

# Where is Europe going?

## Europe Beyond Brexit: Scenarios for the Future

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Contribution to the Panel

«**The European Union after Brexit: Centrifugal Tensions and Differentiated Integration**»

Lisbon, 22 March 2019, Calouste Gulbenkian Foundation

## 1. Introduction

One of the most remarkable aspects of Brexit – the decision of the United Kingdom (UK) to withdraw from the European Union (EU)<sup>1</sup> – has been the degree to which the 27 other member states of the EU have been united in their dealing with the UK. Contrary to the expectations of some, the EU27 have never divided on issues connected to the UK withdrawal from the EU. In fact – with the marginal exception of Italy’s legal challenge against the EU Council decision relocating the European Medical Agency from London to Amsterdam, rather than Milan<sup>2</sup> – the EU member states have remained consistently united in negotiating with the UK, delegating all talks to the ad hoc European Commission Article 50 Task Force, and backing the work of the Brexit Chief Negotiator Michel Barnier.<sup>3</sup> Yet, one would be mistaken to believe that the unity of the 27 vis-à-vis the UK reflects a high level of harmony within the EU. In fact, in the midst of the Brexit process, tensions and divisions among the EU member states have actually increased in a number of policy areas. Beyond Brexit, the EU has recently weathered several other important crises – from the euro-crisis, to the migration-crisis and the rule of law crisis – which have increasingly tested the integrity of the Union, and thus raised pressing question on the future of Europe.

The purpose of this paper is to reflect on the future of the EU27, discussing how a number of ongoing centripetal pressures besides Brexit impact on the project of European integration. As the paper claims, the recent multiple crises the EU has faced have produced deep wounds in the fabric of the Union. Most notably, the rise of populism – and the battle for the next European Parliament elections – has polarized the member states, shedding dark clouds on the future of the EU at 27. Certainly, as the paper points out, the impact of path dependency should not be underestimated, which means that a scenario where the EU carries on and resists all difficulties in its current format cannot be ruled out. Nevertheless, the paper suggests that growing differentiation among the member states – if not the outright creation to the side of the existing EU of a new, smaller union including only a minority of member states – are possible alternative scenarios for the future. As such, the paper is structured as follows. Section 2 maps three key centrifugal pressures challenging the EU27 and their consequences. Section 3 outlines three alternative scenarios for the future of Europe which can follow from the EU’s crises. And Section 4 briefly concludes.

### 1.1. Centrifugal pressures

After the UK voted to leave the EU in June 2016, and notified its intention to withdraw from the EU in March 2017,<sup>4</sup> the EU has continued to face a number of other important crises which have tested the resolve of the other 27 member states. In fact, since Brexit, tensions among the member states have possibly even increased on issues such as the response to the euro-crisis, the management of the migration crisis or the respect for the foundational values of the EU. 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 EU project.

### 1.2. Euro-crisis

By Brexit time, the peak of the euro-crisis had elapsed: while action by the European Central Bank (ECB) had fundamentally contributed to reboot the Eurozone economy, the architecture of European economic governance had been reformed to tighten budgetary constraints and increase financial stability.<sup>5</sup> Nevertheless, the Economic and Monetary Union (EMU) remained still incomplete<sup>6</sup> – and tensions between Northern creditor and Southern debtor countries persisted.<sup>7</sup> Indeed, the “crisis let the specter of a euro exit emerge – and we have not yet been able to fully make it disappear again.”<sup>8</sup> This was on show in summer 2018, when Greece ended with much fanfare its third bailout program but, as part of the post-program surveillance framework, was forced by the Eurogroup to commit to maintaining “a primary surplus of 2.2% of gdp on average in the period from 2023 to 2060”<sup>9</sup> – a target which most observers regarded as impossible to meet.<sup>10</sup>

Moreover, the legacy of the euro-crisis with low growth and high level of unemployment continued to fuel acrimony among the member states. 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 League and the Five Star Movement – joined in a sovereigntist coalition, with an explicit plan to abandon the Eurozone.<sup>11</sup> Only the veto of the Italian President of the Republic forced the coalition parties to backtrack on this.<sup>12</sup> Yet, the new Italian government clearly embraced a confrontational stand against the EU: in presenting its 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 in the Stability and Growth Pact – which led the Commission to invoke for the first time ever its power to request a redrafting of the budget bill,<sup>13</sup> and to activate the excessive deficit procedure.<sup>14</sup> In the end, mostly under the pressure of the financial markets, the Italian Government compromised and agreed to revise its budget bill by postponing some expenditures, thus reducing the deficit.<sup>15</sup> Yet, it is clear that this is stopgap, and that the problem will remerge in analogous form in 2019 – as made evident also by the European Commission forecast for 2019, which put Italy at the end of the queue in terms of growth, with a mere 0.2% projection for the year.<sup>16</sup>

Given this state of affairs it is unsurprising that major difficulties have been found in the discussions about completing EMU, including by setting up a fiscal capacity and the last

pillar of banking union through a common deposit guarantee scheme.<sup>17</sup> 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 stabilization purposes,<sup>18</sup> a coalition of Northern countries generally known as the ‘Hanseatic League’, which includes both Eurozone and non-Eurozone states, came out to caution against the Franco-German proposals and rather pleaded for strengthening the European Stability Mechanism (ESM)<sup>19</sup> as a surveillance authority on the budget of the member states<sup>20</sup> – which, in fairness, had always been a German policy priority. In December 2018 the Eurogroup in an inclusive format eventually agreed on a compromise package, which included both a reform of the ESM and steps toward greater Eurozone convergence and competitiveness.<sup>21</sup> The Euro Summit endorsed the packaged, with the ambitious time-line to achieve it by June 2019,<sup>22</sup> but it remains to be seen how member states will be able to strike the balance between risk-reduction and risk-sharing in EMU.

### **1.3. Migration crisis**

Like the euro-crisis, also the migration crisis had apexed by the time of Brexit. 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 – not least at the cost of outsourcing to third countries (of dubious human rights record) the task of controlling the EU external border.<sup>23</sup> Nevertheless, the management of the migration crisis has remained a point of contention among the member states and, in fact, tensions have increased on the functioning of the European Common Asylum System (ECAS).<sup>24</sup> The EU migration policy had been developed in good time, but particularly the Dublin regulation,<sup>25</sup> which identified the member state responsible for processing asylum applications of third-country nationals, was ill designed to cope with a sudden surge of asylum applications. Yet, member states have dramatically divided on how to handle this crisis – with Central and Eastern European member states refusing any form of burden sharing vis-à-vis the coastline 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.<sup>26</sup> Although the number of asylum seekers to be relocated under the Council decision was a drop of water in the ocean, considering that almost 4 million migrants 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 in a fully legitimated way in adopting the decision by majority,<sup>27</sup> the Visegrad countries bluntly refused to abide by the Council decision and the ECJ ruling – in the case of Hungary with the support of the state constitutional court, which declared the EU act in violation of the country’s constitutional identity, intended as enshrining an ethnically homogenous nation.<sup>28</sup> As the Commission had to acknowledge in June 2017

in its periodical report on the relocation system, progress in the implementation of the measure had been simply “insufficient.”<sup>29</sup>

In fact, disagreement among the member states in the Council paralyzed any efforts at reforming the ECAS, and despite the encouragement of the European Council,<sup>30</sup> the proposals by the Commission to overhaul the system<sup>31</sup> – including by introducing a permanent mechanism of relocation in order to increase its fairness – have gone nowhere. Furthermore, just like for EMU, the legacy of the crisis combined with the inequities of the system have fueled political movements which have more explicitly called for drastic responses, including fully suspending Schengen and reintroducing national borders.<sup>32</sup> Ironically this has not happened only in Northern member states such as Austria, or Denmark, but also in coastline countries such as Italy, or Spain, where xenophobic right-wing parties have gained momentum in national and regional elections. Yet the cleavage on the migration issue has mostly run along an East v West axis, and the political conflict among EU member states on how Europe should handle the migration crisis has gotten so intense that Luxembourg Minister of the Interior Jean Asselborn even suggested that Hungary should be expelled from the EU for the way it treats migrants.<sup>33</sup>

#### **1.4. Rule of law crisis**

Compared to euro-crisis and the migration crisis, another crisis got much worse in the midst of the Brexit process. Even if the first signs of backsliding on the respect for the rule of law in a number of EU member states of Central and Eastern Europe were evident since the early 2010s, in the years after the UK voted to leave the EU the phenomenon known as the rule of law crisis both deepened and widened.<sup>34</sup> Even though 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 of the former Warsaw Pact have experienced legal and political developments that have challenged basic constitutional principles such as the independence of the judiciary, the separation of powers, or the fairness of the electoral process.<sup>35</sup> Such developments constitute a major threat to the integrity of the EU, as they undermine the mutual trust on the respect for the rule of law. Yet, Hungarian Prime Minister Viktor Orban proudly defended this path, explicitly arguing that his country was intent on establishing an authoritarian democracy.<sup>36</sup> And the Hungarian example increasingly served as a template in other countries of the region, notably Poland and Romania.

Although arguably with excessive delay, the EU institutions have started taking 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.<sup>37</sup> Moreover, in December 2017 the Commission activated Article 7 TEU against Poland calling on the Council to determine that the country faced a clear risk of a serious breach of the rule of law.<sup>38</sup> And in September 2018 the European Parliament approved a resolution starting the same process against Hungary.<sup>39</sup> Nevertheless, limited progress has been made by

the Council in considering whether the situation in Poland and Hungary required an EU determination that corrective action was 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 for its rule of law record, and limited efforts to fight corruption by the European Parliament<sup>40</sup> – the application of the Article 7 procedure against Poland and Hungary was even removed by the agenda of General Affairs Council meeting.<sup>41</sup>

In this context also the ECJ was involved in the matter. Seized through a preliminary reference by the Irish High Court, the ECJ held that backsliding in 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.<sup>42</sup> And ruling in an infringement proceeding brought by the Commission, the ECJ enjoined Poland from giving effect to a highly controversial law which altered the composition of the state Supreme Court.<sup>43</sup> Yet, while the ECJ has so far managed to command respect, its 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 – in the absence of EU coercive power, and given the growing rise of populism across Europe. In fact, with the formation of sovereigntist, Euro-skeptic government coalitions in an ever greater number of EU member states – including Austria and Italy – it is 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's affair.<sup>44</sup> As a result, the rule of law crisis has the potential to dramatically weaken the EU – de facto even imperiling the functioning of the internal market.

## **2. Scenarios**

The centrifugal pressures identified in section 2 have significantly challenged the unity of the EU. As Dermot Hodson and Uwe Puetter have argued, the EU is currently in disequilibrium.<sup>45</sup> In this context, a debate on the future of Europe has been launched at the highest institutional level<sup>46</sup> – and growing attention is being dedicated to this critical question also by academics and civil society.<sup>47</sup> Many reflections on the future of Europe identify a path of increasing differentiation among, if not outright separation between, EU member states. Yet, one should not under-estimate the dynamics of path dependency within the EU, which may allow things to continue as they have for at least another while. In what follows, therefore, I will try to outline three possible models of integrations that may compete in the next few years.

### **2.1. Resist and carry on**

One cannot exclude that, despite all the challenges the EU is currently facing, things may simply continue as they have. 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,<sup>48</sup> to the failure of the European Constitution<sup>49</sup> and beyond. Hence the EU may simply be able to resist yet another set of crises and carry on as it stands. In fact, there are a number of policy areas where actually the EU is 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,<sup>50</sup> and started negotiations for new economic partnerships with, among others, Australia.<sup>51</sup> Moreover, despite a challenge by the Belgian region of Wallonia,<sup>52</sup> the EU Council signed a comprehensive economic trade agreement with Canada,<sup>53</sup> and the European Commission received a mandate to start new trade negotiations with the US,<sup>54</sup> averting the threats of a tariff war with the Trump administration.<sup>55</sup>

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 the economic scholarship has shown, institutional systems follow a logic of path dependency, and moreover 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.<sup>56</sup> Pareto-optimality, instead, 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 – meaning that improvements to a given equilibrium can only occur if no one loses out of the change. Applied to the EU, these economic 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.<sup>57</sup>

However, one cannot underestimate the novelty of the challenges the EU is facing today – compared to the past. Moreover, the ability of the EU to work in given areas, such as international trade, conceal the fact that this is a special domain, where the institutional structures of the EU actually support an effective governance. The Treaties, in fact, make the common commercial policy an exclusive competence of the EU,<sup>58</sup> vesting the powers to run international negotiations in the European Commission, subject to the mandate of the Council, which operates under QMV, and the oversight of the European Parliament.<sup>59</sup> Yet, in most other areas of high politics, the EU does not follow the same supranational logic. On the contrary, intergovernmental modes of governance 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.<sup>60</sup> 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.<sup>61</sup>

## **2.2. React and differentiate**

It is for these reasons that an alternative scenario is one of reaction and increasing differentiation within the EU. Certainly, differentiation is not a new thing in 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).<sup>62</sup> Nevertheless, in recent times differentiated integration has increasingly become a tool to deal with deadlock and diverging ideological preferences in highly salient policy areas.<sup>63</sup> For instance, the project of establishing a European Public Prosecutor Office (EPPO)<sup>64</sup> to investigate transnational crimes against the financial interests of the EU moved forward through enhanced cooperation with the support of only 20 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.<sup>65</sup> In fact, the efforts by the Romanian government to oppose the appointment of a Romanian anti-corruption prosecutor to lead EPPO<sup>66</sup> signaled how differentiation in policy areas connected to the area of freedom, security and justice is somehow 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 time has been officially endorsed not just by the European Commission as one of its scenarios in the Whitepaper on the Future of Europe<sup>67</sup> – but also by several member states, including the four largest Eurozone countries – Germany, France, Italy and Spain – who expressed their wish “qu’il y ait de nouvelles formes de coopération pour de nouveaux projets – ce que l’on appelle les coopération différenciées – qui fassent que quelques pays puissent aller plus vite, plus loin dans de domaines comme la défense, mais aussi la zone euro au travers l’approfondissement de l’Union économique et monétaire [...] sans que d’autre ne puissent s’y opposer.”<sup>68</sup> And even the European Parliament, albeit with some reluctance, referred to differentiated integration in an ad hoc resolution in January 2019.<sup>69</sup> As it pointed out, differentiated integration “has sometimes allowed for the deepening and widening of the EU to be pursued simultaneously.”<sup>70</sup> As a consequence, the Parliament underlined that “one cannot oppose differentiation and integration, nor can one present differentiation as an innovative path for the future of the Union.”<sup>71</sup> Yet, it cautiously underlined how differentiation “is often perceived as a path towards the creation of first- and second-class Member States”<sup>72</sup> and thus concluded that “that differentiation should only be conceived of as a temporary step on the path towards more effective and integrated policymaking.”<sup>73</sup>

Whatever the benefits of differentiation, it is well known that this strategy suffers from a number of difficulties – not least actually the risk of being unable to effectively differentiate. The case of cooperation in the field of defense is telling from this point of view.<sup>74</sup> Following the decision of the UK to leave the EU, the European Council, in June 2017 agreed eventually on the need to launch for the first time an inclusive and ambitious Permanent Structured Cooperation (PESCO) in the field of defense pursuant to Article 42(6) TEU.<sup>75</sup> In December 2017 the Council formally approved the creation of PESCO on the understanding that member states participating to the military cooperation “shall make contributions which fulfill the more binding commitments which they have made to one another.”<sup>76</sup> And in March 2018 the Council gave its blessing to the first operational projects.<sup>77</sup> 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 – to establish an alternative European Intervention Initiative.<sup>78</sup> This project, which involves only 10 countries (including the UK and Denmark) is designed to bring together EU states which share a common vision regarding security concerns – creating a framework of selective cooperation outside the structures of the EU. And this may be a model to be used elsewhere.

### **2.3. Downsize and restart**

The idea that a number of member states could consolidate their cooperation through separated structures outside the EU has led some to think that the Eurozone could become the framework for the creation of a core Europe.<sup>79</sup> 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,<sup>80</sup> an ESM to assist failing states,<sup>81</sup> and a Single Resolution Fund to support failing banks.<sup>82</sup> But monetary union requires even greater federalization, particularly in order to establish a fiscal capacity, with the connected problems of taxation and representation.<sup>83</sup> In the future, if efforts at deepening and completing EMU were to succeed, therefore, this may lead to the consolidation – de facto to the side of the EU – 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 have decided 20 years ago to share a single currency, aka a hallmark of sovereignty.

However, the ability of the Eurozone to operate as a core alliance of EU member states suffers from two limitations. On the one hand, not least because Eurozone member states decided in 2014 to appoint as President of the Euro-Summit Donald Tusk, who comes from a non-Eurozone state (Poland), ongoing debates on EMU reform have been enlarged to non-Eurozone countries, and are thus now undertaken in an inclusive format.<sup>84</sup> While this catered the interest of the more Euroskeptic countries such as those of the Hanseatic League – which by involving non-Eurozone countries can tame the leadership of France and Germany on Eurozone matters and 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. On the other hand, the attacks that the new populist Italian government is staging against the EMU institutional architecture and fiscal rules suggest that this framework may be actually too inclusive to be the springboard for a restart of the EU project. As such, a scenario where the Eurozone would serve as the breeding ground for greater integration among a sub-set of member states cannot be taken for certain at least short term.

If this were the case, then, the restart of the project of integration may occur on an even smaller scale. In this regard, the recent conclusion by France and Germany of the Treaty of Aachen in January 2019 signals a possible roadmap.<sup>85</sup> In this bilateral agreement the two core EU/Eurozone member states committed to deepen their integration at all levels, including with the aim of achieving a “zone économique franco-allemand dotée de règles communes.”<sup>86</sup> In fact, the Treaty also creates a new organizational structure for Franco-German cooperation,<sup>87</sup> and a commitment to advance joint proposals on all major

European issues.<sup>88</sup> While the Preamble of the Treaty affirms that the two countries are interested “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”<sup>89</sup> it is clear that it could represent the nucleus of a new *kern Europa*, to which only a few other like-minded EU member states could be associated. While this scenario has raised concerns as it would lead other member states behind,<sup>90</sup> it could be a welcome development to address the challenges that Europe is facing and to overcome the paralysis of the EU institutional system.

### 3. Conclusion

This paper has analyzed the scenarios for the future of Europe beyond Brexit. As it pointed out, while the EU 27 have been remarkably united in negotiating with the UK, they are heavily divided between themselves on crucial political issues. In fact, the legacies of the euro-crisis and migration crisis and the growing rule of law backsliding in a number of EU member states are leaving deep scars in the fabric of the EU. While political efforts have been made at the highest EU institutional level to chart a united way forward, the forthcoming European elections and the rise of populism do not bode well for the unity of Europe. In this context the paper has outlined alternative scenarios for the future. As it has been 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 that step by step a new, separate organization of integration may emerge to the side of the EU – either around the Eurozone, or a smaller alliance of states championed by France and Germany. In the end, as Irish poet Oscar Wilde famously put it, “*prediction is very difficult, especially if it’s about the future.*” *So the future of Europe remains to be seen. Yet, there is little doubt that Brexit will not be the last disruptive developments in the life of the EU and, important adjustments are to be expected among the EU 27.*

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<sup>1</sup> See generally Federico Fabbrini (ed.), *The Law & Politics of Brexit* (OUP 2017).

<sup>2</sup> 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.

<sup>3</sup> See European Council (Article 50) 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”).

<sup>4</sup> Letter of Prime Minister Theresa May to European Council President Donald Tusk, 29 March 2017.

<sup>5</sup> See further Federico Fabbrini, *Economic Governance in Europe* (OUP 2016).

<sup>6</sup> See ECB President Mario Draghi, speech at the session of the plenary of the European Parliament to mark the 20<sup>th</sup> anniversary of the euro in Strasbourg, 15 January 2019 (stating that “EMU remains incomplete”).

<sup>7</sup> See also French President Emmanuel Macron, speech, Athens, 7 September 2017 (defining the euro-crisis as “une forme de guerre civile interne”).

<sup>8</sup> Kerstin Bernoth et al, “Happy Birthday? The euro at 20”, study commissioned by the European Parliament Economic Affairs Committee, January 2019, 6

<sup>9</sup> Eurogroup statement on Greece, 22 June 2018

<sup>10</sup> See Jeromin Zettelmeyer et al., “How to Solve the Greek Debt Problem” Peterson Institute for International Economics Policy Brief 10/2018.

<sup>11</sup> 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).

<sup>12</sup> 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”).

<sup>13</sup> 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.

<sup>14</sup> 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.

<sup>15</sup> 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).

<sup>16</sup> European Commission, Winter 2019 Economic Forecast – Italy, 6 February 2019, available at [https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-performance-country/italy/economic-forecast-italy\\_en](https://ec.europa.eu/info/business-economy-euro/economic-performance-and-forecasts/economic-performance-country/italy/economic-forecast-italy_en) (last visited 16 February 2019)

<sup>17</sup> See further Federico Fabbrini & Marco Ventoruzzo (eds.), *Research Handbook on European Economic Law* (Elgar 2019).

<sup>18</sup> See Franco-German Proposal on the architecture of a Eurozone Budget within the Framework of the European Union, 16 November 2018.

<sup>19</sup> See Treaty Establishing the European Stability Mechanism, 25 March 2011.

<sup>20</sup> Shared views from the Finance Minister of Denmark, Estonia, Finland, Ireland, Latvia, Lithuania, the Netherlands and Sweden, 6 March 2018.

<sup>21</sup> Eurogroup report to Leaders on EMU Deepening, 4 December 2018, PRESS 738/18.

<sup>22</sup> Euro Summit statement, 14 December 2018, PRESS 790/18.

<sup>23</sup> See EU-Turkey statement, 18 March 2016, Press release 144/16.

<sup>24</sup> See generally Cathryn Costello, *The Human Rights of Migrants and Refugees in European Law* (OUP 2015).

<sup>25</sup> 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.

<sup>26</sup> 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.

<sup>27</sup> See Case C-643/15 and C-647/15 *Slovakia & Hungary v. Council of the EU*, ECLI:EU:C:2017:631

<sup>28</sup> Hungarian Constitutional Court Decision 22/2016. (XII. 5.) AB

<sup>29</sup> See European Commission Thirteenth report on relocation and resettlement, 13 June 2017, COM(2017) 330 final.

<sup>30</sup> See European Council conclusions 28 June 2018, EUCO 9/18, §12 (calling for a “speedy solution to the whole package” of reforms).

<sup>31</sup> See European Commission communication, A European Agenda on Migration, 13 May 2015, COM(2015) 240 final.

<sup>32</sup> See European Commission communication on preserving and strengthening Schengen, 27 September 2017, COM(2017) 570 final.

<sup>33</sup> Madeline Chambers & Marton Dunai, “EU should expel Hungary for mistreating migrants, Luxembourg minister says”, *Reuters*, 13 September 2016

<sup>34</sup> See generally Andras Jakab & Dimity Kochenov (eds.), *The Enforcement of EU Law and Values* (OUP 2017).

<sup>35</sup> See Laurent Pech & Kim Lane Scheppele, “Illiberalism Within: Rule of Law Backsliding in the EU” (2017) 19 *Cambridge Yearbook of European Legal Studies* 3.

<sup>36</sup> 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”).

<sup>37</sup> 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.

<sup>38</sup> 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.

<sup>39</sup> 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.

<sup>40</sup> European Parliament resolution of 13 November 2018 on the rule of law in Romania, P8\_TA(2018)0446.

<sup>41</sup> See General Affairs Council, Outcome of meeting, 8 January 2019, Doc 5039/19.

<sup>42</sup> See Case C-216/18 PPU, *LM*, ECLI:EU:C:2018:586

<sup>43</sup> Order of the Vice-President of the Court in Case C-619/18 R, *Commission v. Poland*, 19 October 2018 (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). See also now Case C-619/18 R, *Commission v. Poland*, Opinion of AG Tanchev, 11 April 2019.

<sup>44</sup> 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.

<sup>45</sup> Dermot Hodson & Uwe Puetter, “The European Union in Disequilibrium”, (2019) *Journal of European Public Policy* 3.

<sup>46</sup> See in particular European Commission Whitepaper on the Future of Europe, 1 March 2017.

<sup>47</sup> See e.g. Sergio Fabbrini, *Europe’s Future* (CUP 2019).

<sup>48</sup> 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.

<sup>49</sup> See Nick Barber et al (eds.), *The Rise and Fall of the European Constitution* (Hart 2019).

<sup>50</sup> See EU-Japan Economic Partnership Agreement

<sup>51</sup> See European Commission press release, “EU and Australia launch talks for a broad trade agreement”, 18 June 2018, IP/18/4164

<sup>52</sup> 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).

<sup>53</sup> See EU-Canada Comprehensive Economic Trade Agreement OJ [2017] L11/23.

<sup>54</sup> See Council Decision authorizing the opening of negotiations with the United States of America for an agreement on the elimination of tariffs for industrial goods, 15 April 2019.

<sup>55</sup> Joint EU-US Statement, 25 July 2018, STATEMENT/18/4687

<sup>56</sup> See Kurt Dopfer, “Toward a Theory of Economic Institutions: Synergies and Path Dependency” (1991) 25 *Journal of Economic Issues* 535.

<sup>57</sup> See Art. 48 TEU.

<sup>58</sup> Art. 3 TFEU.

<sup>59</sup> Art. 207 TFEU.

<sup>60</sup> See Federico Fabbrini, “Constitutional Crisis and Institutional Reform: The European Union at the Crossroad” (2017) 32 *Connecticut Journal of International Law* 285.

<sup>61</sup> See also Ronan McCrea, “Forward or Back: The Future of European Integration and the Impossibility of the Status Quo” (2017) 23 *European Law Journal* 66.

<sup>62</sup> See Bruno De Witte et al (eds.), *Between Flexibility and Disintegration* (Elgar 2017).

<sup>63</sup> See also Maria Demertzis et al., “One size does not fit all: European Integration by Differentiation”, Bruegel Policy Brief 3/2018.

<sup>64</sup> 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.

<sup>65</sup> See n 38 & 39.

<sup>66</sup> 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.

<sup>67</sup> European Commission whitepaper on The Future of Europe, 1 March 2017, COM(2017) 2025 final.

<sup>68</sup> See Déclaration au Sommet informel Allemagne, Espagne, France, Italie à Versailles, 6 March 2017.

<sup>69</sup> European Parliament resolution of 17 January 2019 on differentiated integration, P8\_TA-PROV(2019)0044

<sup>70</sup> *Ibid.*, §E.

<sup>71</sup> *Ibid.*

<sup>72</sup> *Ibid.*, §C.

<sup>73</sup> *Ibid.*, §3.

<sup>74</sup> See Federico Fabbrini, “Do NATO Obligations Trump European Budgetary Constraints?” (2018) 9 *Harvard National Security Journal* 121.

<sup>75</sup> See European Council conclusions, 22-23 June 2017, EUCO §8.

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<sup>76</sup> 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).

<sup>77</sup> Council Decision (CFSP) 2018/340 of 6 March 2018 establishing the list of projects to be developed under PESCO, OJ [2018] L65/24.

<sup>78</sup> French Minister of Defence Florence Parly, speech at the European Council on Foreign Relations, Paris, 28 May 2018.

<sup>79</sup> See also Jean-Claude Piris, *The Future of Europe. Towards a Two-Speed EU?* (CUP 2011).

<sup>80</sup> See Treaty on Stability, Coordination and Governance in the Economic and Monetary Union, 2 March 2012, Art. 12

<sup>81</sup> See n 19.

<sup>82</sup> See Agreement on the transfer and mutualisation of contributions to the Single Resolution Fund, 21 May 2014

<sup>83</sup> See further Federico Fabbrini, “A Fiscal Capacity for the Eurozone: Constitutional Perspectives”, study commissioned by the European Parliament Constitutional Affairs Committee, February 2019.

<sup>84</sup> Euro Summit, Leaders’ Agenda, 23 March 2018.

<sup>85</sup> See *Traité entre la République française et la République fédérale d’Allemagne sur la coopération et l’intégration franco-allemand*, Aachen, 22 January 2019.

<sup>86</sup> *Ibid.*, Art. 20.

<sup>87</sup> *Ibid.*, Art.s 23-26.

<sup>88</sup> *Ibid.*, Art. 2.

<sup>89</sup> *Ibid.*, Preamble.

<sup>90</sup> 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”).