of opportunity” to push through reforms before it gets much more difficult: the EU elections of June 2024 (which were correctly expected to bring in more EU-sceptic parliamentarians) and the institutional cycle before the first new members might join in 2030 (*ibid.*, 47 ff).

The report recognises that many of its recommendations would require treaty change after convening a Convention (Art. 48 TEU), and that “the experience of the previous Convention (2002–03) and the history of treaty revisions teach us that unforeseen political obstacles are more than likely” (*ibid.*, 35). And indeed, these political obstacles can easily be foreseen (another veto in a French referendum, a more robust intervention by the German Constitutional Court, not to mention the obstinacy of Hungary or other EU members). As “second best,” the report therefore suggests a “package deal in the Council between the pro-deepening and the pro-enlargement camps” and some rather obscure legal manoeuvres to hide treaty adjustments in an accession treaty (*ibid.*, 36–7). Only as a “fallback option” in case of continuing deadlock, a “coalition of the willing” would create a de facto Europe of concentric circles.

This “third best” option would have to show “respect for the *acquis communautaire*” (including the obligation to introduce the euro) for all present EU member states and “remain with the EU framework” of EU institutions. But it would offer opt-outs for the “uncooperative/unwilling state(s)” in new projects of further integration (*ibid.*, 39 ff). As a result, “four distinct tiers” of European integration would emerge: (a) an “inner circle” of those willing and capable to move beyond the EU *acquis* and commit to “doing much more together” (see scenario 5 above) *e.g.*, in policy areas like climate, energy, taxation; (b) the EU (all current and future members); (c) associate members as “a first outer tier” including “EEA countries, Switzerland or even the UK.” These would not be bound to “ever closer union,” but integrated into the single market – which also implies that they fall under the jurisdiction of the European Court of Justice and pay into the EU budget; (d) An EPC 2.0 in “policy areas of mutual importance ... such as security, energy or ... climate policy” and as “a useful step towards EU membership.”

It goes without saying that this academic proposal has not been endorsed by any EU institution or member state (not even France or Germany). But it offers a valuable first step towards structuring the inescapable debate on the future of EU governance. Based on the constitutional political economy arguments outlined above, I would regard “coalitions of the willing” (and capable) not a third best “fallback option” which political elites may have to choose because their citizens might be too stubborn to follow their lead. I would rather look at the opportunities for “gains from joint commitment” (Vanberg 2011) and procedural rules that allow citizens and their representatives to realise them. Variable geometries, out of which overlapping, and perhaps increasingly coherent concentric circles might evolve, may come close to that pragmatic ideal.

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