

The resistible decline of the EU: Towards unconventional forms of cooperation

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Executive summary

Europe will navigate in dangerous waters in the future, both economically and militarily. Member states crucially need the EU to quickly bolster their economies, especially in high tech and military capacities, through large-scale loans for example. Yet the EU decision-making is in a deadlock, as it requires unanimity (among 27 and potentially 30+ members in the future) for major issues. It is easy to adopt bold general objectives, but difficult to decide on precise implementing legislative and budgetary acts.

Moreover, the rules adopted by the EU have increasingly been circumvented in recent years, including on core EU issues, such as the Single Market, the Eurozone and Schengen. With no changes, the EU is thus in danger of slowly unravelling. This is not irreversible, however. Five options to allow the EU to react swiftly could be considered.

Two of these options aim at preserving the unity of the 27, but appear to be unrealistic. The first would be revising the Lisbon Treaty decision-making. The second option would be activating the Lisbon Treaty passerelles to use more qualified majority voting.

A third option would be for a group of member states to create, by treaty, a new small Political Community with bold aims and means. However, this would raise complex legal problems.

Finally, a group of willing and able member states could decide to act together, either within the EU framework, by using possibilities of enhanced cooperation and PESCO (fourth option), or outside the EU framework, by using intergovernmental forms of cooperation (fifth option). These two last options could, if successful, open a pathway to breaking the deadlock and halt the EU's decline.

Introduction

While the international landscape is undergoing rapid, deep transformation, the EU is unable to react quickly and boldly. EU member states are relatively small and have poor natural resources. Their populations are shrinking fast. Their economic growth and competitiveness are weakening, particularly in high-tech industries. And they are, since the Second World War, unable to ensure their security without the help of the US, which is no longer guaranteed.

For the EU to play a more active role on the global stage and to be able to defend better the interests of

Europe, the economic and military capacities of its members need a significant boost. Common decisions on how to move forward would help, including on the implementation of the Draghi Report or the joint financing of a very substantial increase of European military industry building. But given the uncertain goodwill of member states and the EU's slow and inefficient decision-making process, nothing is less sure. As a result, the EU is increasingly fragmented and unable to reach its aims of more sovereignty and security.

A critical diagnosis

Over the years, the EU has agreed many bold objectives but struggled to adopt the legislative and budgetary acts necessary to reach them.

This is the case for the finalisation of the Single Market, the banking union, asylum and immigration policy, judicial cooperation in criminal matters, energy and environment policies, including action against climate change. Regarding the progressive framing of a common defence policy that will lead to a common defence, which the EU was given the power to define 30 years ago, it remains elusive, despite geopolitical risks and US policy shifts. As to the common foreign policy, it shows divisions on some major issues.

On most of these policies, little actual progress has been made for years. The EU lacks the lever that it had to create the Single Market: the legal option to ask for a qualified majority vote in the Council. Even if rarely applied, and never against the vital interests of member states, this was a powerful tool to make national capitals accept to enter into negotiations. Without it, the declared opposition of one or several member states is sufficient to stop a proposal before any negotiation, or even before a formal proposal is presented.

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Even when the necessary rules are painstakingly agreed, including on the EU's core aims, they are not always respected. Alarming, the rules on the compatibility of state aid – fundamental for the Single Market –, the rules for budget and debt – recently made more flexible and essential within the monetary union –, and the Schengen rules for the freedom of movement of persons, have increasingly been circumvented in recent years, even if one may understand for which reasons. Despite that, the number of cases of infringement referred to the Court of Justice has been, and still is, diminishing. Thus, one might fear that the EU is already beginning to slowly unravel. Without reaction, this could lead to more decline. So, what options are there to counter this development?

FIRST OPTION: THE 27 COULD REVISE DECISION-MAKING IN THE EU TREATIES

The EU institutions only have the powers conferred upon them in the Treaties by the member states. According to the Treaties, the development of any of the policies mentioned above requires financial and legal decisions to be taken by these institutions, with the agreement of all member states. Therefore, the first option would be to change the decision-making provided in the Treaty. However, such a modification appears to be politically impossible, even in the long term.

Does this mean that essential decisions, even if largely approved, will forever to be subject to 27 possible individual vetoes, not only on defence and foreign policy, but also on issues directly affecting the establishment or functioning of the Single Market, like the banking union, parts of the energy and environment policies, tax matters, or the budgetary means necessary for the EU to work? Will this remain unchanged while, in future, the strategic imperative to enlarge the EU to 30+ members will mathematically further weaken the EU's ability to decide and act swiftly?

Given this prospect, it is wise to investigate alternative options.

SECOND OPTION: THE 27 COULD ACTIVATE SOME OF THE PASSERELLES PROVIDED IN THE LISBON TREATY

There is a way to improve EU decision-making without revising the Lisbon Treaty. This is to use some of the provisions included in the Treaty allowing either the European Council or the Council, acting by unanimity, to decide switches from unanimity to qualified majority voting (QMV) in the Council.

In more concrete terms, Article 48(7) 1st and 2nd subparagraph of the Treaty on European Union (TEU) states that on legislative matters, the European Council may decide, after obtaining the consent of the European Parliament and after a procedure involving national parliaments, to switch legal bases foreseen in the Treaty on the Functioning of the European Union (TFEU) from a special legislative procedure to the ordinary one (co-decision with the European Parliament, QMV in the Council), and/or to switch from unanimity to QMV in the Council on a given area or case concerning the Common Foreign and Security Policy (CFSP), excluding decisions with military or defence implications (see also for CFSP; Article 31(2 and 3) TEU).

In addition, Article 312(2) 2nd subparagraph TFEU states that on budgetary matters, the European Council may adopt a decision authorising the Council to act by QMV to adopt the regulation laying down the Multiannual Financial Framework.

Unfortunately, the positions adopted up to now by member states show that achieving unanimity for the option of using a passerelle will be extremely difficult, except maybe in limited cases. If no option involving all member states is realistic, what other options could be examined?

THIRD OPTION: A GROUP OF MEMBER STATES COULD CREATE, WITHIN THE EU FRAMEWORK, AN AMBITIOUS CLOSER POLITICAL COMMUNITY

If the passerelles cannot be used due to a lack of unanimity, some member states could adopt a new Treaty creating a closer Political Community. If ambitious, this Treaty would permit them to exercise enhanced cooperation in some issues and to decide on them by QMV. Decisions of the Community, binding only for participating member states, would be taken in the EU Council, composed of all member states, but only those participating would have the right to vote. Similarly, in the European Parliament, only the MEPs elected in the participating member states would have the right to vote. The individual veto of these participants would be reserved for strictly vital issues. For other decisions which are adopted unanimously in the EU, a veto should only be exercised collectively,

for instance by 10 to 15% of the participating member states representing 10 to 15% of their total population. Other institutions would continue to function according to current rules for the Political Community and for the EU.

If the passerelles cannot be used due to a lack of unanimity, some member states could adopt a new Treaty creating a closer Political Community.

However, this option seems rather unrealistic, given that it might necessitate the revision of some national Constitutions and the organisation of referenda, thus raising huge political and legal problems.

So, are there less ambitious options open to groups of member states?

FOURTH OPTION: WILLING AND ABLE MEMBER STATES COULD USE ENHANCED COOPERATION AND PESCO

Some willing and able member states might decide to exploit all Treaty possibilities to adopt common policies or decisions in the EU framework. There are possibilities to do this while fully respecting the EU Treaties.

- ▶ For one, the member states concerned could use the provisions in the Treaties for enhanced cooperation, with the EU Institutions playing their role as set out in the Treaties (Article 20 TEU and Article 326 to 334 TFEU).
- ▶ In addition, they could also develop further, inside the EU framework, their cooperation in the specific field of defence and security, via the instrument of permanent structured cooperation (PESCO) (Article 42(6) and Article 46 TEU), implementation of a task or operation by a group of member states (Article 43 and 44(1) TEU), or specific groups for joint projects in the framework of the European Defence Agency (Article 45(2) TEU).

This is certainly a realistic option, which some member states are probably considering. But will they be more attracted by remaining in the EU framework or by pursuing an intergovernmental option?

FIFTH OPTION: WILLING AND ABLE MEMBER STATES COULD ADOPT INTERGOVERNMENTAL DECISIONS ON SENSITIVE ISSUES

Additional cooperation between some member states is already frequently taking place outside the EU institutional framework. This does not preclude, in

some cases, giving EU institutions a role, as has been recognised by the Court of Justice (Pringle, Case-370/12). The conditions are that intergovernmental agreements must be compatible with the EU Treaties, respect the powers of the EU institutions and not be in contradiction with EU law and procedures.

This was the case at the time of the public debt crisis, with the adoption of the European Financial Stability Facility in 2010, followed by the European Stability Mechanism (ESM) in 2012, and with the adoption by almost all member states of the Treaty on Stability, Coordination and Governance in 2012. In those cases, there was no other solution than to work in an intergovernmental way to overcome the impossibility of reforming the basic EU Treaties. This was a success.

Today, the crisis is about defence.

A group of willing and able member states could decide to organise armament cooperation and opening public procurement to each other in order to strengthen their defence industries (including personnel vehicles,

transport of troops by air, helicopters, naval shipyards). Such an initiative would build on the Organisation for Joint Armament Cooperation (OCCAR), involving Belgium, France, Germany, Italy, Spain, and the UK, to which both NATO and the EU are partners, and other existing intergovernmental forms of cooperation. The same could be done for operational defence projects, such as the Eurocorps and others. Such cooperation might be open to third European countries, such as Norway and the UK.

Finally, a group of willing and able member states could also decide to launch a large common loan, in view of the imperative need to finance an urgent and massive effort in the development of their defence industries. According to the press, this project is now being discussed informally within the EU framework, following the model of the Next Generation EU (NGEU), the recovery instrument adopted after the Covid-19 pandemic. It could therefore be adopted in the EU framework. However, if unanimity cannot be reached within the EU framework, the intergovernmental way could and should be envisaged.

Time for some member states to be bold

As Fabian Zuleeg and Janis A. Emmanouilidis recently wrote: “Those within the EU who are prepared to take the necessary steps to rise to the challenge posed by Trump may have to explore unconventional forms of cooperation to act effectively. Moving forward in this way poses its own legal and political risks. But with European democracy at stake, it may be the only path to achieving the necessary level of ambition and unity to mount a strong response to Trump 2.”¹

Among the options considered above, there are only two which would safeguard the unity of the 27. Unfortunately, they both look politically unrealistic. Some member states should therefore think seriously about bold actions from a group of willing and able member states. In the event of such a group emerging, it should remain open to other member states.

¹ See Emmanouilidis, Janis A. and Zuleeg, Fabian (2025), “Europe’s next watershed – how liberal Europe should react to Trump 2.0”, *EPC Discussion Paper*. Download available here: [https://www.emmanouilidis.eu/download/Emmanouilidis:Zuleeg__Europe_s_Next_Watershed_\(1-2025\).pdf](https://www.emmanouilidis.eu/download/Emmanouilidis:Zuleeg__Europe_s_Next_Watershed_(1-2025).pdf)

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