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Integration Under Pressure: Europe's Path Forward

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Preface

This volume brings together contributions presented at the 16th Network Europe Conference, held in Belfast, Northern Ireland, on 4–5 September 2025. The conference examined how European integration can remain on course amid geopolitical instability, institutional challenges, and persistent security threats. Russia's war of aggression against Ukraine remains the defining challenge for Europe's security architecture. The opening contribution examines the limitations of existing institutional arrangements, including the United Nations, NATO, the European Union, and the OSCE, in responding to the return of large-scale interstate warfare. It also examines how Switzerland, as a neutral state, might contribute to reform efforts within the UN Security Council and the OSCE. The analysis of Lithuania's security policy, meanwhile, illustrates how directly the war is reshaping the priorities of individual EU Member States.

EU enlargement and the broader processes of European integration constitute another major theme of this volume. The contributions on Ukraine, Armenia, Georgia, and the Western Balkans demonstrate that integration is far from linear. Geopolitical upheaval may accelerate integration in some cases, while domestic political resistance, institutional weaknesses, and pressure from external actors may produce delays, reversals, or even the suspension of the process. The contribution on Northern Ireland serves as a reminder that the path from violent conflict to lasting peace and greater prosperity remains long and fragile. Its experience also underlines the importance of sustained reconciliation and resilient institutional safeguards at a time of renewed tensions across Europe and its neighbourhood.

At the institutional level, the Union continues to face the challenge of preserving its capacity to act while respecting the safeguards embedded in its decision-making framework. The contribution on qualified majority voting in the Common Foreign and Security Policy examines how the unanimity requirement can hinder effective action in an increasingly uncertain geopolitical environment, while also acknowledging the potential costs of a shift towards majority voting. The contribution on restoring the rule of law after democratic backsliding explores the difficult question of how damaged institutions can be rebuilt without undermining the very principles being restored. Finally, one contribution examines how the Union seeks to address the systemic risks associated with disinformation and hate speech in the digital public sphere, while safeguarding freedom of expression and confronting the significant discretion exercised by private platforms. Taken together, the contributions gathered in this volume show that European integration is being tested on multiple fronts: collective security, enlargement, conflict transformation, institutional effectiveness, the rule of law, and digital governance. Yet they also demonstrate that Europe, despite, and perhaps because of these pressures, retains its capacity for critical reflection and reform.

We are grateful to our co-host, Professor Lee McGowan of Queen's University Belfast, whose support made this conference possible. We also thank Dr. Fatlum Ademi for his dedicated work in organizing the conference, Dr. des. Petja Sachsenroeder for her careful copy-editing, as well as Dr. Petra Bitterli and Sophie Tschalèr for overseeing the production of this volume. Finally, we thank all participants and authors for the thoughtful engagement in the conference and this volume.

Zurich, June 2026 Tobias Baumgartner / Andreas Kellerhals

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Renewing European Collective Security: What Role for Switzerland?

Michael Ambühl / Nora Meier

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I. Introduction

Europe's security environment has undergone a profound transformation in recent years. The return of large-scale interstate war to the European continent, most visibly since Russia's full-scale invasion of Ukraine in 2022, has challenged long-standing assumptions about stability, territorial integrity, and the durability of the post-Cold War order. At the same time, a dense network of international and regional organizations – established precisely to preserve peace and guarantee collective security – continues to exist. This raises a fundamental question: how can it be that Europe possesses an extensive institutional architecture for peace, yet finds itself confronted with war and systemic instability?

This paper addresses that tension. In chapter II, we provide an overview of the principal institutions and organizations in the context of collective security in Europe (*see* II.1) and examine the most pressing challenges (*see* II.2), preliminary concluding (*see* II.3) that the existing institutional framework has proven insufficient in the face of renewed great-power confrontation. While the architecture remains formally intact, its capacity to prevent or resolve conflict has been significantly weakened.

In chapter III, we then turn to possible solutions. Given the breadth of the problem, our analysis focuses selectively on reform options that are, at least in principle, influenceable by a state such as Switzerland. Rather than attempting to redesign the entire security order, the paper concentrates on two institutional arenas of particular relevance: the reform of the United Nations Security Council (*see* III.1) and potential renewal efforts within the Organization for Security and Co-operation in Europe (OSCE) (*see* III.2).

In chapter IV, we evaluate Switzerland's potential contribution – both at the international level (*see* IV.1) and through necessary adjustments to its own security policy (*see* IV.2). The central argument is that while Switzerland cannot determine geopolitical outcomes, it can contribute to institutional reform and normative renewal. However, such engagement requires not only diplomatic initiative abroad but also strategic clarity and credibility at home, including a conscious effort to sharpen its profile as a reliable and solid partner in international security policy.

II. The Security Policy Situation in Europe

This chapter provides an overall assessment of the current security landscape in Europe. Its purpose is to situate the subsequent analysis within the broader institutional and geopolitical context and to identify the structural conditions under which European collective security presently operates. The chapter is divided into three parts. The first section (*see* 1) offers an overview of the most relevant institutions and organizations responsible for collective security in Europe. It outlines their mandates, roles, and interrelationships within the broader security architecture. The second section (*see* 2) turns to the most significant challenges confronting European security. In doing so, it distinguishes between systemic challenges rooted in institutional design and structural features of the security order – and non-systemic challenges arising from geopolitical developments, power politics, and shifting strategic dynamics. Finally, the third section (*see* 3) presents a preliminary conclusion, drawing together the main findings and assessing the overall functionality of the existing European security architecture.

1. Current Institutional and Organizational Landscape

In the following, the most important institutions and organizations relevant to collective security in Europe are briefly outlined and described in terms of their mandates and functions.

- *United Nations Security Council* (UNSC): The UNSC is one of the core organs of the United Nations (UN), established in 1945. It is responsible for maintaining international peace and security and consists of a total of 15 UN members states. These members are distinguished by the length of their terms in the UNSC. On the one hand, there are 10 members that rotate every two years – they are thus considered "non-permanent members". On the other hand, there are 5 so-called "permanent members" – *also called P5* – that do not rotate (China, France, Russian Federation,[1] United Kingdom and the United States). They have the power to veto any decision that the UNSC can take. On the contrary to the United Nations General Assembly, the UNSC can take binding decisions.
- *North Atlantic Treaty Organization* (NATO): NATO is a defensive alliance of 32 countries from Europe and North America.[2] It was established in 1949 to ensure mutual defense among its member states in response to any external attack. NATO was originally founded to counter Soviet military power in Europe after WW II and has since evolved into a cooperative security organization.[3] Despite currently being under severe pressure, it remains a key pillar of transatlantic military cooperation. All NATO decisions are made by consensus (i.e. by common consent), after discussion and consultation among member countries.[4]

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1 The Russian Federation has inherited the seat of the Soviet Union, which was dissolved in 1991.

2 European countries that are NATO members (but not EU member states): Albania, North Macedonia, Norway, Turkey and the UK. <https://www.globe-project.eu/en/nato-eu-osce-membership-overlap_11001>.

3 <https://www.nato.int/en>.

4 The principle of consensus is considered a fundamental principle. It has been accepted as the sole basis for decision-making in NATO since the creation of the alliance in 1949.

- *European Union* (*EU*): The EU is a political and economic union of 27 European countries, many of which also belong to NATO.[5] After WW II, a series of treaties were established and gradually expanded to form the European Communities (1957) and finally the European Union (1993). The period since the 1950s brought the European continent not only prosperity, but an unprecedented era of peace.[6] In foreign policy matters, the EU makes decisions based on the principle of unanimity. De facto, this means that decisions are made by consensus among all member states. The ultimate decision-making body for the EU's foreign and security policy is the European Council, consisting of the EU country heads of states and governments.
- *Organization for Security and Co-operation in Europe* (*OSCE*): With 57 countries from Europe, Central Asia and North America, the OSCE is the world's largest regional security organization. participating states across Europe, Central Asia, and North America. The organization strives for a comprehensive and co-operative approach to security. All members have equal status and decisions are made by consensus.[7]
- *Partnership for Peace* (*PfP*): The PfP is a NATO program established in 1994 to enhance cooperation and stability between all 32 NATO member states and partner countries, in particular in Europe. The partnerships are bilateral, meaning that the type and scope of the agreements are determined individually, also allowing neutral countries, such as Austria and Switzerland to join the PfP. Currently, there are 16 partner countries.[8]

Figure 1 provides an overview of the three institutions (NATO, EU, and OSCE) and the respective numbers of their members, including overlaps. As can be seen, 23 countries[9] are members of all three institutions; 27 countries[10] are both members of the EU and the OSCE; and 32 countries[11] are both members

<https://www.nato.int/en/what-we-do/introduction-to-nato/consensus-decision-making-at-nato>.

5 <https://www.europa.eda.admin.ch/en/portrait-and-history-of-the-eu> Except for Austria, Cyprus, Ireland and Malta. They belong to the EU but not to NATO.

6 <https://www.europa.eda.admin.ch/en/portrait-and-history-of-the-eu>.

7 <https://www.osce.org/>.

8 Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Georgia, Ireland, Kazakhstan, Kyrgyzstan, Malta, Moldova, Serbia, Switzerland, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan. NATO's partnerships with Belarus and the Russian Federation are currently suspended following North Atlantic Council decisions related to the security environment. <https://www.nato.int/en/what-we-do/partnerships-and-cooperation/natos-partnerships>.

9 Belgium, Bulgaria, Croatia, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and The Netherlands.

10 All EU members are also members of the OSCE.

11 This includes all NATO members.

of NATO and the OSCE. This leaves 4 states that are solely members of the EU and the OSCE but not NATO (Austria, Cyprus, Ireland and Malta) and 9 states that are solely members of NATO and the OSCE but not the EU (Albania, Canada, Iceland, Montenegro, North Macedonia, Norway, Türkiye, United Kingdom and the United States). 21 states, including Switzerland, are only members of the OSCE.[12] However, of these 21, 13 states have a PfP agreement with NATO (Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Serbia, Switzerland, Tajikistan, Turkmenistan, Ukraine and Uzbekistan). China is the only permanent member of the UN Security Council that belongs to neither the EU, NATO nor the OSCE.

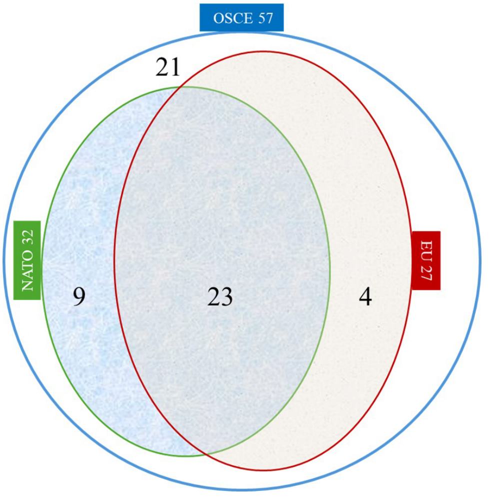

Figure 1: EU, NATO, and OSCE members. Source: own illustration.

[12] In addition to Switzerland, this includes Andorra, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Georgia, Holy Sea, Kazakhstan, Kyrgyzstan, Liechtenstein, Moldova, Monaca, Mongolia, Russian Federation, San Marino, Serbia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan.

2. Challenges Facing the Collective Security in Europe

There are various challenges facing the collective security in Europe. We categorize them as *systemic* (a) and *non-systemic* (b), whereby we define 'systemic' as inherent to the relevant institutions and organizations, and 'non-systemic' as other developments that originate outside the respective systems. That being said, of course, certain interactions between the two categories exist. Furthermore, this is not an exhaustive list.

a) Systemic Challenges

As outlined in *section* 1, European collective security is embedded in a dense institutional framework composed of multiple organizations. Several of these institutions face significant systemic challenges that directly affect the functioning and effectiveness of security policy in Europe. Many of these challenges stem from structural features of their decision-making processes, in particular the voting procedures that govern their actions. In the following, the challenges of four of these institutions will be examined in greater detail.

aa) UN Security Council: Veto Power of the P5

A first systemic challenge is the veto power of the five permanent members (P5) of the UNSC (China, France, Russian Federation, United Kingdom and the United States), which – except for Russia – they were granted at the founding of the UN in 1945. The veto right allows the P5 to block decisions of the body. While the veto rights are not explicitly mentioned, Art. 27 of the UN Charter[13] refers to the voting rules of the UNSC. Accordingly, decisions *on all [other than procedural] matters* require an affirmative vote of nine members, including the concurring votes of the five permanent members.

Since 1946, a total of 327 vetoes have been exercised by the P5.[14] Almost half of these vetoes (49%) were made by the USSR / Russian Federation (161 vetoes), followed by the USA (95 vetoes, 29%), the UK (32 vetoes, 10%), China (21 vetoes, 6.5%) and France (18 vetoes, 5.5%) (*see Figure 2*).

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13 <https://www.un.org/en/about-us/un-charter/full-text>.

14 Vetoes Dashboard, DPPA United Nations. <https://main.un.org/securitycouncil/en/content/vetoes-since-1946>.

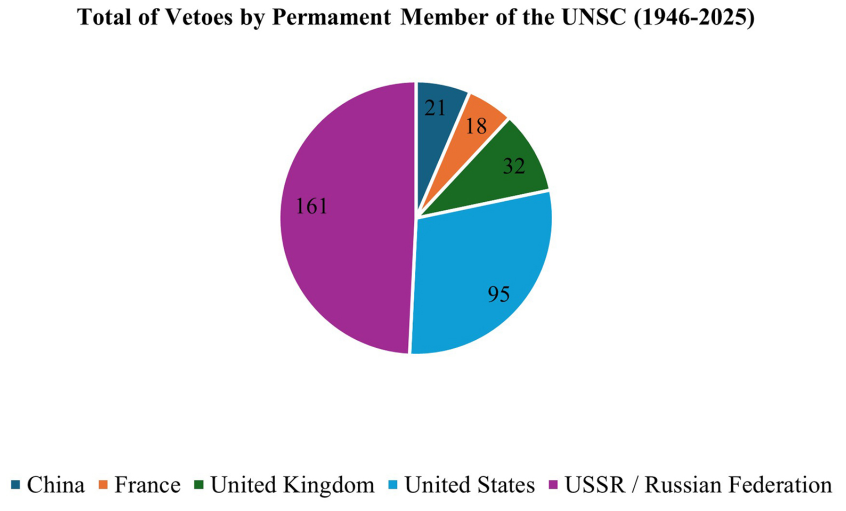

Figure 2: Total of vetoes by P5 1946-2025. Source: Vetoes Dashboard. DPPA UN.

Between February 25, 2022 (i.e., one day after Russia's attack on Ukraine) and September 18, 2025, there were a total of 23 vetoes, with only three of the five permanent members exercising their veto power (*see Table 1*).[15] Russia accounted for more than half of all of these vetoes (52%) with 12 vetoes, followed by the USA (8 vetoes, 35%) and China (3 vetoes, 13%). Seven of the eight American vetoes were related to the 'Middle East, including the Palestinian question' and exercised in favor of the State of Israel.[16]

The 'Middle East, including the Palestinian question' was also the most blocked in the period from February 2022 to September 2025 (11 out of a total of 23 vetoes). Other topics that led to vetoes were 'non-proliferation and non-proliferation/DPRK' (4 times overall, 3 times Russia and 1 time China); 'Ukraine' (3 times overall, 3 times Russia); 'Syria' (2 times overall, 2 times Russia), 'Sudan and South Sudan' (1 time overall, 1 time Russia), 'Admission of new Members' (1 time overall, 1 time USA USA) and 'Mali' (1 time overall, 1 time Russia).

All the vetoes during this period can be classified in the context of the greatest conflicts and the greatest challenges to international peace and security of

15 The two European permanent Members of the Security Council (France and the UK) have not exercised their veto since 1989. Vetoes Dashboard, DPPA United Nations.

16 The topics are defined by the DPPA UN. They are based on the agenda items of the Security Council meetings. In order to determine the exact content of what was discussed at the meetings, the minutes of the meetings would have to be analyzed. This was not done for this article.

this time. For instance, 'Middle East, including Palestinian question' in connection with the outbreak of the most recent war in Gaza on October 8, 2023; 'non-proliferation and non-proliferation/DPRK' in connection with the ongoing nuclear dispute with Iran; 'Ukraine' in connection with Russia's ongoing war of aggression against Ukraine; 'Syria' with the change of power in December 2024; and 'Sudan and South Sudan' with the civil war in Sudan that broke out in April 2023 and is still ongoing, and internal tensions in South Sudan, among other things.

	Veto by during 25/2/22-18/09/25					
Topic	**CHI**	**FR**	**RU**	**UK**	**USA**	*Total vetoes by topic*
Middle East, including Palestinian question	2	0	2	0	7	**11**
Non-proliferation; non-proliferation/DPRK	1	0	3	0	0	**4**
Ukraine; Maintenance and peace and security in Ukraine; 2014 Letter from Ukraine (Ukraine)	0	0	3	0	0	**3**
Middle East (Syria)	0	0	2	0	0	**2**
Sudan and South Sudan	0	0	1	0	0	**1**
Admission of new UN Members	0	0	0	0	1	**1**
Mali	0	0	1	0	0	**1**
Total vetoes by permanent member	**3**	**0**	**12**	**0**	**8**	**23**

Table 1: Overview of vetoes made by P5 & by topic (25/2/22-18/9/25). Source: Vetoes Dashboard. DPPA UN.

In sum, the above analyzed 3.5 year time period shows that the UN Security Council is rendered largely incapable of acting by the P5 exercising their veto rights in fulfilling its main task – namely maintaining international peace and security – whenever the self-interests of these states are at stake (such as the Russian veto in connection with the war in Ukraine, which it itself triggered in violation of international law). The consequences are serious: The UN plays only a minor role, if any, in resolving some of the biggest global conflicts of our time, with direct (e.g. Ukraine, Gaza) or indirect (e.g. Iran, Sudan, Syria) impact on Europe and its collective security system.

bb) NATO: *Mutual Defense, Consensus, Indirect Contributions & 'Free-Riding'*

A second set of systemic challenges arises within the North Atlantic Treaty Organization (NATO). As outlined above, the alliance comprises 32 member states from both Europe and North America. While NATO remains the central pillar of European collective defense, several of its institutional and organizational features create internal challenges that affect its cohesion and effectiveness. In the following, we highlight four such challenges: (i) the mutual defense obligation under Article 5 of the North Atlantic Treaty[17]; (ii) the requirement of decision-making by consensus; (iii) NATO's financing model, which relies largely on indirect national contributions; and (iv) the risk of 'free-riding'[18] that may emerge from the interaction of these structural characteristics.

i. At the core of NATO is the so-called *mutual defense obligation*, which commits members to a joint defense in the event of an attack on a NATO country (also known as case of alliance). An attack on one member state is thus considered an attack on the entire group. This case, regulated in Art. 5 of the NATO Treaty, has only been invoked once by a member so far, namely by the USA after the attacks of September 11, 2001. However, in the event of an attack on a NATO member, there is no automatic counterattack by the alliance. Rather, such a response would have to be decided unanimously at the political level, and each member state could decide for itself what contribution it would like to make. In addition, according to Art. 5 of the NATO Treaty, NATO would have to notify the UN Security Council of the decision taken. Accordingly, the measures taken by NATO must be discontinued as soon as the Security Council has taken the necessary steps to restore and maintain international peace and security.

   To date, the mutual defense obligation has also served as a deterrent to attacks. However, it has also proved to be an obstacle to the admission of new states, mostly due to the concern over the escalation of conflicts between NATO and Russia (i.e. eastward expansion, in particular Ukraine).

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17 The North Atlantic Treaty. April 4, 1949. <https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/1949/04/04/the-north-atlantic-treaty>.

18 The 'free rider' problem describes situations in which the 'efficient production of a good by a group is jeopardized by the incentive each member of the group has not to contribute towards its production.' Cullity, Garrett, "The Free Rider Prob lem", The Stanford Encyclopedia of Philosophy (Fall 2025 Edition), Edward N. Zalta & Uri Nodelman (eds.), URL = <https://plato.stanford.edu/archives/fall2025/entries/free-rider/>. There are those that contribute and there are those who do not (the so-called 'free-riders'), who benefit from the good without contributing to its production. The result is an inefficient production of the good. Analogous to NATO, we risk an inefficient and unstable alliance.

ii. Decisions within NATO are taken *by consensus*. This means that all members must support a decision or at least not oppose it. The advantages of such a procedure on the one hand, are increased legitimacy of a decision; possible protection of smaller and less influential members (as same voting weight);[19] strengthening of unity (i.e. promoting dialogue and willingness to compromise), and perceived stability towards the outside. The disadvantages on the other hand, lie in slow decision-making; the possibility of blockades (i.e. veto power) by individual members who might put national interests above the interests of the collective; and a weakening of decisions (i.e. lowest common denominator) – all of which can influence the security policy situation in Europe.

iii. NATO is funded through direct and *indirect contributions* of its members, with indirect ones being the largest part of the alliance's overall funds. Indirect contributions are paid by the individual member countries and can include the latter's forces and capabilities. All members contribute using an agreed cost share formula. To that end, at the 2025 NATO Summit in The Hague, members made a commitment to investing 5% of their Gross Domestic Product (GDP) annually on core defense requirements and defense- and security-related spending by 2035. At least 3.5% of these 5% of GDP annually should be allocated to core defense requirements and the remaining 1.5% to the protection of i.a. critical infrastructure, ensure civil preparedness and resilience, innovate, and strengthen the defense industrial base.[20]

Despite the combined wealth (measured in GDP) of the non-US NATO members being almost equal to that of the USA, they together spend less than half of what the USA spends on defense. The volume of US defense expenditure represents approximately two thirds of the defense spending of NATO as a whole. However, that being said, this is not the amount that the USA then contributes to the operational running of NATO as that is shared by all members according to the principle of common funding. Nevertheless, NATO relies on the USA for the provision of i.a. intelligence and surveillance. In addition to a transatlantic imbalance, there are also growing asymmetries in defense spending among European member states.[21] All developments that may increasingly challenge European collective security in the future.

19 At least in theory this is the case. However, in reality, of course, smaller states, if dependent, can also be influenced by more powerful ones to vote one way or another.

20 <https://www.nato.int/en/what-we-do/introduction-to-nato/defence-expenditures-and-natos-5-commitment>.

21 <https://www.nato.int/en/what-we-do/introduction-to-nato/funding-nato>.

iv. Finally, as a combination of the abovementioned three factors, NATO is confronted with a challenge similar to the so-called 'free rider' problem. On the one hand, NATO members are required to make an individual contribution to the common fund upon joining (based on a percentage of their respective GDPs). On the other hand, also upon joining, members also receive a commitment that – as part of the collective – they would be defended by the collective in the event of an attack on them (collective defense under Art. 5 of the NATO Treaty). In addition, due to the decision-making by consensus, all states have equal 'voting' weight.

    Now, there are members who pay more than others, and at times there have even been members who did not meet the defined minimum targets for national defense spending. However, with no consequences. They all reap the same benefits in the form of a collective defense and equal voting rights.

    We have seen that this can lead to frustration among members, and not just since the current US administration took office in 2025. This can be illustrated by the example of group work at university, where students receive the same grade regardless of their contribution or effort. The reward – the good grade or, in the case of NATO, the case of alliance and equal voting rights – follows either way.

    That said, this article does not have the ambition to offer a solution to this problem. It can only point out that NATO will likely have to pay more attention to this issue in the future. This not only to prevent the 'free-rider' problem but rather, the latter's impact on the security policy situation in Europe, as NATO itself could become more instable due to internal dependencies and resulting frustration among member states.

cc) *EU: Unanimity Requirement in Foreign and Security Policy*

A third systemic challenge presents itself within the EU, namely the unanimity requirement in the Common Foreign and Security Policy (CFSP).[22] According to that rule, all EU member states must agree on decisions related to those areas.

The advantages of an unanimity requirement in foreign and security policy are – among other – the protection of national sovereignty of the member states; high political legitimacy; and a signaling effect of strength to the outside world. The disadvantages are – as in the UN Security Council and NATO –

[22] EPRS European Parliamentary Research Service. August 2023. <https://www.europarl.europa.eu/RegData/etudes/STUD/2023/740243/EPRS_STU(2023)740243_EN.pdf>.

the possibility of a single member blocking decisions; slow response times and watered-down decisions (weakened positions and decisions that can appear at times more symbolic than implementation-oriented).

Overall, the EU is caught between the competing needs of its members to preserve their national sovereignty and the Union's need to assert itself as a global player in foreign and security policy. In reality, however, various national interests undermine the common strategy (e.g. lack of common arms industry). As a result, the EU is losing its credibility and appears weak. In the Gaza war, for instance, it played only a marginal role, if any. And in the Ukraine war, too, the EU has repeatedly been sidelined by other powers, most importantly, the USA and Russia.[23]

dd) OSCE: Decision-Making by Consensus

Finally, a fourth systemic challenge presents itself in the OSCE, where all 57 members take part in the decision-making bodies with equal weight.[24] Decisions or declarations must be adopted by all 57 members. In principle, the same advantages and disadvantages of such voting rules apply here as listed for NATO and the EU. However, the consequences for the OSCE are considerable in the context of collective security in Europe. Although it is the largest regional security organization in the world, it is currently playing no significant role in the war in Ukraine. The OSCE has been blocked for years (by Russia's veto i.a.) and is therefore unable to make decisions or take action.

b) Non-systemic Challenges

After addressing the principal systemic challenges to collective security in Europe in subsection a, this subsection (b) turns to what we define as 'non-systemic' challenges. Accordingly, these are challenges that originate largely outside the formal structures of the relevant organizations. Even though in practice a strict separation is not always possible. Indeed, systemic and non-systemic factors often interact and reinforce one another. In the following, we discuss three of the major non-systemic challenges: (i) the return of large-scale interstate war on the European continent (Ukraine); (ii) the return of war in Europe's close proximity (Gaza); and (iii) recent changes in the transatlantic relationship.

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23 This must also be seen against the backdrop of years of deprioritization and reduction of investment in the defense capabilities in European countries.

24 <https://www.osce.org/decision-making>.

i. The European continent is witnessing the return of large-scale interstate warfare. Already with the Russian occupation of Crimea in 2014 and more so since Russia's full-scale invasion of Ukraine on 24 February 2022, Europe has had to abandon the long-standing post-1945 assumption that borders on the continent are immutable and that peace is structurally secured. The war has fundamentally altered the European security architecture and revived classical geopolitical confrontation.

   Four years after the outbreak of hostilities, at the time of writing, there is no credible prospect of a cease fire or a comprehensive peace settlement for that matter. The conflict continues with devastating consequences for Ukraine and profound implications for the broader European security order.

   The EU, although now the largest collective supporter of Ukraine in financial, military, and humanitarian terms,[25] has repeatedly demonstrated internal divisions. These divergences become visible i.a. in negotiations over sanctions packages and in debates concerning the development of a coordinated European defense-industrial base.[26] Furthermore, since the inauguration of Donald Trump to his second term in January 2025 as President of the United States, the EU has increasingly found itself sidelined in diplomatic initiatives involving the US and Russia, further exposing structural weaknesses in its foreign and security policy coherence. The EU's structural reliance on close cooperation with the United States in managing and supporting the Ukrainian war effort further constrains its strategic autonomy and weakens its bargaining position. This dependence limits the Union's capacity to act as an independent geopolitical actor and underscores the asymmetry within the transatlantic partnership.[27]

   By contrast, NATO has undergone significant strategic adaptation. Since the beginning of Russia's war of aggression, NATO has expanded to in-

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25 Trebesch et al. (2023) «The Ukraine Support Tracker», Kiel WP. <https://www.kielinstitut.de/topics/war-against-ukraine/ukraine-support-tracker>.

26 Scherrer, Ch. in Spiegel Newspaper, 22.2.2026. <https://www.focus.de/politik/ausland/zusammenhalt-in-europa-droht-an-deutschem-ruestungsboom-zu-scheitern_1d91667b-f4d4-468a-b9b4-aaa8b22502ba.html>; Beechi, F. in Berliner Zeitung, 12.4.2025. <https://www.berliner-zeitung.de/politik-gesellschaft/geopolitik/milliarden-aufruestung-spaltet-die-eu-im-norden-vereint-im-sueden-geteilt-li.2314240>; Imwinkelried, D. in Neue Zürcher Zeitung, 28.5.2025 <https://www.nzz.ch/international/die-eu-will-mit-150-milliarden-euro-gemeinsam-aufruesten-ld.1886444>.

27 zdfheute, 13.12.2025. <https://www.zdfheute.de/politik/ausland/europa-chance-verhandlung-ukraine-krieg-russland-100.html>; Butylin, N. in Berliner Zeitung, 7.8.2025. <https://www.berliner-zeitung.de/politik-gesellschaft/geopolitik/meinung-eu-schaut-nur-zu-russland-und-die-usa-verhandeln-ueber-frieden-in-der-ukraine-li.2347523>.

clude Finland and Sweden, thereby extending its direct border with Russia by more than 1'000 km. In parallel, NATO has also substantially strengthened its deterrence and defense posture. Its rapid reaction forces have been significantly expanded, with more than 300'000 personnel placed at high readiness, representing a marked increase compared to pre-2022 force levels.[28] In addition, allied debates have increasingly focused on raising defense expenditures to levels approaching or exceeding 5% of GDP, reflecting a broader shift toward sustained rearmament and long-term deterrence.[29] This transformation underscores NATO's renewed centrality within the European security architecture.

Nevertheless, NATO's strategic posture also reveals a persistent structural dependence on the US. The credibility of NATO's deterrence continues to rely heavily on U.S. military capabilities, as laid out above. European NATO members remain compelled to maintain political cohesion with Washington, even amid internal disagreements.

At the same time, NATO has demonstrated a clear reluctance to be drawn into a direct military confrontation with Russia. This cautious approach makes Ukrainian membership in NATO in the near term highly unlikely, despite the fact that such membership would constitute the strongest possible security guarantee for Kyiv in negotiations with Moscow. In the absence of NATO accession and despite a considerable increase in European support, Ukraine remains largely dependent on the US as its primary external security guarantor. This dependence weakens Ukraine's negotiating leverage and, by extension, that of the EU. While Western support has been sufficient to prevent Ukraine's defeat, it has thus far not been structured in a manner that would decisively enable a Ukrainian military victory, reflecting a strategy calibrated to avoid escalation rather than to secure outright success.[30]

The UN has likewise remained politically constrained in its capacity to facilitate a resolution of the conflict. While UN agencies play an important technical and humanitarian role, the organization has been unable to act decisively at the political level. This limitation stems primarily from Rus-

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28 Bayer, L. in Politico, 27.6.2022. <https://www.politico.eu/article/nato-increase-high-readiness-force-300000/>.

29 The Hague Summit Declaration. Nato. <https://www.nato.int/en/about-us/official-texts-and-resources/official-texts/2025/06/25/the-hague-summit-declaration>.

30 See Ambühl. M. & Meier N., The War in Ukraine and Europe: A Situational Analysis and Negotiation Perspectives, in European Integration Perspectives in Times of Global Crises. EIZ Publishing, 2023.

sia's veto power within the UNSC, which has prevented the adoption of binding measures addressing the conflict.

More broadly, the war in Ukraine has accelerated a global trend toward rearmament. Defense expenditures have risen significantly across Europe and beyond, reflecting a renewed prioritization of conventional military capabilities, deterrence, and resilience. The cumulative effect of these developments suggests that Europe has entered a new era of strategic competition in which multilateral institutions face structural constraints, alliance politics have regained prominence, and military power has re-emerged as a central instrument of statecraft.

ii. The war in Gaza, while not taking place on European territory, unfolds in Europe's immediate geopolitical neighborhood and thus constitutes an important issue for European security. The conflict between Israel and Hamas has broader regional implications, affecting stability across the Eastern Mediterranean and the Middle East. For Europe, the security relevance of the conflict manifests itself in several ways. First, it risks regional escalation involving actors such as Hezbollah or Iran, potentially destabilizing vital energy and trade routes. Second, the war has direct repercussions for internal European security, including heightened risks of radicalization, terrorist threats, and societal polarization within EU member states. Third, renewed instability in the region may generate additional migration pressures toward Europe. Finally, the conflict exposes once again the limited coherence of the EU in foreign policy matters, as member states diverge in their political positioning. Taken together, the Gaza war illustrates how conflicts in Europe's wider neighborhood also can have immediate and multidimensional consequences for European security.

iii. Developments in the transatlantic security relationship likewise carry far-reaching implications for collective security in Europe. Recent debates surrounding Greenland,[31] framed in strategic terms within broader US security considerations, underscore the renewed geopolitical salience of the Arctic and the growing strategic competition in Europe's northern periphery. At the same time, the most recent U.S. National Security Strategy places heightened emphasis on burden-sharing and calls for greater European responsibility in defense matters, signaling a recalibration – if not

31 The Economist, 18.1.2026 <https://www.economist.com/europe/2026/01/18/as-divisions-over-greenland-grow-europe-examines-its-options>; The Guardian, <https://www.theguardian.com/world/2026/jan/12/what-can-the-eu-and-nato-do-to-stop-trump-from-trying-to-claim-greenland>.

partial retrenchment – of American commitments.[32] Discussions at the Munich Security Conference in 2025 and 2026 further reflected mounting uncertainty regarding the durability of the transatlantic partnership and the future of the liberal international order.

More fundamentally, these developments point to a gradual erosion of the rules-based international order that has shaped European security since 1945. The increasing prevalence of power politics, spheres of influence, and unilateral action suggests a shift toward a system in which coercion and material strength outweigh dialogue, multilateralism, and institutionalized cooperation. For Europe, whose security architecture is deeply embedded in international law, multilateral institutions, and normative commitments, such a transformation poses structural risks. A weakening of rules and norms not only reduces predictability and stability but also disadvantages actors that rely more heavily on legal frameworks and cooperative mechanisms than on raw military power. Consequently, the evolution of the transatlantic relationship and the broader decline of a rules-based order directly affect Europe's capacity to sustain collective security in an increasingly competitive international environment.[33]

3. Preliminary Conclusion

The contemporary European security order is characterized by an extensive network of international organizations that were explicitly created to preserve peace and ensure collective security. Institutions such as the UN Security Council, NATO, the EU, and the OSCE were designed to prevent armed conflict, foster cooperation, and stabilize the international system. Yet the persistence of large-scale war on or near European soil demonstrates that this architecture has not fulfilled its core promise. As was laid out above, the reasons for this shortcoming can be located both at the *systemic* and *non-systemic* levels.

At the *systemic* level, institutional design features have revealed profound limitations under conditions of renewed great-power confrontation. In the case of the UN Security Council, the veto power of the P5 effectively paralyses collective enforcement. This structural feature, originally conceived to secure great-power participation in the system, now inhibits decisive political action. Similarly, NATO's consensus principle ensures that all member states – regardless

32 <https://www.whitehouse.gov/wp-content/uploads/2025/12/2025-National-Security-Strategy.pdf>.

33 To that end, the lack of enforcement at the international level also plays a role in this consideration.

of their material contribution – benefit equally from collective defense guarantees and possess equal decision-making authority. While this strengthens internal cohesion and formal equality, it also risks slowing or blocking strategic adaptation. Within the EU, the unanimity requirement in key areas of foreign and security policy constrains the Union's ability to respond swiftly and coherently to external crises. The same consensus rule applies within the OSCE, where any participating state can obstruct substantive decisions.

In each of these cases, mechanisms originally designed to safeguard inclusiveness and legitimacy have, not only, but under present geopolitical conditions increasingly, produced institutional inertia. As a result, these organizations can monitor, report, deliberate, and convene – but they struggle to enforce or even maintain peace when confronted with determined power politics.

Non-systemic factors further compound these structural constraints. The resurgence of power-maximizing strategies by individual states, the outbreak of large-scale war in Eastern Europe, and the broader destabilization of Europe's neighborhood have fundamentally altered the strategic environment. Moreover, Europe's military and strategic dependence on the US – combined with evolving transatlantic dynamics – has exposed vulnerabilities within the collective security framework. Shifts in US strategic priorities and debates over burden-sharing have intensified uncertainty regarding long-term guarantees, thereby affecting both deterrence credibility and internal cohesion. Divergent threat perceptions among European states and varying levels of political will further weaken collective resolve.

Taken together, these *systemic* and *non-systemic* factors have rendered key institutions partially immobilized at a time when their mandates are most urgently needed. The following chapter therefore turns to the question of possible solutions. If the existing structures are constrained by both institutional design and political realities, the central challenge becomes how to recalibrate Europe's security architecture in order to restore effectiveness, credibility, and resilience in an era of renewed geopolitical confrontation.

III. Possible Solutions

The preceding analysis has demonstrated that the current European security order is confronted with a multitude of interrelated challenges. These range from structural weaknesses within international institutions to broader geopolitical transformations and shifting power dynamics. Within the scope of this article, it is not possible to examine all these challenges in a comprehensive manner. We therefore focus on those challenges that a state such as

Switzerland can, in principle, influence. By doing so, we place the emphasis on structural features of the multilateral security architecture rather than on broader geopolitical rivalries that lie beyond a direct reach of Swiss foreign policy. Specifically, we analyze the UN Security Council and the OSCE, both of which are of central relevance to European security, and Switzerland is an active member of each. Moreover, Switzerland's long-standing commitment to multilateralism, its recognized expertise in mediation and institutional reform, and its political independence position it as a credible and constructive actor in debates concerning institutional adaptation. The following sections therefore examine potential reform avenues within these two frameworks, assessing their relevance and feasibility from a Swiss perspective.

1. Reform of the UN Security Council

a) Overview

Debates on the reform of the UN and, in particular, its Security Council, encompass a broad spectrum of proposals ranging from far-reaching structural transformation to incremental procedural adjustments.[34] At the most radical end of the spectrum lies the idea of dissolving the existing institutional framework altogether and replacing it with a new or parallel body entrusted with maintaining international peace and security. Recent political discourse, including references by US President Donald Trump to alternative formats such as a so-called 'Board of Peace', illustrates that such fundamental reconfigurations are not purely theoretical.[35]

Less radical, yet still transformative, would be the preservation of the UN as an organization combined with the complete abolition of the veto power of the permanent members of the Security Council. While normatively appealing to many observers, such an approach faces significant political obstacles, given that any amendment to the Charter requires the consent of the very states whose privileges would be curtailed.

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34 Reform of the UN Security Council, UN General Assembly. https://www.un.org/en/ga/screform/; Parlamis, J. in In Fo cus, Geneva Center for Security Policy <https://www.gcsp.ch/sites/default/files/2025-02/In%20Focus_Jennifer%20Parlamis_Final.pdf>. Current reform discussions also take place in the framework of the UN80 initiative, which seeks to strengthen the effectiveness and legitimacy of the United Nations on the occasion of its 80th anniversary, although its focus lies primarily on institutional adaptation and renewed political commitment rather than on fundamental structural changes to the veto mechanism within the Security Council.

35 Board of Peace in Britannica, 19.2.2026. <https://www.britannica.com/topic/Board-of-Peace>.

Further along the spectrum are proposals aimed at limiting or qualifying the veto rather than abolishing it outright. These include mechanisms to restrict its use in cases of mass atrocities or to introduce procedural constraints. At the most modest end of reform efforts are largely procedural or cosmetic adjustments, such as increasing transparency, improving working methods, or enhancing reporting obligations – measures that may strengthen legitimacy but do not address the core structural impediments to effective collective security.

We proceed from the assumption that the UN should remain the central pillar of the international security architecture. The dissolution of the organization would be both normatively undesirable and, in our opinion, politically not feasible. Conversely, purely cosmetic reforms risk entrenching dysfunction by leaving the underlying structural problem – namely, the paralysis induced by the veto powers – untouched. The complete abolition of the veto, while conceptually straightforward, appears politically unattainable under current conditions.

Accordingly, our proposal focuses on a more limited yet structurally meaningful option: the targeted attenuation of the veto power. This approach seeks to minimize institutional disruption while addressing the structural weaknesses that have led to recurring paralysis. Importantly, the reform rests on several fixed baseline assumptions; it does not seek to redesign the entire institutional architecture.

First, the existing regional structure of the UN would remain unchanged. *Second*, the distinction between permanent and non-permanent members would be preserved. *Third*, the overall size of the Security Council would be fixed at 25 member states. To that end, an executive organ composed of only five members is no longer sufficiently representative of contemporary geopolitical realities. At the same time, a body consisting of, for instance, one hundred states would no longer be capable of acting effectively or efficiently. The proposed size therefore reflects a balance between representativeness and functionality. Finally, *fourth*, we also define the weighting of the criteria (see below) to reflect an adequate balance between demographic and economic factors.

In other words, while the veto power would be modified and constrained, the broader institutional framework would remain intact. In this way, the proposal aims to reconcile political feasibility with substantive reform by mitigating decision-making deadlock without dismantling the existing institutional order.[36]

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[36] A previous version of this proposal was laid out in an article in the Frankfurter Allgemeine Zeitung (FAZ). This proposal has been updated with new numbers. Ambühl, M., Meier, N., Thürer, D., Eine Reform des UNO Sicherheitsrats ist mög lich in Frankfurter Allgemeine, 14.6.2023. <https://www.faz.net/aktuell/politik/staat-und-recht/eine-reform-des-un-sicherheitsrats-ist-moeglich-18963691.html>.

b) Proposal

The objective of the proposed reform is twofold. *First*, to introduce a voting rule with reduced blockage potential; and *second*, to enhance the representativeness and legitimacy of the UN Security Council. The reform proposal – originally published in June 2023 in the Frankfurter Allgemeine Zeitung – consists of three core elements: (i) Expansion of overall membership in the Security Council; (ii) allocation of the (new) 10 permanent members according to objective criteria; and (iii) a new voting rule.

i. *Expansion of overall membership*: We propose to expand the total membership of the UN Security Council from 15 to 25 members. The number of permanent seats would increase from 5 to 10 (P10), while the number of non-permanent members would rise from 10 to 15. This enlargement is intended to enhance the Council's demographic, economic, and political representativeness, while preserving its ability to function effectively and maintain operational capacity.

ii. *Selection of the 10 permanent members (P10) based on objective criteria*: We propose to allocate the seats of the P10 based on four objective criteria: (1) population size;[37] (2) GDP;[38] (3) voluntary core (un-earmarked) contributions;[39] and (4) regional representation.[40]

   In order to allow a systematic analysis, we propose to weight the three criteria (1, 2, and 3). We denote the weighting factors α, β, and γ which are real numbers between 0 and 1 [0 and 1 included]. The determination of weighting factors α, β, and γ is a political question and not set in stone. For an exemplification of our proposal, we have chosen the following weighting:

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37 Latest data is collected from <https://worldpopulationreview.com/countries?os=vb.&ref=app>.

38 Latest data is collected from World Economic Outlook, IMF. <https://data.imf.org/en/Data-Explorer?datasetUrn=IMF.RES:WEO(9.0.0)>.

39 Data is collected from <https://unsceb.org/fs-revenue-government-donor>. Voluntary non-earmarked contributions to the UN are financial contributions provided by member states (or other donors) that are not tied to a specific project, country, or thematic purpose. Instead, they are flexible funds that the UN entity can allocate at its own discretion in line with its mandate and approved budget priorities. <https://financingun.report/un-financing/un-funding/total-revenue-un-system?utm_source=chatgpt.com>. This criterion was selected to also consider a political will of member states to contribute to UN in addition to their required financial contributions.

40 We base the criterion of 'regional representation' on the **existing** UN regional groups of member states: African States; Asia-Pacific States; Eastern European States (EEG); Latin American and Caribbean States (GRULAC); and Western European and other States (WEOG). <https://www.un.org/dgacm/en/content/regional-groups>. That being said, we do not examine here the legitimate question whether the composition regions should remain the same as designed before 1989.

We assign a demographic weight of 0.5 to population size pop (1), while for the two remaining criteria gdp (2) and voluntary contributions vc (3), which are both of an economic nature, we would propose an equal weighting of 0.25. This results in: $\alpha = 0.5$; $\beta = 0.25$; and $\gamma = 0.25$.

While the underlying data are objective, the decision on how to weight them is, as mentioned, inherently normative. One could, for instance, also assign equal weights of 0.33 to each criterion. However, our approach deliberately equates demographic and economic dimensions, thereby granting equal overall importance to population size and to economic performance in shaping representation.

In addition to the above three weighted criteria, we propose regional representation as a fourth – *unweighted* – criterion, which means that each of the existing UN regions (Africa, Asia-Pacific; Eastern European States (EEG); Latin America and Caribbean States (GRULAC) and Western and Other States (WEOG)) must be represented at least once in the P10. Accordingly, we apply the following algorithm:

1. Data Collection

a) Identify all UN member states

b) For each state, collect data for the following three criteria:

Popoulation (pop)

Gross Domestic Product (gdp)

Voluntary contributions (non-earmarked) (vc)

2. Standardization of Criteria (Scale 0–1)

a) For each of three criteria separately (pop,gdp,vc):

Identify the member state with the highest value for that criteria

Assign this highest value a standardized score of 1

For every other state, calculate its standardized value as a proportion to highest value

$$\text{standardized value} = \frac{\text{value}}{\text{maximum value}}$$

b) After step a), each state has three standardized criterion values btw. 0–1

3. Weighting of Standardized Criteria

a) For each state, apply the predefined weithing factors as in our example:

$\alpha = 0.5$; $\beta = 0.25$; $\gamma = 0.25$

b) For each state, multiply each standardized criterion value by its respective weight

c) For each state, calculate a combined score by summing the three weighted values

4. Creation of an Overall Ranking

a) Rank all states in descending order according to their combined score

b) This produces a single overall ranking list

5. Regional Selection

a) Within each regional group, select state with the highest position in the ranking

b) This results in five selected states (one state per region)

6. Allocation of Remaining five Seats

a) Starting from the top of the list, select highest-ranked states not yet selected

b) Continue this process until the remaining five seats are filled

Applying this methodology, the following ten UN member states would currently qualify as permanent members (in alphabetical order):

	Demographic	**Economic**			
State	**pop (0.50)**	**gdp (USD) (0.25)**	**vc (in USD) (0.25)**	***Ranking***	**Region**
Brazil	212,812,000	2,256,910	6’234’597	10	GRULAC
China	1,416,100,000	19,398,577	39’706’389	1	Asia-Pacific
France	66,650,800	3,361,557	225’227’204	6	WEOG
Germany	84,075,100	5,013,574	543’959’007	4	WEOG
India	1,463,870,000	4,125,213	32’440’626	3	Asia-Pacific
Japan	123,103,000	4,279,828	155’142’802	7	Asia-Pacific
Nigeria	237,528,000	285,003	2’385’713	12	Africa
Russia	143,997,000	2,540,656	1’361’488	13	EEG
UK	69,551,300	3,958,780	404’545’153	5	WEOG
USA	347,276,000	30,615,743	466’320’321	2	WEOG

Table 2:Resulting list of P10 of UN Security Council based on application of above-described algorithm. All UN regions would be represented by at least one permanent member and all G4 states (Brazil, Germany, India and Japan).

Although Indonesia and Pakistan rank 8th and 9th respectively on the basis of the three weighted criteria, they are not included in the final 10-member body. Due to the regional selection rule, Nigeria (ranked 12th) and Russia (ranked 13th) must be included to ensure that each UN regional group is represented by its highest-ranked state. As a result, Indonesia and Pakistan are displaced despite their higher overall scores. Accordingly, the subsequent states would be ordered after the P10 as follows (ranks up to 25):

8. Indonesia
9. Pakistan
11. Italy
14. Bangladesh
15. Mexico
16. Türkiye
17. Ethiopia
18. Philippines
19. Egypt
20. Democratic Republic of the Congo
21. Viet Nam
22. Iran
23. Thailand
24. South Africa
25. Tanzania

These states therefore constitute the next tier in the ranking following the selected P10, ordered strictly according to their composite score.

The proposed formula integrates demographic legitimacy with economic capacity and financial responsibility toward the UN. In addition, the requirement of reginal representation ensures geographic balance and strengthens the global legitimacy of the Security Council. To preserve adaptability, the composition of the P10 should be reviewed periodically (e.g. every 15 years) and adjusted by simple majority if necessary. This review mechanism would prevent permanent blockage and allow the Security Council to reflect evolving global realities.

iii. *Introduction of a new voting rule*: Furthermore, in addition to the expansion of the overall number of seats in the UN Security Council (i) and the allocation of permanent seats on the basis of objective criteria (ii), we propose the introduction of a revised voting rule. This reform is necessary to ensure that an enlarged body does not aggravate existing patterns of institutional paralysis. The proposed rule modifies the current veto system in a way that reduces the risk of blockage while preserving a differentiated role for permanent as opposed to non-permanent members. Accordingly, under the new rule, a resolution would require two cumulative conditions to pass:

1. A simple majority in the Security Council (at least 13 out of 25 members); and
2. No more than two negative votes from the P10 (or in other words, 8 votes out of the P10 need to be affirmative).

In practical terms, the veto would therefore not be abolished but moderately constrained. A resolution could only be blocked if at least three permanent members vote against it. The veto would thus be transformed from a unilateral instrument into a collective one, maintaining the privileged position of permanent members while substantially reducing the likelihood of single-state obstruction. Requiring three negative votes also makes classical bloc-based obstruction more difficult. In configurations where two permanent members frequently align – e.g., Russia and China – a third concurring vote would normally be necessary to block a resolution. This requirement increases the political costs of coordinated veto use, as it typically compels actors to seek support beyond a stable bilateral alignment in order to assemble a blocking coalition.

c) Procedural Pathways

Any substantial reform of the UN Security Council would require an amendment to the UN Charter. As a consequence, it would ultimately depend on the consent of the five permanent members (P5), since Charter amendments must be ratified by all permanent members of the Security Council. For this reason, most proposals seeking to modify or limit the veto system are often dismissed at an early stage as politically unrealistic.

However, procedurally, the veto does not operate at the outset of reform discussions. Under Article 109 of the UN Charter[41], amendments may be considered at a General Conference of member states convened for the purpose of reviewing the Charter. Such a conference can be called upon the recommendation of a two-thirds majority of the members of the General Assembly and *any* nine members of the Security Council. Hence, in this initial phase, the P5 cannot prevent reform proposals from being formally tabled or debated within a Charter review framework.

41 <https://www.un.org/en/about-us/un-charter/full-text>.

The decisive hurdle arises only at the ratification stage. Even if reform proposals were adopted by a two-thirds majority of the General Assembly, they would enter into force only upon ratification by two-thirds of the member states, including all P5 of the Security Council. It is therefore at this final stage that the P5 could effectively block a reform initiative by withholding ratification. At the same time, such a configuration would significantly increase political pressure on the permanent members: once a broad majority of the General Assembly has endorsed a reform, any refusal to ratify could be highly visible and would carry certain reputational and diplomatic costs.

This procedural structure illustrates both the openness and the rigidity of the Charter framework. While the institutional design does not preclude the formal initiation of reform debates, it ensures that no fundamental change can occur without the consent of the major powers. Any realistic reform strategy must therefore combine legal feasibility with political coalition-building capable of generating sufficient pressure or incentives for the permanent members to support or tolerate change. To that end, it would be interesting to examine whether the permanent members are more interested in preventing others from introducing taking decisions (i.e. exercise their own veto) or whether they are more interested in preventing the other permanent members from hindering their active participation (i.e. preventing the others from exercising their veto).

d) Assessment

This proposal does not constitute a radical systemic overhaul. Instead, it remains anchored in the existing institutional design of the Security Council, including the continued distinction between permanent and non-permanent members and the retention – albeit in attenuated form – of special voting privileges for the P10. Precisely because it preserves the core structure while addressing its most pressing weaknesses, the proposal may offer realistic prospects for implementation, provided that sufficient political commitment – particularly from emerging powers such as the G4 – can be mobilized.

2. Reform of the OSCE

Despite being the largest regional security organization, the OSCE is currently unable to fulfil its core mandate. Although conceived as a comprehensive security framework encompassing politico-military, economic, and human dimensions, the organization has proven incapable of playing a meaningful role in managing the most significant armed conflict on its own continent since 1945.

The origins of the OSCE lie in the Conference on Security and Co-operation in Europe (CSCE), established in 1973 during the Cold War. The 1975 Helsinki Final Act reflected a strategic compromise: Western states accepted the existing borders in Eastern Europe, while Eastern states agreed to incorporate human rights commitments into the international framework. This exchange institutionalized dialogue between ideological adversaries and contributed to transparency, confidence-building, and gradual transformation. In 1995, the CSCE was transformed into the OSCE, with an expanded mandate including election observation, conflict prevention, and arms control.[42]

Over time, however, the effectiveness of the newly transformed organization declined. Three structural factors are particularly significant: (1) the unchanged consensus requirement for all substantive decisions, (2) diverging political values among participating states, and (3) the absence of enforcement mechanisms. These constraints have become especially visible since 2022. In the context of Russia's war against Ukraine, the OSCE has been unable to exert meaningful influence. It cannot operate in Russia or Belarus; field missions have been terminated; budgets have been blocked; and political initiatives have been obstructed. As a result, the organization has been largely marginalized at a time when its mandate would be most urgently needed.

Prospects for structural reform within the OSCE are limited. Any amendment to its decision-making procedures would itself require consensus – including the agreement of those states that benefit from the current impasse. In this respect, the dilemma closely resembles that of the UN Security Council. Comprehensive institutional reform therefore appears conceivable only in the long term and under altered geopolitical conditions.

Nevertheless, if Europe is to reflect seriously on a renewed security architecture, it must also consider how peaceful coexistence on the continent should be organized once active hostilities subside. If existing rules and mechanisms no longer function effectively, updated or newly negotiated principles may be required. One conceivable avenue would be the convening of a renewed multilateral conference – something akin to a "Helsinki 2" – with the aim of redefining and reaffirming the foundational norms of European security. Such a process would not seek to replace the OSCE but rather to revitalize its normative basis by clarifying and consolidating commitments regarding territorial integrity, sovereignty, human rights, and confidence-building measures. At the same time, it must be acknowledged that such a comprehensive diplomatic process would likely take considerable time. Precisely for that reason, preparatory efforts should begin in the near future, while the political momen-

42 <https://www.osce.org/secretariat/52527>.

tum and the perceived necessity for reform remain tangible and widely (yet not unanimously) recognized.

IV. Switzerland's Contribution to Possible Solutions

Having outlined potential reform approaches concerning the UN Security Council and the OSCE, the question arises as to what role Switzerland can realistically play in advancing such ideas. Switzerland's contribution must be understood along two complementary dimensions: its engagement (1) at the international level and (2) the domestic level.

1. International Level

Switzerland can contribute to addressing structural deficiencies within the multilateral system. As a long-standing advocate of multilateralism and host state to numerous international institutions, it possesses both the diplomatic expertise and the institutional know-how necessary to engage constructively in reform debates. Unlike major powers, Switzerland is not embedded in bloc structures and is therefore well positioned to act as a bridge-builder. In institutional matters – such as discussions on decision-making reform, transparency, or procedural innovation – it can credibly participate, facilitate dialogue, and advance technically grounded proposals.

By contrast, Switzerland's capacity to shape broader geopolitical developments remains limited; as a small state, it cannot decisively influence great-power competition or systemic shifts in the global order. Its comparative advantage lies in institutional diplomacy rather than power politics.

a) Reform of the UN Security Council

As laid out above, Switzerland possesses both the normative credibility and the technical expertise to contribute constructively to discussions on Security Council reform. In particular, Switzerland could actively promote the convening of a General Conference of Member States for the purpose of reviewing the Charter, as foreseen in Article 109 of the Charter. While such a step would require a two-thirds majority in the General Assembly, the initiative to table and advocate for such a conference could originate from a coalition of reform-minded states – potentially with Switzerland playing a coordinating or convening role.

Importantly, the permanent members cannot prevent reform proposals from being formally discussed at such a conference; their decisive leverage arises only at the ratification stage (*see* III.1.c)). Switzerland could therefore contribute to ensuring that reform ideas are at least formally placed on the institutional agenda and debated within an appropriate legal framework.

Moreover, Switzerland's reputation as a neutral and independent actor enables it to engage in dialogue with both Western and non-Western states without being perceived as aligned with a particular bloc. It can host expert meetings, sponsor diplomatic consultations, and provide platforms for structured exchange on feasible reform models – particularly those aimed at moderating, rather than abolishing, the veto. In doing so, Switzerland would not impose solutions but contribute to shaping a reform discourse grounded in pragmatism, institutional continuity, and broad-based legitimacy.

b) Reform of the OSCE

In the debate on the future of the OSCE, Switzerland currently occupies a position of particular relevance. As Chairperson-in-Office in 2026, the Swiss foreign Minister will hold an important agenda-setting and facilitating role within the organization. Although Switzerland's chairmanship does not remove the structural constraints imposed by the consensus principle, it offers a platform to preserve communication channels, rebuild minimal trust among participating states, and initiate exploratory discussions on the future normative foundations of European security.

Beyond incremental institutional adjustments within the OSCE framework, Switzerland could also contribute to launching a broader process of reflection. A first step could consist of initiating a structured dialogue on necessary rules, mechanisms, and principles for securing peace in Europe. Such a process would aim to clarify how peaceful coexistence on the continent should be organized in light of the evident shortcomings of the current architecture. Concretely, Switzerland could conduct discreet consultations with like-minded states; initiate a preparatory dialogue rather than immediately convening a formal conference; and offer Bern as the venue for a later process – conceivably under the label of a 'Bern Initiative' as an alternative or complement to the idea of 'Helsinki 2'. Switzerland's OSCE chairmanship in 2026 provides both institutional legitimacy and political visibility.

2. Domestic Level

However, Switzerland must also address its own domestic responsibilities. A credible contribution to European security requires internal coherence and strategic clarity. This includes, first and foremost, a resolution of the ongoing debate concerning the interpretation and future orientation of Swiss neutrality. Clarifying the scope and limits of neutrality is essential for defining Switzerland's room for maneuver in an increasingly polarized security environment.

Furthermore, Switzerland should ensure that its armed forces are capable of fulfilling a primary mission: the protection of its own Alpine region. Territorial defense and resilience remain foundational elements of sovereignty and security policy. At the same time, Switzerland should equip and structure its military in a manner that enables it to provide a solidaristic contribution to European security. Such a contribution need not imply combat operations; rather, it could consist of logistics, support functions, infrastructure, medical services, or other enabling capabilities that strengthen collective resilience. It would likely be highly welcomed by the European partners.

In sum, Switzerland's role in strengthening European security rests on a dual approach: proactive engagement in institutional reform at the international level and credible strategic preparedness at home.

V. Conclusion

In this paper, we first provided an overview of the current security situation in Europe (*see chapter* II), by outlining the relevant key institutions and organizations (*see* II.1) and examining the most pressing challenges facing the collective security in Europe (*see* II.2). Our preliminary conclusion (*see* II.3) was that, despite the existence of a dense institutional network mandated to i.a. safeguard peace and stability, this architecture has not functioned effectively – particularly since 2022 and the outbreak of Russia's full-scale war against Ukraine. Europe today faces a situation in which neither peace nor a fully functioning system of collective security can be taken for granted.

Following this assessment, we focused on two reform approaches that are of particular relevance to Switzerland: a reform of the UN Security Council and reform initiatives within the OSCE. With regard to the Security Council, we presented a concrete reform proposal based on three elements: (i) an expansion of overall seats, (ii) an allocation of permanent membership based on objective criteria, and (iii) the introduction of a modified voting rule. The proposal's advantage lies in its evolutionary rather than revolutionary character. It does not dismantle the existing system but preserves key structural features, including the distinction between permanent and non-permanent members, the continued existence – albeit moderated – of the veto, and the regional framework of the UN. Concerning the OSCE, we explored possible avenues for institutional renewal and the initiation of a broader dialogue on the future normative foundations of European security.

Finally, we examined Switzerland's potential contribution. We argued that Switzerland can act both internationally and domestically. Internationally, it can play a constructive role in advancing reform discussions within the two institutions under consideration – particularly within the OSCE, where it currently holds the Chairpersonship and thus benefits from enhanced agenda-setting and facilitation capacity. Domestically, Switzerland must ensure the credibility of its own security policy by clarifying its neutrality doctrine and strengthening its defense capabilities in line with its responsibilities toward national and European security.

Taken together, these reflections suggest that while Switzerland cannot reshape the geopolitical environment on its own, it can contribute meaningfully to institutional adaptation and to the strengthening of collective security – provided that diplomatic initiative abroad is matched by strategic coherence at home and by the deliberate sharpening of its profile as a solid and responsible partner.

‘Europeanization’: Ukraine’s Integration Steps into the EU and Paths for Recovery

Kseniia Smyrnova

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I. Introduction

The Association Agreement between the European Union (EU) and Ukraine (hereinafter referred to as Association Agreement) serves as the primary legal instrument for realizing Ukraine’s foreign policy vector and implementing the constitutional principle regarding the European identity of the Ukrainian people and the irreversibility of Ukraine’s European and Euro-Atlantic course. The implementation of the Association Agreement has become a tool not only for fulfilling its specific obligations but also for ensuring the processes required to achieve Ukraine’s full membership in the EU. The execution of the Association Agreement will depend on its national implementation and the determination of its status within the hierarchy of sources of national law.

The Association Agreement opened new opportunities for Ukraine to attract European experience and best practices in creating an effective legal system. The ongoing war of four years in Ukraine showed the resilience of the state and strict European inspiration. It contributed to the strengthening of democratic institutions, the expansion of economic opportunities, and the improvement of social standards. An important element of this process was increasing the level of transparency and accountability of state institutions, which is an integral part of the European governance model. Moreover, integration streamed as a path for recovery of economic and political system of Ukraine.

By 2022, EU enlargement was in a state of deep stagnation (so-called "enlargement fatigue"). Ukraine was viewed through the prism of the Association Agreement, without clear prospects for membership. The full-scale war proved that "gray zones" of security provoke aggression. Now enlargement is seen not only as an economic project, but as an instrument of survival and stability of the EU itself. Ukraine received candidate status and opened accession negotiations in record time which had taken other countries decades. The integration model has become more flexible and faster, but at the same time much more complex, as it now includes issues of physical survival, global food security, and a complete restructuring of European institutions.

II. Evolution of European integration accelerated by the war

The transposition of EU law into the legal order of Ukraine can be defined as a process of 'Europeanization'.[1] In academia and legal science, Europeanization is treated as a distinct, measurable process of institutional transfer, legal harmonization, and research integration. This process is evident not only at the levels of legislative and executive power in the adoption of relevant norms and acts but also within judicial practice, aimed at the harmonious interpretation of these norms.

The path to signing the Association Agreement is related to a tragic and painful process of Ukraine's struggle for its European choice. The Association Agreement between Ukraine and the EU has become an irreversible mechanism for Ukraine to identify its foreign policy and economic development strategy. The unique character and features of new types of association agreements were written in doctrine for several years[2]. The Association Agreement is accom-

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1 Smyrnova Kseniia, Kot Oleksii, Development of the legal system of Ukraine in the context of European integration // Legal regulation of the post-war recovery of Ukraine, Kyiv 2025: Yurinkom Inter.

2 Hillion Christophe, Mapping-Out the New Contractual Relations between the European Union and Its Neighbours: Learning from the EU – Ukraine 'Enhanced Agreement', European Foreign Affairs Review 2007, No 12, p.. 170; Elsuwege Peter van, Petrov Roman, Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union, European Law Review 2011, No 36 (5), pp. 688–703; Petrov Roman, Legal Basis and Scope of the New EU – Ukraine Enhanced Agreement. Is There Any Room for Further Speculation?, EUI Working Paper 2008/17; Shadikhodjaev Sherzod, Trade Integration in the CIS Region: A Thorny Path towards a Customs Union, Journal of International Economic Law 2009, No 12 (3), pp. 555–578; Smith Karen Elizabeth, The Use of Political Conditionality in the EU's Relations with Third Countries: How Effective?, European Foreign Affairs Review 1998, No 3, p. 253–274; Stegniy Oleksander, Ukraine and the Eastern Partnership: "Lost in Translation?", Korosteleva Elena (ed.), Eastern Partnership: A New Op-

panied by unprecedented international legal practice and particularly painful events related to the full-scale aggression of Russia against Ukraine which began on 24 February 2022. From that day on, a new stage of the "juridization" of the approximation to the EU began. Thus, on 28 February 2022, the President of Ukraine signed an application for Ukraine's membership in the EU. Already at the beginning of April 2022, Ukraine received a questionnaire from the European Commission for obtaining EU candidate status and answered its first and second parts in May 2022. The completed questionnaire became an invaluable source for analyzing Ukraine's legal system. Based on the results of the analysis of the questionnaire, on 17 June 2022, the European Commission presented its opinion on Ukraine's application for EU membership[3]. This decision served as the basis for the vote by the European Council whose powers include granting candidate status. On 23 June 2022, the European Council adopted a unanimous decision to grant Ukraine the status of a candidate country for EU membership.

In doctrine, there were positions regarding the "path to membership through war"[4]. Legal researchers are evaluating the unique phenomenon of "accession through war," tracking how emergency martial law provisions co-exist with the rapid adoption of highly technical EU single-market regulations. However, it is difficult to agree with this position[5]. The arguments are that even before applying for EU membership, Ukraine successfully amended its Constitution in 2019 to reflect the state's national foreign policy course[6]. According to official data from the Government of Ukraine, more than 60% of the obligations under the Association Agreement were fulfilled during 2014–2021[7]. Considering the

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portunity for the Neighbours. London, New York Routledge, 2012, pp. 52–74; Kostyuchenko Yaroslav, Legal Regulation of EU-Ukraine cooperation, Kyiv, LAT&K, 2011, p.205; Smyrnova Kseniia, Svyatun Olena, EU-Ukraine Association Agreement Implementation Coordination Mechanism // Actual problems of international relations, Release 142, 2020, pp. 50–61.

3 See <https://www.eeas.europa.eu/delegations/ukraine/eu-commissions-recommendations-ukraines-eu-candidate-status_en?s=232>.

4 Petrov Roman, Hillion Christophe, Accession through war – Ukraine's road to the EU Applying for EU membership in time of war, <https://kluwerlawonline.com/api/Product/CitationPDFURL%3Ffile%3DJournals%5CCOLA%5CCOLA2022092.pdf>.

5 Smyrnova Kseniia, Introduction to the topic of the journal "EU-Ukraine Association Agreement: features in the conditions of the legal status of Ukraine as a candidate country for accession to the European Union" // Law of Ukraine, vol. 7, 2024, pp. 9–13, <https://pravoua.com.ua/uk/store/pravoukr/pravo_2024_7>.

6 Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding the strategic course of the state for the acquisition of full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization)", <https://zakon.rada.gov.ua/laws/show/2680-19%23Text>.

7 For more detailed information see interactive Governmental Map "Pulse of Agreement", <https://pulse.kmu.gov.ua/>.

above, it is worth noting that the acts of aggression by Russia and martial law only served as an accelerator of European integration processes in Ukraine.

On 8 November 2023, the European Commission published the Ukraine Progress Report within the 2023 EU Enlargement Package[8], for the first time, recognizing Ukraine's high progress in fulfilling seven recommendations. This became the basis for the European Commission's recommendation to EU leaders to open negotiations with Ukraine. At the same time, four additional steps were identified within these seven recommendations, the implementation of which is a prerequisite for adopting the negotiation framework for Ukraine, as well as nearly 100 recommendations for each negotiation chapter.

On 15 December 2023, during a meeting of the European Council[9], a decision to launch the procedure for opening EU membership negotiations with Ukraine was approved. At the same time, the Association Agreement remains the only legal framework under which the transposition of the EU *acquis* and the assessment of the fulfillment of obligations will be carried out. Another topical issue is the parallelism of the processes of enlargement and the internal reform and modernization of the legal order of the EU itself. Negotiation procedures will be accompanied by an assessment of the implementation of the Association Agreement.

On 18 June 2024, the EU Council approved the negotiation framework for Ukraine[10]. The first intergovernmental conference, which effectively marked the official start of our country's membership negotiations, took place on 25 June. The negotiation framework consists of three parts: (1) negotiation principles, (2) content, and (3) procedure. The draft negotiation framework for Ukraine is based on the updated 2020 EU enlargement methodology, previous EU enlargement experience, current accession negotiations with other candidate countries, and considers the development of the EU *acquis*. Accession negotiations for any candidate country are not negotiations in the traditional sense of the word. The purpose of the negotiations is: on the part of the candidate country — to achieve the membership criteria, particularly, bringing national legislation into compliance with current EU law and ensuring its effective implementation and application; and on the part of the EU — to achieve readiness to accept a new Member State.

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8 See <https://enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699_Ukraine report.pdf>.

9 See <https://www.consilium.europa.eu/media/68967/europeancouncilconclusions-14-15-12-2023-en.pdf>.

10 See <https://www.consilium.europa.eu/media/hzmfw1ji/public-ad00009en24.pdf>.

III. Internal stages of implementing acquis

From March 2023 to October 2023, Ukraine conducted an independent analysis of the compliance of national legislation with EU law. This stage is not mandatory under EU procedures. However, Ukraine became the first state to carry out such self-assessment before the official screening by the European Commission to better prepare for the latter. For that reason, there were approximately 28'000 acts being assessed and monitored as part of the screening procedure by the Ukrainian Government. Ukraine successfully completed the comprehensive screening process in September 2025. This was a massive technical undertaking where the European Commission and Ukraine compared Ukrainian laws against the entire body of the EU *acquis*. The positive result allowed negotiations to move into the substantive phase.

The EU's current enlargement methodology groups 35 "chapters" into six thematic clusters. In late 2025, the European Commission confirmed that Ukraine met the requirements to open the first three: Cluster 1: Fundamentals (justice, security, and the rule of law) as the most critical cluster that opens first and remains open until the very end; Cluster 2: Internal Market (free movement of goods, people, and services); Cluster 6: External Relations. At the same time, by the end of 2025, the Ukrainian government finalized negotiation positions for all 35 chapters across 6 clusters.

The process of adapting Ukrainian legislation to the EU *acquis* is not just a translation of directives and the incorporation of norms, but a complete restructuring of the legal and economic ecosystem, as well as the transformation of society and legal culture and enforcement practice.

The application of EU law provisions in Ukraine is carried out through the implementation of the acquis acts into national legislation with the aim of its harmonization with EU law, as well as through the interpretation of the norms and principles of EU law by the European Court of Justice. Thus, the Association Agreement between Ukraine and the EU contains specific obligations to approximate domestic legislation across various sectors to the EU regulations and directives specified in the annexes to the Agreement. Furthermore, the National Program for the Adaptation of Ukraine's Legislation to the Law of the European Union (EU *acquis*), approved by the Resolution of the Cabinet of Ministers of Ukraine dated April 1, 2026, No. 438[11], serves as a strategic document that outlines Ukraine's fulfillment of its European integration commitments within the negotiation process for EU membership.

11 <https://zakon.rada.gov.ua/laws/show/438-2026-n#Text>.

Based on the experience of previous waves of enlargement and the specifics of the Ukrainian context, it is possible to single out several of the most "painful" and complex areas, which are primarily related to the high cost of modernization for the private sector, the institutional weakness of the bodies that are supposed to control the implementation of new norms, and political sensitivity, where European norms can temporarily reduce the competitiveness of certain industries in the internal market. So, such areas include agriculture and food security, the difficulties here lie not so much in the legal plane as in the economic transformation; sanitary and phytosanitary measures (SPS), which require huge investments from small and medium-sized farmers, the common agricultural policy, where the integration of our system of subsidies and production volumes into the EU budget model will cause tough discussions from the current member states (in particular Poland and France). One of the most expensive areas for adaptation is and remains ecology and climate policy (Green Deal). EU directives require enterprises to switch to "best available technologies" (BAT-NEEC). For Ukrainian's heavy industry, which often operates on outdated capacities, this means the need for billions of modernizations. The transition to a circular economy and a strict waste management hierarchy require a complete change in infrastructure and business mentality.

IV. Current constitutional dimension of European integration of Ukraine

The relationship between the Constitution of Ukraine and the process of Europeanization of Ukraine is currently the central axis driving the evolution of the entire domestic legal system. The opening of accession negotiation clusters and the intensive technical screening of Ukrainian legislation have shifted this topic from theoretical academic debate into practical constitutional engineering. Within the negotiation process for Ukraine's accession to the EU, it is crucial to proactively shape a constitutional architecture that enables Ukraine to demonstrate to the EU its institutional capacity to implement the EU *acquis* in line with European integration commitments. Ukraine's future membership in the EU will necessitate the recognition of the primacy of EU law within the scope of competences transferred by Ukraine to the EU, a readiness to amend the Constitution of Ukraine to ensure the enforcement of EU legal acts, and a somewhat restrained application of the concept of constitutional identity. What is the current state within the constitutional dimension? At this pre-accession stage, the interaction between Ukrainian domestic law and the EU legal framework is strictly governed by the traditional provisions of the Constitution of Ukraine by Article 8, where absolute supremacy of the Constitution is prescribed[12]. Currently, the Association Agreement and the EU acts implemented under its framework operate under the logic of Article 9 of the Constitution of Ukraine[13]. This means that the EU legal order does not yet have a direct, autonomous effect in Ukraine; it acts "indirectly," relying on the Parliament (Verkhovna Rada) or the Government (Cabinet of Ministers) to transform these norms into national statutes or regulations. Acts of the EU *acquis* do not currently possess direct effect or autonomous primacy in Ukraine. They are applied indirectly via the tool of harmonious (euro-friendly) interpretation of domestic legislation enacted to fulfill the Association Agreement.

The foundational bedrock of the EU legal order is the absolute primacy (supremacy) of EU law, established by the Court of Justice of the European Union (CJEU) in landmark rulings such as Costa v. ENEL and Internationale Handelsgesellschaft. Under this doctrine, EU law takes precedence over any national provisions of member states, including their national constitutions.

When Ukraine signs its Accession Treaty, a direct conflict will emerge between Article 8 (Supremacy of the Ukrainian Constitution) and the principle of EU law primacy. The current architecture of Article 9 is structurally insufficient to resolve this, as EU law is supranational in nature, distinct from classic international treaty law.

It's worth mentioning that the 2019 constitutional amendment enshrining the "European identity of the Ukrainian people" effectively defines sovereignty as the right to choose a specific civilizational path. Prior to the amendments voting in the Parliament there was a decision of Constitutional Court of Ukraine[14] that supported the enshrinement in the Preamble of the Constitution of the irreversibility of the European and Euro-Atlantic course. The Court recognized that the aspiration to membership in these organizations does not contradict sovereignty but is a way of effectively protecting it: "Ukraine's strategic course towards gaining full membership in the EU and the North Atlantic Treaty Organization is a guarantee of ensuring its sovereignty and territorial integrity".

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12 Article 8 of the Constitution of Ukraine: "The Constitution of Ukraine holds the highest legal force in the land. All laws and other legal acts, including those aimed at European integration, must strictly comply with it".

13 Article 9 of Constitution of Ukraine: "International treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine. The conclusion of international treaties that contravene the Constitution of Ukraine is possible only after introducing relevant amendments to the Constitution of Ukraine" – <https://ccu.gov.ua/sites/default/files/constitution_2019_eng.pdf>.

14 Decision of November 22, 2018 No. 3-v/2018 (Opinion on the course towards the EU and NATO).

Building on the landmark decision of July 14, 2021 (No. 1-r/2021), recent 2025 rulings emphasize that while Ukraine is on an "irreversible strategic course" (Preamble of the Constitution), this path must respect the core values that define the Ukrainian people's historical state-building experience.

A fundamental milestone in the evolution of domestic jurisprudence was established by the Judgment of the Constitutional Court of Ukraine dated 19 May 2026, No. 3-r/2026. The Constitutional Court of Ukraine ruled that the European identity of the Ukrainian people and the irreversibility of the country's European course, as enshrined in the Preamble and Articles 85, 102, and 116, have crystallized into a fully-fledged binding constitutional principle of European integration. This principle legally mandates all courts of general jurisdiction, spearheaded by the Supreme Court, to apply teleological (purpose-driven) interpretation to domestic norms. If a Ukrainian statute allows for ambiguous interpretations, the court must select the trajectory that best aligns with EU law and standards.

By elevating the constitutional principle of European integration to a cornerstone of the constitutional order, the Court has made a significant doctrinal leap. It means that the European trajectory is no longer viewed merely as a political declaration or a functional mandate for specific state organs, but as a core constitutional value that must guide the interpretation of any provision of the Constitution of Ukraine. For Ukraine, the issue of recognizing the primacy of EU law remains, as of today, a matter of political and legal debate. The entrenchment of the primacy of EU law over the Constitution of Ukraine cannot occur without corresponding amendments to the Constitution of Ukraine to that effect. Therefore, it would be most expedient to introduce such amendments by dedicating a distinct chapter within the Constitution of Ukraine entitled "European and Euro-Atlantic Integration" wherein the primacy of EU law over national legislation can be explicitly codified.

To demonstrate the institutional capacity to enforce the EU *acquis* upon full membership, Ukraine will need to modernize the text of its Constitution. Because Article 157 of the Constitution of Ukraine prohibits any constitutional amendments under conditions of martial law or a state of emergency, this comprehensive reform will be executed during the final stage of the pre-accession process, following the lifting of such legal regimes. At the same time, several distinguished and interconnected steps could be proposed. Firstly, introduction of a so-called "Euro-Clause" dedicating a distinct chapter or a specialized article within the Constitution (following the successful precedents of Poland, Czech Republic, or France) that explicitly permits the delegation or shared exercise of specific sovereign powers to supranational EU institutions. Secondly, defining the scope of primacy through explicitly codifying the primacy of EU acts within the specific spheres of competence that Ukraine formally transfers to the Union. And thirdly, restraining the concept of constitutional identity. Comparative experience (notably the jurisprudence of the German Federal Constitutional Court in the Solange and Lisbon judgments) demonstrates that national courts retain ultimate oversight regarding the "core" of their constitutions (human rights, republican form of government). Ukraine will need to strike a delicate balance—applying the concept of constitutional identity with restraint so as not to paralyze the uniform application of the pan-European legal order.

Undiscussable that Ukraine's sovereign choice to integrate into the EU does not signify a loss of independence, but rather its modern shared exercise (shared sovereignty) within a unified European legal space. The recent jurisprudence of the Constitutional Court in 2026 already serves as a robust teleological bridge linking domestic rule of law to a future supranational legal reality.

V. Judicial enforcement of acquis in Ukraine as a process of Europeanization

The process of Europeanization is traced both at legislative and executive level of the government through the adoption of relevant norms and acts, as well as by judicial practice for the harmonious interpretation of relevant norms. In this process, through the fulfillment of obligations included in the Association Agreement[15], the practice of the CJEU and its legal positions are of great importance as sources of interpretation of norms that by their nature are transpositional from EU law. It is due to "judicial activism"[16] that the legal order of the EU is evolving as an integration supranational association focused on the protection of individuals. Legal positions formulated in the decisions of the CJEU as well as upon request in preliminary rulings of the CJEU can become an effective tool for the formation of Ukrainian legislation in the context of its approximation to EU legislation. The implementation of the Association Agreement will depend on the national implementation of the Agreement and the determination of its status in the system of sources of national law.

The current judicial enforcement of the EU *acquis* in Ukraine reflects a dynamic "transition phase." While Ukraine is not yet an EU member state, its judi-

15 Smyrnova Kseniia, Enforcement of the Association Agreement with the EU in the legal order of Ukraine: judicial practice, Journal Law of Ukraine, 2024, No. 7, pp. 13-22.

16 Komarova Tetyana, Court of Justice of the European Union: development of the judicial system and practice of interpreting EU law: monograph, Kharkiv: Pravo, 2018, p. 264.

ciary—spearheaded by the Supreme Court—is actively developing mechanisms to enforce and apply European standards within the boundaries of the current constitutional framework.

The courts of Ukraine, particularly the Supreme Court, are increasingly referring to EU law as a source of argumentation for their legal positions. Thus, pursuant to the ruling of the Grand Chamber of the Supreme Court dated 12 March 2019, in case No. 9901/636/18, the legal positions formulated in the judgments of the CJEU may be considered by administrative courts as argumentation and reasoning for the harmonious interpretation of the national legislation of Ukraine in accordance with the established standards of the legal system of the EU, yet not as a legal basis (source of law) for settling the relations under dispute. The judgments of the CJEU operate solely within the legal system of the EU of which Ukraine is currently not a member state.

Nevertheless, today one can distinguish three categories of cases in which the Supreme Court already cites the jurisprudence of the CJEU: cases concerning the energy sector; cases regarding state aid; and cases involving the protection of intellectual property rights.

The judgment of the Supreme Court, sitting as a panel of judges of the Commercial Cassation Court, in its ruling on case No. 910/14972/17 dated July 17, 2018, should be noted as landmark[17]. In this decision, the Supreme Court applied the priority of Article 198 of the Association Agreement[18] over the national legislation of Ukraine.

The jurisprudence of Ukrainian courts is already expanding the experience of utilizing not only the provisions of the Association Agreement but also EU case law. From an evolutionary perspective, this can be mapped out as follows:

1. (i) The Supreme Court, sitting as a panel of judges of the Commercial Cassation Court, in its judgment dated July 17, 2018, in case No. 910/14972/17 (Zentiva case), applied the priority of Article 198 of the Association Agreement over the national legislation of Ukraine;
2. (ii) The Supreme Court, sitting as a panel of judges of the Commercial Cassation Court, in its judgment dated July 4, 2019, in case No. 910/4947/18

17 Resolution of the Supreme Court in case No. 910/14972/17 dated 17.07.18: <http://reyestr.court.gov.ua/Review/75399206>.

18 The provisions of Article 198 of the Association Agreement concern the conditions and grounds for the revocation of a trademark. It provides for a five-year period during which the trademark was not used as a ground for its revocation. Meanwhile, the national legislation of Ukraine, in particular the Law of Ukraine "On Marks for Goods and Services," provided for a three-year period.

> (Kanzhut case), arrived at the legal position that Article 198 of the Association Agreement can be applied as a norm with direct effect, given that it establishes new standards for the protection of intellectual property rights.

In other words, these two judgments put a definitive end to academic debates regarding the impossibility of applying the provisions of the Association Agreement as self-executing norms without a dedicated domestic statute, while also affirming Ukraine's unequivocal monistic stance regarding the priority of the Association Agreement over national legislation. Furthermore, the approach toward utilizing sources of interpretation is also evolving within the legal positions of the Supreme Court. Specifically, the Supreme Court, sitting as a panel of judges of the Administrative Cassation Court, in case No. 640/65/19 on March 31, 2020, confirmed the lawfulness of using judgments of the CJEU and other sources of EU law during adjudication. Provisions governing the use of EU Court judgments are already present in the judicial practice of Ukraine. A notable example is the field of state aid which became a new institute in Ukrainian economic competition law upon the entry into force of the relevant special law in 2017. Thus, in the judgment of the Supreme Court, sitting as a panel of judges of the Administrative Cassation Court, dated 31 March 2020, in case No. 640/65/19, it was determined that: "…guided by Article 264 of the Association Agreement, pursuant to which the Parties agreed that they shall apply Articles 262, 263(3), or 263(4) of the Agreement using as sources of interpretation the criteria arising from the application of Articles 106, 107, and 93 of the Treaty on the Functioning of the European Union, including the relevant jurisprudence of the Court of Justice of the European Union, as well as relevant secondary legislation, frameworks, guidelines, and other administrative acts in force in the European Union…;". It explicitly states that "…the plaintiff's assertion regarding the mistaken use of the sources of European Union law by the Committee when adopting Decision No. 652-r is erroneous, groundless, unsubstantiated, and contrary to the legislation and materials of the case."

Consequently, using the example of this specific case, it was solidified that the Antimonopoly Committee of Ukraine's reference in its decision to the Judgment of the CJEU in case C-280/00 Altmark Trans GmbH, Regierungspräsidium Magdeburg v. Nahverkehrsgesellschaft Altmark GmbH is entirely lawful and justified. Hence, the legal positions formulated by the CJEU serve as an absolute source of interpretation of norms that, by their nature, possess a transpositional character from EU law through the fulfillment of obligations embedded in the Association Agreement.

The Grand Chamber of the Supreme Court directly pointed this out in its ruling dated 3 August 2022, in case No. 910/9627/20. In particular, the Supreme Court noted that: "The Judgment of the Court of Justice of the European Union should be regarded as an instrument that enables the determination of the substance of the provisions of European Union legislative acts specified in Article 2 of the Law of Ukraine 'On the Electricity Market.' Similar to the practice of applying the judgments of the European Court of Human Rights, the principles arising from its judgments on similar matters are subject to consideration, even if they concern other states. The fact that Article 67 of the Treaty Establishing the Energy Community provides for the submission of annual reports by the Energy Community Secretariat to the Council of Ministers does not mean that its official conclusions, formulated in a manner other than an annual report, cannot be taken into account for the purpose of establishing the substance of the EU legislative acts specified in Article 2 of the Law of Ukraine 'On the Electricity Market' and the application of the provisions of this Treaty by courts. The established transmission fee regarding the volumes of exported electricity is, by its nature and taking into account its structure, one that must be regarded as a measure equivalent to a customs duty, the establishment of which does not comply with the norms of Article 41 of the said Treaty and is not justified under paragraph 2 of this Article."

Attention must also be drawn to the initiation of the process of systematizing the jurisprudence of the CJEU for the practice of the Supreme Court[19]. Such systematization of legal positions in the Ukrainian language will foster the penetration of EU law argumentation approaches and improve the conditions for interpreting and applying the provisions of the Association Agreement as well as the interpretation of shared values. Naturally, along this path, a whole series of legal issues arise that require resolution by both doctrine and practitioners, specifically regarding the conditions for applying the legal positions of the CJEU, their translation, and the development of judicial practice in applying the norms of EU law.

VI. Synchronic transformative paths and latest achievements for long stable recovery

The EU previously insisted that Ukraine must change to meet the Union's standards. Currently, the discussion has become bilateral. Brussels has recognized that accepting such a large and agriculturally powerful country as Ukraine will

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19 <https://supreme.court.gov.ua/userfiles/media/new_folder_for_uploads/supreme/ogliady/Oglyad_SES_04_07_2023.pdf>.

require a reform of the EU's voting system and budgetary policy. This means that Ukraine's path stimulates the transformation of the whole of Europe. If earlier the main requirements were only economic reforms and the fight against corruption, now the military-industrial aspect has also been added. Ukraine is seen as the future "security hub" of Europe. The EU is integrating the Ukrainian defence sector into its strategy (for example, through the EDIS program), which is a unique case for a country that is not yet a member of the Union. Inevitably, the war has clearly washed away bureaucratic inertia.

The most significant event was the Informal Meeting of European Affairs Ministers which took place on 10 and 11 December 2025. This was a historic occasion as it was the first symbolic meeting of EU Council that was held on Ukrainian soil during the active accession process. Main points of the agenda were the "frontloading" reform, especially discussions focused on accelerating Ukraine's internal reforms so that the country becomes technically ready for membership even while political hurdles (like specific vetoes) remain; to review the results legislative screening with the aim to assess accession progress. And one of the decisions that was taken was the financial support with finalizing the details of the €90 billion financial aid package for 2026–2027 which, shortly after, was officially approved by the European Council.

Holding the meeting in Lviv was intended to symbolically send a "clear and united political message" that Ukraine's future is irrevocably within the EU. While the Ukrainian government has set an ambitious goal of being ready for membership by 2027[20], some EU officials[21] suggest that a realistic window for full accession is between 2028 and 2030 depending on the pace of domestic reforms.

The significance of the Association Agreement can hardly be overestimated. It has become the foundation for large-scale reforms in Ukraine, covering all spheres of public life — from the economy to justice. It contributed to the creation of new institutions and the strengthening of democratic processes. For the EU, this agreement is also an important step toward stability and prosperity in the region, demonstrating support for Ukraine's sovereignty and terri-

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20 See <https://pro-justice.com.ua/en/2027-realna-data-chy-dyplomatychnyj-symvol-shho-stoyit-za-ambitnym-terminom-vstupu-ukrayiny-do-yevrosoyuzu-i-chomu-czej-proczes-vazhlyvo-rozumity-kozhnomu/>.

21 See <https://newsukraine.rbc.ua/news/von-der-leyen-responds-to-naus-da-s-idea-1740417549.html%23:~:text=At the same time, she,EU even earlier than 2030>; see also earlier debates: <https://euneighbourseast.eu/news/latest-news/charles-michel-i-believe-we-must-be-ready-on-both-sides-to-enlarge-by-2030/%23:~:text=President of the European Council,sides — to enlarge by 2030>.

torial integrity. Ukraine goes to Europe not only with hope for a better future but also with the determination to protect and implement European values. Accession negotiations are not just a technical process but an important stage on the way to the pan-European community. It is obvious that through joint efforts we will be able to achieve success and build a strong, stable, and prosperous Ukraine as part of the EU.

The EU began to introduce elements of dynamic integration. This means that Ukraine can access certain EU benefits, such as the single roaming area, visa-free travel for transport and energy, and the internal market even before officially receiving full membership.

Ukraine today is not simply adapting to European security standards but is itself influencing their modernization. A full-scale war has transformed Ukraine from a "buffer zone" into a key actor that determines the stability of the entire continent. Until 2022, NATO's strategy in Europe was largely detonation (deterrence through the threat of sanctions or a limited response). Ukraine has changed this paradigm. Ukraine's example has pushed Finland and Sweden to join NATO which completely changed the balance of power in the Baltics and the Arctic. Ukraine has become a global laboratory for testing the latest military technologies. The use of combat management systems (such as Delta) and satellite communications (Starlink) has shown European armies that data transfer speed is more important than the number of tanks. Ukraine has proven that inexpensive drones can offset the advantage in heavy equipment and the fleet. This forces EU countries to urgently review their defense budgets and procurement strategies as we are currently witnessing, for example, in the context of the European Commission's unveiling of completely new proposals for financing the defense sector with the mandatory participation of enterprises from Ukraine.

The synchronization of the Ukrainian energy grid with the European one (ENTSO-E) in the first weeks of a full-scale invasion in 2022 proved that technical integration is possible in extreme conditions. This accelerated the EU's rejection of Russian energy resources.

Ukraine withstood the first full-scale cyberwar in history which accompanied physical hostilities. This experience is now being used by EU intelligence services to protect critical infrastructure from cyberattacks. Now there is a consensus in Brussels that a stable and democratic Ukraine is the only way to prevent another major war. This has changed the priorities of EU enlargement, turning it from a purely economic into a security project.

Europeanization is functionally financed through robust, reform-contingent mechanisms designed to bridge immediate stabilization with long-term economic modernization. Long stable recovery manifests across critical dimensions, transforming institutional and physical landscapes such as rule of law and institutional trust, internal market integration and "gradual integration". Accession requirements enforce the total overhaul of the judicial self-governance bodies, rigorous anti-corruption screening, and the transparent optimization of public administration. For recovery, this institutional cleanup acts as the ultimate de-risking mechanism, unlocking billions in private foreign direct investment that would otherwise hesitate due to perceived legal vulnerabilities. Gradual integration into the EU internal market includes securing prolonged zero-tariff and zero-quota regimes for agricultural and industrial goods and possible advancing the ACAA (Agreement on Conformity Assessment and Acceptance of Industrial Products), ensuring Ukrainian industrial outputs are recognized instantly within the EU single market without duplicate certifications. The latest path remains under negotiations still.

Europeanization is described as the reorientation of state policy through the dynamism of the EU. It involves the development, dissemination, and institutionalization of formal and informal rules, shared beliefs, and norms developed at the EU level, which are later incorporated into national legislation. These mechanisms include (i) reception and transposition as the formal adoption of EU rules; (ii) adaptation and approximation that include aligning national legal and regulatory frameworks with the EU *acquis*.

At the same time recovery through integration involves the process of several key issues, such as (i) transparency and accountability that include implementing European governance models to mitigate corruption risks; (ii) access to the EU internal market, it is obvious that the Association Agreement has already ensured the implementation of 70% of the required norms, allowing Ukrainian businesses to integrate into European value chains; (iii) progress in sectoral integration, thereby a particularly high performance (over 90%) is observed in the fields of statistics and information exchange, which is critical for reconstruction planning.

VII. Conclusions

Europeanization is the gradual transformation of the national legal order. Europeanization is a multi-vector and multi-faceted concept, and this concept is not about high offices in Brussels, but about how the logic of interaction between citizens, businesses and the state is changing. The process of legal approximation is the largest and most difficult task during accession to the EU.

This process includes the harmonization, implementation and transformation of legal norms to ensure compliance of the Ukrainian legal order with the EU *acquis* and the access to the EU internal market. Europeanization as a complex process involves not only the implementation of norms at legislative level, but also symmetrical application at the level of secondary legislation as well as effective and transparent law enforcement in the courts. The consequences of Europeanization do manifest themselves not only at a purely legal level, but also in the socio-economic and political spheres. In practical terms, these consequences contribute to the effective protection of citizens' rights, increasing the transparency of the activities of state institutions and ensuring the independence of the judicial system. In the socio-economic sphere, the Europeanization of legal order provides access to the single European market, creating the conditions for economic growth and foreign investment. In this context, effective legislation on the protection of economic competition, which creates conditions for doing business, is extremely important. The political consequences are the strengthening of democratic institutions, the improvement of public administration mechanisms and the approximation of Ukraine to the standards of EU membership.

Europeanization involves the use of best European practices in the field of lawmaking, law implementation, law enforcement and justice to ensure values such as respect for human rights, democracy and the rule of law. For successful recovery, progress in the first negotiation cluster is decisive, as it includes: judicial reform, the rule of law, and the fight against corruption. Without these reforms, attracting private foreign investment for reconstruction will be impossible. At the same time crucial issues should be solved as challenges on the path to recovery via the EU, such as (i) institutional capacity, that is to say a high need for a large number of highly qualified experts to implement the EU *acquis*; (ii) finding legal and economic solutions for the integration of regions of temporarily occupied territories affected by the war; and (iii) the necessity for new constitutional amendments specifically for accession to the Union.

Critical Junctures, Turning Points, and U-turns: Armenia's European Integration Revisited*

Anna Khvorostiankina

Summary

Complementing the puzzle of case studies illustrating the current challenges of "integration under pressure", this conference paper analyses the most recent progress in the partnership between the European Union (EU) and Armenia. Considering the growing role of the EU locally and regionally and the dynamics of internal processes in Armenia, the paper aims to answer if another U-turn – towards Armenia's EU membership – is currently underway or likely to occur in the near future in EU-Armenia relations.

The paper argues that the current developments resemble the 2013 U-turn in geopolitical salience, but differ in their legal form, domestic decision-making, and gradual unfolding. The 2013 U-turn was abrupt, elite-led, and immediately consequential: Armenia abandoned a finalised Association Agreement/ DCFTA with the EU and joined the Russia-led integration framework. The current process is more complex. Without a change of the formal legal frameworks of bilateral relations with the EU and Russia-led integration structures, it is marked by the EU's growing role as a security and resilience actor, visa liberalisation dialogue, new ambitious partnership priorities, the civil-society-initiated 2025 law launching Armenia's EU membership process, and Armenia's broader search for a new constitutional and geopolitical identity.

The paper therefore conceptualizes the present moment not as a completed U-turn, but as a critical juncture of strategic re-anchoring, shaped by the interaction of two evolving constitutional identities: that of the EU as a geopolitical and security actor, and that of Armenia as a state seeking to redefine sovereignty, security and democratic transformation after the crisis of its Rus-

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* This paper presents the results of a research project on the dynamics of development and future perspectives of EU-Armenia relations, carried out within the framework of the Jean Monnet Chair in EU Legal Studies and Legal Europeanization (2022-2025). It is based on the conference paper "Critical Junctures, Turning Points, and U-turns: Armenia's European Integration Revisited". Funded by the European Union. Views and opinions expressed are however those of the author(s) only and do not necessarily reflect those of the European Union or the European Education and Culture Executive Agency (EACEA). Neither the European Union nor EACEA can be held responsible for them.

sia-centered security model and in the context of ongoing Armenia-Azerbaijan peace process.

Although the reinforcement of the EU-Armenia partnership is currently clearly observable, despite the multidimensional strengthening of cooperation, the nature of change is not (yet) sufficient to bring about Armenia's membership in the EU. Despite the positive dynamics and active steps from both sides, the future of EU-Armenia relations largely depends on the results of the peace process in the South Caucasus and local political situation in Armenia in the context of forthcoming elections in 2026.

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I. Introduction

On 26 March 2025, the National Assembly of the Republic of Armenia adopted the Law HO-70-N[1] on launching the process of Armenia's accession to the EU. The only provision of this Law states that

> "The Republic of Armenia, aiming to develop democratic institutions, increase the well-being of society, strengthen the country's security, resilience and the rule of law, declares the start of the process of the Republic of Armenia's accession to the European Union"[2].

Although the Law did not provoke any immediate reaction from Brussels, later it was acknowledged as an important sign of Armenia's European integration aspirations. During her official visit to Yerevan on 29 and 30 July 2025, the EU High Representative Kaja Kallas noted that "Armenia and the European Union have never been closer to each other than they are now", stressing that "the

1 The Law entered into force on 17 April 2025.

2 The Law in Armenian is available at: <https://www.arlis.am/hy/acts/205203/latest>.

European Union is ready to further deepen the partnership in all directions"[3]. She also referred to another "important milestone in strengthening strategic cooperation between Armenia and its European and Western partners" – the Armenia-EU-US trilateral statement signed in Brussels on April 5, 2024 – that, in her words, "has served as the basis for a new level of political dialogue"[4].

As further steps forward, the EU-Armenia visa liberalisation dialogue was launched in September 2024, and the first-ever European Peace Facility assistance package for Armenia was adopted in July 2024. In December 2025, the parties adopted the ambitious New Strategic Partnership Agenda, which identified expected reforms, relevant benchmarks, and timelines to ensure the effective implementation of the EU-Armenia Comprehensive and Enhanced Partnership Agreement (CEPA).

Focusing on the dynamics of EU-Armenia relations, this paper seeks to answer the question of whether the recent developments in the EU-Armenia relations mark another U-turn, mirroring the U-turn of 2013 when Armenia abandoned the already negotiated Association Agreement with the EU and joined the Russia-led Eurasian integration project, and whether they can potentially lead to Armenia's application for membership in the EU. The paper starts with setting the scene by analysing the evolution of EU-Armenia relations and identifying its major stages, milestones, and critical junctures. It then proceeds with the analysis of the "anatomy" of the 2013 U-turn – its manifestations, context, and consequences. Attention is paid to the transformation of the logic of cooperation between the EU and Armenia and the change at the level of formal legal frameworks, domestic context, the state of constitutional identity, and the geopolitical context in the region. Finally, based on the identified criteria, the most recent developments are compared with the situation in 2013. The paper concludes with an outline of the future of EU-Armenia relations. It is argued that the recent developments signal the reinforcement of the EU-Armenia partnership; however, despite the multidimensional strengthening of cooperation, the nature of change is not (yet) sufficient to be identified as a "U-turn" and to bring about clear perspectives of Armenia's membership in the EU. Despite positive dynamics and active steps from both sides, the future of EU-Armenia relations largely depends on the geopolitical balance in the region

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3 Press release. Prime Minister Receives EU High Representative Kaja Kallas (30 June 2025), <https://www.primeminister.am/en/press-release/item/2025/06/30/Nikol-Pashinyan-meeting/>.

4 Press release. Prime Minister Receives EU High Representative Kaja Kallas (30 June 2025), <https://www.primeminister.am/en/press-release/item/2025/06/30/Nikol-Pashinyan-meeting/>.

and the local political situation in Armenia, which will be shaped by the results of the 2026 parliamentary elections.

II. The path of EU-Armenia relations: major stages and critical junctures

This part of the paper zooms out on the major stages of EU-Armenia relations and identifies the so-called "critical junctures" – the moments that affected the logic of bilateral cooperation and shaped its substance under the influence of internal or external factors or decisions. The changes observed on the timeline of EU-Armenia cooperation are characterised by varying magnitudes of shift. Following the classification offered by Hermann, they can be defined as ranging from "minor adjustment changes, through both program and goal changes, to fundamental changes in a country's international orientation"[5]. The latter can be defined as a U-turn – a radical foreign policy change under external or internal pressure resulting in the reorientation of integration or cooperation vectors, occurring both at the political level and at the level of legal frameworks.

The first stage of EU-Armenia relations spanned from the collapse of the Soviet Union to 2004, when the European Neighbourhood Policy was launched. Characterised by the logic of modernisation and democratic transformation, at this stage the EU-Armenia relations were framed by the Partnership and Cooperation Agreement (PCA)[6] signed in 1996. The PCA replaced the Agreement between the European Economic Community, the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and economic and commercial cooperation of 1989. According to Art. 1 PCA, the objectives of the partnership were: (1) to provide an appropriate framework for the political dialogue between the Parties allowing the development of political relations, (2) to support the Republic of Armenia's efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy, (3) to promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable eco-

5 Hermann Charles F., Changing Course: When Governments Choose to Redirect Foreign Policy, International Studies Quarterly, Vol. 34, Issue 1, March 1990, pp. 3–21, <https://doi.org/10.2307/2600403>.

6 Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Armenia, of the other part – Protocol on mutual assistance between authorities in customs matters – Final Act – Joint Declarations – Exchange of Letters in relation to the establishment of companies – Declaration of the French Government, OJ L 239, 9.9.1999, pp. 3–50, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:21999A0909(01)>.

nomic development, and (4) to provide a basis for legislative, economic, social, financial, civil scientific, technological and cultural cooperation. The Agreement, therefore, aimed to assist Armenia in its post-Soviet transformation and transition to democracy and market economy.

Although with some nuances, the text of the document reproduced the general template of similar PCAs concluded with other post-Soviet countries. In the area of domestic reforms, the Agreement recognised the importance of approximation of Armenian existing and future legislation to that of the Community framed with a very "soft" commitment of Armenia to "endeavour to ensure that its legislation will be gradually made compatible with that of the Community" (Art. 43 PCA).

PCA was concluded for an initial period of 10 years and automatically renewed on the basis of Art. 94 PCA. Although outdated in many respects in the changed social, economic, legal, and political contexts, it remained the formal legal basis for EU-Armenia relations during the subsequent stage of their development.

In 2004, the context of EU-Armenia relations was reshaped by internal developments in the EU – the enlargement that brought the post-Soviet countries closer to the Union's borders and the launch of the European Neighbourhood Policy (ENP), marking the transition to the second stage of the development of EU-Armenia relations. In 2005, the five-year EU-Armenia ENP Action Plan (AP)[7] was adopted. Based on the approach "founded on partnership, joint ownership and differentiation", the Action Plan aimed at "laying out the strategic objectives of the cooperation between Armenia and the EU", leading to an enhanced format of partnership. It subordinated progress in the development of relations to "the degree of Armenia's commitment to common values as well as its capacity to implement jointly agreed priorities, in compliance with international and European norms and principles". The EU also took "note of Armenia's expressed European aspirations". From a legal perspective, the Action Plan was a political, or "soft law", document; it adjusted the objectives of the PCA to the new realities – in some respects, clearly going beyond the text of the Agreement – and identified actions directed toward their achievement.

This second stage of development of the EU-Armenia relations was marked with the launch of the Eastern Partnership (2009) and subsequent (in July 2010) opening of negotiations on the new legal instrument – the innovative and ambitious Association Agreement (AA). At the opening of the negotiations, the

7 EU-Armenia Action Plan of 2005, <https://eeas.europa.eu/sites/eeas/files/armenia_enp_ap_final_en.pdf>.

Minister of Foreign Affairs of Armenia, Edward Nalbandian, underlined Armenia's interest in deepening relations with the EU and made a strong statement grounded in the European identity argument. He said that the ties between the Armenian nation and Europe "go back to the depth of centuries to the times when the enlightened sons of our [Armenian] nation had their participation in the formation of value system, which today are called the European values"[8]. In other words, EU values were portrayed by political elites as part of the domestic legal heritage, as something genuine and not imposed from the outside.

The Minister also acknowledged Armenia's progress in implementing the required reforms and its readiness to develop relations at a qualitatively new level. He expressed hope for a swift conclusion of the visa liberalisation and readmission agreements (eventually concluded in 2014), that can be interpreted as a strong incentive for the introduction of reforms in the justice, freedom and security sector.

Regardless of this pro-European discursive component of the Armenian dialogically constructed "constitutional identity" and declaring adherence to the European values and standards, the reality of legal and political practice was significantly diverging, being marked by violations of human rights, distorted mechanisms of separation of powers and growing authoritarian tendencies, oligarchy and the lack of fair market competition, thus making the reforms ineffective and largely façade in their nature.

The negotiations on AA were completed in July 2013 and resulted in the elaboration of the text that had to enable further "comprehensive modernisation and reform based upon shared values, political association and economic integration"[9]. Importantly, the process of negotiations on the Association Agreement ran in parallel with and was conditioned by the results of the approximation of Armenian legislation to the EU *acquis*. The negotiation process was arguably a powerful stimulus for the domestic reforms; however, the adopted legislation appeared to be rather a superficial change, and the problem of proper implementation of the letter and spirit of law remained unresolved. In the existing political context and amid semi-authoritarian tendencies, the introduced reforms had little potential to change the political and legal culture, as well as the social practices of nepotism, corruption, and legal nihilism.

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8 Negotiations on the Association Agreement started between the Republic of Armenia and the EU (19 *July*, 2010), <https://www.mfa.am/en/press-releases/2010/07/19/association-negotiations/1578>.

9 Joint Statement by High Representative Catherine Ashton and Commissioner Štefan Füle on completion of negotiations on the future Association Agreement with Armenia, Brussels, 25 July 2013 A 401/13, <https://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/138404.pdf>.

Despite the pro-European rhetoric and the work towards formal compliance with the EU acquis, the Association Agreement, which was expected to be signed in November 2013, remained a failed draft following the infamous U-turn announced by the President of Armenia upon his return from the Kremlin. Challenged by multiple asymmetrical dependencies, Armenia was forced to change its integration priorities from the "integration without membership" with the EU to accession to the Russia-led Customs Union (later – the Eurasian Economic Union). As a result, the EU-Armenia relations entered a relatively brief period of silence. The silence then gradually evolved into attempts to find a compromise and an alternative format for EU-Armenia relations that would take into account Armenia's new international commitments, marking the beginning of the third, ongoing stage in the development of EU-Armenia relations.

In the course of a scoping exercise identifying possible areas of future cooperation launched by the EU and Armenia in November 2014, the Parties reconsidered the possibility of reformatting the previously designed legal framework, adjusting the failed Association Agreement to the new reality. The negotiations on the new agreement were launched on 7 December 2015, lasted 1 year and 2 months and encompassed 9 rounds[10]. In the course of negotiations, Armenia's membership in the EAEU and the international obligations arising from EAEU law were taken into account. As a result, the competing provisions (in particular, on the Deep and Comprehensive Free Trade Area) were eliminated from the text. Importantly, the "constitutional identity" provisions initially included in AA remained in the new draft, declaring that the Parties share the same values and setting the list of these values in an essential element clause of Art. 2 CEPA as a prerequisite for implementation of the Agreement as a whole.

The new negotiated instrument – the EU-Armenia Comprehensive and Enhanced Partnership Agreement[11] – was signed on 24 November 2017 on the margins of the 5th Eastern Partnership Summit in Brussels. Following the requirement of Art. 168(3) of the Constitution of Armenia, on 16 March 2018, CEPA underwent constitutional review[12] and, after the ratification by the Na-

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10 Ministry of Foreign Affairs of the Republic of Armenia, Official website, Bilateral Relations: EU, <https://www.mfa.am/en/bilateral-relations/eu>.

11 Comprehensive and Enhanced Partnership Agreement between the EU and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part (not yet in force), OJ L 23, 26 January 2018, pp. 4–466, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22018A0126(01)&qid=1523193570030>.

12 DCC-1407 of 16 March 2017 "On the Case of Conformity of the Obligations Stipulated by Comprehensive and Enhanced Partnership Agreement between the Republic of Armenia,

tional Assembly on 11 April 2018[13], became an integral part of the Armenian domestic legal system (based on Art. 5 and Art. 116 of the Constitution). Pending the ratifications from all the Member States, starting from 1 June 2018, it had been provisionally applied by the Parties[14]. On 25 January 2021, the ratification process was completed[15], and, in virtue of Art. 385(2) of CEPA, the Agreement entered into force on 1 March 2021[16].

Aiming, in particular, "to enhance the comprehensive political and economic partnership and cooperation between the Parties, based on common values and close links, including by increasing the participation of the Republic of Armenia in policies, programmes and agencies of the European Union"[17], CEPA replaced the outdated EU-Armenia PCA of 1996[18]. The implementation of CEPA was supported by the CEPA Reform Facility as an integral part of the overall EU development assistance to Armenia[19] and by the EU-Armenia Partnership Priorities, which stressed the promotion of universal values and stability, re-

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of the One Part, and the European Union and the European Atomic Energy Community and Their Member States, of the Other Part, signed in Brussels on 24 November 2017 with the Constitution of the Republic of Armenia", <http://concourt.am/armenian/decisions/common/2018/pdf/sdv-1407.pdf> (in Armenian).

13 See: Law of RA on Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part of 11 April 2018 (in Armenian), <http://www.parliament.am/legislation.php?sel=show&ID=6399&lang=arm>.

14 Delegation of the EU to Armenia, Step forward for EU-Armenia relations as new agreement is provisionally applied (1/06/2018), <https://eeas.europa.eu/delegations/armenia/45736/step-forward-eu-armenia-relations-new-agreement-provisionally-applied_en>. The provisional application is enabled by Art. 385 (5) of CEPA. The scope of provisional application covered the majority of CEPA's provisions including those related to the subject of this research (see: Council Decision (EU) 2018/104 of 20 November 2017 on the signing, on behalf of the Union, and provisional application of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, OJ L 23, 26 January 2018, pp. 1–3, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32018D0104&qid=1614594983302)>.

15 Information concerning the entry into force of the Comprehensive and Enhanced Partnership Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Armenia, of the other part, OJ L 55, 16 February 2021, p. 1–1 (<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:22021X0216(01)&qid=1614594757865>), <https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2017024&DocLanguage=en>.

16 In accordance with Art. 385 (2), CEPA shall enter into force on the first day of the second month following the date of deposit of the last instrument of ratification or approval.

17 Art. 1(a) CEPA.

18 Art. 380 CEPA.

19 See <https://ec.europa.eu/neighbourhood-enlargement/sites/default/files/annexes/c_2019_8734_f1_annex_en_v1_p1_1054438.pdf>.

silience, security, and prosperity built on democracy, human rights, the rule of law, and sustainable economic growth and openness.

In the same manner as AA, CEPA has introduced joint EU-Armenian institutions, joint mechanisms of dispute resolution, enhanced role of civil society that serve to increase the relevance of the EU's actions in the domestic context; essential elements, conditionality mechanisms, legislative approximation, implementation and enforcement clauses that serve to increase the effectiveness of the introduced reforms; and the references to the EU legal basis and common values. Furthermore, the framework character of the Agreement and the provisions enabling further evolution of the bilateral relations contribute to greater flexibility and resilience of the EU's policies towards Armenia.

Although its formal legal framework (the EU-Armenia CEPA) remains unchanged, the current stage is not homogeneous: several sub-periods can be identified based on the milestones and "critical junctures" in the development of EU-Armenia relations.

The first "critical juncture" was the peaceful protests of 2018 (the "Velvet Revolution"), which led to a transition of power and the change of dominant political elites, marking the beginning of genuine democratisation reforms. One of the major triggers of the protest was the manipulation with the constitutional amendments in 2015[20] that changed the form of government from semi-presidential to parliamentary republic, thereby enabling then-President Sargsyan to be elected for a third consecutive term, formally as Prime Minister. The EU's acceptance of the constitutional reform and subsequent manipulations widened the gap between the growing demand for reforms within Armenian society and the EU's pragmatic approach. Considering the lack of significant leverage over Armenian elites, the 'soft-power' nature of the tools used by the EU[21] and the existence of legal limits on the interference into purely domestic affairs, this gap amounted to a 'capability-expectations gap' as coined by Hill[22]. The situation began to change gradually after the "Velvet Revolution", in the context of a significant increase in the EU's support for domestic reforms and democratisation processes.

The second critical moment was the 44-day war over Nagorno-Karabakh in 2020, which reshaped the region's geopolitical architecture and local political processes. On the one hand, it was characterised by a certain disappointment

20 The amendments were entering into force gradually till 2018.

21 Nielsen K.L. (2013). EU Soft Power and the Capability-Expectations Gap, Journal of Contemporary European Research. 9 (5), pp. 723–739.

22 Hill C. (1993), The Capability-Expectations Gap, or Conceptualizing Europe's International Role, *Journal of Common Market Studies*, 31, pp. 305–328.

in the EU's role as a regional security actor. As Delcoure observes, the conflict not only exposed the helplessness of the EU as a security actor in the region but also, "[f]or many in Armenian civil society, [...] highlighted a major gap between the EU's claim to be a normative actor and its lack of commitment to defend the country's emerging democratic values"[23] in the war with an autocracy. On the other hand, the EU performed as a very active development actor and humanitarian aid provider, strengthening, in particular, the bordering regions and contributing to the resilience of their communities.

Russia's war of aggression against Ukraine was another critical moment, as it affected the behaviour of the EU on the international scene and urged the Union to be more affirmative in its external action. For Armenia, this resulted in a stronger EU presence in the conflict resolution process, taking the form of both the direct facilitation of Armenia-Azerbaijan negotiations and the deployment of the EU civilian mission (EUMA) in Armenia along the border with Azerbaijan.

Granting the candidate status to Georgia, Moldova, and Ukraine in 2022 was a milestone in the relations between the EU and the EaP countries. This process intensified pro-European attitudes within civil society and stimulated consideration of a possible membership application among political elites. The meeting in Brussels on 5 April 2024 between the Prime Minister of Armenia and top officials of the EU and the US was a further step toward advancing the relations. Even though it did not result in the declaration of Armenia's membership aspirations (as was widely discussed domestically and expected by the public, who saw that period as a "window of opportunities"), the Western partners assured the Armenian counterparts of their readiness to provide increasingly substantial support. The opening of the visa liberalisation negotiations afterwards was another important development; it was followed by the approval of the Visa Liberalisation Action Plan detailing the expected reforms.

On 26 March 2025, the Law on the launch of Armenia's membership process was adopted. Being a citizen-initiated legislative act (the '*Eurovote*' civic initiative, represented, large extent, by the member organisations of the EU-Armenia Civil Society Platform), this Law represents a case of bottom-up Europeanization. Being purely domestic and grassroots by its nature, this initiative aimed at setting out the vector of foreign policy at the legislative level and to mobilise European aspirations to reinforce fundamental values (enshrined not

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23 Laure Delcoure (2021). The Future of Democracy and State Building in Postconflict Armenia, Carnegie Endowment for International Peace, <https://carnegieendowment.org/research/2021/01/the-future-of-democracy-and-state-building-in-postconflict-armenia?lang=en>.

only in CEPA but also in the Constitution of Armenia). Noteworthy, the legislative processes became a (rather weaker) substitute for an initial idea of employing a direct democracy instrument by calling a popular referendum on EU membership for Armenia. The absence of precise, enforceable provisions (such as timeframes, responsible actors, and planned practical steps) further weakened this legal act.

While the adoption of the Law developed the domestic legal framework of European integration (albeit rather symbolically due to the mentioned weaknesses), the bilateral framework of cooperation was advanced by the adoption of the new Strategic Partnership Agenda on 2 December 2025. The Agenda identified specific reforms expected in mid- and long-term perspectives and aimed at the effective implementation of CEPA.

Alongside discussions of membership perspectives, Armenia is actively exploring other formats of European integration. Thus, since the establishment of the European Political Community in 2022, Armenia has been its active member. Although EPC is not an accession-related mechanism or an alternative to the membership, it is still significant for Armenia from two perspectives: firstly, from the perspective of security and peace process (at the Summit in Prague in 2022 Armenia and Azerbaijan reaffirmed their respect to each other's sovereignty and territorial integrity based on the UN Charter and Alma-Ata declaration of 1991 as a basis for the work of the border delimitation commissions; furthermore, it was decided that Armenia would facilitate a civilian EU mission alongside the border with Azerbaijan[24]); secondly, EPC serves as an important additional forum for a political dialogue and symbolically emphasizes Armenia's European identity. As Armenia was chosen as a hosting country for the 8th EPC Summit (May 2026), PM Pashinyan noted at the closing session of the 7th EPC Summit in Copenhagen in October 2025 that this "will reinforce [Armenia's] integration into the European family and provide an opportunity to showcase [its] progress in democratic reforms"[25]. Following the 8th EPC Summit on 4 May 2026, Armenia hosted the first-ever EU-Armenia summit on 5 May.

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24 European Council. Statements and remarks (7 October 2022) Statement following quadrilateral meeting between President Aliyev, Prime Minister Pashinyan, President Macron and President Michel, 6 October 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/10/07/statement-following-quadrilateral-meeting-between-president-aliyev-prime-minister-pashinyan-president-macron-and-president-michel-6-october-2022/>.

25 Prime Minister Nikol Pashinyan's working visit to the Kingdom of Denmark, <https://www.primeminister.am/en/foreign-visits/item/2025/10/01/Nikol-Pashinyan-visiting-Kingdom-of-Denmark/?utm_source=chatgpt.com#:~:text=Prime Minister Nikol Pashinyan's working visit to the Kingdom of Denmark>.

This brief analysis demonstrates that EU-Armenia relations are not progressing in a linear fashion. They are defined by ups and downs caused by turning points and critical junctures that lead to the transformations and shifts of varying magnitudes. While some critical moments result in the adjustment of goals and the expansion of the cooperation toolkit (like in cases with the launch of EaP that had to culminate in the Association Agreement; the 'Velvet Revolution' that strengthened the domestic incentives towards proper implementation of CEPA; the escalation of the Nagorno-Karabakh conflict that first brought about disappointment in the EU's position but then resulted in the EU's active participation in peacemaking and security and resilience building), others result in the changing of international cooperation vectors and frameworks.

Such a radical change occurred in 2013, resulting in Armenia's U-turn from the EU- to the Russia-led integration project. The following parts of the paper explore the "anatomy" of this U-turn and analyze whether the most recent developments in EU-Armenia relations (in particular, the adoption of the Law on membership in 2025) have similarly strong transformative potential in a reverse direction.

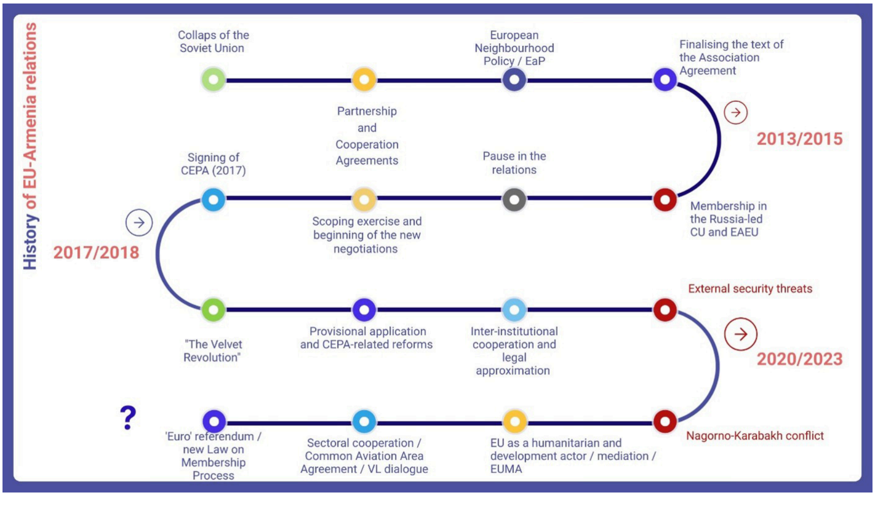

Chart. The history of development of the EU-Armenia relations: milestones, turning points, and critical junctures (designed by the author using Genially).

III. The anatomy of a U-turn: defining the features of 2013 transformation

In this part of the paper, I identify the key elements of the 2013 E-turn and compare them with the developments of 2025 posing the question as to whether the latter amount to a radical change of the vector, substance, and legal frameworks of regional integration or whether it follows the logic of gradual incremental and accumulative change that results in a "strategic re-anchoring", a gradual relocation of a state's dominant external reference point without immediate rupture from existing institutional frameworks and commitments. The analytical framework builds upon the existing scholarship on changing trajectories of foreign policy (Holsti, Haar, Hermann, Gonzalez Pujol, Rosati, as well as case-study-based literature).

The analysis of the 2013 U-turn allows identifying its following characteristics: (1) it was an abrupt, largely unexpected and consequential reversal of an existing (or almost finalised) foreign-policy trajectory; (2) this trajectory was clearly identified and had a clear objective (the conclusion of the Association Agreement, the establishment of DCFTA and the 'integration without membership' model of advanced cooperation with the EU); (3) the reversal trajectory was clearly identifiable too and constitute the antagonistic path (the reorientation towards the Russia-led integration projects non-compatible with the DCFTA and, at more recent stages, clearly non-compatible from the perspective of fundamental values); (4) the shift had not only (geo)political but also legal manifestation – the negotiated comprehensive and complex AA was abandoned and Armenia joined another legal order, the one based on the EAEU Treaty; instead of AA-based institutions, Armenia got involved into EAEU institutional framework); (5) the radical shift was geopolitically salient (it initially caused the temporary post-shock 'freezing' of the relations between the EU and Armenia and later necessitated the in-depth revision of the cooperation model).

The "change agents" (Hermann) were the political elites (then President of Armenia), and the factors included multiple asymmetrical dependencies, perceived security threats, and external pressure. In addition to energy and migration dependencies, Armenia's policy was highly securitised in the context of the unresolved Nagorno-Karabakh conflict, in which Russia was perceived as an ally and security guarantor (a perception that led to deep disillusionment after the events of 2020 and 2023).

IV. Is 2025 another U-turn?

Compared with the identified characteristics of the 2013 U-turn, developments in Armenia's foreign policy in 2025 look different (at the time of writing). Arguably, the intensification of relations between the EU and Armenia does not yet amount to a U-turn in the strict sense but rather constitutes a gradual deepening and widening of the partnership based on existing cooperation logic and legal frameworks (CEPA and supporting New Strategic Partnership Agenda).

The adoption of the 2025 Law launching Armenia's EU accession process was a result of civil society activism and a popular legislative initiative (which may signal a certain degree of "domestic restructuring")[26]. However, the Law remains largely symbolic: it does not constitute a formal application for EU membership required as a first step in the accession process; nor does it prescribe the timeframe and procedural framework for preparatory work on the application.

Unlike in 2013, there has been no immediate replacement of the bilateral legal framework. The EU-Armenia Comprehensive and Enhanced Partnership Agreement remains the main legal basis for relations, and Armenia continues to be a member of the Eurasian Economic Union (while its participation in the Collective Security Treaty Organisation has been frozen due to ineffectiveness of the collective security mechanisms in relation to Armenia).

In terms of external pressures, Armenia's dependence on Russia for energy and migration remains. In the security sector, although the EU plays an increasingly visible role, it focuses mainly on local resilience and human security (based on the EUMA's mandate). At the same time, Russia is no longer perceived as a reliable ally. In the sociological polls, in the answers to the question "Which country is currently the main enemy of Armenia?", Russia takes third place (10%) following Azerbaijan (56%) and Turkey (28%), showing an increase in comparison with 2021 (5% and third place)[27]. France is defined as the "main friend of Armenia" in 2024 (37%) and in 2021 (37%), while Russia holds second place, with a sharp decrease in scores (34% in 2021 and 14% in 2024). The EU acted as a facilitator of the Armenia-Azerbaijan peace process; however, the breakthrough was achieved with the facilitation of the US President ("Trump

[26] See the comments of the EU-Armenia Civil Society Platform on the adoption of the Law, <https://eap-csf.eu/articles/towards-a-new-european-chapter-in-armenias-history/#:~:text=Civil society must be recognised,reality for all in Armenia>.

[27] Caucasus Barometer 2024 Armenia, <https://caucasusbarometer.org/en/cb2024am/MAINENEM/>; Caucasus Barometer 2021 Armenia, <https://caucasusbarometer.org/en/cb2021am/MAINENEM/>.

Route for International Peace and Prosperity" (TRIPP)[28]). Although the role of the EU in TRIPP implementation is still to be defined, the initiative itself signals a departure from a Russia-dependent security infrastructure.

From the perspective of evolving constitutional identity and the changing internal political balance of powers, the situations of 2013 and 2025 also differ significantly. In contrast with the semi-authoritarian political environment of 2013, the post-2018 period was marked by substantive democratisation reforms; although, due to system resistance and, in some cases, lack of proper capacities, not all of them were successfully implemented. The peace process with Azerbaijan, the consequences of the 2020 war and the 2023 displacement of Armenians from Nagorno-Karabakh have created a much more complex political landscape, high tensions and political polarisation. The period leading up to the 2026 elections is marked by controversial political trends and uncertainty. These factors make the current European turn politically significant but still fragile.

Therefore, the comparison leads us to a nuanced conclusion. The 2013 U-turn was abrupt, externally pressured and legally consequential. The 2025 development is better understood as a potential or emerging U-turn rather than a completed one. It reflects Armenia's search for new security arrangements, deeper cooperation with the EU and a possible reconfiguration of constitutional identity. However, as long as the CEPA framework remains unchanged, Armenia stays within the EAEU, and no formal EU membership application is submitted, the current moment should be described more accurately as gradual strategic re-anchoring (only potentially leading to a radical change) rather than a completed U-turn.

V. Conclusion: Looking ahead

Armenia's recent EU-oriented developments should be interpreted as a complex process of strategic re-anchoring rather than a straightforward reversal of the 2013 U-turn. The 2013 U-turn was abrupt, externally influenced, and immediately consequential, redirecting Armenia from a negotiated Association Agreement/Deep and Comprehensive Free Trade Area (AA/DCFTA) toward the Russia-led integration framework. In contrast, the current process is gradual and multidimensional, but also potentially more sustainable and legitimate,

[28] Joint Declaration by the President of the Republic of Azerbaijan, the Prime Minister of the Republic of Armenia and the President of the United States of America on the outcomes of their meeting in Washington D.C., United States of America, <https://www.primeminister.am/en/press-release/item/2025/08/09/Nikol-Pashinyan-visit-US-declaration/>.

as it is significantly more participatory and more clearly articulated in legal-constitutional terms domestically. It is driven by the disillusionment in the Russia-centered security model, the EU's expanding role as a [human] security and resilience actor, more meaningful and coherent legal approximation with EU acquis based on the Comprehensive and Enhanced Partnership Agreement, and Armenia's pursuit of a new constitutional identity.

However, this process remains incomplete. Until Armenia formally addresses the incompatibility between its EU accession aspirations and its membership in the Eurasian Economic Union (EAEU) and submits the membership application requesting clearer integration perspectives from the EU's side[29], the current situation should be characterized as a critical juncture of strategic re-anchoring rather than a completed U-turn. Even though the 2025 Law on EU membership signals European aspirations, its legal value is rather symbolic. The implementation of this law in practice depends on multiple factors, including the geopolitical situation (Russia's role in the region and the progress of the Armenia-Azerbaijan peace process) and domestic political will, which will be defined by the configuration and balance of power after the forthcoming parliamentary elections in summer 2026.

[29] This, in turn, depends on the dynamics of the enlargement process and the related constitutional reforms in the EU. Although the ideas of the alternative paths and revised accession logic (which might create more feasible opportunities of membership for Armenia too) are periodically appearing in the political discourse, currently, the logic of accession remains merit- and value-based. This is repeatedly highlighted by the Commissioner Marta Kos ("There will be no geopolitical discount. The enlargement process remains merit-based", <https://www.euronews.com/my-europe/2025/01/14/eu-commissioner-kos-says-enlargement-will-remain-based-on-merit-rather-than-geopolitics>).

Current Political Turmoil: Why Georgia's EU Integration Stalled During Candidacy

Eka Akobia

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I. Introduction

Relations between the European Union (EU) and Georgia have generally followed a path of gradual deepening, from early cooperation in the 1990s to association and, eventually, EU candidate status in 2023. This progression was expected to strengthen reforms, as candidacy and then the accession stage typically increases both the incentives and the pressure for compliance with EU law. Yet, Georgia's trajectory has taken a different turn. Instead of reinforcing Europeanisation, the accession phase coincided with growing political tensions between Georgia and the EU, visible democratic backsliding, and, by late 2024, a suspension of accession efforts from Georgia. The Georgian case suggests that de-Europeanisation can begin not only after accession, but during the accession process itself when domestic political incentives outweigh the benefits of compliance and when there are autocratic external avenues to reduce the costs of de-Europeanisation.

II. EU–Georgia cooperation and integration formats: Progressively Deepening Integration (1992–2022)

Beyond high-stakes contentious issues in areas of rule-of law and human rights, EU-Georgia fallout includes the flash weakening in many other areas as well, such as oversight institutions, increasing politicisation of the civil service, and the rise of more confrontational, anti-EU rhetoric. This article argues that such developments point to a shift away from EU not due to reforms fatigue or a lack of incentives, but following a purposeful political strategy aimed at regime survival above all else.

EU–Georgia relations have evolved through successive cooperative and institutional frameworks that progressively deepened political, economic, and societal linkages. The trajectory reflects a gradual shift from post-Soviet mere bilateral cooperation toward candidacy and the pre-accession stage, with socialisation and conditionality supporting the Europeanisation process up to a certain extent.

Bilateral relations between Georgia and the European Community commenced in 1992, shortly after Georgia regained independence. Early engagement focused on stabilisation and basic cooperation rather than transformative integration, reflecting both Georgia's state-building priorities and the limited eastern policy of the European Community at the time.[1] EU-Georgia relationship was formalized with the signing of the Partnership and Cooperation Agreement (PCA) in 1996 which entered into force in 1999.[2] The PCA provided a foundational legal framework for political dialogue, trade cooperation, and institutional interaction, but it remained largely intergovernmental and non-integrative in nature, lacking strong conditionality or enforcement mechanisms. A qualitative shift occurred in 2004, when Georgia was incorporated into the European Neighbourhood Policy (ENP) following the eastern enlargement of the EU. The ENP marked the first attempt to systematize political conditionality and regulatory approximation beyond enlargement candidates.[3] Under this framework, the EU–Georgia ENP Action Plan adopted in 2006 introduced reform benchmarks across governance, rule of law, economic policy, and sectoral cooperation, embedding Europeanisation logic more ex-

1 European Commission, TACIS Action Programmes for Technical Assistance to the CIS and Georgia, CORDIS, 1993, <https://cordis.europa.eu/article/id/1266-tacis-action-programmes-for-technical-assistance-to-the-cis-and-georgia>.

2 Partnership and Cooperation Agreement between the European Communities and Their Member States, and Georgia, OJ L 205 (4 August 1999), pp. 3–52.

3 European External Action Service, European Neighbourhood Policy, <https://www.eeas.europa.eu/eeas/european-neighbourhood-policy_en>.

plicitly into bilateral relations.[4] Further differentiation came with Georgia's inclusion in the Eastern Partnership (EaP) in 2009 which elevated Georgia to the EU aspiring group of willing and able Eastern partners alongside Ukraine and Moldova. The EaP framework strengthened multilateral cooperation and opened the path toward deeper bilateral integration instruments, including association agreements and comprehensive trade arrangements.[5]

The most significant institutional milestone were the negotiations regarding the Association Agreement (AA) and the subsequent process. The AA, after years of high-level intergovernmental discussions and groundbreaking preparations, was initialed in November 2013, signed in June 2014, and fully entered into force in July 2016. Its core economic component, the Deep and Comprehensive Free Trade Area (DCFTA), extended EU market access in exchange for far-reaching regulatory approximation. Politically, the AA repositioned EU–Georgia relations from neighbourhood cooperation to structured political association, anchoring reforms in EU legal, administrative, and normative standards.[6]

Integration was further reinforced in 2017, when visa-free short-stay travel to the Schengen area was granted to Georgian citizens. Notably, just like the AA negotiations, the visa liberalisation was consistently framed as a declared goal during former United National Movement (UNP) governing period as well as subsequent Georgian Dream Coalition government period. According to one observer, "since 2012, Georgia has agreed to ratify seven international conventions and to adopt eight national strategies, around 60 legislative amendments and roughly 70 bylaws, regulations, and instructions". This was a clear testament of a national priority upheld by subsequent governments.[7] Once finalized, visa liberalization became one of the most tangible manifestations of European integration for the Georgian population, linking domestic reforms and continued performance in border management, anti-corruption, and rule of law to everyday mobility benefits for the wider Georgian society.[8]

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4 Ministry of Foreign Affairs (MFA) of Georgia, EU/Georgia Action Plan (European Neighbourhood Policy), 2006, <https://mfa.gov.ge/pfiles/files/EU-GE-ENP-AP.pdf>.

5 European Commission, Eastern Partnership, European Neighbourhood Policy and Enlargement, <https://enlargement.ec.europa.eu/european-neighbourhood-policy/eastern-partnership_en>.

6 Tamar Khuntsaria, The EU's Association Agreement with Georgia: Assessing the Domestic Political and Economic Implications, Caucasus Social Science Review 2, No. 1 (2015).

7 Loda, Chiara, Georgia, the European Union, and the Visa-Free Travel Regime: Between European Identity and Strategic Pragmatism, Nationalities Papers 47, No. 1 (2019), <https://doi.org/10.1017/nps.2018.7>, pp. 72–86.

8 European Commission, Report from the Commission to the European Parliament, the European Council and the Council: First Report under the Visa Suspension Mechanism,

III. From Candidate Status to Suspension of the accession process: Georgia's Fallout (2022–2024)

Following Russia's full-scale invasion of Ukraine in February 2022, the relationship between Georgia and the EU entered a new phase. Georgia submitted its EU membership application in March 2022, aligning itself formally with the new enlargement track started by Ukraine. In December 2023, the European Council granted EU candidate status to Georgia, conditional upon progress on a set of governance- and democracy-related priorities, dabbed the nine steps.[9] This decision marked a transition from association-based Europeanisation to pre-accession track, fundamentally reinforcing the benchmarks by which Georgia's performance would thereafter be assessed for continued engagement on the accession path. However, paradoxically, the more Georgia advanced on the accession path in terms of formats, less responsive it became to the EU's conditionalities to Europeanize.

The deterioration of the political relations between Georgia and the EU unfolded in stages, first resulting in de facto halt due to no progress and then, culminating into complete suspension of accession efforts from Georgia by late 2024. However, the sings that Georgia was moving off the EU integration track started to reveal themselves as early as in 2022. In response to the deterioration of democracy in Georgia, on 23 June 2022, the European Council refrained from granting candidacy to Georgia, but formally recognized Georgia's *European perspective*, postponing the granting of candidate status pending compliance with twelve priorities outlined in the European Commission's Opinion on Georgia's membership application.[10] This decision placed Georgia on a differentiated accession track: politically acknowledged its EU aspiration, yet subjected to intensified governance conditionality rather than immediate advancement on the accession track. The twelve priorities covered judicial independence, media freedom, depolarisation, and de-oligarchisation and became the primary benchmark against which Georgia's reform credibility would be assessed by the EU.

A partial recalibration followed on 8 November 2023, when the European Commission, in its 2023 Georgia Report recommended granting candidate sta-

COM(2017) 815 final (20 December 2017), <https://www.refworld.org/reference/themreport/eucommission/2017/119733>.

[9] European Council, European Council Meeting (14 and 15 December 2023) – Conclusions, EUCO 20/23 (Brussels, 15 December 2023), <https://www.consilium.europa.eu/media/68967/europeancouncilconclusions-14-15-12-2023-en.pdf>.

[10] European Commission, Opinion on Georgia's application for membership of the EuropeanUnion (16 June 2022), <https://enlargement.ec.europa.eu/opinion-georgias-application-membership-european-union_en>.

tus to Georgia, conditional upon implementation of a revised set of reform benchmarks termed in nine steps.[11] On the part of the EU, this was another major sign aimed at signaling the persistent concerns over Georgia's governance and institutional resilience coupled with the intention not to decouple the so-called Associated Trio and keep all three countries on an enlargement track. While formally a positive move, this conditional promise of candidacy, rather than unequivocal endorsement, reflected a narrowing of expectations from the EU towards the political governance in Georgia.

On 14 December 2023, the European Council did grant EU candidate status to Georgia. Although a politically significant milestone for Georgia, this decision institutionalized *conditionality of the future advancement*: progress was explicitly tied to measurable compliance with the nine steps, embedding heightened monitoring and reversibility into the accession process.[12]

The fragile equilibrium collapsed in spring–summer 2024. On 27 June 2024, following the adoption of the so-called "foreign influence" law, the European Council concluded that Georgia's actions were incompatible with the obligations arising from candidate status and called on the Georgian government to "clarify their intentions by reversing the current course of action which jeopardises Georgia's EU path, de facto leading to a halt of the accession process."[13] This marked the first explicit acknowledgment by EU institutions of a regressive divergence, rather than just a stalled progress.

The political message was reinforced on 9 July 2024, when the EU Ambassador in Tbilisi publicly confirmed the formal suspension of high-level political engagement and the freezing of selected EU financial assistance. Overall, EU withheld EUR 121 million from the 2022, 2023 and 2024 allocations that were earmarked to directly benefit the Government of Georgia in the form of budget support or technical assistance.[14] This suspension remained in force ever since. At this point, deterioration moved from declaratory politics to operational consequences, affecting institutional cooperation and funding streams.

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11 European Commission, Georgia Report 2023, Directorate-General for Neighbourhood and Enlargement Negotiations (8 November 2023), <https://enlargement.ec.europa.eu/georgia-report-2023_en>.

12 European Council, European Council Meeting (14–15 December 2023) – Conclusions.

13 European Council, European Council Meeting (27 June 2024) – Conclusions, <https://www.consilium.europa.eu/media/qa3lblga/euco-conclusions-27062024-en.pdf>.

14 European Union, Financial Assistance Lost as a Result of Democratic Backsliding, EU4Georgia, <https://eu4georgia.eu/financial-assistance-lost-as-a-result-of-democratic-backsliding/>.

EU also withheld EUR 30 million earmarked for Georgia's defense forces under the European Peace Facility (EPF).[15]

The October 2024 Enlargement Report constituted the first comprehensive EU assessment ever issued *after* the sweeping deterioration of relations. The report evaluated Georgia against accession clusters and the nine steps attached to candidate status and concluded that developments during 2024 represented systemic backsliding, particularly in the areas of democratic governance, rule of law, media freedom, and civil society. The adoption and enforcement of the so-called *foreign influence* legislation was treated not as an isolated policy dispute but as evidence of structural divergence from EU values. Importantly, the report framed the accession process as halted in substance, pending a reversal of legislative and political trends by Georgia.[16]

The final rupture occurred on 28 November 2024, when Prime Minister Irakli Kobakhidze announced that the government was suspending EU accession efforts until the end of 2028 and would reject any EU financial support until that time.[17] This declaration reversed the logic of conditionality: the Georgian government reframed disengagement as a sovereign political choice, completing the transition from contested accession to self-declared withdrawal from the EU accession trajectory.

The subsequent 2025 Enlargement Report consolidated the previous assessment and shifted emphasis from immediate compliance problems to longer-term stagnation risks. The report underscored the absence of credible political commitment to the accession agenda, noting continued incompatibility between domestic governance practices and EU democratic standards. Georgia was increasingly positioned as an outlier within the enlargement framework, with the report signaling that accession benchmarks remained formally in place but practically unattainable under the prevailing political conditions.[18]

This sequence demonstrates that EU–Georgia relations shifted from conditional advancement to suspension of the course in 2024, transforming the ac-

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15 Light Felix, EU Freezes 30 Million Euros in Aid to Georgian Army, Reuters, 9 July 2024, <https://www.reuters.com/world/europe/eu-freezes-30-million-euros-aid-georgian-army-2024-07-09/>.

16 European Commission, Georgia 2024 Report, SWD(2024) 697 final (30 October 2024), <https://enlargement.ec.europa.eu/document/download/7b6ed47c-ecde-41a2-99ea-41683dc2d1bd_en?filename=Georgia Report 2024.pdf>.

17 PM Kobakhidze: No EU Accession Negotiations until 2028, Rejecting Grants to Avoid Blackmail, Georgian Public Broadcaster (8 November 2024), <https://1tv.ge/lang/en/news/pm-kobakhidze-no-eu-accession-negotiations-until-2028-rejecting-grants-to-avoid-black mail/>.

18 European Commission, Enlargement Report on Georgia (2025).

cession process from an instrument of enlargement and Europeanisation into a format of political and geopolitical confrontation. The enlargement reports on Georgia chronicle the record of regression from the EU's point of view, while the EU argumentation was entirely dismissed by the ruling political party – Georgian Dream (GD). The latter blamed the EU on a wide range of issues and by 2025 forming an array of conspiratorial rhetoric accompanied by institutional backtracking on key democratic governance commitments undertaken previously.

IV. The anatomy of the fallout

De-Europeanisation has taken place in many areas, first and foremost in the areas of human rights and civil society, judiciary and other high stakes political benchmarks. However, de-Europeanisation took place across many relatively low-key areas of governance, showing the depth and width of the overall erosion of the political relations between the EU and Georgia and the accession progress.

1. Deteriorating Rhetoric and the Mainstreaming of Anti-EU Narratives

One of the stanning developments in GD's falling off from the European integration rails happened as part of the longitudinal deterioration in the speech act GD used to portray the EU at home. A growing body of studies showed that since 2021 government rethoric had already started to gradually distance itself from value-based politics through its political rhetoric. While the government continued to speak in favor of European integration, its messages increasingly conflicted with EU positions, creating a gap between words and actions. Georgia's European path was becoming inconsistent, and politically instrumentalized. Over time, especially after the war in Ukraine and the candidate status decision, this shift became more visible, evolving from defensive responses to direct criticism of the EU.[19]

In the run up to the 2024 parliamentary elections, GD's talking heads from the very top to all the party and political functionaries started presenting the EU in an adversely negative light to the Georgian public. The media with the GD was also fully immersed in this stanning campaign. One of the discourse stud-

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[19] Tsuladze Lia, Abzianidze Nino, Mariam Amashukeli, and Lela Javakhishvili, De-Europeanization as Discursive Disengagement: Has Georgia 'Got Lost' on Its Way to European Integration?, *Journal of European Integration* 46, No. 3 (2024), <https://doi.org/10.1080/07036337.2023.2278072>, pp. 297–319.

ies has revealed that the new information campaign had five directions: the war and peace narrative in which "global powers" seek to draw Georgia into a war with Russia; Portraying Ukraine as a victim of global power struggle, persistently shifting the blame away from Russia as the real aggressor; Portraying the EU as partisan and partial towards the Georgian opposition, rather than seeing the EU as standing for European values and recognizing the true causes of the rifts; Manipulating with numbers and context to accuse the EU of double standards, as if tolerating trade with Russia or democratic misconduct within the EU but targeting Georgia for the same things; Lastly, portraying EU instructions as undemocratic and hostile to state sovereignty.[20] Such information campaign was not new or innovative per se as it was taken out of the well-known autocratic handbook, but clear conclusions could be drawn: "when such messages consistently target a single actor and are amplified by top leaders with high intensity and repetition, they signal a deliberate strategy of 'unfriending.'"[21]

Notably, in 2023 the EU included fighting disinformation as the first step of its nine steps and the request from the Georgian government to "fight disinformation and foreign information manipulation and interference against the EU and its values". However, not only was there no meaningful effort from the GD government, but the anti-EU rhetoric continued to escalate and to widen. Those state structures which could devise counter measures were never empowered to effectively fulfil their duties, and by 1 July 2025 were either abolished or incorporated into bigger directorates within the Ministry of Foreign Affairs (MFA) of Georgia, visibly reducing their political significance and impact. The information center on NATO and the EU which was a primary state organ for promoting European values and NATO awareness since 2005 was liquidated and its functions were transferred to the EU Integration Department which itself was reorganized and demoted within Georgia's MFA shortly beforehand.[22]

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[20] Zurabashvili Tornike, Unfriending Europe: How Georgian Dream Turned its Rhetoric against the EU, *Civil Georgia*, 18 January 2026.

[21] Zurabashvili, see footnote 20.

[22] NATO, EU Information Center to Be Abolished, MFA Says It Will Join Ministry, Civil.ge (4 June 2025) <https://civil.ge/archives/685188>; საგარეო საქმეთა სამინისტროში რეორგანიზაცია იწყება, Radio Free Europe/Radio Liberty (Radio Tavisupleba), 1 May 2025, <https://www.radiotavisupleba.ge/a/33402213.html>.

2. Deviating from Commitments: The Unravelling of EU-Aligned Reforms

a) De-Europeanizing the still reforming civil service

The decision not to seek the EU accession negotiations until 2028 was starkly viewed from individual civil servants, prompting a wave of reserved but clear collective protest and a show of loyalty to Georgia's European integration trajecty. The protest came in the form of circulating public announcements followed by voluntary signatures to a joint pro-EU integration statement, supposedly at first emanating from the MFA of Georgia and then spreading to other public sectors. All in all, there were a couple of statements signed by hundreds of acting civil servants. Such public solidarity triggered an immediate harsh response from the GD, culminating in fast-tracked legal actions resulting in the crackdown on the civil service.[23]

The legal changes have weakened job security and reduced safeguards for civil servants, making dismissals and reorganisations in civil service significantly easier for the government, with that departing from earlier EU-aligned public administration reforms. These were accompanied by politically motivated removals in hundreds, particularly targeting individuals perceived as critical of the government or supportive of a pro-European course. In a display of total disregard of value-based commitment to depoliticized civil service, top representative of the Government of Georgia framed the process of sweeping dismissals as a "self-cleansing" of the state apparatus. On 20 February 2025, a single-party Parliament with present members only from the GD party abolished the Civil Service Bureau symbolizing a clear break from its previous EU oriented reforms and, at least on the surface, a commitment to building a depoliticized and merit based civil service. The dismantling of key oversight institutions has eroded any ongoing or future prospect of merit-based recruitment and professional neutrality of the civil service, reinforcing a shift toward a loyalty-based administrative system. Taken together, these trends suggested not just policy adjustment but a deeper move away from the principles of an independent, depoliticized civil service, a core component of the fundamentals cluster of the accession chapters.[24]

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23 Transparency International Georgia, Georgian Dream's Repressions in Public Service, *Transparency International Georgia*, <https://transparency.ge/en/post/georgian-dreams-repressions-public-service>.

24 Devdariani Jaba, Readied to Serve: From Civil Service to Political Servants under Georgian Dream, *Geopolitics*, Issue No. 19 (June 2025), <https://politicsgeo.com/wp-content/uploads/2025/06/Readied-to-Serve-From-Civil-Service-to-Political-Servants-under-Georgian-Dream-Jaba-Devadriani.pdf>.

Another illustrative case of instrumentalizing and dismantling the civil service organs is the case of Georgia's Anti-Corruption Bureau, which illustrates how reform institutions were first weakened and, then, effectively dismantled. Even before its abolition, EU assessments had already pointed to serious shortcomings in its independence and effectiveness, raising concerns about selective enforcement.[25] Rather than addressing these weaknesses, the institution was increasingly instrumentalized with reports indicating that it targeted civil society actors instead of exposing corruption. Ultimately, instead of being strengthened in line with EU recommendations, the Bureau was abolished and its functions redistributed across other state bodies, further diluting accountability mechanisms.[26] This trajectory reflected a broader pattern in which imperfect reform institutions were not corrected as demanded by accession benchmarks but gradually repurposed and dismantled, undermining anti-corruption governance altogether.

The trajectory of the Personal Data Protection Service (PDPS) further reflects a broader pattern of institutional weakening and eventual dismantling of EU integration related governance structures and approaches. The PDPS was established in 2022 as an independent supervisory authority, aligned with the EU data protection standards and accountable to the Parliament.[27] However, although an achievement at its inception, in time, as election pressures intensified, the agency's merely formal alignment with European norms, and its limited independence and effectiveness in practice became evident. Rather than strengthening the institution in line with EU expectations, in late 2025, the ruling party-initiated legislation to abolish the Personal Data Protection Service altogether, alongside the Anti-Corruption Bureau. The law, adopted by Parliament, stipulated that the PDPS would be liquidated as of 2 March 22026, with its powers transferred to the State Audit Office.[28] This restructuring has significant governance implications for Georgia and its EU trajectory.

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25 Institute for Development of Freedom of Information (IDFI), Instead of Exposing Corruption, the Anti-Corruption Bureau is Persecuting Civil Society, IDFI, <https://idfi.ge/en/instead-of-exposing-corruption-the-anti-corruption-bureau-is-persecuting-civil-society>.

26 European Commission, Communication on EU Enlargement Policy 2023, COM(2023) 690 final (8 November 2023); European Commission, Communication on EU Enlargement Policy 2024, COM(2024) 690 final.

27 RCRC Conference, Establishment of Personal Data Protection Service of Georgia, July 2024. <https://rcrcconference.org/pledge-report/establishment-of-personal-data-protection-service-of-georgia/>.

28 Parliament of Georgia, Anti-Corruption Bureau and Personal Data Protection Service to Be Abolished from 2 March 2026, <https://www.parliament.ge/en/media/news/antikoruftsiuli-biuro-da-personalur-monatsemta-datsvis-samsakhuri-2026-tslis-2-marts-gaukmdeba>.

The PDPS had been designed as an independent oversight body safeguarding privacy and monitoring state surveillance practices, including sensitive areas such as covert investigative actions. Its abolition and the transfer of its functions to another state institution weaken institutional independence and blur the separation between oversight and executive authority. More broadly, the case illustrates how institutions created under EU integration frameworks, already imperfect, were not reformed but instead absorbed into centralized structures, purposefully reducing accountability and undermining the rule-of-law foundations of governance.

b) De-Europeanizing transparency and accountability in policy making

De-Europeanisation became purposeful in many areas of Georgian public administration and governance that EU deems as the fundamental cluster of EU *acquis*. The failure of the Regulatory Impact Assessment (RIA) reform in Georgia showcases how EU-inspired governance tools were formally adopted but never meaningfully implemented. Although RIA was embedded in legislation and supported by donors as part of the Public Administration Reform, in practice it became a box-ticking exercise, with no functioning system emerging. And, even basic requirements, such as submitting RIA reports, were largely ignored by governing institutions. Political and bureaucratic actors actively exploited legal loopholes to bypass the requirement, preserving existing decision-making practices while maintaining a façade of compliance. Crucially, the reform proved entirely dependent on external support and once donor engagement declined in line with deteriorating political relations between the EU and the GD, it led to suspension of cooperation in 2024 followed by the near total collapse of the process almost immediately, revealing the absence of genuine domestic commitment. This trajectory reflects a broader pattern of mimicry-driven Europeanisation, where reforms are adopted to signal alignment with EU standards but are subsequently hollowed out, contributing to the gradual de-Europeanisation of governance practices.[29]

The trajectory of policy planning reform in Georgia reflects a similar pattern of formal alignment with EU standards but weak and selective implementation in practice. While the system was redesigned to incorporate key EU principles, such as evidence-based policymaking, whole-of-government coordination, and results-based management, it has remained largely procedural and su-

[29] Khishtovani Giorgi, The Failure of Regulatory Impact Assessment Reform in Georgia: An Isomorphic Mimicry Perspective, *Globalization and Business*, No. 20 (2025), <https://doi.org/10.35945/gb.2025.20.007>.

perficial, with limited impact on actual decision-making. In practice, policy planning is fragmented, underfunded, and often reduced to a technical exercise focused on formatting and compliance rather than substance, while public consultations and stakeholder engagement remain largely symbolic. Crucially, the system continues to suffer from weak political will, limited administrative capacity, and poor inter-agency coordination, resulting in a persistent gap between formal commitments and real governance practices.[30]

This dynamic is illustrative of how EU-inspired reforms were maintained at the level of discourse and institutional design but hollowed out in implementation. Once the external donors slowly moved aside from the process starting in 2024, and the political fallout was made clear later by the end of the year, the dynamism in policy planning and implementation completely died out, falling under the broader and overarching ongoing pattern of de-Europeanisation.

V. Conclusions: De-Europeanisation as Regime-Survival Strategy and how to mediate it

Georgia's recent trajectory presents a theoretically important puzzle. The onset of the EU accession process is normally expected to strengthen reform outcomes due to more clear-cut conditionality, and to raise the domestic cost of democratic backsliding for the government.[31] Yet, Georgia has moved in the opposite direction: the shift from association to candidate status was denoted with deeper compliance but with accelerating de-democratisation and de-Europeanisation. The evidence reviewed in this paper shows that this was not a single policy rupture but a broader pattern: Along with anti-European legislative moves and stifling the space for independent reporting and civil society as well as freedom of assembly, other relatively low key but worrying trends developed, such as deteriorating anti-EU rhetoric, the weakening or abolition of EU-aligned institutions, the politicisation of the civil service, the dismantling of anti-corruption and data-protection oversight, and the hollowing out of evidence-based policymaking and policy-planning reforms.

30 Bitari Khuroshvili Bacho, The Policy Planning System in Georgia: Design and Implementation Challenges, Eastern Journal of European Studies 16, No. 1 (June 2025), <https://doi.org/10.47743/ejes-2025-0108>, pp. 173–193.

31 Schimmelfennig Frank and Sedelmeier Ulrich, The Europeanization of Central and Eastern Europe, Ithaca, NY: Cornell University Press, 2005; Schimmelfennig Frank and Sedelmeier Ulrich, Governance by Conditionality: EU Rule Transfer to the Candidate Countries of Central and Eastern Europe, Journal of European Public Policy 11, No. 4 (2004), pp. 661–679; Schimmelfennig Frank, Europeanization beyond Europe, Living Reviews in European Governance 7, No. 1 (2012).

The conditionality literature assumes that candidate countries comply when the expected rewards of accession are credible, substantial, and politically valuable.[32] In Georgia's case, however, accession conditionality increasingly collided with the ruling party's domestic survival strategy.[33] The demands of the EU in the "fundamentals" cluster, such as judicial independence, civil service neutrality, anti-corruption safeguards, media freedom, civil society protection, and institutional accountability threatened precisely those instruments through which ruling elites maintain political control. Once compliance came to imply a loss of administrative, informational, and coercive advantages, the costs of Europeanisation outweighed its benefits for the incumbent regime. From this perspective, de-Europeanisation was not merely a consequence of weak implementation capacity or reform fatigue. It was a deliberate political strategy.

The Georgian case therefore complicates the conventional sequencing of Europeanisation and de-Europeanisation. In much of literature, democratic backsliding and re-sovereignisation are associated with the post-accession period, when the strongest incentive of the EU – membership, has already been granted. Georgia shows that a similar dynamic can emerge before accession as well, during the candidacy phase itself, when the credibility or desirability of accession is weakened and domestic regime-survival incentives dominate. In Georgia, this resulted in preventive de-Europeanisation: the GD stopped complying with accession conditionality and then formally and declaratively halted the accession process.

This has broader implications for EU enlargement policy. The case of Georgia shows that the candidate status alone cannot guarantee compliance if domestic incumbents, especially when there is a prevalence of other autocratic external actors, such as Orban's Hungary, Russia or China, supply alternative narratives, economic incentives and external political legitimacy, downgrading the costs of the failed EU integration process for the incumbents. In this sense, Georgia's fallout is not only a national crisis of European integration; it is also a warning about the limits of existing practices in dealing with EU-aspirant countries. The Georgian case suggests that the EU needs more hands-on tools

32 Vachudova Milada Anna, Europe Undivided: Democracy, Leverage, and Integration after Communism, Oxford University Press, Oxford 2005; Grabbe Heather, The EU's Transformative Power: Europeanization through Conditionality in Central and Eastern Europe, Basingstoke: Palgrave Macmillan, 2006.

33 De Mesquita Bueno, Alastair Smith Bruce, Siverson Randolph M. and Morrow James D., The Logic of Political Survival, Cambridge, MA: MIT Press, 2003; Bueno de Mesquita, Bruce, and Alastair Smith. The Dictator's Handbook: Why Bad Behavior Is Almost Always Good Politics. New York: PublicAffairs, 2011; Levitsky Steven and Way Lucan A., Competitive Authoritarianism: Hybrid Regimes after the Cold War, Cambridge University Press, Cambridge 2010.

to detect façade compliance and institutional mimicry to curb the possibility of strengthening autocrats by formal alignment with the EU *acquis*. Such tools must also include the active ongoing and public facing communication about the EU in candidate countries to warn against the strategic hollowing out of reforms before they culminate in an open rupture.

Western Balkans in the European Integration Process

Jelena Ceranic Perisic

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I. Introduction: Background and Historical Perspective

The engagement of the European Union (EU) with the Western Balkans formally began in the early 2000s, in the wake of the Yugoslav conflicts. The Thessaloniki Summit in 2003 marked a key moment in the European path of the Western Balkan countries, as it was the first time that the prospect of EU membership was presented to them, with an emphasis on the principle that each country's progress would be assessed on an individual basis. This political commitment by the heads of state and the governments of the EU Member States was understood as a strong incentive and a promise that the future of the region within the EU would be stable and prosperous.[1]

This signaled the start of the EU's long-term strategy of anchoring the region through enlargement. The Stabilization and Association Process (SAP) was launched to support reforms, democratization, and economic transition. For years, the Western Balkans were treated as a single enlargement group-though with recognition that countries would move at their own pace. This regional approach was driven by concerns over stability, reconciliation, and avoiding fragmentation of EU policy in the region.

Despite the continued formal support by the EU and its Member States for the European perspective of the Western Balkans, over the past twenty-three years only one country from the region has acceded to the EU. The Republic of Croatia became a full member in 2013, while the rest of the countries remained in various stages of the accession process, facing both internal and EU-related obstacles.

The limited success of the EU's enlargement policy in the Western Balkans has been partly attributed to the low credibility of EU conditionality, which from the very beginning of the integration process has stemmed from insufficiently clear conditions and from rewards in the accession process that were neither timely nor adequate.[2] Consequently, at the Summit held in November 2019, a decision was taken to reassess the effectiveness of accession negotiations with the Western Balkan countries.

On 5 February 2020, the European Commission issued a Communication proposing to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions a new EU enlargement methodology entitled *Enhancing the Accession Process – A Credible EU Perspective for the Western Balkans.*[3]

The primary objective of the new enlargement methodology is to revitalize the enlargement policy through the introduction of clearer parameters. Although

1 Kmezic, pp. 54–61.
2 Milicevic, p. 59.
3 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Enhancing the accession process – A credible EU perspective for the Western Balkans, COM (2020) 57 final.

the immediate trigger for adopting the new methodology was France's opposition to opening accession negotiations with North Macedonia and Albania in October 2019, the underlying causes are deeper and more numerous.[4] For some time, the EU has been facing what is commonly referred to as "enlargement fatigue," resulting from three waves of enlargement within a nine-year period. Accordingly, within only a few years, the EU almost doubled its membership. As a result, the willingness of EU Member States to accept the Western Balkan countries into the European community has become increasingly uncertain. In addition, the EU itself is burdened by numerous internal challenges.

While the EU has been experiencing "enlargement fatigue," the Western Balkan countries have, in turn, developed a certain degree of "accession fatigue." This fatigue has been further exacerbated by the EU's broad and multidimensional crisis, accompanied by the frequent introduction of new requirements on top of an already complex set of accession conditions. Coined in the early 2000s, "enlargement fatigue" in the EU and Western Balkan candidate states seemed more paralyzing than ever.[5]

It is therefore unsurprising that the accession process has reached a stalemate which the EU sought to overcome through the adoption of the new methodology. Today, circumstances are different following the EU's geopolitical awakening and the war in Ukraine.[6] Following the granting of candidate status to Ukraine (June 2022), Moldova (June 2022), and Georgia (December 2023), the enlargement process appears to have gained renewed momentum.[7]

Although, for a while, the region's EU path seemed to be stuck in a kind of "*Waiting for Godot*" scenario, over the past year, we've seen some signals of renewed movement—at least in parts of the region. This paper examines recent shifts in EU policy toward the Western Balkans and considers their implications for the region's future within the EU. After the brief historical overview (Part I.), the paper analyzes recent changes in EU policy (Part II.) and presents a country-by-country analysis (Part III.). It then discusses key challenges facing the region (Part IV.) and the role of the EU (Part V.). Finally, the paper explores possible future scenarios for the Western Balkans in the context of EU integration (Part VI.), followed by concluding remarks (Part VII.).

4 Jano, p. 18.
5 Börzel/Dimitrova/Schimmelfennig.
6 Lubbers/Haverland/Zhelyazkova, p. 67.
7 *Ibid.*, pp. 67 et seqq.

II. Shift in EU Strategy

In recent years, particularly over the past 18 months, there has been a significant shift in the EU's approach to the region. The enlargement fatigue that dominated EU thinking in the 2010s has started to give way to a more pragmatic, geopolitically driven policy. Key changes include a "gradual integration" model, and a differentiated approach to each country.

1. "Gradual integration"

The "gradual integration" model allows countries to access certain benefits before full membership. This opportunity for candidate countries was provided for the first time by a new enlargement methodology. To make the accession process more predictable, a new enlargement methodology envisages instruments of positive and negative incentives. As regards positive incentives, if countries move on reform priorities agreed in the negotiations sufficiently, this should lead to closer integration of the country with the EU, work for accelerated integration and "phasing-in" to individual EU policies, the EU market and EU programs, while ensuring a level playing field.[8]

Despite its initial assessment as a highly motivating and positive framework, the gradual integration model appears to present several challenges, especially when it comes to its feasibility. The possibility of "phasing-in" to individual EU policies, the EU market and EU programmes for the Western Balkans countries has opened a few practical questions. First and foremost, it remains to be seen how this "phasing-in" will operate in practice, especially when it comes to the decision-making process. Does it mean that the candidate country will be allowed to participate in the decision-making process in certain EU policies and to vote in the Council and in the European Parliament? Or does it mean that the representatives of that country will participate only as observers in the mentioned EU meetings?[9]

One may recall the model of participation of EFTA countries (Norway, Iceland, and Liechtenstein) in the EU's internal market without being members of the EU. These countries do not formally participate in the decision-making process. As a compensation for their absence from the formal decision-making stage in the Union, the Agreement affords them extensive room for consultations during the preparatory stage of the legislative process in the EU.[10] In this

8 COM (2020) 57 final, see above footnote 3.

9 Ceranic Perisic, pp. 136–137.

10 See What is the European Economic Area?, <https://www.efta.int/~/media/Files/Publications/Bulletins/eeadecisionshaping-bulletin.pdf>.

regard, it is not realistic to expect that the Western Balkans countries, within the framework of closer cooperation, could gain more than the EFTA countries in terms of participation in the decision-making process.[11]

2. Differentiated approach

In recent years, the EU has moved away from treating the region as a single enlargement group and has instead adopted a more differentiated approach, providing clearer, country-specific signals. Montenegro's accession trajectory illustrates this shift, as does the EU's increased support for granting candidate status to Bosnia and Herzegovina. This differentiated approach represents a departure from the previous "one-size-fits-all" model. While it reflects the uneven progress among countries in the region, it also introduces new political dynamics and potential sources of tension within the region. Under the differentiated approach, certain countries have experienced accelerated progress, while others have seen no significant change.

III. Country-by-Country Overview

The countries of the Western Balkans are at different stages of the European integration process. Until two years ago, Serbia and Montenegro were considered frontrunners, while Bosnia and Herzegovina did not even hold official candidate status.[12] Over the past two years, however, the situation has changed significantly. Montenegro is now the most advanced country in the European integration process and is expected to be the first to join the EU. Albania has made remarkable progress over the last two years and is now also regarded as a frontrunner. Serbia is currently experiencing a period of stagnation. North Macedonia is facing numerous political challenges, while Bosnia and Herzegovina is making moderate progress. The following part analyzes the situation in each of the Western Balkan countries.

1. Albania

After years of delays, accession negotiations with Albania officially opened in July 2022, alongside North Macedonia. Since then, Albania has made steady progress in aligning with EU standards, particularly in areas such as judicial reform and anti-corruption efforts. Nevertheless, the country continues to face

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11 Ceranic Perisic, p. 137.
12 Ceranic/Perisic, pp. 129 et seqq.

structural challenges and must deliver on key reforms, especially in public administration and the rule of law.

In recent years, Albania has emerged as one of the most dynamic candidates in the EU enlargement process.[13] By late 2025, the country had opened negotiating chapters across all six thematic clusters under the revised EU accession methodology, thereby entering the final phase of accession talks. Progress has been particularly notable in terms of the rapid opening of chapters; however, the decisive test will be the pace and credibility of their provisional closure.

In Tirana, the objective has become increasingly explicit: to conclude accession negotiations by 2027, with full EU membership envisaged by around 2030, conditional upon sustained reform implementation.

With regard to the relations of the EU with Albania, Brussels acknowledges the country's political commitment to reform but continues to insist on credible, measurable, and lasting implementation, particularly in the areas of the rule of law and judicial independence.

2. North Macedonia

North Macedonia has long been regarded as a model reformer. Its Stabilisation and Association Agreement, the first in the region, has been in force since 2004. The country applied for EU membership in March 2004, and the Council granted it candidate status in December 2005.

Despite these developments, its EU path has been repeatedly blocked – first by Greece and later by Bulgaria over identity and language issues. Following the resolution of the name dispute with Greece through the Prespa Agreement in 2018, the country officially changed its name to the Republic of North Macedonia.[14]

Accession negotiations were subsequently opened in 2022. However, progress has once again stalled due to domestic resistance to the constitutional amendments required under the agreement with Bulgaria. Bulgaria imposed a veto in 2020, blocking progress due to bilateral disputes related to historical and identity-related issues. The impasse was temporarily overcome following the acceptance of the so-called French proposal by North Macedonia and Bulgaria,

13 See What are the next steps on Albania's EU path? <https://europeanwesternbalkans.com/2025/12/16/what-are-the-next-steps-on-albanias-eu-path/>.

14 See Prespa Agreement enters into force: Macedonia officially renames itself, <https://europeanwesternbalkans.com/2019/02/13/prespa-agreement-enters-force-macedonia-officially-renames>.

which provides for the recognition of the Macedonian language within the EU framework, constitutional amendments acknowledging Bulgarians among the constituent peoples, and enhanced protection of minority rights.[15] These developments have contributed to growing public frustration and a declining level of trust in the fairness and credibility of the EU accession process. To date, no negotiating chapters have been opened.

Despite North Macedonia's longstanding commitment to reforms and European integration, its accession process remains hindered by bilateral disputes and domestic challenges, raising concerns within the EU regarding declining public confidence in the enlargement process.

3. Serbia

Serbia began accession negotiations in 2014 and has opened numerous chapters; however, the process has largely stagnated. To date, 22 chapters have been opened, and two chapters have been provisionally closed (Education and Culture; Science and Research). Although Serbia is technically ready to open Cluster 3, political obstacles remain. In particular, the normalization of relations with Kosovo* continues to be the central condition for progress, and recent tensions have further complicated the process.

The EU accession process in Serbia has slowed primarily due to political conditions rather than technical preparedness. While Serbia has achieved considerable alignment with EU standards, the opening of new clusters has been effectively paused since 2021, pending further progress on political and bilateral issues.

While the EU has promoted alignment with its foreign policy positions, Serbia has continued to cultivate diverse international partnerships, including with Russia and China. Within EU policy circles, this has been viewed as an element relevant to assessing Serbia's broader strategic orientation.

Thus, although Serbia was once regarded as a frontrunner, it now lags significantly behind Montenegro and Albania.

4. Montenegro

Often considered the most advanced country in the region in terms of EU accession, Montenegro opened negotiations in 2012. However, the last few years

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15 Ceranic Perisic, p. 129.

have been marked by political instability, fragile governments, and stalled reforms, particularly in the judiciary.

Despite being a frontrunner on paper, there has been little actual progress toward the provisional closure of negotiation chapters. Montenegro has opened all 33 negotiating chapters, and as of January 2026, a total of 13 chapters have been provisionally closed (half of them last year), marking tangible progress on its path toward EU membership.[16] However, the provisional closure of the remaining chapters remains contingent on continued institutional and political reforms, particularly in areas related to the rule of law and judicial independence. The government aims to complete negotiations by the end of 2026, with full EU membership targeted by 2028. From the EU perspective, support remains strong but conditional, with Brussels expecting concrete political and institutional progress.

5. Bosnia and Herzegovina

Bosnia and Herzegovina was granted EU candidate status in December 2022. While the EU supports its integration, progress remains slow due to internal political disagreements and limited implementation of key reforms.

In March 2024, the EU formally approved the opening of accession negotiations, but the actual screening process, which assesses the country's alignment with EU law, has not yet begun due to institutional and political challenges. Consequently, no negotiation chapters have been opened, and advancement remains contingent on the implementation of key reforms and improvements in the functionality of institutions.[17] The country's deeply fragmented political system, persistent ethnic divisions, and limited reform progress continue to block advancement. Some recent steps – such as the adoption of certain EU-related laws – have been welcomed in Brussels, but they are seen more as symbolic than systemic. On the part of the EU, support exists but major concerns persist regarding the functionality of institutions and the commitment to reform across all levels of government.

16 See EU and Montenegro provisionally close another chapter in accession negotiations,<https://enlargement.ec.europa.eu/news/eu-and-montenegro-provisionally-close-another-chapter-accession-negotiations-2026-01-26_en>.

17 See Bosnia and Herzegovina 2025 Report, <https://www.eeas.europa.eu/delegations/bosnia-and-herzegovina/bosnia-and-herzegovina-2025-report_en?s=219>.

Country	Chapters/Clusters Opened	Chapters Provisionally Closed	Status / Main Obstacles
Montenegro	33 chapters	13 chapters	Most advanced; aiming for accession by 2028
Albania	33 chapters	–	Actively negotiating; target EU entry by 2030
Serbia	22 chapters	2 chapters	Politically blocked; stalled reforms
North Macedonia	Screening completed (6 clusters)	–	No chapters opened; constitutional issues remain
Bosnia & Herzegovina	Screening started in 2024	–	Early stage; internal political delays

Summary Table: Negotiation Progress by Country

IV. Key Challenges for the Region

While each country faces its own specific obstacles, several broader challenges continue to affect the entire region of the Western Balkans and its EU integration prospects. The main challenges are rule of law and governance, bilateral disputes, political instability and polarization, external influences: and the credibility and enlargement Fatigue of the EU.

1. Rule of Law and Governance

The rule of law constitutes a foundational constitutional principle of the EU which is non-negotiable and represents a fundamental prerequisite for accession to the EU. The Union cannot operate effectively in the absence of reciprocity, mutual trust, and respect for the Union's core values and legal principles.[18] Progress achieved in the field of the rule of law forms the very backbone of the EU accession process. Over the past two decades, the rule of law has increasingly occupied a central position within the internal policies and the governance framework of the EU and is no longer perceived merely as an abstract normative obligation but rather as a principle endowed with concrete legal and material effects.[19]

More than a decade ago, the European Commission introduced a new approach to enlargement policy, commonly referred to as the 'Fundamentals

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18 Report on the Franco-German Working group on EU Institutional Reform, Sailing on the High Seas: Reforming and Enlarging EU for the 21st Century, <https://www.politico.eu/wp-content/uploads/2023/09/19/Paper-EU-reform.pdf>.

19 Kneževic Bojovic/Coric, p. 51.

First' principle, according to which the absence of tangible results in the fields of democracy and the rule of law precludes overall progress in accession negotiations. Since 2011, the strengthening of the rule of law has been placed at the very center of the EU enlargement policy. Experiences from previous rounds of enlargement have demonstrated that the rule of law constitutes a fundamental precondition for the effective realization of the other values upon which the EU is founded. Moreover, the revised EU enlargement methodology for the Western Balkans has a particularly prominent role to the rule of law.[20]

The main challenges related to the rule of law in the Western Balkan countries remain weak institutions, politicized judiciaries, and widespread corruption. When it comes to reforms, they often appear superficial or driven by external pressure rather than by genuine internal commitment. The EU increasingly expects not only legislative changes, but also tangible results – particularly in combating high-level corruption and ensuring judicial independence.[21]

2. Bilateral Disputes

Historical and political tensions between neighboring countries continue to disrupt the enlargement process. Such bilateral disputes frequently go beyond technical accession criteria and become intertwined with identity politics, historical interpretations, and issues of national sovereignty, making their resolution particularly complex within the enlargement framework (e.g. North Macedonia – Bulgaria)[22]. Their instrumentalization in the accession process enables individual Member States to exercise disproportionate leverage, thereby undermining the credibility, consistency, and predictability of EU conditionality. As a result, progress in enlargement increasingly depends not only on alignment with the *acquis communautaire*, but also on the ability of candidate countries to maintain good-neighborly relations and engage in constructive regional cooperation. Nevertheless, the EU has made clear that unresolved bilateral issues will not be imported into the Union, placing additional pressure on regional diplomacy.

3. Political Instability and Polarization

Political instability and deepening polarization represent persistent challenges across the Western Balkans. Frequent government crises, fragile coalition arrangements, and increasingly divisive political rhetoric contribute to an un-

20 COM (2020) 57 final, see above footnote 3.
21 Kneževic Bojovic/Coric, pp. 352 et seqq.
22 See above III.2.

stable governance environment. Such instability significantly undermines the effective implementation of reforms and erodes public trust in democratic institutions. In several countries, these dynamics are accompanied by democratic backsliding, particularly regarding media freedom, the shrinking of civic space, and the deterioration of electoral standards. Collectively, these trends weaken democratic resilience and further complicate the EU accession process.

4. External Influences

The geopolitical vacuum created by the slow pace of EU integration has increasingly been filled by external factors such as Russia, China, Turkey, and other regional and global powers. These actors pursue strategic, economic, and political interests that run often counter to EU norms and standards, providing alternative sources of investment, energy, and political support. Their growing influence complicates domestic reform dynamics and can weaken the effectiveness of EU conditionality, particularly in countries where governments leverage these relationships to consolidate power or to resist unpopular reforms. Consequently, the presence of competing external actors not only challenges the normative and political authority of the EU in the region but adds an additional layer of complexity to the accession process.

5. EU's Credibility and Enlargement Fatigue

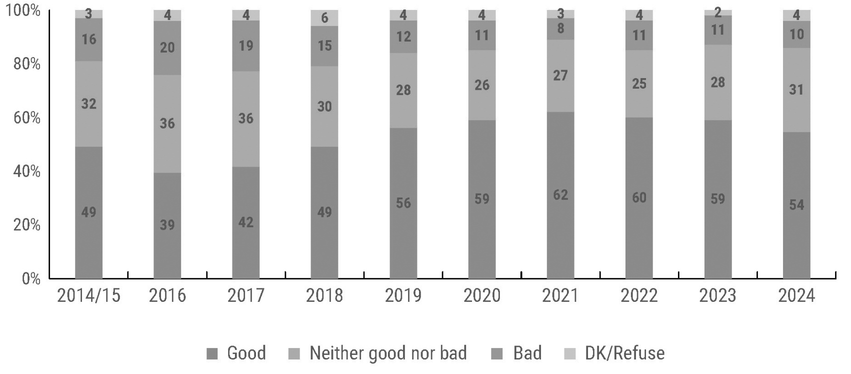
The Union has been facing 'enlargement fatigue' for some time, which emerged as a result of three waves of enlargement within a nine-year period.[23] Accordingly, the EU nearly doubled its number of Member States in just a few years. As a result, the willingness of EU Member States to integrate the Western Balkan countries into the European community is questionable. Moreover, the Union itself is burdened with numerous internal challenges.

Many in the region feel that the EU keeps raising the bar and delaying rewards, despite the criteria being fulfilled. The long stagnation has eroded public enthusiasm for EU membership, especially among younger generations. This raises a deeper question: Is enlargement still a real political project or just a bureaucratic process?[24]

In this context, it is instructive to examine the following chart. The question posed was: "Do you think that EU membership would be good, neither good nor bad or bad?"

23 Szolucha, pp. 107 et seqq.
24 Lubbers/Haverland/Zhelyazkova, p. 67.

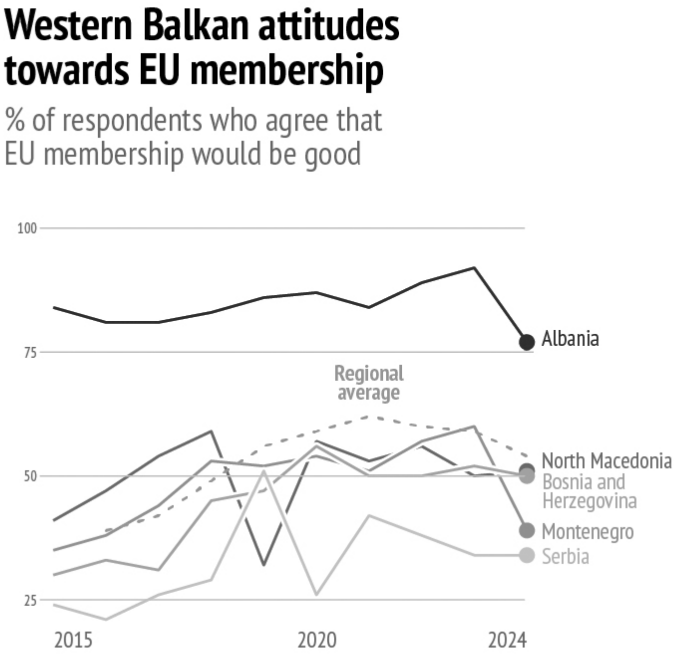
Do you think that EU membership would be good, neither good nor bad or bad



Source: Balkan Barometer 2024 Public opinion

The trend shown below indicates a rise in support for EU membership in the Western Balkans until 2021, with the proportion of positive views increasing from 49% in 2014/2015 to 62% in 2021. Since then, however, support has declined to 54% in 2024. Despite challenges such as slow progress in the accession process, reform fatigue, uncertainty regarding membership prospects, complex geopolitical dynamics, and significant economic and social obstacles, positive sentiment towards EU membership remains relatively strong. Citizens in the region continue to perceive EU enlargement as a means to address long-standing issues and to achieve stability, prosperity, and closer integration with Europe. At the same time, neutral responses have remained largely stable, while opposition has slightly decreased. The consistently low proportion of 'don't know' responses suggests that most respondents hold a clear opinion on the matter.

Furthermore, it is particularly **revealing** to examine the chart illustrating public support for EU membership among the populations of the Western Balkan countries, as it sheds further light on regional attitudes toward the accession process.



Adopted from: www.iss.europa.eu

Public support for EU membership across the Western Balkans has remained relatively stable since 2015, albeit with significant country-to-country disparities. These variations largely reflect each country's internal dynamics, as well as growing public impatience with the slow pace of the accession process. In Bosnia and Herzegovina, support has remained relatively steady at around 50%, reaching a peak of 56% in 2020. North Macedonia has experienced notable fluctuations but has generally maintained support levels between 50% and 57% since 2020. Serbia's trajectory has been more volatile, with support increasing from 24% in 2015 to 51% in 2019, before declining to 34% in 2024. Montenegro, meanwhile, experienced a sharp drop in support from 60% in 2023 to just 39% in 2024. By contrast, traditionally strong supporters such as Albania have continued to register higher approval rates, although recent shifts are evident: support in Albania declined from 92% in 2023 to 77% in 2024.

This phenomenon reflects a paradox of proximity, whereby the closer a country comes to EU membership, the more public support for European integration tends to decline, often as a result of prolonged accession processes, unmet expectations, and growing skepticism toward the credibility of enlargement conditionality.[25]

V. The Role of the European Union

The EU plays a central role in shaping the political, economic, and social trajectory of the Western Balkans. However, its influence has become more complex, and often more ambiguous, over time.

In assessing the role of the EU in the European integration process of the Western Balkans, it is necessary to consider factors such as: Credibility of the Enlargement Process; The power of Political Signals; The EU' Renewed Strategic Interest; and Need for Internal EU Reform.

1. Credibility of the Enlargement Process

The EU accession is theoretically understood as a process in which external conditionality constitutes a key instrument of integration.[26] Within this framework, the EU conditions membership on the fulfillment of a set of requirements, including the harmonization of national legal frameworks and practices with the *acquis communautaire*.

While conditionality remains the core tool of EU influence, it is increasingly perceived as inconsistent. Repeated delays – particularly in the cases of North Macedonia and Albania – have sent mixed signals, thereby weakening the EU's image as a credible and reliable partner. This resulting credibility gap undermines reform momentum in the region and creates space for alternative narratives and alliances.[27]

2. The Power of Political Signals

The EU influence extends beyond technical benchmarks; it also lies in the political signals it conveys. When the EU opens accession negotiations, grants visa liberalization, or provides additional funding, it creates political incentives for reform. Conversely, silence or prolonged delays often strengthen nationalist narratives and weaken pro-EU actors.

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25 Marinoni.

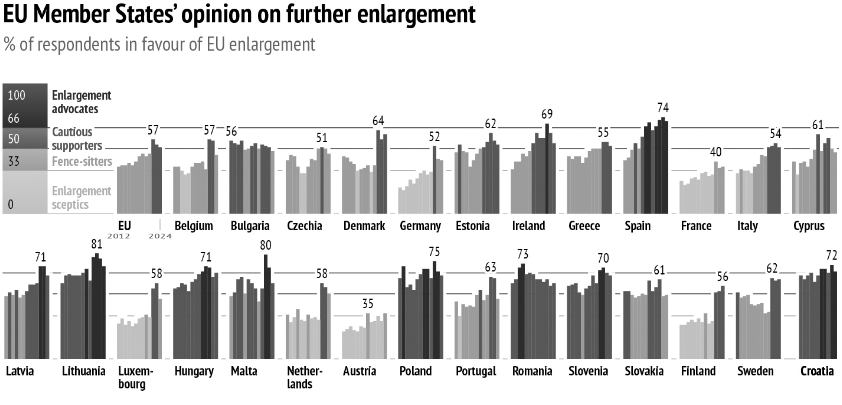
26 Knezevic Bojovic/Coric/Visekruna, p. 233.

27 See above IV.4.

As a result, the effectiveness of EU conditionality depends not only on formal criteria and monitoring mechanisms, but also on the credibility, consistency, and timing of the political signals sent by the Union.

3. The EU's Renewed Strategic Interest

Over the past few years, in the context of the war in Ukraine and broader global instability, the EU appears to have begun to view the Western Balkans once again through a strategic lens. This renewed strategic interest is reflected in a stronger emphasis on energy security, resilience to disinformation, and alignment with the EU's foreign and security policy. The EU now seems increasingly aware that stagnation is not neutral; rather, it constitutes a risk both for the region and for the Union itself. Irrespective of the EU's strategic interests, it is important to bear in mind that, pursuant to the Lisbon Treaty, any future EU enlargement requires the unanimous consent of all 27 Member States. Specifically, each Accession Treaty must be ratified individually by every Member State, in accordance with their respective constitutional procedures. In some states, ratification is carried out by the national parliament, whereas in others, it necessitates a referendum. In light of these considerations, it is particularly instructive to analyze the positions of EU Member States with respect to prospective enlargement.



Source: Eurostat, EuroBarometer 2025

This chart illustrates the opinions of EU Member States on future enlargement over the period from 2012 to 2024, measured as the percentage of respondents in favour. The responses are shaded according to the level of support—from enlargement sceptics (lightest grey) to strong advocates (darkest grey). The highest levels of support are observed in Lithuania (81%), Malta (80%), and

Bulgaria (80%), while the lowest are in Austria (35%) and France (40%). Most countries fall into the category of 'cautious supporters,' with approval rates around or slightly above 50%. Some countries, such as Luxembourg and Germany, exhibit a notable share of skepticism. Overall, average support across the EU stands at 57%, reflecting a generally positive, yet divided, outlook on further enlargement.

It is somewhat encouraging that, in 2024, support for EU enlargement did not fall below 33 percent in any Member State. In France, Austria, and Germany, support remains below 50 percent, but it is no longer under 33 percent, as it had been for an extended period.

4. Need for Internal EU Reform

Some of the hesitation surrounding enlargement stems from internal EU challenges, such as institutional capacity constraints, rule of law backsliding in certain Member States, and enlargement fatigue. As a result, the EU increasingly links enlargement to its own reform agenda, encapsulated by the notion that 'the EU must reform in order to enlarge, and enlarge in order to reform.' This creates a double burden for candidate countries: not only are they required to meet all accession criteria, but they also face delays that are unrelated to their own progress.[28]

The need for internal reforms has been debated within the EU for some time, particularly regarding institutional reforms. The proposal of the Franco-German expert group *Sailing on the High Seas: Reforming and Enlarging EU for the 21st Century*[29] which never became an official EU document but attracted considerable attention from the academic and policy communities, devoted significant attention to the issue of EU institutional reform.[30] These discussions are closely linked to future enlargement, as the Union's institutional capacity to absorb new Member States is widely regarded as a prerequisite for maintaining effective decision-making, coherence, and democratic legitimacy in an expanded EU.[31]

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28 Marinoni.

29 Report on the Franco-German Working group on EU Institutional Reform, Sailing on the High Seas: Reforming and Enlarging EU for the 21st Century, <https://www.politico.eu/wp-content/uploads/2023/09/19/Paper-EU-reform.pdf>.

30 Ceranic Perisic, pp. 94 et seqq.

31 Hakenberg, pp. 187 et seqq.

VI. Outlook

In assessing potential future scenarios, several possibilities emerge for the Western Balkans in the context of EU integration. None of these scenarios is inevitable but each depends on political will, both within the region and in Brussels.

Accelerated Integration (Selective or Gradual)

Under this scenario, the EU continues with its "gradual integration" model,[32] allowing countries that meet criteria to gain access to parts of the Single market, EU funding, or enhanced political cooperation before full membership. Some countries (e.g. Montenegro, Albania) may advance more rapidly than others, setting a precedent for "staggered accession". This approach would maintain momentum and reward reformers, while avoiding complete blockage due to slow-progressing neighbors.

Continued Stagnation

If reforms stall and EU signals remain vague or politically constrained, the region may enter a new phase of stagnation. In this scenario, the risk of political backsliding, public disillusionment, and regional tensions increases. Moreover, public support for EU integration could decline further, while external actors may expand their influence by offering short-term gains without democratic conditions.

Reinvention of Enlargement

A more ambitious possibility is that the EU undertakes substantial internal reform, clarifies the enlargement timeline, and restores credibility. This would require political courage at EU level and greater unity among Member States. For the region, it would provide a clearer path forward, with transparent criteria, measurable progress, and concrete rewards at each step. Contemporary scholarship has long moved beyond viewing enlargement as one-time event of territorial expansion, instead recognizing it as a catalyst driving changes within the EU and the candidate countries.[33]

32 See above II.1.
33 Schimmelfenning/Sedelmeir, p. 96.

VII. Conclusion

The European integration of the Western Balkans remains one of the EU's most complex, yet also most consequential, policy challenges. Over the past year and the half, important shifts have occurred both in how the EU approaches the region and in how individual countries respond.

While progress has been uneven and at times frustrating, it would be a mistake to view the process as stalled or irrelevant. On the contrary, the last eighteen months have demonstrated that momentum can regained – particularly when there is political will, strategic clarity, and a shared sense of urgency on both sides.

Enlargement has always been linked to peace, prosperity, and stability. The transformative power of membership and warns against indecision, arguing that enlargement remains the EU's most effective geopolitical tool.[34]

Finally, rather than a formal conclusion, three key points should be borne in mind. Differentiation is the new reality. The EU no longer treats the Western Balkans as a single package which brings both risks and opportunities. This approach to EU enlargement is consistent with the broader approach to European integration. One of the most prominent theorists of European integration and current president of Finland, Alexander Stubb, proposes three levels of European integration: the EU, the European Community, and the European Space.[35] This model is designed to be inclusive rather than exclusive, with participation at each level depending on a country's political choice and its ability to meet the relevant criteria. Credibility matters. Without trust in the process, even the most carefully designed reforms are unlikely to generate meaningful change. If actors begin to doubt the fairness or consistency of the criteria, commitment weakens, and formal compliance may replace genuine transformation.

Integration is not just about meeting criteria; it is about shaping the future of Europe. The Western Balkans are not external to the EU's story; they are an internal part of it. Their stability, prosperity, and democratic development are inseparable from the future of the Union itself.

[34] Stubb, pp. 11 et seqq.
[35] *Ibid.*

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Northern Ireland: Navigating the difficult Journey from Conflict to Peace and Prosperity

Lee McGowan

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This year the European Network conference took place in Belfast and the event provided the ideal opportunity to showcase a new post conflict city and its wider hinterland while discussing its future as a region within Europe. For visitors, Belfast looks like many European cities. For its citizens Belfast has undergone major change. Its city centre is once again hiving with bars, restaurants and the construction of ever more hotels as the demand for visitor accommodation grows. Statistics for 2024 reveal that 1.4 million visitors from Great Britain (30%), 1,1 million from the Republic of Ireland and 600,000 from beyond these islands[1] spent at least one night in Belfast. There were an additional 265,000 day visitors from 145 cruise ships visiting the city.[2] The city is undergoing a boom.

The unemployment rate stands at a record low with 1.5% of the population out of work.[3]. Belfast has become the home to digital technologies, financial services (Citi Bank and the CME Group) alongside the region's long- established successes in advanced manufacturing (aerospace and machinery) companies and food processing firms. Northern Ireland now possesses a very vibrant television and movie production industry (Game of Thrones, Dalgliesh, Derry Girls, Belfast and Mission Impossible) and is home to two leading universities that are research pioneers in their specialised fields. Queen's University Belfast, the venue for the 2025 Network Conference, has priorities in

1 Department of the Economy, 29 May 2025, <https://www.economy-ni.gov.uk/news/annual-tourism-statistics-northern-ireland-published>.

2 Belfast Harbour 2025, <https://www.belfast-harbour.co.uk/news/last-call-of-2024-marks-end-of-successful-cruise-season-for-belfast-harbour/>.

3 BBC 15th April 2025, <https://www.bbc.co.uk/news/articles/cgqvnjpxn00o>.

secure connected intelligence, human environment relations and a transformative and sustainable economy.[4]

Belfast is a city undergoing major economic and social change in the twenty-first century. Like other cities it also faces issues in relation to poverty, homelessness and growing drug dependencies but unlike most other European cities it is emerging from a period of major economic and political turmoil that continues to haunt and shape the modern-day developments.

Northern Ireland was the location for one of western Europe's most troubled and violent regions in an armed conflict – the so-called 'Troubles' – that raged from 1969 until 1998. The largest and well-equipped terrorist forces were the Irish Republican Army (IRA) and the Irish National Liberation Army (INLA) and both sought an end to what they regarded as the British occupation of the 'north of Ireland'. Their campaigns of violence were directed at the British army, the police and prison officers. In a bid to damage the economic stability of Northern Ireland the business community (particularly the hotel sector) was also deemed as legitimate targets for attack. This violence resulted in an armed response from loyalist (pro staying part of the UK) paramilitary groups who engaged in atrocities against the Catholic community. Often the killings from both sides occurred on a tit for tat basis. Amidst the violence and the financial costs of running Northern Ireland successive British governments rejected all calls to abandon Northern Ireland so long as a majority of its people preferred Northern Ireland to remain a constituent part of the United Kingdom.

Both the IRA and INLA's campaigns of violence were effectively directed towards the wrong target and more progress towards Irish unification may have been possible if a peaceful crusade had been designed as the means to win the hearts and minds of those preferring the British connection. Such a non-violent crusade via the pen would never have been straightforward. It must remain an issue of conjecture but a counter factual to the violence that rocked Northern Ireland and was on occasions transported to Great Britain.

By the end of the 1980s it was fairly clear that the campaigns of violence were never going to achieve the objective of pushing the UK to relinquish Northern Ireland without the support of the people in this region. Dialogue, reconciliation and mutual understanding were slowly being recognised as the best way to tackle the future constitutional status of Northern Ireland.

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4 Queen's Belfast 2025, <https://www.qub.ac.uk/Research/our-research/>.

The armed conflict (or most of it) ended under the terms of the multi-party Belfast (BA) or Good Friday Agreement (GFA) between the British and Irish governments and most political parties in the region. At its core the agreement envisaged a new consociational model of shared government and a path to peace and reconciliation between the two main communities which are identified here under the broad terms on unionists (those seeking to retain links with the British state) and nationalist (those aspiring to Irish unification). Most of the former essentially belong to the various Protestant denominations and the latter to the Roman Catholic faith.

The existence of religious differences between the two main communities have so often served as an easy label to apply to discussions of the Northern Ireland conflict, but caution is needed as the Troubles were driven more by identity politics, and so often depicted as battles between the green (nationalist) and the orange (unionist), rather than overtly religious ones. Given the reality of two communities with starkly opposed identities and political aspirations the process of enabling genuine conflict transformation after 1998 was never ever going to be a straightforward but it was a promising start.

The 1998 agreement contained within it the means of facilitating a transition toward a new accommodation between the region's two main communities. It is regularly championed as a success story and was assisted by funds (Peace Programme) from the European Union. Indeed, it is regularly presented as a template for others in studies of peace building and conflict transformation.

Questions about whether the conflict had been futile and even counterproductive as they unleashed considerable damage and misery that scarred everyone in Northern Ireland are highly content, but there remain small militant factions who want to continue their armed struggle. The 'Troubles' still cast long shadows over the politics of Northern Ireland in 2026.

While the BA/GFA brought an end to the campaigns of violence, the agreement itself is best understood as an armistice and a first, albeit a very important, step towards hopefully establishing the basis for a genuine and long lasting peace settlement between the two main communities The physical damage to property and infrastructure inflicted during the 'Troubles' could certainly be rectified but the psychological and emotional scars of the conflict were always going to take longer to tackle. At the personal level memories of past events and atrocities linger for many families. How far a permanent peace could be delivered much depended on the extent to which the two communities could be reconciled? Failure to do so not just undermined the future economic and political stability of Northern Ireland but threatened to return the region into a new phase of renewed conflict.

Two different historical narratives about the conflict, the protagonists, the perpetrators of the violence as well as its victims existed within the two communities. These continue to be rehearsed and passed onto new generations via family, sporting events, social activities and cultural (around identity) celebrations. Schooling, for example, remains a sign of division. Aspirations. for more integrated education post 1998 and an environment where Catholic and Protestant pupils were educated together and facilitate the construction of a peaceful and prosperous society, remain unfulfilled. Only some 8% of the entire school sector is integrated. The narratives of the past are very much embedded in Northern Irish society today and they make any process of moving forward rather difficult as the retelling and reframing of past events and atrocities – over, for example, British soldiers killing unarmed civilians and the IRA's victims, keep old prejudices alive. They also fuel new antagonisms. One of the most visible of these are the differing approaches to the use of the Irish language across Northern Ireland. For many in the unionist community the conflict is still raging in the cultural sphere.

This all sounds gloomy and downbeat in tone, but it forms the backdrop of the issues that are required to understand Northern Irish politics and society in 2026. The transition from conflict to peace has not been easy and there have been numerous and ongoing difficulties as tensions continue to simmer between sections of the two communities over flags, national and regional commemorations, the allocation of social housing in Belfast and past atrocities. The vote for Brexit rapidly emerged as another point of division as some 88% of those identifying as 'nationalists' voted for the UK to remain in the EU in comparison to only 34% of those who described themselves as 'unionists'.[5] Phrased another way some 87% who identified as Irish opted for Remain as opposed to only 37% who identified as British. The identity issue was in play yet again! Brexit further destabilised and already delicate political scene in Northern Ireland.

This chapter recognises that peace is happening and that many workers and volunteers on the ground have been at the forefront of many reconciliation efforts and particularly in deprived socio-economic areas, traditionally the recruiting grounds for more militant minded young men and women. The peace process has been an incremental one. No matter how much compromise and reconciliation takes place, the crux issue of identity still means that the of truly

5 Garry, 2018, LSE Blog, <https://blogs.lse.ac.uk/brexit/2018/02/21/in-northern-ireland-there-is-a-strong-division-in-how-different-ethno-national-groups-voted-in-the-referendum/>.

settling an agreed future destination of Northern Ireland – as remaining within the UK or joining the Republic of Ireland

In short, with society in Northern Ireland being divided on an identity basis, the possibility of an agreed position on the very future of Northern Ireland remains challenging. Under the terms of the BA/GFA people can define themselves as being British or Irish Can these competing positions be overcome? This short chapter considers the issues and tensions that make the road to any lasting peace problematic but also asserts that the BA/GFA, a wonderful document of constructive ambiguity, met the needs of Unionists and kept the region in the UK but also promised Nationalists at some undefined point in time a future referendum on Irish unification.

The BA/GFA simply postponed any final decision on the issue of identity. However, this played out in the longer term there were always going to be perceived winners and perceived losers and the key to any lasting peace settlement was to convince as much of the population as possible of an agreed way forward. The challenge was always going to prove harder in the working-class areas of Belfast and the many villages and small towns across Northern Ireland. If the process of a shared future based on reconciliation is properly handled, the region may be propelled into renewed and more violent conflict than before. Nearly 30 years after the GFA Northern Ireland the peace process remains more fragile than many commentators might be willing to admit. So where is Northern Ireland and is an agreed political settlement arguably more difficult today in 2026 than at any point in time over the last three decades?

I. Northern Ireland: A short historical overview

Northern Ireland, as a political entity, was created under the 1920 Government of Ireland Act alongside a new Southern Irish entity that eventually became the Republic of Ireland (in 1937).[6] Both were the products of decades of argument in the Westminster parliament in London about giving 'Home Rule' to Ireland (i.e. a new and largely self-ruling Irish dominion within the British Empire), before parliament finally approved a third Home Rule bill in 1912. The outbreak of the First World War in 1914 not only paused this process but illustrated the tensions in Ireland between unionists and many nationalists signing up for active service and a smaller number of Irish Republicans using the war to advance their own cause by staging the 1916 Easter Rising in Dublin. The attempted 'revolution' failed but it was the British government's response to it and primarily its imposition of the death penalty on the leading protagonists

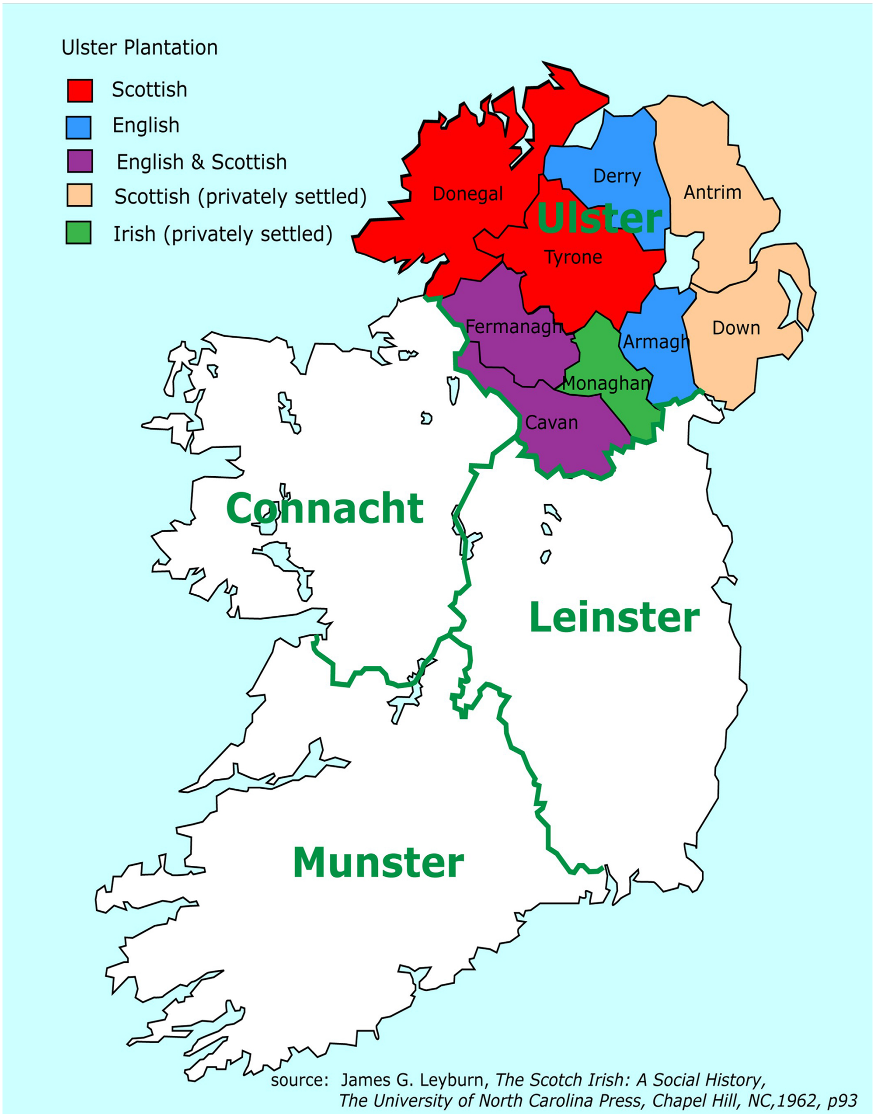
6 For a short introduction to Northern Ireland see Mulholland, 2002.

behind the armed rising that deeply soured opinions in many parts of Ireland towards the British state.

Opposition, however, to 'Home Rule' had been particularly strong in the north of Ireland where the majority Protestant population preferred to maintain the status quo within the United Kingdom of Great Britain and Ireland (that had first been established in 1801) and it was a political union they threatened to defend by arms if necessary. This opposition to 'Home Rule' deeply influenced the thinking of the UK government and shaped its proposal for partition and the establishment of two political entities on the island of Ireland; the first comprising six northern counties that became Northern Ireland on 3rd May 1921 and the second encompassing the remaining 26 counties that became the Irish Free State (1921-37) under the 1921 Anglo-Irish Treaty. The flag of St Patrick (diagonal red cross on a white background) continued to be represented in the 'Union Flag' (British flag) which also comprises the crosses of St George (for England) and St Andrew (for Scotland).

Northern Ireland's position as an integral part of the new titled United Kingdom of Great Britain and Northern Ireland was established under the Government of Ireland Act (1920). In purely geographical terms, however, Northern Ireland is neither part of Britain nor Great Britain. This is one of those small factual points that are forgotten or simply not known in many sections of the media and academe when referring to Britain or Great Britain when they mean the UK.

There is another major factual error in reporting Northern Ireland. The island of Ireland contains 4 Provinces, namely Connaught (in the West) Leinster (in the East), Munster (in the South) and Ulster in the North. Ulster and Northern Ireland are words often and inaccurately deployed by journalists and authors as synonymous terms. However, only six of Ulster's nine counties, as illustrated in the map below, make up Northern Ireland (Antrim, Armagh, Down, Fermanagh Londonderry and Tyrone).



source: James G. Leyburn, *The Scotch Irish: A Social History, The University of North Carolina Press, Chapel Hill, NC,1962, p93*

From its inception and with a population being two thirds Protestant (a marked contrast to the Southern State which was over 93% Catholic) it was assumed that the Northern Irish Protestant community would always maintain its dominance in the new statelet and at the ballot box. For half a century this proved to be the case and where a devolved parliament in Belfast effectively provided for one party rule under the Ulster Unionist Party. However, this meant that many in the minority nationalist community who held aspirations for Irish unification were left outside the system of government. This situation bred both dissatisfaction and discontent amongst nationalists and generated feelings for many of them as being second class citizens in a state that was not open to their Irish identity and openly discriminated against them in relation to employment and housing.

The new Northen Irish entity heavily emphasised its connections and loyalty to the British state just as the new southern Irish state promoted Irish culture and language and established very close relations with the Catholic church. The two states on the island of Ireland were certainly very different in their political outlook, but this differentiation was also evident in relation to the economy with the northern state being largely industrial (textiles and shipbuilding) and the southern state being largely agricultural. Both entities were as compatible as fire and water.

With hindsight it seems so easy to see how the longer-term stability and durability of Northern Ireland were undermined from the very outset by internal divisions between the two main communities that reflected both population concentrations, political polarisation and the economy. The significance of such issues was not so fully appreciated at the time.

On the political front a minority (one third) of Northern Ireland's population had opposed the partition of the island and were neither enthused nor willing to recognise the new state. Today this is most evident when many nationalists and almost all Republicans (now representing some 50% of the population) refer to 'the North' or the six counties when talking about Northern Ireland. This approach irritates and antagonises many Unionists bur remains a good indicator of political divisions.

This political identity issue was compounded by the fact that Northern Ireland itself was largely built on a heavily Unionist dominated eastern part with a narrow nationalist majority in the west. This mattered and coloured perceptions and specifically in economic terms, Major investment, industry and employment hubs were concentrated here in the east of Northern Ireland rather than the west which remained largely agricultural and focused on textiles where unemployment was higher.

In short Northern Ireland was divided from the outset on political and economic grounds and these were manifest in relation his gave wave to major social housing, infrastructure projects and employment opportunities in the east which exacerbated a sense of discrimination towards the nationalist community in the west. Tensions were particularly acute in Londonderry where a minority unionist population controlled the city council through a process of gerrymandering electoral awards and granting voting rights to property owners.

Frustrations culminated in the late 1960s in the form of civil right marches for equality that mirrored the student protests occurring across the western world. The protests in Northern Ireland were seized upon by more militant factions to radicalise sections of society and led directly to the re-emergence of the Provisional Irish Republican Army (IRA) and other smaller nationalist terrorist groups. It should be said that Northern Ireland had never been completely conflict free between 1921 and 1969, but these incidents of violence and armed campaigns were sporadic and short-lived. The situation from 1969 to 1998 was to be on a very different level as the sustained armed campaigns of rival republican groups against the British presence in Ireland fuelled the emergence of counter loyalist violence targeted towards members of the Catholic population. Unable to control the spiralling nature of violence the ‘Home Rule’ parliament in Northern Ireland was suspended by the UK government on 30th March 1972 with direct rule from London being reimposed.

Secret negotiations between leading republicans and the British government in the early 1970s failed. An attempt by the British government in 1973 to establish a power sharing executive likewise came to nothing on account of unionist opposition with street protests and strikes bringing the region to standstill until the plan was dropped in May 1974. Political divisions and intransigence on both sides towards any form of political compromise left Northern Ireland in a political quagmire. The ‘Troubles’ continued for over another two decades with a running catalogue of atrocities and at their end some 3,500 fatalities. They left many families to this day grieving, looking for answers and seeking justice for their dead relatives and friends.

Three decades of violence impacted on daily lives, poisoned politics and in a time of global economic downturn led to Northern Ireland’s dependency on the UK Treasury. Attracting Foreign Direct Investment (FDI) became incredibly difficult amidst some of the highest unemployment and poverty rates across the entire UK. Northern Ireland was in a state of economic and political meltdown as the republican terrorist campaigns raged on in the face of a determined British government and more loyalist terror. It became apparent that the IRA’s armed conflict – forcing the UK out of Northern Ireland could never succeed even when this violence was exported to Great Britain. The Republican Hunger Strikes of 1980/1981 and Margaret Thatcher’s refusal to recognise the inmates as political prisoners and the subsequent 10 deaths (7 IRA members and 3 INLA members) darkened the political atmosphere.

The UK government's continued efforts to restore order and devolved rule saw the setting up of a new and short-lived Northern Ireland Assembly (1982-86) and an agreement with the Irish government in 1985 (Anglo-Irish Agreement) that gave Dublin an advisory role in Northern Ireland's Affairs. The former failed because nationalists (Social Democratic and Labour Party or SDLP) and Sinn Fein or SF (the political representatives of the IRA) were unwilling to take their seats. The latter infuriated the unionists without placating the republicans. Progress seemed practically impossible, and the killings continued until negotiations between the SDLP in the late 1980s and more secret negotiations with the representatives of the IRA in the early 1990s facilitated a ceasefire of armed hostilities from both the IRA and loyalist (unionist) paramilitary groups in the autumn of 1994. The hopes for a cessation in violence proved short-lived as IRA bombings in Manchester and Canary Wharf in 1996 illustrated the ongoing sensitivities but determination and zeal from a new Labour government working in close tandem with the Irish government and the political leaders in Northern Ireland brought almost everyone back to the drawing board and produced the Belfast Agreement[7], also referred to more often as the Good Friday Agreement, of 10 April 1998. Terminology, once again, reflects cultural differences in Northern Ireland with unionists more likely to refer to the Belfast Agreement rather than the Good Friday Agreement (given its more Catholic religious connotations).

The European dimension and the role of the European Union in this process should not be overlooked for by removing customs posts between Northern Ireland and the Republic under the single market programme (1993) trade and people flows between both parts of the island uncreased. The European Commission's interest in helping to build peace led to the creation of its Special Support Programme for Peace and Reconciliation (PEACE programmes) to support social inclusion and enable grassroots projects to facilitate reconciliation. The initial phase (Phase 1, 1994-98) pledged 300 million euros and this European funding has continued after Brexit with the EU co-funding the cross-border PEACEPLUS programme[8] alongside the Irish and British governments to the tune of some 1.4 billion euros from 2021-27.

The BA/GFA is normally considered as a major milestone and a truly critical juncture in the narratives of contemporary Northern Ireland. This landmark agreement between the British and Irish governments and most of the political parties (multi-party) in Northern Ireland is regarded as laying the basis for peace. It comprised three mutually locking strands. The first restored devolved government under a power sharing Executive between nationalists and union-

7 See <https://www.gov.uk/government/publications/the-belfast-agreement>.
8 See <https://www.seupb.eu/peaceplus>.

ists. The second North-South strand provided for greater cooperation between a new North South Ministerial Council and several implementation bodies in areas of regional development, peace building and reconciliation. This Irish dimension strand was welcomed by nationalists and was complemented for the unionists by a third strand to enhance relationships between the Republic of Ireland and the United Kingdom working as members of the EU. No-one in 1998 foresaw Brexit and how the UK's departure from the EU would re-open the border question and test the contents of the BA/GFA.

Significantly, the BA/GFA acknowledged Northern Ireland's constitutional position as an integral part of the UK, but it also provided the means for a future referendum on Irish unity. As part of the negotiations, amendments were made to the Irish constitution (1937-98). Articles 2 and 3 dropped their irredentist claims on Northern Ireland as part of the 'national territory' and enabled anyone on the island of Ireland to be part of the Irish nation. In short, the BA/GFA established the conditions for a settlement that confirmed Northern Ireland's status quo in the UK but also provided a means for those preferring Irish unification to pursue their desire in this direction by constitutional means.

The BA/GFA should be regarded as a positive achievement and a mechanism to lessen internal between unionist and nationalist preferences and aspirations. It provided a platform for shared governance and c-operation, but few could have doubted the challenges that the conflict transformation process entailed. It has been difficult. The BA/GFA certainly offered the prospects of a shared future but in presenting two political scenarios it simply postponed any decision on Northern Ireland's medium-term future. The BA/GFA settlement was a political armistice and left the verbal fighting about the future of the region, which remained very much contested, to the region's politicians.

It is important to note when discussing future events that this 1998 road map towards peace was not shared by all the protagonists and the wider electorate. Indeed, in a referendum on the terms of the GFA in May 1998 some 27% of voters in Northern Ireland rejected its terms. Most were members of the Democratic Unionist Party (or DUP) with others from largely unionist backgrounds who were united in their opposition towards Sinn Fein and what they perceived as a victory for the IRA.

Dissident groups within Irish Republicanism also disowned the BA/GFA and with very limited political support continued to conduct their sporadic armed struggle. They would be responsible for the worst atrocity in the history of the entire conflict when they planted a car bomb in Omagh on 15th August 1998 that on detonation killed 29 people and left over 200 injured. This episode demonstrated that traversing the road to reconciliation was never going to be easy and maybe even impossible as cultural and political identities had not fundamentally altered. Whatever way the peace process played out there were always going to be perceived winners and losers in the identity war in the medium to longer term whether Northern Ireland remained within the UK or acceded to the Republic of Ireland.

II. Northern Ireland, Conflict Transformation and the Roads to Peace and Reconciliation

The demographics of Northern Ireland were changing. The sizeable Protestant majority of 1921 had declined over the course of the century and according to the 2021 census only 43.5% declared themselves as Protestant[9] with some 45.7% identifying as Catholic and another 1.5% possessing a different religion. It should be noted that the remainder who did not state a religious background or claimed to have no religion were largely from Protestant and middle-class areas in the eastern part of Northern Ireland. This changing religious demographic is important and plays directly into current political debates. Although it is too simplistic to equate Catholics with nationalist and republican inclinations and Protestants with unionist and loyalist sympathies, this general assumption holds. The demographic change has bolstered the aspirations of those seeking Northern Ireland's unification with the Irish Republic in the shorter term. Political divisions persist.

The degree of division finds reflection amongst the electorate as demonstrated in the elections to the 2022 Northern Ireland Assembly. The results (figure 2) aptly reveal the identity split within the region with the West and the South (coloured in green) being predominantly nationalist voters and the North and the East (coloured orange) being largely unionist. There is very little sharing of votes between these two political blocks, but recent years have seen the emergence of the Alliance Party which neither sees itself as nationalist or unionist and appeals much to the middle class and socio liberal unionists (coloured yellow). The success of Alliance was a sign of better politics beyond the green and orange tribes but its 13.5% of the vote at these 2022 elections fell behind the 29% for *Sinn Fein* and the 21% for the DUP. Moreover, moderate unionism in the form of the UUP was slowly stagnating at 11.2% while a more radical brand of the TUV was rising (7.6%). Moderate nationalism in the SDLP recorded some of its worst ever results (at 9.1%).

9 See <https://www.nisra.gov.uk/system/files/statistics/census-2021-main-statistics-for-northern-ireland-phase-1-statistical-bulletin-religion.pdf>.

Consequently, the need for reconciliation and greater understanding between the two main communities became ever more urgent to soothe and limit the degrees of friction and tension. This task was never going to be easy. Reconciliation is occurring and there were fewer more high-profile signs of this reality than when Queen Elizabeth II shook hands with Martin McGuinness, a former member of the IRA, a leading SF politician and the then deputy First Minister of Northern Ireland in June 2012.

Establishing trust, however, has been a slow process. Interparty working relationships even in mandatory coalition government are often fractious with ministers taking each other to court in an attempt to solve disagreements. So often they appear to be operating in separate silos that seem designed to meet the needs of their own tribal party identity and support base. A fully functional joined up government involving both unionist and nationalist ministers operating through a 'basic consensus' (Garry, O'Leary and Pow, 2025) is proving at times challenging in government Some commentators have described 2025 as a year of 'paralysis' in government.[10]

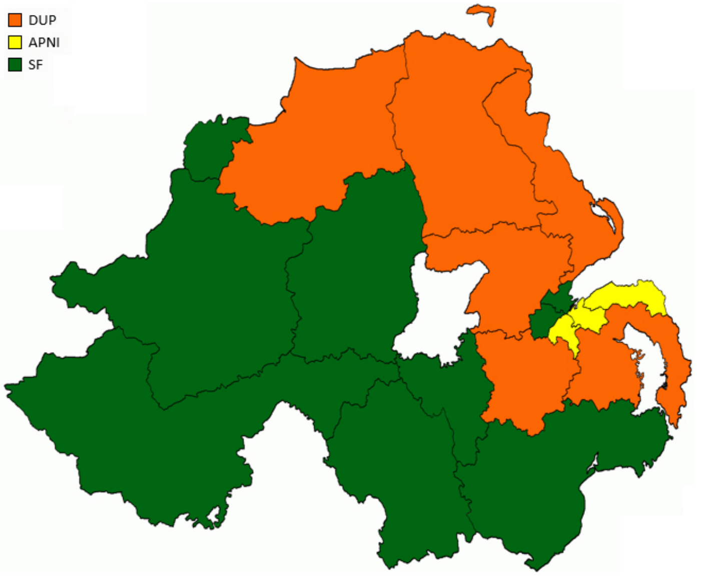


Figure 2: The Political Geography of the 2022 Northern Ireland Assembly Elections
Source: https://www.ark.ac.uk/elections/fa22.htm

10 Belfast Telegraph, 31 December 2025, <https://www.belfasttelegraph.co.uk/opinion/news-analysis/a-year-of-stormont-paralysis-waiting-list-misery-a5-delays-and-fractured-relations/a1557809086.html>.

Consequently, the fledgling political system in its short history has shown repeated signs of fragility. The devolution project has been suspended on six occasions, and its current operation (since February 2024) has not always made for smooth running as ministers have frequently clashed over legacy issues relating to death during the 'Troubles', the use of the Irish language, climate change and integrated education.

The largest shock to the devolved power sharing system was undoubtedly the vote for Brexit in the UK referendum on EU membership in June 2016. This UK wide call unsettled relations between the two main communities in Northern Ireland by enabling identity politics as it turbo-charged the constitutional question. This was apparent in the voting patterns in Northern Ireland. Overall, almost 56% voted for retained EU membership with 44.2% opting for Brexit. Support for EU membership was much stronger amongst the nationalist electorate (at 88%) than the unionist one (at 34%). In contrast, Brexit had been heavily promoted by the DUP, the Traditional Unionist Voice (TUV) party and sections of the Ulster Unionist Party (UUP) as a means of reinforcing their British identity. The unionist parties may have lost the argument in Northern Ireland, but the narrow vote for Brexit at 52% across the entire UK meant that Northern Ireland was heading towards leaving the EU against a majority of its population.

With hindsight the decision of the unionist parties would turn out to be something of an error of judgement (which they strongly deny) as the Brexit negotiations between the UK government and the EU unfolded. Within the EU the border between Northern Ireland and the Republic of Ireland had disappeared with the advent of the European single market and goods and people moved freely across the border. The BA/GFA brought an end to the security controls on the border and the nationalist minority felt further protected under the norms and values of EU membership. Both events facilitated the transition to a more peaceful society and inter-Irish relations. Brexit changed the dynamics and re-opened the sensitive issue of the Irish border. Any suggestions of re-establishing some form of physical infrastructure along the border was greeted with dismay and anger by nationalists as a form of visible partition.

Brexit kickstarted in nationalist and republican circles for a border poll on Irish unification as provided for in the BA/GFA.[11] This issue very much remains the number one policy priority for both Sinn Fein and the SDLP, but it remains

[11] See <https://researchbriefings.files.parliament.uk/documents/CBP-10101/CBP-10101.pdf>.

anathema to most unionist voters who firmly believe that the region's longer-term benefits lie in remaining within the UK

The Northern Irish issue became an unexpected but integral part of the entire EU/UK negotiations package from the outset. The EU's resolve to prevent the return of a hard border on the island of Ireland compelled the UK to compromise to secure any wider deal with Brussels. To placate EU concerns about the return of violence and an end to the peace process the UK government agreed with the EU under the terms of the Ireland/Northern Ireland Protocol that was attached to its 2019 Withdrawal Agreement (WA) to place a customs and regulatory border down the Irish Sea. This move infuriated the unionist parties and led the DUP to collapse the Northern Ireland Executive (February 2022). In truth, Northern Ireland became something of a sacrificial lamb on the Brexit altar to secure both the Withdrawal Agreement (WA) and the Trade and Cooperation Agreement (TCA) in 2020.

The Northern Ireland Executive was not restored until February 2024 and only after the UK government's 2023 Windsor Framework (WF) that sought to address the DUP's hostility towards the Protocol. The WF facilitated trade flows between GB and NI easier, but it left the Irish Sea border in place. In short, Brexit had disturbed the road to reconciliation, hardened the identity issue by stoking resentment, unease and insecurities which have simply further inflamed existing difficulties.

Almost 30 years since the signing of the BA/GFA tensions between the two communities remain and, in some quarters, even thrive. Towards the end of 2025 both the DUP and SF, still the two largest parties sitting at 18% and 25% respectively, in one highly respected public opinion survey[12] are losing political support to more hard-line elements such as the Traditional Unionist Voice (13%) in the case of the DUP and alternative left-wing challenges from the People before Profit Party (2%)and the Green Party (4%). The middle ground Alliance party is stalling at 11%.

Indeed, there are some worrying signs that some of the post conflict generations in working class areas of Belfast and Derry/Londonderry are not so much clinging to the past but reinforcing it and their sense of identity without consideration of alternative interpretations and any desire for reconciliation. Politicians together with civic and business leaders need to make Northern Ireland, irrespective of political identities and desires. Work. Prosperity,

12 Lucid Talk 28 October 2025, <https://www.lucidtalk.co.uk/news/lucidtalk-belfast-telegraph-ni-tracker-poll-autumn-2025/>.

investment and employment are the answers. They were largely missing in the 'Troubles' and may promise to help to heal divisions. Time is needed.

Irish unification makes for a great discussion topic, in universities, in the press, in countless social media platforms and even on the street where it is regularly presented as an inevitability by its advocates. Caution in required. It is certainly true that support for Irish unification has increased on the back of Brexit. Polling has indicated a 5.7% rise between 2017 until 2024.[13] However, support for unification has declined slightly (by 1.4%). This survey found that 40.6% favoured unification with 59.4% preferring to stay within the UK.

A poll on Irish unification is at least a decade away and maybe more as its supporters need to be sure they can win such a referendum across Northern Ireland, and indeed an accompanying one in the Republic of Ireland. There is much to debate ahead for citizens on both sides of the border in relation to tax regimes, health and education services as well as flags, anthems and political structures.[14] There are lessons to be learned from the Brexit referendum and a simple majority of 50%+ 1 in any poll on Irish unity is a harbinger for genuine political instability and violence.

Preparations necessitate careful and intense planning and the provision of much information. Holding any such poll will always prove highly contentious and problematic and could easily heighten divisions within Northern Ireland. To avoid or at least minimise all degrees of friction the unionist community need to be both brought into debates and be ready itself to engage with all discussions pertaining to Irish unification alongside those advocating the status quo arrangements within the UK. A shared and agreed approach to any settlement muse be reached prior to any referendum and this can only be facilitated through continuous efforts at peace and reconciliation. This is not going to be straightforward. There are two key questions here: Are pro-unification supporters willing to understand the concerns of unionists and are the unionists ready to engage when they prefer the status quo.

Another sign of political differences between the unionist and nationalist communities is reflected in their approaches to current conflict in Gaza. The two identity groups in Northern Ireland take opposing sides with nationalists generally supporting the rights and plight of the Palestinians and the unionists aligning themselves behind Israel and opposition towards Hamas and Hezbollah terrorism.

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13 Belfast Telegraph, 15th December 2025, <https://www.belfasttelegraph.co.uk/news/politics/slight-decline-in-pro-unity-vote-in-last-year-but-56-rise-since-2017-new-survey-reveals/a1165266708.html>.

14 O'Toole and McBride, 2025.

Simple parallels are often drawn between the rights of native inhabitants and the activities of the English and Scottish settlers and their expropriation of land in largely the north of Ireland in the 16th and 17th centuries and the Jews in what is now deemed Palestine in the 1900s. The two case studies, of course, are not comparable, but the sympathies for each side are displayed by the flying of Palestinian and Israeli flags in different parts of Belfast and beyond.

A rapidly emerging point of contention in 2026 is the extent to which signs in the Irish language should now be displayed outside Belfast's Irish speaking communities and within Belfast's newly built Grand Central Station as well as on the uniforms and property of Belfast City Council. This cultural war sees one identity group promoting its language and the other identity group (who do not use the Irish language) long interpreting it as a political weapon and a threat to their British identity. This language issue provides another example of the difficulties facing reconciliation.

III. Conclusions

How are we to analyse the political situation in Northern Ireland in 2026? The period following that BA/GFA (1998-2026) has been shaped by a genuine determination to establish a functioning consociational government for the region. A cross-party political executive was designed as the primary means to initiate and lead a process of reconciliation and conflict transformation while easing political divisions between the nationalist and unionist communities. The politics of hope and aspiration of the last 28 years stands in marked contrast to the previous 29 years (1969-98) which were overshadowed by armed conflict and killings, political animosities, economic woes and a deep pessimism about the future.

However, the BA/GFA never settled the identity question that goes to the heart of understanding politics in Northern Ireland. This was too much of an ask. It simply postponed questions about Northern Ireland's future constitutional position in the optimistic hope that the establishing of normality and improved relations between Northern Ireland's citizens would facilitate acceptance of either the status quo or find support for Irish unification.

Whichever outcome occurs there are always going to be willing detractors and ready opponents. Herein lay the conundrum of the BA/GFA. On the one hand this significant document ushered in a period of peace, but it never actually solved the identity question remained open. It provided a means to this end, but it was never going to be easy. The BA/GFA never envisaged Brexit and the divisions it stoked. Likewise, the authors of the BA/GFA could never have envisaged a scenario where the UK might also favour leaving the European Court of Human Rights (ECHR). The ECHR was clearly built into the Agreement as a mechanism to ensure that minority rights were protected. The moves to leave the ECHR is being promoted by the same English backers of Brexit, namely the Conservative party under Kemi Badenoch and Nigel Farage's Reform UK. Their opposition to the ECHR is linked to its rulings against the UK government on immigration. Once again, any such move ignores the impact on Northern Ireland and can only reignite the old familiar nationalist and unionist divisions.

Northern Ireland remains an integral part of the UK. This may always be the case but there is an alternative path that sees Northern Ireland joining the Republic of Ireland. It is difficult to accurately forecast the future constitutional and political direction of Northern Ireland. Proponents of each position will make their case and may still be making their case in another fifty years. Irish unification is highly likely at some point but when and how is very much open to debate. Irish unification is very likely, but it is not inevitable. Its supporters must make their case for unification. They must win the hearts and minds from both nationalists and as many unionists in Northern Ireland as they can. Consent is very much needed.

From the viewpoint of January 2026, the old divisions still persist. The politicians from the DUP and SF continually bicker, and even within a shared Executive, – over policy priorities given the lack of available funding and any disinclination to raise new revenue streams. In many ways this blame game reflects the years of the Troubles when Northern Ireland was mostly administered from London. It is a legacy that needs to be abandoned in favour of promoting reconciliation, building on the positives of the peace process and delivering for the inhabitants of Northern Ireland. This is easily written down but the truth is that Northern Ireland remains trapped by its own past. The historical memories of injustices, violence and killings cast shadows over many aspects of Northern Ireland today. They resurface in court cases, missing persons and countless commemorations.

The identity question is reasserting itself and without due, care and attention the region could stumble back into the old ways and familiar traits of violence. To prevent any such calamity now and more than ever it is time for the British and Irish governments with the support of the EU and the United States of America to urge Northern Irish political parties to discuss, consider and debate the way ahead. Courage and conviction are needed more than ever as we approach the 30th anniversary of the BA/GFA.

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The Limits of Systemic Risk Governance under the Digital Services Act: Fake News, Hate Speech and the Digital Public Sphere*

Tobias Baumgartner

Executive Summary

The Digital Services Act (DSA) marks a shift from content-based regulation towards systemic risk governance. In the context of hate speech and disinformation, the DSA does not create new categories of unlawful content but targets the platform structures through which such content is disseminated, amplified, and made visible. This contribution argues that the DSA's regulatory model is innovative but inherently limited. Its effectiveness depends on open-ended systemic risk concepts, the operational choices of private platforms, and a hybrid governance architecture involving regulators, platforms, trusted flaggers, and other non-state actors. At the same time, developments such as politically volatile moderation practices, state-led restrictions on access to digital services, and the growing proliferation of AI-generated content demonstrate that the governance of digital communication remains subject to rapid transformation. Moreover, recent debates surrounding competitiveness, regulatory simplification, and initiatives such as the Digital Omnibus suggest that the broader trajectory of EU digital regulation itself remains politically and economically contingent. The DSA should therefore be understood not as a definitive solution to online harms, but as an evolving regulatory baseline for the governance of the digital public sphere.

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I. Introduction

The digital transformation of public communication has fundamentally altered the conditions under which information is created, disseminated, and consumed. Social media platforms and other online intermediaries have evolved into central infrastructures of the digital public sphere, increasingly replacing traditional media as primary sources of information, particularly for younger users.

At the same time, this transformation has given rise to new forms of societal and democratic risk. Two phenomena are of particular relevance in this context: hate speech and disinformation. Both may have significant societal impact while also posing considerable challenges for legal regulation. A central difficulty lies in the fact that harmful online content is often disseminated across borders, amplified through platform architectures, and difficult to attribute to identifiable actors within traditional frameworks of legal responsibility.

The Digital Services Act (DSA)[1] responds to these developments not by creating new categories of unlawful content or new criminal offences, but by addressing the structural conditions under which harmful content is disseminated and amplified. To this end, it imposes due diligence and systemic risk-management obligations on online intermediaries, in particular online platforms. The DSA thus reflects a broader regulatory shift from content-based regulation towards systemic platform governance, focusing less on individual perpetrators than on the infrastructural and amplificatory role of platforms within the digital public sphere.

1. Political Concepts and the Limits of Legal Qualification

Neither "hate speech" nor "fake news" constitutes a clearly defined legal concept under EU law. Both terms originate primarily from public and political discourse and are often used in a broader and less precise sense than in legal doctrine.[2] Importantly, the DSA does not introduce new categories of criminal liability or establish new criminal offences relating to hate speech or disinformation. The qualification of content as unlawful therefore continues to be governed by existing legal frameworks, most notably the criminal law of the Member States.

"Hate speech" generally refers to expressions that denigrate, attack or dehumanise individuals or groups on the basis of characteristics such as ethnicity, religion, nationality, gender or other protected attributes. From a legal

1 Regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market for Digital Services and amending Directive 2000/31/EC (Digital Services Act), OJ 2022 L 277, p. 1.

2 See European Commission, Tackling online disinformation: a European Approach, COM(2018) 236 final, 26 April 2018, p. 4 ("verifiably false or misleading information [...] presented and disseminated for economic gain or to intentionally deceive the public, and may cause public harm").

perspective, however, the relevant boundaries are often difficult to determine with precision. Certain forms of online hostility may amount to criminal offences, including incitement to violence, threats, defamation or racial discrimination. Other forms of aggressive, discriminatory or inflammatory speech may remain below the threshold of criminal liability while nevertheless contributing to hostile communicative environments or broader societal tensions.[3]

Similar conceptual difficulties emerge with regard to "fake news". The term does not constitute a legal category but rather serves as a broad umbrella concept encompassing different forms of false, misleading or manipulative information. A more precise distinction is commonly drawn between "disinformation", which generally implies an element of intent or strategic manipulation, and "misinformation", which refers to inaccurate information shared without such intent. From a legal perspective, false or misleading statements may become relevant where they interfere with protected legal interests, for example in cases involving fraud, market manipulation, electoral interference, or demonstrably false information capable of causing concrete harm to public health or public safety. At the same time, however, many forms of misleading or manipulative communication remain difficult to classify in strictly legal terms, particularly where factual assertions, opinion, exaggeration and political rhetoric overlap.[4]

This distinction between clearly unlawful content and broader forms of harmful or misleading online communication is of central importance to the regulatory approach of the DSA. Significant parts of online hate speech and disinformation may operate in legally uncertain or borderline areas that are not always adequately addressed through traditional mechanisms of criminal law enforcement alone. At the same time, such content may still have considerable societal effects, including on democratic processes, public discourse, public trust and the safety of online environments. The DSA responds to this tension not by broadly redefining the substantive boundaries of unlawful speech, but by addressing the structural conditions under which such content is dissem-

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3 See European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No. 15 on Combating Hate Speech, 2015; UN Human Rights Council, Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred, 2013, both emphasising the contextual and often difficult distinction between protected expression, offensive speech and unlawful incitement.

4 On limitations of the term "fake news", see European Commission, High Level Group on Fake News and Online Disinformation, A Multi-Dimensional Approach to Disinformation, 2018, pp. 10 et seq. The report emphasises that many forms of disinformation are not necessarily illegal, but may nevertheless undermine democratic processes, public trust and informed public discourse.

inated, amplified and monetised, in particular through systemic risk assessment and mitigation obligations applicable to very large online platforms and search engines.[5]

2. The Structural Role of Platforms

The increasing regulatory attention devoted to online platforms can only be understood in light of their specific functional role within the contemporary information environment. Platforms do not typically act as originators of content. Rather, they operate as intermediaries that store, organise, curate, and disseminate user-generated information. However, their technical architecture, economic incentives, and governance structures decisively shape the visibility, reach, and impact of such content. From a functional perspective, platforms have evolved into central infrastructures of public communication. As the European Commission has observed, they increasingly perform functions traditionally associated with media organisations, acting as aggregators and distributors of information without assuming comparable editorial responsibilities. Empirical evidence confirms this structural shift. Survey data, including Eurobarometer findings and the EU Social Media Survey 2025, indicate that social media services have become a primary source of news and information for a substantial share of users within the European Union, particularly among younger demographics.[6]

Moreover, users frequently encounter content that they have not actively sought out, but which is recommended or surfaced through algorithmic systems. This "incidental exposure" reflects a shift away from user-driven information retrieval towards platform-driven information environments in which visibility is increasingly shaped by automated selection processes. Recommender systems tend to prioritise content that generates high levels of engagement, thereby creating incentives that may favour sensational, polarising, or misleading content. As the Commission has noted, advertising-driven and attention-based business models privilege virality over reliability, reinforcing the visibility of content that maximises user engagement.[7] In this sense, platforms do not merely organise information, but actively structure attention and shape the contours of public discourse. Personalised content feeds may further reinforce selective exposure and contribute to the fragmentation of public discourse.

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5 Articles 34 and 35 DSA; see also Recital 84.

6 European Commission, EU Social Media Survey 2025, Section on social media use, <https://europa.eu/eurobarometer/surveys/detail/3592>.

7 European Commission, Tackling online disinformation: a European Approach, Section 2.2., COM(2018) 236 final, 26 April 2018.

The dissemination of problematic content is further intensified by behavioural and technological factors, including coordinated inauthentic behaviour, automated amplification, and the rapid circulation of unverified information by users themselves. Importantly, the societal impact of disinformation is not primarily a question of volume. Even limited quantities of misleading or harmful content may achieve disproportionate reach through platform dynamics and recommendation systems. Empirical studies suggest that disinformation can spread more rapidly and widely than other forms of content, potentially eroding public trust, distorting democratic discourse, and impairing informed decision-making.[8]

These developments have shifted regulatory attention from individual content items towards the structural characteristics of platform services. A significant proportion of problematic content does not qualify as illegal and therefore cannot effectively be addressed through traditional enforcement mechanisms alone. The resulting asymmetry is central to the DSA's regulatory logic: while the production of harmful content is decentralised, its dissemination is shaped by centralised platform infrastructures and curation mechanisms largely outside users' control. It is precisely this asymmetry that gives rise to systemic risks affecting democratic processes, public health, and fundamental rights. Rather than focusing solely on individual instances of unlawful content, the DSA therefore targets the structural conditions under which content is disseminated and amplified. By addressing the design, functioning, and governance of platforms, the Regulation reflects a shift from a content-centred to a structure-oriented regulatory paradigm. It is the intermediary and amplificatory role of platforms, rather than their function as mere hosts of information, that provides the conceptual foundation for this approach.

II. The Transformation of EU Digital Governance

1. From Market Integration to Systemic Risk Governance

The DSA forms part of a broader transformation of EU digital regulation. Earlier policy phases, particularly under the Juncker Commission in 2015, were primarily oriented towards market integration and the completion of the Digital Single Market.[9] The central objective was to remove regulatory barriers to

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8 European Commission, Tackling online disinformation: a European Approach, Section 1., COM(2018) 236 final, 26 April 2018.

9 Communication from the Commission, A Digital Single Market, COM(2015) 192 final, 6 May 2015; Commission Staff Working Paper, A Digital Single Market Strategy – Analysis and Evidence, SWD(2015) 100 final, 6 May 2025.

cross-border digital services and to unlock economic growth potential within the internal market. The Commission explicitly framed the Digital Single Market as a project to "tear down regulatory walls" between national markets and to enable businesses and consumers to fully benefit from cross-border digital opportunities.

Within this evolving landscape, the policy agenda of the Digital Single Market was translated into a set of regulatory initiatives focused on facilitating e-commerce, reducing transaction costs, harmonising consumer and contract rules, and improving market access for digital services. The underlying rationale was predominantly economic: digital integration was expected to enhance competitiveness, stimulate innovation, and generate significant growth effects.

Since the beginning of the von der Leyen Commission in 2020, however, EU digital policy has undergone a significant reorientation. While the internal market logic remains formally central, it is increasingly complemented and in part overshadowed by concerns relating to technological sovereignty, security, and systemic risks.[10] The Digital Decade policy framework illustrates this shift particularly clearly. It conceptualises digital transformation not merely as a driver of growth, but as a key instrument for strengthening Europe's "technological sovereignty", "resilience", and "strategic autonomy" in an increasingly volatile geopolitical environment.[11]

Increasingly, the policy discourse places growing emphasis on structural vulnerabilities and dependencies. The Union is portrayed as being exposed to external risks stemming from reliance on foreign digital infrastructures, cloud services, and foundational technologies. Addressing these dependencies has become a central objective of EU digital policy, alongside the strengthening of domestic technological capacities and coordinated investment strategies.[12]

In parallel, the regulatory focus has shifted more explicitly towards the management of societal and systemic risks arising from digital technologies. Recent policy documents highlight threats such as disinformation, cyberattacks, algorithmic manipulation, and risks to democratic processes, which are seen as potentially undermining public trust, electoral integrity, and even the rule of law. The growing prominence of such concerns reflects a move beyond a

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10 European Commission, DG for Informatics, Strategic Plan 2020-2024, Ref.Ares(2020) 4602715, 4 September 2020.

11 Communication from the Commission, State of the Digital Decade 2025: Keep buliding the EU's sovereignty and digital future, COM(2025) 290 final, 16 June 2025.

12 European Commission, Shaping Europe's Digital Future, COM(2020) 67 final, 19 February 2020, p. 3, 5.

purely economic understanding of digital markets towards a broader conception of digital infrastructures as critical components of democratic and societal order.[13]

The DSA is situated within this evolving framework. Together with instruments such as the Digital Markets Act, the GDPR, and the Artificial Intelligence Act, it forms part of an increasingly dense regulatory architecture that combines internal market integration with elements of risk governance, security policy, and public interest regulation.[14] More recent debates surrounding competitiveness, innovation capacity, and regulatory simplification suggest that this expansive phase of EU digital regulation may itself become subject to future recalibration.[15] In this respect, current discussions increasingly point to emerging tensions between ambitious regulatory intervention and concerns regarding Europe's economic competitiveness and regulatory sustainability.

2. From Soft Law to Hybrid Governance

The regulatory approach of the DSA builds upon a sequence of earlier EU initiatives which, since 2018, have progressively developed from predominantly policy-driven and voluntary instruments towards a more structured co-regulatory framework. The starting point at EU level was the Commission Communication on tackling online disinformation, which identified disinformation as a systemic challenge to democratic processes, public discourse, and electoral integrity.[16] Rather than proposing binding legal obligations, the Communication outlined a set of strategic priorities, including enhanced transparency of the online ecosystem, user empowerment, and improved capacities for monitoring and research. This initial policy framework was complemented by the Action Plan against Disinformation, which emphasised coordinated responses to disinformation campaigns, particularly in the context of elections

13 European Commission, Shaping Europe's Digital Future, COM(2020) 67 final, 19 February 2020, p. 6.

14 See generally Chayanis Aueamnuay/Carmen Berjón/Stella Galehr/Luca Graf/Andreas Heinemann, Digital Regulation in the European Union, EuZ 03/2024, discussing the EU's increasingly integrated digital regulatory framework, including the DMA, DSA, Data Act, Data Governance Act and AI Act.

15 Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the simplification of the digital regulatory framework and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868 and Directive (EU) 2019/1024 (Digital Omnibus Regulation), COM(2025) 837 final, 19 November 2025.

16 Communication from the Commission, Tackling online disinformation: A European Approach, COM(2018) 236, 26 April 2018.

and hybrid threats.[17] It introduced operational mechanisms such as the Rapid Alert System and strengthened cooperation between EU institutions, Member States, and private actors.

A central element of this early phase was the Code of Practise on Disinformation, adopted in 2018 as a voluntary self-regulatory instrument.[18] It brought together major online platforms, advertisers, and civil society actors and relied on commitments relating, inter alia, to transparency, the integrity of services, and cooperation with fact-checkers. However, this framework remained limited in several respects: participation was uneven, commitments were not legally binding, and enforcement mechanisms were largely absent. The revised Code of Practice on Disinformation of 2022 marks a significant evolution of this approach.[19] It introduces a substantially more detailed and operationalised set of commitments, structured across multiple areas, including demonetisation of disinformation, transparency in political advertising, integrity of platform services, user empowerment, and access to data for researchers. Importantly, the strengthened Code also establishes more robust governance and monitoring mechanisms. It provides for structured reporting through qualitative and quantitative indicators, the creation of a Transparency Centre, and the establishment of a permanent task-force involving the Commission, Member States, and relevant stakeholders. These features significantly enhance accountability compared to the original 2018 framework.

Over time, the conceptual scope of the policy has broadened. Disinformation is no longer treated merely as misleading content, but as part of a wider spectrum of phenomena, including misinformation, coordinated influence operations, and foreign interference in the information space. This reflects a growing alignment between disinformation policy and broader concerns of security, geopolitical competition, and democratic resilience. Despite these advancements, the Code remains formally a voluntary instrument. Its legal significance therefore depends on its integration into binding regulatory structures. This integration is realised through the DSA, adopted in October 2022 and applicable since 17 February 2024.

The DSA does not regulate disinformation through substantive prohibitions but instead incorporates earlier policy approaches into a binding framework of due diligence obligations. In particular, the strengthened Code of Practice on

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17 Joint Communication, Action Plan against Disinformation, Join(2018) 36 final, 5 December 2018.

18 Code of Practise on Disinformation, 16 June 2022, <https://digital-strategy.ec.europa.eu/en/library/2018-code-practice-disinformation>.

19 Strengthened Code of Practice on DIsinformation, 16 June 2022, <https://digital-strategy.ec.europa.eu/en/library/2022-strengthened-code-practice-disinformation>.

Disinformation has been integrated into the DSA framework as a Code of Conduct and thereby acquires particular relevance in the context of systemic risk mitigation by very large online platforms and search engines.[20] Adherence to the Code may serve as a relevant benchmark for assessing compliance with the DSA's obligations relating to risk assessment and mitigation, particularly under Articles 34 and 35 DSA. The DSA thus transforms what was previously a largely voluntary and fragmented governance model into a hybrid regime combining binding regulatory obligations with structured industry commitments.

III. Scope of Application of the DSA

1. Functional Approach to Intermediary Services

The scope of application of the DSA is defined by a functional rather than a sector-specific approach. The Regulation applies to a broad range of intermediary services within the meaning of Article 3(g) DSA, i.e. services that transmit, cache, or host information provided by recipients of the service. The decisive criterion is therefore not the business model of a provider, but its role in facilitating the storage and, where applicable, the dissemination of user-generated content. In particular, the DSA covers services that enable communication, exchange, intermediation, or the provision of goods and services, provided that they involve user-generated content. Where such content is made available to the public, the service may qualify as an online platform within the meaning of Article 3(i) DSA. This includes not only social networks and content-sharing platforms, but also online marketplaces, service intermediation platforms, and various forms of peer-to-peer or community-based services.

This broad and technology-neutral approach is designed to capture the diverse and evolving ecosystem of digital services. It ensures that the applicability of the Regulation does not depend on formal classifications, but on the actual functions performed by the service, in particular its role in mediating the dissemination of information and thereby potentially contributing to systemic risks.

[20] See European Commission, The Code of Conduct on Disinformation, Press Release, 13 February 2025, confirming the integration of the strengthened Code into the DSA framework as a Code of Conduct and its relevance as a benchmark for DSA compliance, <https://digital-strategy.ec.europa.eu/en/library/code-conduct-disinformation>.

2. Hierarchy of Intermediary Services

The DSA distinguishes between different categories of intermediary services, each subject to a specific set of obligations. These categories form a hierarchical structure, which can be described as a "due diligence pyramid". At the base are mere conduit services, such as internet access providers and domain name registrars, which primarily transmit information without modifying it. These services benefit from the liability exemption set out in Article 4 DSA and are subject to relatively limited obligations. These obligations include, in particular, compliance with orders to act against illegal content (Article 9 DSA) or to provide information about recipients of the service (Article 10 DSA), as well as general transparency and contact point requirements (Articles 11 and 15 DSA).

The next category comprises hosting services, which store information provided by users. Examples include cloud storage services or web hosting providers. These services are subject to the liability regime under Article 6 DSA and more extensive due diligence obligations. In particular, they must implement notice-and-action mechanisms enabling the submission of notices concerning illegal content (Article 16 DSA) and provide statements of reasons for content moderation decisions (Article 17 DSA).

A central category is that of online platforms, defined as hosting services that store and disseminate user-generated content to the public (Article 3(i) DSA). This category includes social media platforms, online marketplaces, and various forms of community-based services. In addition to the obligations applicable to hosting services, online platforms are subject to further requirements, including the establishment of internal complaint-handling systems (Article 20 DSA), participation in out-of-court dispute settlement (Article 21 DSA), and enhanced transparency obligations, including reporting on content moderation activities (Article 15 DSA) and the publication of information on active users (Article 24 DSA).

At the top of the hierarchy are very large online platforms (VLOPs) and very large online search engines (VLOSEs). These are defined by a threshold of more than 45 million average monthly active recipients of the service in the European Union (Article 33 DSA) and are formally designated by the European Commission. As of early 2026, the Commission has designated more than twenty VLOPs and two VLOSEs, including platforms and services such as Facebook, Instagram, TikTok, YouTube, X, LinkedIn, Amazon Store, Zalando and

Google Search.[21] These services are subject to particularly stringent obligations, especially with regard to systemic risk management, including the obligation to conduct regular risk assessments (Article 34 DSA), to adopt risk mitigation measures (Article 35 DSA), to undergo independent audits (Article 37 DSA), and to provide data access to researchers and authorities (Article 40 DSA).

3. Territorial Scope of Application

The DSA has a broad territorial scope. It applies not only to providers established within the European Union, but also to providers established outside the Union, provided that they offer services to recipients located in the EU internal market. This follows from the general scope provision of the Regulation (Article 2(1) DSA), read in conjunction with the definitions of intermediary services and recipients of the service (Article 3 DSA). In order to ensure the effective application of the Regulation to such providers, the DSA requires those not established in the Union to designate a legal representative within the EU (Article 13 DSA). This requirement facilitates enforcement and ensures that obligations under the DSA can be effectively imposed on providers operating across borders.

Given the global nature of digital services, this extraterritorial reach is essential. It ensures that major international platforms are subject to the regulatory framework of the DSA when targeting users in the EU, thereby reducing the risk of regulatory circumvention and contributing to a level playing field within the internal market.[22]

4. Limits of the Scope of Application

Despite its broad scope, the DSA does not apply to all digital services. Its application is limited to intermediary services within the meaning of Article 3(g) DSA, i.e. services that transmit, cache, or host information provided by users. Services that do not involve the intermediation of user-generated content, such as purely editorial services, fall outside this definition. Similarly, services limited to private interpersonal communication will generally not qualify as online platforms, since they do not disseminate information to the public. By

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[21] The list of designated VLOPs and VLOSEs can be found on the Website of the European Commission: <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>.

[22] See also Anu Bradford, The Brussels Effect: How the European Union Rules the World, Oxford University Press 2020, pp. 131 et seqq., describing the global spillover effects and de facto extraterritorial reach of EU digital regulation.

contrast, services that make user content available to an indeterminate number of recipients may fall within the definition of an online platform (Article 3(i) DSA). Sector-specific exclusions, including in the field of financial services, are reflected in Article 2(3) DSA.

IV. Core Regulatory Mechanisms of the DSA

The Digital Services Act introduces a comprehensive framework of due diligence obligations for intermediary services. Rather than primarily relying on direct content-based regulation, it establishes procedural, organisational, and risk-based obligations designed to structure how platforms address potentially harmful content.

1. Proceduralisation of Content Moderation

A central innovation of the DSA lies in the regulation of content moderation procedures. While the regulation does not impose a general obligation to monitor content, it requires platforms to establish structured mechanisms for dealing with illegal content. In particular, hosting services and online platforms must provide notice-and-action mechanisms that allow users to notify the provider of allegedly illegal content (Article 16 DSA). These mechanisms must be easily accessible and enable the submission of sufficiently precise and adequately substantiated notices. Furthermore, platforms are required to provide statements of reasons for decisions to remove or disable access to content (Article 17 DSA). This obligation enhances transparency and enables affected users to understand and challenge moderation decisions. In addition, online platforms must establish internal complaint-handling systems (Article 20 DSA), allowing users to contest moderation decisions such as the removal of content, the suspension of accounts, or restrictions on visibility. These procedures must be accessible, free of charge, and processed in a timely and non-arbitrary manner.

Taken together, these provisions introduce, for the first time, a harmonised set of procedural safeguards for content moderation across the European Union. The DSA thereby transforms content moderation from a largely private and discretionary practice into a legally structured process subject to minimum procedural standards.

2. Compliance as Platform Governance

Beyond individual procedures, the DSA systematically embeds compliance obligations within the organisational structures of platforms. Providers are required to establish internal processes, designate contact points, and, where applicable, appoint legal representatives within the Union (Articles 11–13 DSA). Moreover, platforms must publish transparency reports on their content moderation activities (Article 15 DSA), thereby enabling public scrutiny and regulatory oversight.

This set of obligations reveals a broader transformation: platforms are no longer treated merely as passive intermediaries, but as regulated actors with defined organisational responsibilities. Compliance thus becomes a structural feature of platform governance rather than a reactive response to individual cases.

3. Systemic Risk Governance

The most distinctive element of the DSA is its systemic risk-based approach, particularly with regard to very large online platforms (VLOPs) and very large online search engines (VLOSEs). These services are required to identify, analyse, and assess systemic risks arising from the design, functioning, and use of their services (Article 34 DSA). The notion of systemic risks is deliberately broad and encompasses, inter alia, the dissemination of illegal content, negative effects on fundamental rights, adverse impacts on democratic processes, public security and public health, as well as risks related to the intentional manipulation of services.

Importantly, the DSA's systemic risk framework is not limited to illegal content. Recitals 84 and 87 clarify that systemic risks may also arise from the dissemination of information capable of negatively affecting fundamental rights, democratic discourse, electoral processes, or public health, including in situations commonly associated with disinformation, even where the content concerned is not necessarily unlawful. Where such risks are identified, providers of VLOPs and VLOSEs are required to implement reasonable, proportionate, and effective mitigation measures (Article 35 DSA). These may include adjustments to content moderation systems, modifications of recommender systems, changes to terms and conditions, adaptations of platform design, or enhanced cooperation with trusted flaggers, researchers, and civil society actors (Recital 87).

The focus of these obligations is not primarily on individual items of content, but on the structural and systemic features of platform environments that contribute to the amplification of societal risks. Particular attention is therefore directed towards algorithmic recommendation systems, engagement-based amplification mechanisms, platform design choices, and the incentive structures inherent in platform business models.

4. Transparency as a Governance Mechanism

Transparency constitutes another central pillar of the DSA. Platforms are required to provide information on various aspects of their operations, including content moderation practices, online advertising, and recommender systems. In particular, platforms must disclose the main parameters of their recommender systems (Article 27 DSA) and provide transparency regarding online advertising, including information on the advertiser and the targeting criteria (Article 26 DSA). For VLOPs and VLOSEs, transparency obligations are further extended to include access to data for vetted researchers (Article 40 DSA) and the publication of risk assessment and audit reports.

The objective of these measures is to reduce the opacity of platform operations, often described as "black boxes", and to enable both regulatory authorities and external actors to better understand and assess the functioning of digital platforms. Transparency thereby serves not merely as an informational obligation, but as a broader governance mechanism aimed at facilitating oversight, accountability, and external scrutiny of platform practices.

5. User Rights and Procedural Safeguards

The Digital Services Act significantly strengthens the procedural position of users vis-à-vis online platforms by introducing a set of procedural rights and safeguards designed to ensure that content moderation decisions remain transparent, reviewable, and subject to minimum standards of fairness.

A central element of this framework is the obligation for online platforms to establish internal complaint-handling systems (Article 20 DSA). These systems must enable users to challenge moderation decisions, including the removal or disabling of access to content, the suspension of accounts, or other restrictions imposed on the basis of allegedly illegal or incompatible content. Such procedures must be easily accessible, free of charge, and handled in a timely, diligent, and non-arbitrary manner.

In addition, the DSA provides for out-of-court dispute settlement mechanisms (Article 21 DSA), allowing users to seek independent review of platform decisions by certified bodies. These mechanisms complement internal complaint procedures and are intended to offer a low-threshold alternative to judicial proceedings, thereby strengthening the practical enforceability of user rights.

6. Trusted Flaggers

The DSA also establishes a mechanism for so-called trusted flaggers under Article 22 DSA. These are entities with recognised expertise in detecting illegal content whose notices benefit from priority treatment by online platforms. This mechanism is designed to improve the efficiency and reliability of notice-and-action procedures by ensuring that platforms give particular weight to notifications submitted by qualified actors. Trusted flagger status is granted by the competent Digital Services Coordinator (DSC) of the Member State in which the entity is established. The designation is subject to specific criteria, including demonstrated expertise in detecting illegal content, independence from online platform providers, and the ability to act in a diligent, accurate, and objective manner (Recital 61). While the number of designated trusted flaggers is still evolving, several dozen entities have already been recognised across the European Union, reflecting a diverse landscape of actors ranging from civil society organisations to specialised reporting bodies.[23]

The institutional landscape of trusted flaggers is heterogeneous. It includes a range of actors such as non-governmental organisations, specialised civil society bodies, and entities with a more formalised or quasi-public status, including consumer protection organisations or sector-specific institutions. Their areas of activity reflect the diversity of illegal content addressed by the DSA and may cover, inter alia, hate speech and online violence, the protection of minors, consumer protection and fraud prevention, intellectual property enforcement, and data protection.

From a legal perspective, the role of trusted flaggers is clearly delimited. They do not take binding decisions on the legality of content but rather submit notices that must be prioritised by platforms. The final decision on whether to remove or restrict content remains with the platform provider, subject to the procedural safeguards established by the DSA. Despite this formal limitation, the prioritised treatment of trusted flagger notices may create indirect incentives for platforms to align moderation decisions with such assessments in practice.

The DSA does not establish a harmonised funding model for trusted flaggers. Funding structures may vary and include public financing, private donations, membership contributions, or sector-specific support. While this diversity allows for flexibility, it also underscores the importance of ensuring independence and transparency in the designation and operation of trusted flaggers.

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23 A list of designated trusted flaggers can be found on the website of the European Commission: <https://digital-strategy.ec.europa.eu/en/policies/trusted-flaggers-under-dsa>.

7. Protection of Minors

The protection of minors constitutes a distinct and increasingly structured component of the Digital Services Act. While Article 28 DSA formulates this objective in broad terms, recent Commission guidance has significantly specified its content, transforming it into a comprehensive framework of risk-based and design-oriented obligations.[24] At its core, Article 28(1) DSA requires providers of online platforms accessible to minors to implement appropriate and proportionate measures to ensure a high level of privacy, safety, and security. This obligation is explicitly contextual and cannot be avoided merely by excluding minors in formal terms where services remain de facto accessible. The regulatory model is guided by principles such as proportionality, the "best interests of the child", and the notion of safety- and privacy-by-design. Platforms are thus required to integrate protective features directly into the architecture of their services, rather than relying solely on ex post content moderation.

Operationally, the framework is centred on a structured risk-based approach.[25] Platforms must identify and assess risks to minors, including exposure to harmful content, contact risks such as grooming, and design-related risks stemming from recommender systems or persuasive interface features.[26] On this basis, they are expected to implement appropriate mitigation measures, ranging from age-appropriate design and default settings to restrictions on advertising and recommender systems.

This approach raises important tensions. The emphasis on design-based interventions and behavioural safeguards may lead to a form of indirect paternalism, in which platforms shape the online experience of minors in ways that are only partially transparent and not always subject to clear legal standards. In particular, the reliance on age assurance mechanisms and content curation tools highlights the difficulty of balancing effective protection with fundamental rights, including privacy, data protection, and freedom of expression. This tension is also reflected in the prohibition of targeted advertising based on profiling where the platform is aware that the user is a minor (Article 28(2) DSA), which aligns the DSA with the General Data Protection Regulation, but

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24 Communication from the Commission, Guidelines on measures to ensure a high level of privacy, safety and security for minors online, pursuant to Article 28(4) of Regulation (EU) 2022/2065, C/2025/5519, 10 October 2025.

25 C/2025/5519, para 5.

26 For broader classifications of digital risks affecting minors, including content-, contact-, conduct-, contractual-, and systemic risks, see Oberlin/von Hoyningen-Huene, Navigating Digital Safety for Minors in Europe, 2026, pp. 9-28.

leaves open questions regarding enforcement and the practical feasibility of reliably identifying minors without excessive data processing.

V. Enforcement of the DSA

The effectiveness of the DSA depends not only on the substantive obligations it imposes, but also on its enforcement architecture. The Regulation establishes a multi-level system combining decentralised enforcement by national authorities, centralised oversight at EU level, and structured mechanisms of coordination. This architecture is designed to ensure both effective supervision of cross-border services and a consistent application of the DSA across the internal market.

1. Decentralised Supervision: Digital Services Coordinators

At the national level, Member States are required to designate a Digital Services Coordinator (DSC) as the primary authority responsible for the supervision and enforcement of the DSA (Article 49 DSA).[27] These authorities act as central points of contact and are entrusted with a broad range of investigative, supervisory, and coordinating tasks. In particular, DSCs are responsible for supervising intermediary services established in their jurisdiction, with the exception of very large online platforms (VLOPs) and very large online search engines (VLOSEs), which fall under the enhanced supervisory role of the European Commission. Their powers include the ability to conduct investigations, request information, carry out inspections, issue orders to bring infringements to an end, and impose penalties in accordance with national law (Articles 51 and 52 DSA).

DSCs also play a key role in the operational functioning of the DSA framework. They are responsible for certifying out-of-court dispute settlement bodies (Article 21 DSA) and for designating trusted flaggers (Article 22 DSA), thereby contributing to the institutionalisation and proceduralisation of content moderation processes. This decentralised enforcement structure builds on existing traditions of national regulatory authorities, while embedding them within a broader European system of cooperation. In particular, DSCs participate in the European Board for Digital Services (Article 61 DSA), which facilitates coordination, consistency, and the exchange of best practices across Member States.

[27] A list of the Digital Service Coordinators can be found on the website of the European Commission: <https://digital-strategy.ec.europa.eu/en/policies/dsa-dscs#1720699867912-1>.

Despite the harmonising character of the DSA, the institutional implementation of its decentralised enforcement structure remains partly dependent on national administrative arrangements. In Germany, for example, the Bundesnetzagentur has assumed the role of Digital Services Coordinator and exercises important supervisory and procedural functions under the Regulation.

2. Centralised Supervision: The Role of the European Commission

A distinctive feature of the DSA is the strong role assigned to the European Commission in the supervision of VLOPs and VLOSEs. For these services, primary enforcement responsibility is largely centralised at EU level (Article 56 DSA), reflecting the assumption that systemic risks associated with large platforms cannot be adequately addressed through purely national supervision.

The Commission's enforcement framework follows a structured administrative procedure. It may initiate investigations where there are indications of a potential infringement, either on the basis of its own monitoring activities or information obtained from third parties. In this context, it may deploy a broad range of investigative tools, including requests for information, access to platform data and relevant technical systems, interviews, and inspections (Articles 67–69 DSA). If the Commission maintains its preliminary assessment of a possible infringement, it may formally open proceedings. Before adopting a final decision, the provider concerned must be given the opportunity to be heard, reflecting the procedural guarantees characteristic of EU administrative enforcement.

Where an infringement is established, the Commission may adopt a non-compliance decision and impose sanctions. Fines may reach up to 6% of the provider's total worldwide annual turnover, depending on the nature, gravity, duration, and recurrence of the infringement. The Commission also has the power to impose interim measures where there is an urgent risk of serious harm to users. Such measures may include modifications to recommender systems or other specific risk mitigation measures, underlining the preventive and risk-oriented character of the DSA's enforcement model. As a measure of last resort, the Commission may initiate procedures leading to the temporary restriction of access to a service within the Union, subject to judicial authorisation at national level.

The Commission has already started to make use of these powers: In July 2024, the Commission adopted preliminary findings concerning breaches of transparency-related obligations, including deceptive design practices, deficiencies in the platform's advertising repository, and restrictions on researchers' access to public data. Following the completion of its investigation, the Commission adopted a non-compliance decision under the DSA in December 2025 and imposed a fine of €120 million.[28] In addition to the fine, the Commission ordered X to adopt specific remedial measures within defined timeframes, with the possibility of periodic penalty payments in the event of continued non-compliance. Further proceedings have been initiated against other VLOPs, including Meta and TikTok, focusing on issues such as the protection of minors, recommender system design, and the mitigation of systemic risks, as well as against platforms such as AliExpress in relation to illegal products and marketplace governance.[29] In April 2026, for example, the Commission issued preliminary findings against Meta concerning Facebook's and Instagram's compliance with the DSA's obligations relating to the protection of minors.[30] The Commission criticised, inter alia, ineffective age assurance mechanisms, inadequate risk assessments concerning underage users, and insufficient mitigation measures aimed at preventing children under the age of 13 from accessing the services. The proceedings also address broader concerns relating to addictive platform design and so-called "rabbit hole" effects, thereby illustrating the increasingly design-oriented and risk-based character of DSA enforcement.

3. European Coordination: The European Board for Digital Services

In order to ensure the coherent application of the DSA, the Regulation establishes the European Board for Digital Services (EBDS) (Article 61 DSA). The Board is composed of representatives of the national Digital Services Coordinators (DSCs) and is chaired by the European Commission. The EBDS does not exercise independent enforcement powers. Its primary function is to facilitate coordination, promote the consistent interpretation and application of the DSA, and support cooperation between national authorities and the Commission (Articles 62 and 63 DSA). In particular, the Board may issue opinions, recommendations, and guidance, thereby contributing to the development of a common supervisory practice.

This coordination mechanism is of particular importance in cross-border cases, where multiple jurisdictions may be involved. By providing a structured

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28 European Commission, press release IP/25/2934, 5 December 2025, <https://ec.europa.eu/commission/presscorner/detail/en/ip_25_2934>.

29 An overview on the Commissions enforcement activities on the basis of the DSA can be found here: <https://digital-strategy.ec.europa.eu/en/policies/list-designated-vlops-and-vloses>.

30 European Commission, press release IP/26/920, 29 April 2026, <https://ec.europa.eu/commission/presscorner/detail/en/ip_26_920>.

forum for exchange, alignment, and mutual assistance, the EBDS contributes to the uniform application of the Regulation within the internal market and helps to mitigate the risk of divergent enforcement approaches across Member States. At the same time, its role remains primarily advisory, and the effectiveness of coordination depends largely on the alignment of national and EU-level practices.

VI. Controversies

Despite its innovative approach, the DSA gives rise to a number of controversies relating to freedom of expression, the regulation of lawful but harmful content, the growing reliance on private and hybrid actors in the governance of online speech, and the structural limits of transparency.

1. Freedom of Expression and the Risk of Overblocking

One of the most prominent controversies surrounding the DSA concerns its potential impact on freedom of expression, in particular through the risk of overblocking.[31] By imposing extensive compliance obligations on platforms, including notice-and-action mechanisms (Article 16 DSA) and systemic risk mitigation duties (Articles 34 and 35 DSA), the Regulation creates a regulatory environment in which platforms are structurally incentivised to minimise legal, financial, and reputational risks. This incentive structure is not neutral. Rather, it systematically favours precautionary moderation practices, encouraging platforms to remove or restrict content even where its legal status is uncertain. In this sense, overblocking does not merely arise as an incidental side effect but may be understood as an inherent feature of a regulatory model that externalises risk onto private actors and rewards risk-averse behaviour. Such practices risk suppressing lawful expression, particularly in areas characterised by legal ambiguity, such as hate speech and disinformation.[32]

The risk is further amplified by the open-ended nature of key regulatory concepts, most notably that of “systemic risks”. While the flexibility of this concept allows the DSA to address evolving societal harms, it also confers a considerable degree of interpretative discretion on platforms. In combination with

31 See, for a detailed discussion of the risks of overblocking and the tension between content moderation and freedom of expression, Julia Mroz, Regulierung von Hate Speech in sozialen Netzwerken auf nationaler und europäischer Ebene, in: Bernzen/Grisse/Kaesling (eds.), Immaterialgüter und Medien im Binnenmarkt – Europäisierung des Rechts und ihre Grenzen, Nomos 2022, pp. 160 et seqq.

32 Alexander Peukert, Zu Risiken und Nebenwirkungen des DAS, KritV 2022, 57, 63 et seq.

automated moderation tools and decision-making at scale, this may produce systematic biases towards removal, as platforms are likely to err on the side of caution in order to ensure compliance.

From a fundamental rights perspective, this dynamic gives rise to concerns about chilling effects, insofar as users may refrain from lawful expression due to the perceived risk of removal or reduced visibility. The combination of broad risk concepts, automated moderation, and strong compliance incentives may therefore create structural pressures towards precautionary moderation practices that disproportionately affect lawful expression.[33]

2. Regulation of Lawful but Harmful Content

A second, closely related controversy concerns the treatment of so-called lawful but harmful content. While the DSA does not formally establish such a category, its systemic risk framework unmistakably addresses phenomena that may not necessarily fall within clearly defined categories of illegality but may nevertheless generate broader societal risks. In particular, the obligations applicable to very large online platforms and search engines extend to risks affecting civic discourse, electoral processes, public security and public health, including risks linked to the dissemination and amplification of disinformation (Articles 34 and 35 DSA; Recital 84).

This development marks a broader shift in regulatory logic. Rather than expanding substantive prohibitions, the DSA focuses on the structural conditions governing the dissemination, visibility and amplification of content.[34] The Regulation thus seeks to address large-scale societal harms associated with platform-mediated communication without formally redefining the legal boundaries between lawful and unlawful speech. At the same time, however, this approach has generated significant conceptual and constitutional debate, particularly because notions such as “systemic risks”, “harmful effects” and manipulative amplification remain inherently open-ended and context-dependent.[35]

Assessing whether online content contributes to systemic or harmful societal effects nevertheless remains highly difficult in practice. Content relating to

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33 Folkert Wilman/Saulus Lukas Kaleda/Paul-John Loewenthal, The EU Digital Services Act, A Commentary, 2024, Art. 14, para. 18; Janos Tamas Papp, Moving Forward: Charting the Much-Needed Evolution of the Digital Services Act, in: Szabo/Gyeney/Lancos, Hungarian Yearbooko f International Law and European Law 2024, 457, 459 et seqq.

34 See Giovanni De Gregorio, Digital Constitutionalism in Europe: Reframing Rights and Powers in the Algorithmic Society, Cambridge University Press 2022, Section 5.1 (“Expressions in the Algorithmic Society”).

35 See also Alexander Peukert, Zu Risiken und Nebenwirkungen des DAS, KritV 2022, 57, 70 et seqq.

public health crises, armed conflicts, migration or elections often combines factual assertions, political rhetoric, emotional mobilisation and ideological framing in ways that resist clear legal or factual classification. Platform operators are therefore frequently required to take operational decisions under conditions of significant legal and societal uncertainty, creating considerable discretion at the level of platform governance and content moderation.[36]

The resulting model may accordingly be characterised as a form of indirect or architecture-based content governance. By targeting recommender systems, content prioritisation, virality mechanisms and platform design, the DSA seeks to influence visibility dynamics and communicative outcomes without directly regulating speech as such. At the same time, however, this form of governance is not subject to the same doctrinal constraints that traditionally govern direct restrictions on freedom of expression. Whereas direct limitations on speech typically require a clearly defined legal basis and remain subject to judicial scrutiny, the modulation of visibility through platform systems is largely mediated by private actors operating under significant regulatory pressure and within complex technical infrastructures. The DSA may therefore contribute to a gradual shift from legally defined limits of expression towards operationally defined limits of visibility, thereby relocating important normative decisions from courts and legislators to privately mediated systems of platform governance and systemic risk management.

3. Legitimacy of Trusted Flaggers

The DSA assigns an important role not only to platforms and public authorities, but also to a range of non-platform actors, most notably trusted flaggers (Article 22 DSA). These entities are granted a privileged procedural status within notice-and-action mechanisms, as platforms are required to prioritise the processing of notices submitted by them.

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[36] Practical enforcement developments further illustrate these tensions in practice. Proceedings initiated by the European Commission against platforms such as X and TikTok have focused on risks associated with the dissemination and amplification of disinformation, election-related manipulation, recommender systems, and potentially addictive platform design. See European Commission, 'Commission opens formal proceedings against X under the Digital Services Act' , press release, 18 December 2023, <https://digital-strategy.ec.europa.eu/en/news/commission-opens-formal-proceedings-against-x-under-digital-services-act>; European Commission, 'Commission opens formal proceedings against TikTok under the Digital Services Act', ress release, 19 February 2024, <https://digital-strategy.ec.europa.eu/en/news/commission-opens-formal-proceedings-against-tiktok-under-digital-services-act>.

The Regulation does not prescribe a specific organisational form or funding structure for trusted flaggers, resulting in a considerable degree of institutional diversity. Trusted flaggers may include civil society organisations, consumer protection bodies, or public and quasi-public institutions. In practice, designated entities include organisations such as HateAid[37], which focuses on combating online abuse, the Verbraucherzentrale Bundesverband[38], representing consumer interests, and jugendschutz.net[39], which operates in the field of youth protection online. Their fields of activity extend across a broad range of areas, including hate speech, consumer protection, intellectual property, fraudulent commercial practices, and violations of personality rights.[40]

Although trusted flaggers do not formally take binding decisions, their practical influence should not be underestimated. By structuring the prioritisation of content review, they may significantly shape which content is examined and ultimately removed, thereby influencing how legal standards are operationalised in practice. In this sense, trusted flaggers contribute to the practical enforcement of legal norms in the digital sphere without themselves being subject to the full set of institutional and procedural constraints typically applicable to public authorities.

This gives rise to questions of legitimacy, accountability, and procedural fairness.[41] While designation by Digital Services Coordinators introduces a degree of public oversight, the relevant criteria, such as expertise, independence, and representativeness, remain relatively open-textured and may be applied unevenly across Member States. As a result, the institutional quality and normative orientation of trusted flaggers may vary considerably throughout the Union. This is also reflected in public controversies surrounding individual organisations. In Germany, for example, HateAid has been subject to political and media scrutiny concerning its role in online content governance, including debates regarding neutrality, public funding, and its broader influence on moderation processes.[42]

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37 Website HateAid: <https://hateaid.org>.

38 Website Verbraucherschutzzentrale Bundesverband: <https://www.vzbv.de>.

39 Website Jugendschutz.net: <www.jugendschutz.net>.

40 Across the European Union, the number of formally designated trusted flaggers remains relatively limited but is steadily increasing; at present, roughly 50 entities have been granted this status by national Digital Services Coordinator. An official list of awarded trusted flaggerscan be found under: <https://digital-strategy.ec.europa.eu/en/policies/trusted-flaggers-under-dsa>.

41 Nicolas Harding, Trusted Flagger nach dem Digital Serices Act, MMR 2025, 94, para III; Folkert Wilman/Saulus Lukas Kaleda/Paul-John Loewenthal, The EU Digital Services Act, A Commentary, 2024, Art. 22, para 18.

42 Kontraste/rbb24, press release, 9. April. 2026: <https://www.rbb-online.de/kontraste/archiv/20260409_2145/hate-aid-im-visier.html>.

More broadly, the trusted flagger mechanism exemplifies a wider structural development in platform regulation: the increasing reliance on non-state actors in the enforcement of legal norms. The DSA does not merely rely on platforms as intermediaries but incorporates additional private or hybrid actors into the enforcement framework. This may be understood as a form of functional delegation of enforcement tasks, raising the question whether sufficient safeguards exist to ensure that such hybrid arrangements remain compatible with principles of democratic legitimacy and the rule of law.

4. Transparency Overload

Transparency constitutes a central pillar of the DSA's regulatory model. The Regulation introduces extensive disclosure obligations, including transparency reports (Article 15 DSA) and the publication of statements of reasons in the DSA Transparency Database (Article 24(5) DSA). These mechanisms generate large quantities of highly granular data, reflecting the scale and individualised nature of content moderation decisions.

This transparency architecture is operationalised in particular through the DSA Transparency Database operated by the European Commission, which aggregates statements of reasons submitted by online platforms in near real time.[43] The database already contains several billion entries covering moderation decisions across hundreds of platforms. Nevertheless, the practical value of this information for effective oversight remains contested. Reported figures may vary depending on relevant timeframes, aggregation methods, and reporting practices, creating difficulties for comparability and systematic analysis. Moreover, the sheer volume and complexity of the available data may itself become an obstacle to meaningful scrutiny.

This gives rise to a broader structural concern which can be described as "transparency overload". While the DSA significantly increases the availability of information concerning platform governance, transparency does not automatically translate into accountability. Effective oversight depends not only on disclosure as such, but also on the accessibility, comprehensibility, and practical usability of the information provided. In this respect, the DSA raises the question whether large-scale transparency mechanisms alone are sufficient to ensure meaningful democratic, regulatory, and academic scrutiny of platform governance practices.[44]

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43 Website DSA Transparency Database: <https://transparency.dsa.ec.europa.eu/>.

44 Marie-Therese Sekwenz/Rita Gsenger, The Digital Services Act: Online Risks, Transparency and Data Access, in: Gsenger/Sekwenz, Digital Decade: How the EU Shapes Digitalisation Research, 2025, 119 et seqq.

5. Market Effects and Regulatory Asymmetries

Finally, the DSA may have unintended consequences for market structure. Compliance with its obligations entails significant administrative, organisational, and technical costs, particularly for services subject to enhanced obligations, such as very large online platforms and search engines (Articles 33–37 DSA). Although the Regulation differentiates obligations according to size and reach, the overall compliance burden may still disproportionately affect smaller providers. These actors may lack the resources necessary to implement complex risk management systems, auditing procedures, and transparency mechanisms. As a result, the DSA may contribute to regulatory asymmetries, reinforcing the position of large platforms that are better equipped to absorb compliance costs.

Moreover, the Regulation relies extensively on information generated and controlled by the platforms themselves, particularly in the context of systemic risk assessments and data access (Article 40 DSA). This creates a potential informational dependency of regulators on large platforms, which possess superior technical expertise, infrastructural knowledge, and control over relevant data. The DSA therefore risks producing a structural paradox; while seeking to constrain platform power, its enforcement model simultaneously depends on the organisational and informational capacities of the very actors it aims to regulate.

VII. Conclusion and Outlook

The preceding analysis suggests that the DSA does not constitute a definitive solution to the underlying challenges that prompted its adoption. Its effectiveness remains shaped by persistent tensions within the Regulation itself, including the indeterminacy of systemic risk governance, the increasing reliance on private actors, and the continuing difficulties associated with balancing freedom of expression and the mitigation of online harms. Moreover, recent developments, such as shifting platform moderation practices, new forms of state intervention aimed at controlling access to digital services, and the growing impact of generative artificial intelligence, suggest that the regulatory environment surrounding digital communication remains subject to significant and ongoing transformation.

1. Systemic Risk Governance under the DSA

The Digital Services Act introduced a fundamental shift in the regulation of digital communication. Rather than focusing on the legality of individual content, it establishes a framework for governing the systemic conditions under which content is produced, disseminated, and amplified. In this model, platforms are no longer treated merely as intermediaries, but as key infrastructures of the digital public sphere. In the context of hate speech and disinformation, this shift is particularly significant. Both phenomena expose the limits of traditional legal approaches based on clearly defined categories of unlawful conduct. While certain forms of harmful content may be illegal, a substantial proportion remains within the scope of protected expression. The DSA responds to this challenge not by expanding substantive prohibitions, but by targeting the mechanisms that shape visibility and reach, including recommender systems, platform design, and organisational processes.

2. The Limits of Systemic Risk Governance

This regulatory model is not without tensions. At its core lies the concept of systemic risk, which functions as a central organising principle of the DSA. While this concept enables a flexible and forward-looking form of regulation, it remains inherently indeterminate, leaving considerable discretion in its interpretation and operationalisation. At the same time, the DSA relies heavily on private actors for the implementation of regulatory objectives. Platforms are required to assess and mitigate risks, design safeguards, and operationalise abstract legal standards. This effectively shifts key normative decisions to private entities, raising questions of legitimacy, accountability, and effective oversight, particularly where such decisions shape the visibility of lawful expression.

Further challenges arise in relation to fundamental rights. The risk of overblocking, the opacity of algorithmic systems, and the procedural asymmetries between platforms and users may affect freedom of expression and access to information. Although the DSA introduces procedural safeguards, such as notice-and-action mechanisms, reason-giving obligations, and complaint-handling systems, these primarily structure decision-making processes rather than substantively constrain outcomes.

Ultimately, the responsibility for safeguarding the conditions of democratic discourse and media pluralism remains with the state. The DSA does not eliminate this responsibility but redistributes it within a hybrid governance framework in which public oversight and private ordering are closely intertwined, and not always clearly aligned.

3. Fragmentation in Platform Governance

At the same time, developments at the level of platform governance point in a partially divergent direction. In recent years, major platforms have begun to recalibrate their content moderation strategies, in some cases significantly reducing the scope of proactive interventions and shifting responsibility away from centralised moderation structures.

A particularly illustrative example is provided by recent policy changes at Meta. In January 2025, the company announced a fundamental restructuring of its content moderation framework, including the discontinuation of large parts of its third-party fact-checking programme, initially in the United States, and its replacement with user-driven mechanisms such as "community notes".[45] Inspired by similar approaches adopted by X, this model relies on users themselves to identify and contextualise potentially misleading content. Moreover, Meta signalled a broader shift towards prioritising freedom of expression and reducing what it described as excessive or erroneous removals of lawful content. These developments can be interpreted as marking a departure from the more interventionist moderation strategies adopted in the aftermath of earlier disinformation crises. Content moderation has increasingly become a site of political contestation, particularly in the United States, where platforms have faced criticism for allegedly over-enforcing moderation rules and engaging in forms of private censorship. The shift towards community-based moderation might also be driven by economic and operational considerations, as it reduces the need for extensive moderation infrastructures while allowing platforms to limit both costs and legal exposure.

However, these developments have also raised significant concerns. Meta's own Oversight Board criticised the company for implementing the policy changes "hastily" and without sufficient assessment of their human rights impact.[46] In particular, concerns have been expressed that reducing proactive moderation and automated detection mechanisms may increase the circulation of harmful content, especially in high-risk contexts such as political crises or situations of intergroup conflict.

More fundamentally, these developments reveal a potential misalignment between evolving platform practices and the regulatory logic underlying the

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45 See Meta, "More Speech and Fewer Mistakes", 7 January 2025, <https://about.fb.com/news/2025/01/meta-more-speech-fewer-mistakes/?utm_source=chatgpt.com>.

46 See Dan Milmo, 'Meta "hastily" changed moderation policy with little regard to impact, says oversight board', The Guardian, 23 April 2025, <https://www.theguardian.com/technology/2025/apr/23/meta-hastily-changed-moderation-policy-with-little-regard-to-impact-says-oversight-board>.

DSA. While the DSA is premised on the idea that platforms should assume structured responsibilities for the identification and mitigation of systemic risks, recent developments suggest a partial retrenchment from precisely such responsibilities in certain political and regulatory environments. This creates a risk of increasing regulatory divergence, particularly where global platforms adopt differentiated governance models across jurisdictions. These tensions have also acquired a more explicitly geopolitical dimension. In late 2025, the United States adopted restrictive measures against several European actors associated with content moderation and disinformation governance frameworks, framing their activities as forms of "extraterritorial censorship".[47] This episode illustrates how platform regulation is increasingly embedded in broader conflicts over digital sovereignty and the legitimate limits of state influence over online discourse.

4. From Platform Governance to Access Control

Recent developments suggest that political responses to online harms may increasingly extend beyond platform governance towards more direct forms of state intervention and access control. While the DSA is built around due diligence, procedural safeguards, and systemic risk mitigation, a growing number of states are considering or adopting more direct interventions aimed not merely at structuring platform behaviour, but at restricting access to digital services themselves.

A particularly important example concerns age-based restrictions on access to social media services. Australia has moved furthest in this direction. Since 10 December 2025, age-restricted social media platforms must take "reasonable steps" to prevent Australians under 16 from creating or keeping accounts.[48] The regime is enforced against platforms rather than against children or parents, and the law has been presented as a response to the harmful effects of social media design features, including compulsive use, exposure to harmful content, and risks to minors' health and wellbeing.

Comparable debates are now unfolding in Europe. In France, the National Assembly approved a bill in January 2026 that would ban access to social

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47 See SRF News, "USA: Entry bans against five Europeans – EU threatens retaliation" (24 December 2025), available at: <https://www.srf.ch/news/international/usa/wegen-angeblicher-zensur-usa-einreiseverbot-gegen-fuenf-europaeer-eu-droht-mit-vergeltung>.

48 See Australian Government, Department of Infrastructure, Transport, Regional Development, Communications and the Arts, 'Social media minimum age', available at <https://www.infrastructure.gov.au/media-communications/internet/online-safety/social-media-minimum-age?utm_source=chatgpt.com>.

media for children under 15, although disagreement between the parliamentary chambers has persisted over the exact scope of the measure.[49] In Austria, the government announced in March 2026 its intention to introduce a statutory minimum age of 14, with the proposal specifically framed around harmful platform functionalities and addictive algorithmic design rather than particular named services.[50] At EU level, the debate has also intensified: the Commission has promoted a common age-verification solution, and a broader political discussion on minimum age thresholds is now underway across a growing number of Member States.[51]

These initiatives respond to legitimate concerns, particularly regarding harmful content, cyberbullying, addictive design, and the commercial exploitation of minors' attention. At the same time, they raise difficult legal and practical questions. Effective age assurance may require intrusive forms of verification; anonymous or privacy-preserving solutions remain technically and institutionally contested; and broad age-based restrictions risk shifting regulatory attention away from platform architecture and systemic incentives towards exclusionary access bans. In this respect, such measures go beyond the DSA's basic logic. Rather than structuring platform governance through procedural and risk-based duties, they seek to exclude certain users from participation altogether, at least with respect to specified services or functionalities.

A second development concerns more direct state interventions affecting access to platforms as such. The most prominent recent example is Brazil's temporary blocking of X in 2024.[52] After a conflict over compliance with judicial orders and the requirement to appoint a legal representative in the country, Brazil's Supreme Federal Court ordered internet service providers to block access to the platform nationwide. Access was restored only after X complied with the relevant orders, paid fines, and appointed a representative.

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49 See The Guardian, 'French lawmakers vote to ban social media use by under-15s', 27 January 2026, <https://www.theguardian.com/world/2026/jan/27/france-social-media-ban-under-15s>.

50 See Reuters, 'Austria plans social media ban for children under 14', 27 March 2026, <https://www.reuters.com/business/media-telecom/austria-plans-social-media-ban-children-under-14-2026-03-27/>.

51 European Commission, press release, 'Commission sets out a common approach for EU-wide Age Verification technologies', 29 April 2026, <https://digital-strategy.ec.europa.eu/en/library/commission-sets-out-common-approach-eu-wide-age-verification-technologies?utm_source=chatgpt.com>.

52 See The New York Times, 'Brazil Blocks X After Musk Ignores Court Orders', 30 August 2024, <https://www.nytimes.com/2024/08/30/world/americas/brazil-elon-musk-x-blocked.html>.

This type of intervention reflects a regulatory logic fundamentally different from that of the DSA. The DSA seeks to discipline platforms through transparency, accountability, and systemic risk mitigation while preserving the basic availability of services within the internal market. By contrast, age-based bans and platform suspensions rely on exclusion, service restriction, or direct sovereign control over access to communication infrastructures. They therefore raise distinct concerns under constitutional and international human rights law, including proportionality, due process, freedom of expression, and access to information. Current developments thus suggest that the future regulation of digital communication may not be shaped by the DSA alone, but by a more heterogeneous and increasingly interventionist set of legal responses.

5. Generative AI and the Amplification of Systemic Risks

These challenges are likely to intensify in light of ongoing technological developments. Generative artificial intelligence significantly lowers the barriers to the production of misleading, manipulative, and synthetic content. It enables the rapid creation of texts, images, audio, and video that can be disseminated at scale and tailored to specific audiences. In this respect, generative AI does not merely increase the quantity of problematic content; it also enhances its plausibility and strategic usefulness.

A further challenge lies in the growing sophistication of synthetic media, particularly deepfakes. AI-generated or AI-manipulated content increasingly blurs the line between authentic and fabricated communication and thereby undermines established cues of credibility.[53] The EU has begun to respond to these risks through transparency obligations under the AI Act, including specific rules concerning AI-generated content and deepfakes. Yet such obligations address only part of the problem: they may improve transparency, but they do not in themselves prevent the rapid dissemination and amplification of deceptive content through platform systems. At the same time, generative AI interacts with existing platform architectures in ways that may intensify systemic risks. Where recommendation systems privilege emotionally charged or polarising material, AI makes it easier to produce precisely such content in scalable and highly adaptable forms. In this sense, generative AI amplifies ex-

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[53] See Bobby Chesney and Danielle Citron, "Deep Fakes: A Looming Challenge for Privacy, Democracy, and National Security", 107 California Law Review (2019), Part I.C ("Fueling the Fire"), emphasising that deepfakes interact with social media amplification structures, information cascades, and cognitive biases in ways that accelerate the dissemination and credibility of deceptive content.

isting vulnerabilities in the digital information environment rather than creating an entirely new category of risk.

Under these conditions, the distinction between illegal content and lawful but harmful content may become increasingly difficult to operationalise in a consistent and predictable manner. This places additional pressure on regulatory models that rely on that distinction as a central organising principle and suggests that future governance will require a combination of transparency duties, systemic oversight, and broader forms of societal resilience.

6. The Competitiveness Turn in EU Digital Regulation

Recent developments suggest a broader shift in the political and regulatory environment surrounding EU digital regulation. While the legislative cycle between roughly 2020 and 2024 was characterised by an unprecedented expansion of digital regulation, including the adoption of the DSA, the DMA, the AI Act and the Data Act, the current regulatory discourse increasingly emphasises simplification, competitiveness, innovation capacity, and the cumulative burden of regulation on European businesses. This shift is particularly visible in the European Commission's "Digital Omnibus" proposal presented in November 2025.[54] The initiative forms part of a broader series of Omnibus packages aimed at reducing regulatory complexity and streamlining compliance obligations across several policy fields within the Union. In the digital field, the Commission explicitly frames the initiative as a first step in a wider effort to "stress-test" the digital acquis and simplify the increasingly dense framework of EU digital legislation.

From a broader governance perspective, this development may indicate the emergence of a third phase of EU digital regulation. The first phase, particularly associated with the Juncker Commission's Digital Single Market strategy, focused primarily on market integration and the removal of barriers within the internal market. The subsequent phase under the von der Leyen Commission was marked by a substantial expansion of regulatory intervention aimed at platform accountability, digital sovereignty, systemic risk governance, and the constitutionalisation of the digital public sphere. By contrast, the current phase appears increasingly shaped by concerns relating to Europe's economic

[54] Proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the simplification of the digital regulatory framework and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868 and Directive (EU) 2019/1024 (Digital Omnibus Regulation), COM(2025) 837 final, 19 November 2025.

competitiveness and regulatory sustainability. The Staff Working Document accompanying the Digital Omnibus repeatedly refers to the need for a "simpler and faster Europe", a reduction of compliance costs, and a more "innovation-friendly implementation" of digital rules.[55] The initiative is also explicitly linked to the broader competitiveness discourse reflected in the Draghi[56] and Letta[57] reports, both of which warned against the economic effects of regulatory accumulation and administrative fragmentation within the Union.

At present, the Digital Omnibus does not directly amend the DSA itself. The proposal primarily targets parts of the data acquis, cybersecurity legislation, and aspects of the AI regulatory framework. Nevertheless, the accompanying documents expressly announce a broader "Digital Fitness Check" of the Union's digital legislation and identify the DSA as one of the instruments scheduled for future evaluation during the current legislative cycle. Although the Commission simultaneously emphasises that simplification efforts should not undermine the underlying objectives or standards of existing legislation, the initiative nonetheless illustrates a changing political and economic environment surrounding EU digital governance.

7. Beyond the DSA: Platform Governance in the Age of Synthetic Communication

The Digital Services Act represents a significant step in the evolution of platform regulation. By shifting the regulatory focus from individual pieces of content towards systemic risks, platform architectures, and procedural governance mechanisms, it provides a more structurally oriented response to the dynamics of digital communication. At the same time, the model introduced by the DSA remains inherently contested and exposed to continuous

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55 European Commission, Commission Staff Working Document Accompanying the documents Proposal for a Regulation of the European Parliament and of the Council Amending Regulations (EU) 2016/679, (EU) 2018/1724, (EU) 2018/1725, (EU) 2023/2854 and Directives 2002/58/EC, (EU) 2022/2555 and (EU) 2022/2557 as regards the simplification of the digital legislative framework, and repealing Regulations (EU) 2018/1807, (EU) 2019/1150, (EU) 2022/868, and Directive (EU) 2019/1024 (Digital Omnibus) / Amending Regulations (EU) 2024/1689 and (EU) 2018/1139 as regards the simplification of the implementation of harmonised rules on artificial intelligence (Digital Omnibus on AI), SWD(2025) 836 final, Brussels, 19 November 2025, p. 2.

56 Mario Draghi, *The Future of European Competitiveness*, Report for the European Commission, September 2024, <https://commission.europa.eu/topics/competitiveness/draghi-report_en>.

57 Enrico Letta, Much More Than a Market: Speed, Security, Solidarity – Empowering the Single Market to Deliver a Sustainable Future and Prosperity for All EU Citizens, Report to the European Council, April 2024, <https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf>.

transformation. Platform governance practices are evolving rapidly, regulatory approaches increasingly diverge across jurisdictions, and technological developments, particularly generative artificial intelligence, are reshaping the production and dissemination of digital content.

These developments expose the limits of a regulatory framework that continues to rely on transparency obligations, procedural safeguards, and risk mitigation duties as instruments for stabilising digital public discourse. The growing proliferation of AI-generated and synthetic content may increasingly blur the distinction between authentic and artificial communication, thereby contributing to broader forms of informational uncertainty and declining trust in online environments.[58] If digital platforms gradually lose their function as trusted spaces of public communication, political pressures for more interventionist forms of regulation may intensify, including stronger identity verification requirements, mandatory labelling of synthetic content, or more direct forms of state intervention aimed at protecting the integrity of digital communication infrastructures. Against this background, the DSA is best understood not as a final settlement, but as a regulatory baseline within a rapidly evolving technological and geopolitical environment.

58 See Sarah Montani/Rolf H. Weber, Synthetische Persönlichkeit und der Schutz des Selbst, in Rolf H. Weber, Künstliche Intelligenz und rechtliche Normenordnung (2025), pp. 244 et seq., arguing that AI-generated synthetic realities may progressively blur the distinction between authentic and simulated communication and thereby affect the perceived authenticity of digital interaction spaces.

Security Policy of the European Union and Lithuania in View of Russia's War of Aggression

Haroldas Sinkunas / Indre Isokaite

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I. Introduction

Russia's war of aggression against Ukraine has threatened international legal order at its core and placed the security of European countries at risk. Its ideology and policy reflected in full-scale hostilities revealed a crystal-clear reality: international peace and security is a promise rather than a guarantee and threats posed by the aggressor state are lasting and real. Russia's war in Ukraine has challenged our values and democratic way of life and has accordingly impacted the security strategies of many European states, such as Lithuania, and organisations, including the European Union (EU). Speaking of the latter, from a 70 years' perspective "it is symbolic that both – the quest for peace, necessary in the face of Russia's aggression against Ukraine, and the principle of the rule of law – still are the most significant part of the European project".[1] For Lithuania, which was subject to 50 years of Soviet occupation, the threat posed by Russia is not unexpected or unknown: many years if not decades Lithuania as well as other Baltic states used to warn European countries of the risks posed by Russia. History now reminds us of our common legacy and brings an historic challenge to take. There is no longer a clear boundary left between Lithuania's or even Europe's security and Ukraine's security: their fight for freedom, democracy, rule of law and human rights has become our fight. Reports and assessments on possible scenarios of future geopolitical events often link the likelihood of Russia's attack on other state(s) to the course of the war in Ukraine.

This research explores security threats that Lithuania has been facing recently in relation to Russia's aggression against Ukraine and measures taken by the state as well as the security policy of the EU to address such threats.

II. International security landscape

Initially, a general picture of the international security landscape should be given. As regards *global* security environment, one of major studies of peacefulness Global Peace Index 2025[2] concludes that the world has become less peaceful over the past 17 years. Deteriorating peacefulness is evident: for example, on the report's day there were 59 active state-based conflicts, 98 countries that were at least partially involved in some form of external conflict over the past five years; 78 countries engaged in a conflict beyond their borders. A New Agenda for Peace 2023[3] refers to a world at a crossroad, where there is less trust and solidarity and more competition. It is noted that while the contours of the new global order remain to be defined, multipolarity might serve as one of its defining traits. "In this moment of transition, power dynamics have become increasingly fragmented as new poles of influence emerge, new economic blocs form and axes of contestation are redefined".[4] A significant role of regional organizations is admitted. Nevertheless, there might be

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1 Calleja D., Rusche T. M., ES teisei – 70 metų. Savo piliečių labui veikianti Sąjunga [70 Years of EU Law. Union acting for the benefit of its citizens], Luxembourg: Publications Office of the European Union, 2024, p. 16.

2 The study uses 23 indicators for the assessment of global peacefulness. Institute for Economics & Peace. Global Peace Index 2025: Identifying and Measuring the Factors that Drive Peace, Sydney, June 2025, <https://www.visionofhumanity.org/wp-content/uploads/2025/06/Global-Peace-Index-2025-web.pdf>.

3 United Nations, A New Agenda for Peace, 2023, <https://www.un.org/sites/un2.un.org/files/our-common-agenda-policy-brief-new-agenda-for-peace-en.pdf>.

4 United Nations (footnote 3), p. 3.

complex tensions within – fragmentation, hesitation, lack of unity or willingness to contribute to common aspirations and be equally involved.

NATO, the main collective security and defence alliance, has indicated that the *Euro-Atlantic* region is not at peace. The NATO Strategic concept 2022[5] declares that "the Russian Federation is the most significant and direct threat to Allies' security and to peace and stability in the Euro-Atlantic area. It seeks to establish spheres of influence and direct control through coercion, subversion, aggression and annexation. It uses conventional, cyber and hybrid means against us and our partners. Its coercive military posture, rhetoric and proven willingness to use force to pursue its political goals undermine the rules-based international order".[6] The list of threats is continued by terrorism, conflict and fragility in the Middle East, China's coercive policies, contested cyberspace and other hybrid threats, emerging disruptive technologies, erosion of arms control, including nuclear threats, among others. Similar perception of the security situation, at times defined as most dangerous security environment from the Second World War, has been retained in recent years. For example, in January 2025, Secretary General Mark Rutte stated: "Russia's war against Ukraine rages on. An assertive grouping of adversaries seeks to divide and challenge us. There is war in the Middle East. Terrorism poses a persistent threat. And new technologies bring opportunities but also many serious security challenges".[7]

III. Threats to Lithuania's security

Lithuania's security and even freedom have for years been dependent on its fight against, resilience and response to Soviet, now Russian aggression. Historically, always at a crossroad between the West and the East, Lithuania is geographically situated in the neighbourhood of Belarus and Kaliningrad (Russia). Beeing located in between the adversary states Russia and Belarus, Lithuania has chosen the path of European and transatlantic integration. That is why the Constitution of the Republic of Lithuania establishes provisions which are implied as a principle of a geopolitical orientation: this means, the State's membership in the EU and NATO, that is, European and transatlantic integration and encompasses non-alignment to post-Soviet Eastern unions.

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5 NATO Strategic Concept 2022, <https://www.nato.int/cps/en/natohq/topics_210907.htm>.

6 Ibid., p. 4.

7 NATO Secretary General Mark Rutte, Opening remarks at the meeting of the North Atlantic Council at the level of Heads of State and Government, 25 June 2025, see <https://www.nato.int/cps/en/natohq/opinions_236497.htm?selectedLocale=en>.

Unsurprisingly, the National Threat Assessment 2025[8], prepared by the Lithuanian security institutions, indicates Russia and its aggressive policy as a major threat, taking into account that it has resources to renew its military capacities to continue war in Ukraine, a diplomatic solution in the nearest future can hardly be expected as well as assuming that the Russian regime perceives their relations with the West as being between war and peace. Lithuania faces hybrid threats: "there were dozens of sabotage operations targeting infrastructure, energy, transport, information systems, and objects of historical memory in Lithuania and other European countries supporting Ukraine".[9] Threats to Lithuania's security also come from Belarus – Russia's ally and partner in military and economic cooperation.

Today, Lithuania is facing a wide range of security threats that call for appropriate action. They are different in their nature, duration and seriousness and, with no intention of providing an exhaustive list, the following are to be mentioned:

- illegal migration from Belarus;
- hybrid threats in the Baltic Sea;
- the Suwalki Corridor (Gap);
- "Zapad" military exercise;
- growing militarization of hostile state;
- smuggling balloons from Belarus;
- drones entering Lithuanian airspace
- GPS signal jamming from the Kaliningrad region;
- aggressive propaganda;
- attempts to rewrite history;
- persecution of the Russian and Belarussian opposition;
- other (deliberate arson, etc.).

1. Illegal migration from Belarus

Lithuania in recent years has been facing so called "instrumentalised migration" from Belarus. At the beginning of the summer of 2021, an illegal migration crisis broke out on Lithuania's border with Belarus. Just before first groups of migrants appeared near Lithuania's borders A. Lukashenko had declared: "We were stopping migrants and drugs – now you will catch them and eat them

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8 Ministry of National Defence of Lithuania, National Threat Assessment 2025, <https://kam.lt/wp-content/uploads/2025/03/2025-GR-ENG-02-21-El-be-uzraso_.pdf>.

9 Ministry of National Defence of Lithuania (footnote 8), p. 7.

yourselves".[10] Migrants began to flow into Lithuania and other countries sharing a border with Belarus – Latvia and Poland. This wave of migration was inspired by the Belarusian government. This is evidenced by such signs as the significant increase in flights operated by the Belarusian state airline "Belavia" to certain Asian countries affected by crises or with very low living standards – Syria, Iraq, Afghanistan and others. In addition, advertisements were purchased on television in these countries, claiming that Lithuania was the EU country easiest to enter, with the only requirement being to travel to Belarus. After their arrival to Belarus, they were free of charge transported to the Lithuanian border and instructed where to cross. In many cases the Belarusian border guards themselves assisted migrants in crossing into Lithuania, either by showing them the way or even by damaging infrastructure of state border. In a very short time, more than 4'000 migrants entered Lithuania. From July 2021, the flows of migrants rose to more than 100 per day, and sometimes more than 800 migrants attempted to enter Lithuania illegally daily.

Due to the influx of migrants at the Lithuanian border, a state of emergency was declared, the Lithuanian armed forces were called to ensure security and control supporting the State Border Guard Service and physical barrier (a barbed wire (concertina) fence) along the Lithuanian border has been installed. Lithuania has been trying to balance the need to ensure human rights standards and protect the State's security, however, Lithuanian border guards were allowed to push back migrants attempting to enter Lithuania from Belarus disregarding established procedure, i.e. not through designated border crossing points. Since then, the number of migrants who have been denied entry to Lithuania has exceeded 24'000.

These cases will undoubtedly contribute to the new developments in the field of asylum and migration and have already been reflected in the new EU asylum and migration policy. In July 2025, the proceedings by Lithuania have been instituted against Belarus at the International Court of Justice (ICJ) in the case Alleged Smuggling of Migrants[11] and in cases against not only Lithuania, but also Latvia and Poland related with the alleged "push back" of migrants are pending before the European Court of Human Rights (ECHR).[12]

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10 Lithuanian PM calls Lukashenko 'migrants and drugs' threats absurd, BNS, 27 May 2021, <https://www.lrt.lt/en/news-in-english/19/1418870/lithuanian-pm-calls-lukashenko-migrants-and-drugs-threats-absurd?srsltid=AfmBOooEuXQQKSJ01fHWd635MZulLG8uesGUwoZggAjFurBzhOE6rje5>.

11 International Court of Justice, Alleged Smuggling of Migrants (Lithuania v. Belarus), <https://www.icj-cij.org/case/200>.

12 In February 2025, there were over 30 cases regarding "pushbacks" at the Belarusian borders from summer 2021 to summer 2023 pending before the ECtHR against Latvia, Lithuania and

Three cases pending before the ECHR Grand Chamber concern the legal and practical consequences of the respective measures for the applicants – Afghan, Iraqi and Cuban nationals – who complain that they were pushed back to Belarus, which is not a safe third country, without being given an opportunity to request asylum in the relevant EU Member States. They complain that they were subjected to collective expulsion, without an examination of their individual circumstances and without having a genuine and effective access to means of legal entry. In general, respondent States mostly seek to emphasize the need to protect national security, applicants' failure to follow established procedure and among other arguments rely on the case-law of the ECHR in similar cases related with illegal migration. For example, N.D. and N.T. v. Spain, where violations have not been established by the ECHR in the situation related with the attempts of the groups of migrants who used even force trying to enter the territory often at nighttime ignoring established procedure and therefore were returned[13].

As regards the ICJ, this is the first time Lithuania institutes inter-state proceedings before this court. In the proceedings against Belarus before the ICJ, Lithuania claims that Belarus breached many of its obligations under the Protocol against the Smuggling of Migrants by Land, Sea and Air (supplementing the United Nations Convention against Transnational Crime) by: "facilitating, supporting, and enabling the smuggling of migrants, and also failing to take necessary border measures to prevent and detect the smuggling of migrants and to ensure the security and control of documents; failing to exchange information to prevent, detect, and investigate the smuggling of migrants, strengthen cooperation with Lithuania's border control agencies, and cooperate in the field of public information to prevent potential migrants from falling victim to organized criminalized groups; and failing to preserve and protect the rights of migrants and afford them appropriate assistance". Lithuania contends that "the smuggling of migrants through Belarus into Lithuania has caused serious harm to Lithuania's sovereignty, security, and public order, as well as to the rights and interests of the smuggled migrants themselves, who have been exposed to grave abuses in trying to reach Lithuanian territory".[14]

Poland. ECtHR Press Release: Grand Chamber hearing concerning alleged "pushbacks" at the Lithuanian-Belarusian border, 12 February 2025.

13 Ancite-Jepifánova A. From the EU-Belarus Border to Strasbourg. 3 March 2025. Available: <https://verfassungsblog.de/eu-belarus-border-migrant-instrumentalisation/>. Also see ECHR Factsheets. Collective expulsions of aliens. October 2024, <https://www.echr.coe.int/documents/d/echr/FS_Collective_expulsions_ENG>.

14 ICJ press release, 19 May 2025, <https://www.icj-cij.org/sites/default/files/case-related/200/200-20250519-pre-01-00-en.pdf>.

2. Hybrid threats in the Baltic Sea

In recent years Baltic Sea has become more vulnerable to threats to critical undersea infrastructure. Lithuania and other Baltic Sea countries have been reporting repeating cases of damaged or cut undersea cables attributing such incidents to Russia's "shadow fleet". Targeting to disrupt the provision of critical state services of communication and energy transmission, such attacks may qualify as sabotage and amount to hybrid attacks which are just below the threshold of kinetic warfare and blur the lines between peace and conflict. Baltic Sea is an area of critical strategic importance: it serves for maritime trading routes and communication and holds potential for the development of new energy sources thus is likely to remain attractive to similar incidents which may range from interruption of commercial vessels navigation to damaging critical state infrastructure. In the face of such threats, Baltic States have turned to both, the EU and NATO, which hold both, power and instruments needed to respond to such threats. In general, such measures as surveillance, information sharing, patrolling at sea, strengthening response capacities and increasing resilience have been activated. NATO has established a "Baltic Sentry" aimed at increasing patrol aircraft, warships and drones to deter destabilising acts and the EU developed regulation on critical entities and responded with application of sanctions on "shadow fleet" ships.

3. The Suwalki Corridor (Gap)

This is a section of the Lithuanian Polish border about 65 km wide, located between Russia's Kaliningrad region in the west and Belarus in the east. The Suwalki Corridor is the only land link connecting the Baltic States with NATO and EU territory. It is said to be the most vulnerable NATO location in Europe from a military point of view: if an enemy were to succeed in taking control of the Suwalki Corridor, the Baltic States would be cut off from the rest of the NATO countries, making their defence extremely complicated and resulting in a very serious security crisis. Incidentally, during the "Zapad" exercises held in 2017, joint Russian and Belarusian forces specifically trained to seize control of the Suwałki Corridor. This area is of specific importance not only in terms of military but also human perspective. In case of (a threat of a) real attack, this would also become the main or even a single route for residents of Lithuania to flee having taken such crucial decision as many Ukrainians were called to. Therefore, this zone is one of the most discussed areas in NATO planning. Lithuania and Poland, together with their allies, regularly conduct exercises, strengthen defence plans, and deploy additional forces. The NATO brigades stationed in the Baltic States are intended, among other things, to provide deterrence and to demonstrate that aggression against these countries would mean conflict with NATO.

“Zapad” military exercise and growing militarization of hostile states. Russian-Belarussian military exercise is closely watched by NATO and in particular Belarus neighboring European states each time it takes place. The exercise is not only aimed at training hostility but also raises a real risk of deployment of military troops along the border which preceded Russia’s invasion in Ukraine in 2022 and Georgia in 2008. Belarussian military is closely intertwined with Russia’s military. Just to remind, open aggression against Ukraine in February 2022 was launched from the territory of Belarus which has been used for continuing the aggression against Ukraine since then.

Most recently, “Zapad” took place in September 2025 in Belarus. This was a counterpart to the “*Zapad-2021*” exercise, after which the large-scale invasion of Ukraine began. The need to take this exercise seriously is also illustrated by the example of Georgia, which was invaded by Russia six days after the “*Kavkaz-2008*” exercise in 2008, resulting in the loss of Abkhazia and South Ossetia – comprising about 20 percent of the country’s territory altogether.

According to available information[15], the “*Zapad-2025*” drills seem to have encompassed training of the potential use of nuclear weapons and medium-range missiles which have already been deployed on Belarusian territory. There is no credible information on the scale of military involved, however, analysts assess that actual participation could have ranged between 100’000–150’000 troops, much exceeding official numbers.

Analysts warn that even a smaller-scale exercise poses a threat: such maneuvers should be seen not only as a symbolic event but also as part of an increasingly active strategy designed to train and prepare for potential land escalation on NATO’s eastern flank beyond Ukraine. This represents a lasting, complex, multidimensional challenge for Europe and the Euro-Atlantic community. Western leaders must not only assess the consequences of such large-scale military exercise but also be ready to counter-related hybrid pressure campaigns aimed at undermining their democratic unity. In response to the Belarusian Russian exercise, NATO countries are simultaneously conducting their drills – “*Iron Defender*” in Poland and “*Fierce Wolf*” in Lithuania.

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15 E.g., Belarus says it will draw up nuclear weapons plan and Oreshnik missile system at joint exercises with Russia in September, see news of 13 August 2025, <https://www.pravda.com.ua/eng/news/2025/08/13/7525986/>.

4. Growing militarization of hostile states

Reports declare that "Russia is expanding its brigades and military formations and capacities and settling them along NATO Eastern border and increases drone production".[16] Russia's aggression against Ukraine has called European states to review military capacities and conscription and revealed shortcomings of their military readiness. Lithuania also experiences such deficiencies. The war in Ukraine has become the race in logistics and states have increased military production dramatically. Russia's growing military production and expansion of military capabilities along NATO's border (including the territory of Belarus) remains a serious threat. Reports propose that in terms of military capacities Russia would be capable to launch an attack against a NATO country in a few years.[17]

5. Smuggling balloons from Belarus

Starting from the end of the year 2025 meteorological balloons have been drifting over the border with Belarus entering the territory of Lithuania's sovereignty in high numbers. In 2026, the first shipment of contraband cigarettes was intercepted in January carrying 3'000 packs of cigarettes with a GPS tracking device attached. In 2025, 635 shipments have been recorded and 122 persons were detained suspected for contraband smuggling.[18] Illicit balloon traffic has caused risk to safety of civil aviation demanding closure of national airports for dozen times which resulted of delayed or cancelled flights affecting thousands of passengers. The Lithuanian government declared a state of emergency which allowed certain measures to be taken to respond to such threats; as there was no explicit right to shoot such balloons or resort to similar means, criminal persecution for smuggling has been conducted as well as political pressure against Belarus. Control has been intensified, and the situation has become manageable. Balloons are "weaponized" by Belarus. One of the reports states that "Belarusian authorities have the capability to stop the

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16 Lithuanian intelligence says Russia won't threaten NATO while Ukraine war continues, see Lithuanian National Radio and Television (LRT), 6 March 2026, <https://www.lrt.lt/en/news-in-english/19/2859104/lithuanian-intelligence-says-russia-won-t-threaten-nato-while-ukraine-war-continues?srsltid=AfmBOoqr8t7DIMbvGQNAj9y6ZBBhdUdOw0jvqli1pWTOkn7tnqP-B99->.

17 Germany stations army brigade in Lithuania amid Russian threat, euronews, 2 February 2026, <https://www.euronews.com/2026/02/02/why-germany-is-stationing-a-bundeswehr-brigade-in-lithuania>.

18 Lithuanian border guards seize first balloon-smuggled cigarette shipment of the year, LRT, 6 January 2026, <https://www.lrt.lt/en/news-in-english/19/2798272/lithuanian-border-guards-seize-first-balloon-smuggled-cigarette-shipment-of-the-year?srsltid=AfmBOorhPZ7GCMrZtsZmiWd-Mj1cXB_cTfk3kgNxXxdC4vxSbfHdDOVF>.

smuggling of cigarettes into Lithuania using weather balloons but are deliberately allowing such activity to continue, exploiting criminal networks to pressure Lithuania into political dialogue".[19]

6. Drones entering Lithuanian airspace

In September 2024, a Russian-launched Shahed-type unmanned aerial vehicle that was carrying explosives entered Latvian territory and crashed; fortunately, its explosives did not detonate and were deactivated. In July 2025, two Russian-made Gerbera-type drones entered Lithuanian airspace from Belarus. According to Lithuanian officials, the first posed no threat, carried no explosives, and crashed near the Belarusian border. The second, also a Gerbera-type drone, carried 2 kg of explosive material and penetrated deeper into Lithuanian territory. Fortunately, the explosives carried by the drone did not detonate.

These drones that entered Latvian and Lithuanian airspace from Belarus exposed certain gaps in the airspace security of both countries. Among other things, they showed that, first, there is a lack of effective means to detect small and low-flying drones; second, the decision-making algorithm did not allow for rapid responses in determining what measures should be taken; and third, the NATO Baltic Air Policing mission does not provide sufficient protection against drones, highlighting the need for other specialized measures. At EU level, taking into account recently faced "growing and multi-faceted challenges relating to drones and meteorological balloons, including hostile overflights, airspace violations, disruptions to airports, as well as risks to our critical infrastructure, external borders and public spaces", EU Action Plan on Drone and Counter Drone Security was presented by the European Commission in February.[20] It aims at both, internal safety and defence and encompasses practical tools ranging from boosting detection capacities to strengthening the EU's defence readiness.

7. GPS signal jamming from the Kaliningrad region

Lithuania also experiences blocking GPS signal along its Western border. Lithuanian Armed Forces in 2025 reported that GPS signal jamming has in-

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19 Lithuanian intelligence says Russia won't threaten NATO while Ukraine war continues, LRT, 6 March 2026, <https://www.lrt.lt/en/news-in-english/19/2859104/lithuanian-intelligence-says-russia-won-t-threaten-nato-while-ukraine-war-continues?srsltid=AfmBOorDedEQ9N36LQIAE2kCF5qJ13_txapiUOIVpuYONcR5cquVZdnx>.

20 European Commission, Action Plan on Drone and Counter Drone Security, 12 February 2026, <https://digital-strategy.ec.europa.eu/en/policies/drone-security>.

creased sevenfold in comparison to the previous year.[21] GPS signal jamming causes a wide range consequences negatively affecting aircraft and drone control, NATO activities and Klaipėda Seaport daily routine.

8. Aggressive propaganda

Propaganda has been actively used by Russia and Belarus many years. Just to remind that "special military operation" in Ukraine in February 2022 was started by Russia as then announced by its president in necessity to respond to neonazism and protect Russian speakers in Ukraine. Russia tries to undermine the unity to support Ukraine, exaggerates alleged Lithuania's unfriendly policy towards Russian speakers and uses each occasion to distort facts and manipulate information. Among many the following narratives may be mentioned: Lithuania is a failing state suffering from migration and unable to manage its economy; Lithuania sympathizes with Nazism; In Lithuania, Russian-speaking individuals are being persecuted etc.

A study on Lithuanian society's resilience to informational threats, the results of which were published at the beginning of 2024[22], revealed the following trends. 68% of respondents never use Russian and Belarusian channels that spread disinformation, while 8% say they watch these channels daily or at least once a week; 63% mainly notice fake news on social media and believe that the response to it is inadequate. The results show that citizens notice disinformation quite frequently and assess their skills in recognizing disinformation quite positively.[23]

9. Attempts to rewrite history

Russian propaganda is related with persistent and decade long attempts to reinterpret the history denying the right of independence of so-called post-soviet countries or even the right of their nations to exist. Vladimir Putin has defined the collapse of the Soviet Union as "the greatest geopolitical catastro-

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21 Drone chaos on Lithuania's coast: GPS jamming near Kaliningrad increased sevenfold, LRT, 10 June 2025, <https://www.lrt.lt/en/news-in-english/19/2586184/drone-chaos-on-lithuania-s-coast-gps-jamming-near-kaliningrad-increased-sevenfold?srsltid=AfmBOopgaXy3d9MUA_m1XBPL4eOs0NndUqzq-JAfPXTEp4sf3CqEMSDg>.

22 Most people in Lithuania believe that social media managers do not respond appropriately to disinformation. Government of the Republic of Lithuania, 8 January 2024. Available: <https://lrv.lt/lt/naujienos/dauguma-lietuvos-gyventoju-mano-kad-socialiniu-tinklu-valdytojai-netinkamai-reaguoja-i-dezinformacija/>.

23 44% of respondents said they are very good or good at recognizing deliberately spread false information, while 29% rate their ability to identify disinformation as average.

phe of the 20th century"[24] and on many occasions contested the restoration of Lithuania's independence in 1990 since then. From textbooks at school to news on mass media, in all fields and forms Russia depicts its own history different from reality and international law. Researchers suggest that Russia's "hostile relationship with Europe and nowadays the West, its historically established tendency of authoritarian government, relative weakness of the rule of law inside the country, and the utmost desire to preserve the territorial integrity of Russia as the world's largest territorial state have decisively shaped post-Soviet Russia's approaches to international law".[25] An open aggression against Ukraine and international crimes continuingly committed by Russia in Ukraine have demonstrated Russia's complete departure from the rules based international legal order. But what is more, is the regime's ideology, driven by imperialism, hostility, disrespect for human dignity, humiliation of other nations and continuous distortion of facts trying to rewrite history and even reshape the state borders on the world's map.

10. Persecution of the Russian and Belarussian opposition

Opposition figures from Russia and Belarus report being threatened by KGB security services abroad. Just recently, in March 2026, an investigation has been opened at the International Criminal Court having concluded that there is a reasonable basis to believe that international crimes were committed at least in part on the territory of the Republic of Lithuania. In September 2024 Republic of Lithuania requested the Office of the Court to investigate alleged crimes against humanity (deportation, etc.) committed from 1 May 2020 onwards. Launching the investigation opens door to prove and seek accountability: "the large-scale commission of the crimes, the number of victims, and the organised nature of the acts are all factors illustrating the widespread and systematic nature of the attack carried out by the authorities against actual or perceived political opponents".[26]

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[24] Putin deplored collapse of USSR. BBC, 25 April 2005, <http://news.bbc.co.uk/2/hi/4480745.stm>.

[25] Mälksoo L., Russian Approaches to International Law, Oxford, 2015, p. 3.

[26] Office of the Prosecutor of the International Criminal Court. The Situation in the Republic of Lithuania / Republic of Belarus. Summary of Preliminary Examination Findings, <https://www.icc-cpi.int/sites/default/files/2026-03/Summary-of-findings-Situation-Lithuania-Belarus.pdf>, para 9.

IV. EU Response

The EU's perception of threats to security is related with their comprehensiveness and interrelation and a close connection with a global dimension from which Europe is not isolated. The global security environment has become more complex and multifaceted. Threats and challenges that the EU faces range from conventional to hybrid threats including cyber-attacks, terrorism, propaganda and are affected by a global environment of instability, insecurity, increased competition and decreased trust. Military conflicts are ongoing not only globally, but also in EU's neighbourhood. Russia's war against Ukraine has urged to prioritize security in the EU global strategy. As it is stated in the EU's Strategic Compass for Security and Defence, EU clearly understands that "Russia is grossly violating international law and the principles of the UN Charter and undermining European and global security and stability"[27]. The latter is a lasting threat and there are many more challenges: climate change prone to foster instability in fragile societies, competition as regards the access to natural gas and oil deposits, artificial intelligence and disruptive technologies.

In recent years the discussion on the need of Europe's better readiness to defend and ability to respond to military threats more independently has been heard more often. In March 2025, the European Commission presented the Community's defence guidelines – the so-called White Paper for European Defence – Readiness 2030. The White Paper proposes measures to close critical capability gaps and build a strong defence industrial base, such as development of greater military capabilities; stepping up support to Ukraine; strengthening European defence industry and partnerships with like-minded countries around the world as well as ensuring a better protection of external borders (with Russia and Belarus).

In addition, sanctions imposed by the EU are to be emphasized. Individual, diplomatic, economic, sectoral and other type of bans and restrictions on Russian individuals and entities have so far been adopted in 19 sanction packages aiming to reduce Russia's ability to wage this brutal war and seeking to end the aggression.

V. Lithuania's security policy

Lithuania's security is perceived within its cooperation with the EU and NATO and supporting the interaction of these two organisations. This Euro-Atlantic

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[27] A Strategic Compass for Security and Defence, <https://www.eeas.europa.eu/sites/default/files/documents/strategic_compass_en3_web.pdf>, p. 17.

integration, 20 years of which (membership in the EU and NATO) Lithuania celebrated in 2024, was a clear choice of a geopolitical orientation, a declaration of values and seen as a guarantee of security and defence. Lithuania's security aspirations today are also related with the membership in both organisations.

Lithuania is an active participant in the EU's Common Security and Defence Policy (CSDP): it develops civilian and military capabilities, contributes to EU missions and operations, develops resilience to hybrid threats. "Over several decades, the EU has contributed to international peace and security, undertaking nearly 40 CSDP missions and operations in regions of conflict and crisis, 18 of which are ongoing today".[28] The Versailles declaration which was adopted by the EU leaders 10-11 March 2022 foresees increase in defence spending, continuation of mission and operations capability, promotion of synergies between civil, defence, space research and innovation, tackling disinformation, preventing attacks on critical infrastructure and also refers to stepping up military mobility within the EU.

Essential part of Lithuania's security policy is defence policy[29] which aims at deterrence against the armed attack of Lithuania and in case of armed aggression – protection of its independence, sovereignty and territorial integrity. Lithuania not only seeks for security guarantees but also contributes to a better regional security and stability environment. This goal is pursued through the joint efforts of the Lithuanian Armed Forces, NATO allies, state institutions and society and combining all means, both military and non-military.

Military means and capacities need to be adequate and enabling to react to hybrid threats, but what is clear is the need of increase in defence funding and ensure adequate military deployment. In order to retain long-term Germany's military presence in the region the German brigade was activated on 1 April 2025 in Lithuania. Once its formation is complete as expected by the end of 2027, the brigade should consist of 4'800 troops and around 200 civilian staff.[30]

Human security is an important part of the security concept and increasing resilience to threats (propaganda, recruitment, etc.) is emphasized. State is

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28 Lithuania's participation in the EU Common Security and Defence Policy (CSDP), <https://www.urm.lt/en/lithuanias-security-policy/lithuanias-participation-in-the-eu-common-security-and-defence-policy-csdp/996>.

29 Ministry of National Defence of Lithuania, Defence Policy, Strategic Provisions, <https://kam.lt/en/strategic-provisions/>.

30 Germany stations army brigade in Lithuania amid Russian threat, 2 February 2026, <https://www.euronews.com/2026/02/02/why-germany-is-stationing-a-bundeswehr-brigade-in-lithuania>.

also developing the mobilization system which would ensure quick and flexible response to the changing situation. Facing hybrid and cyber threats, Lithuania continues to strengthen its capabilities to prevent, identify them, respond and increase an overall resilience to them with a focus on the protection of critical infrastructure. All these tasks require a comprehensive approach: improving legal regulation, developing institutional capacities and reviewing political strategies.

Last but not least to mention is the remaining need to build resilience to Russia's attempts to interfere into domestic democratic processes and a large and coordinated network of Russian propaganda instruments, consisting of state-controlled media, social networks and pro-Russian websites.

VI. Concluding Remarks

Not only there are no clear lines between peace and war but also no boundaries between Ukraine's and Europe's, including Lithuania's, security. Peace for Ukraine means peace for Europe, their fight for democracy, freedom, rule of law and human rights has become our fight. And our responsibility. A historic challenge to take. And an uneasy one: to maintain understanding of continuous support for Ukraine in the long run may become not that simple as separate European countries also face other threats, including terrorism or migration issues, and may prioritize them differently.

Still, in general, the scale and brutality of Russia's war against Ukraine have strengthened unity among European States, increased solidarity and fostered joint action. Security may no longer be understood within domestic borders in the world of transition, global environment of decreased stability, predictability and trust. "In an increasingly interconnected world, Europe's security starts abroad".[31]

Still, the EU is at the crossroads faced with a need to answer what exactly it wants and is capable to be in terms of its enlargement and development of its hard and soft power globally. In any case, there is a common need of EU being more flexible and capable of ensuring its own security environment, ready to respond to predicted and unexpected threats more effectively and better react to crises. A stronger EU in security and defence would positively contribute to Euro-Atlantic security and regional stability as well as the rules-based international legal order.

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31 European External Action Service, EU Peace, Security and Defence, <https://www.eeas.europa.eu/eeas/eu-peace-security-and-defence_en>.

In times of hardship European States should be guided by the EU values, recall their common legacy and the importance of democracy and freedom in opposition to authoritarian threats. Lithuania knows this price well.

Unanimity in Common Foreign and Security Policy: The Role of Qualified Majority Voting in Times of Geopolitical Uncertainty*

Juan Santos Vara

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I. Introduction

The Treaty of Lisbon in 2009 has substantially modified the constitutional framework in which the European Union (EU) foreign policy is developed and implemented. It abolished the pillar structure of the EU and established for the first time a set of principles and values in Article 21 TEU that should guide the whole external action. The intergovernmental nature of the Common Foreign and Security Policy (CFSP) and the Common Security Policy and Defence Policy (CSDP) is clearly reflected in the Treaties. Nevertheless, after the abolition of pillar structure by the Lisbon Treaty, the CFSP cannot be regarded as separate pillar but as an integral part of the EU legal order.[1] The Member States have continued to present CFSP as a policy that has not overcome the intergovernmental nature of the old European Political Cooperation 'while neglect-

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1 See van Elsuwege P., 'Securing the Institutional Balance in the Procedure for Concluding International Agreements: *European Parliament* v. *Council* (*Pirate Transfer Agreement with Mauritius*)' (2015) 52 CML Rev. pp. 1379–1398.

ing an integrationist undercurrent that is boosted by internal and external developments'.[2]

In EU external action, there is no single voting procedure uniformly applied in all policies. This reflects the intention of the Member States to distinguish between the different domains of external action. Such differentiation stems in part from concerns about being outvoted on matters closely related to national sovereignty. Accordingly, the dominance of the Member States in CFSP is ensured through mechanisms, such as the unanimity in the Council, which ensures that no significant foreign or security interest is left aside. The divergent voting arrangements included in the Treaties explain why legal and academic debates on EU external action, continue to distinguish between CFSP and non-CFSP areas. While unanimity and qualified majority voting operate side by side in EU external action, the applicable voting rule ultimately depends on whether a measure falls within CFSP or other external policy areas.

The CFSP 'is subject to specific rules and procedures' that include the requirement of unanimity as laid down in Article 31(1) of the Treaty on European Union (TEU). Although the EU Treaties provide for a number of options to use qualified majority voting in CFSP context, so far EU Member States have been reluctant to use them. As the geopolitical climate has become more hostile and foreign policy has risen to the forefront of the EU's political priorities, the ability of a single Member State to block collective action may undermine the Union's credibility on the global stage.[3]

In the last decade, there has been many political calls to reform CFSP decision-making rules in order to prevent paralysis.[4] It is therefore unsurprising that a move from unanimity to qualified majority voting in CFSP has gained increasing prominence on the EU political agenda. This momentum is largely driven by the emergence of new challenges, including Russia's war against Ukraine, which demand swift and effective decision-making. Everyone seems to agree on the consideration that the EU is facing unprecedented challenges at external level. Some of the decisions adopted by the US administration are deeply concerning not only in their substance but also in their disregard for

2 Wessel R. and Matera C., Context or content? a CFSP or AFSJ legal basis for EU international agreements, (2014) 49 Revista de Derecho Comunitario Europeo, pp. 1047–1064.

3 The European Parliament regretted 'the lack of progress in improving the decision-making process on CFSP matters, which impacts the efficiency, speed and credibility of EU action and decision-making on the international scene', European Parliament, Implementation of the Common Foreign and Security Policy—Annual Report 2020, P9_TA(2021)0012 (20 January 2021).

4 See Wessel R. A. and Szép V., The implementation of Article 31 of the Treaty on European Union and the Use of Qualified Majority Voting, European Parliament 2022, PE 739.139 65.

the principles of international law, international organizations and the world order. However, the EU has been unable to condemn the illegal intervention of the United States on Venezuela that took place on 3 January 2026. Furthermore, power competition between China and the US will probably intensify in the coming years, while climate change poses growing economic, social and geopolitical challenges. There has been a great deal of attention and policy-oriented research on the need for the EU to strengthen its geopolitical influence through well-designed actions in several key policy areas, including CFSP.

In this context, the EU has a duty to take the lead in addressing global challenges. This has been recognized at the highest level by the European institutions. When presenting the Strategic Compass for a stronger EU security and defence in the next decade in 2022, the former High Representative for Foreign Affairs and Security Policy (HR) Josep Borrell warned that 'the threats are rising and the cost of inaction is clear'.[5] In November 2019, the European Commission President-elect at the time, Ursula von der Leyen stressed the need for the EU to become 'more geopolitical'. This objective has been reiterated multiple times since then. However, it is still far from being achieved.

In times of geopolitical uncertainty, the right of a single Member State to veto the action of whole Union could make EU foreign policy ineffective. As a consequence of this practice the EU is sometimes unable to promote its values and interests, as required by Article 3(5) TEU and harm the EU reputation as international actor. One of the most well-known cases was the blocking of sanctions against Belarus by Cyprus demanding severe action against Turkey in 2020. The veto could be used by one single Member State to force the EU to adopt a specific position on another issue of foreign policy or get benefits in completely unrelated matters. The internal division could also be exploited by third countries and, in particular, by the Trump administration. The reform of Treaties could, in principle, provide a way to relax or even eliminate the unanimity requirement in CFSP. However, experience demonstrates that such reforms are far from swift and typically entail protracted negotiations among Member States. An alternative approach to expanding the use of qualified majority voting in the CFSP is to use the current Treaty provisions that allow for more efficient decision-making procedures. The aim of this contribution is to analyse the decision making process in CFSP and the possibilities to expand the use of qualified majority voting (QMV).

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5 European External Action Service, A Strategic Compass for Security and Defence, 2022.

II. Decision making process in CFSP

CFSP is the only EU policy area that was not incorporated into the TFEU. For political reasons, it was deliberately retained in the TEU, reflecting its distinct origins. From the outset, the CFSP was excluded from the EC Treaty by the Maastricht Treaty in 1992 in order to preserve the influence of the Member States in a field that is directly related to national sovereignty. The intergovernmental decision-making introduced by the Maastricht Treaty is still present in the current decision making-procedures enshrined in the Treaties.

Even though the topic of efficient decision-making procedures in EU foreign and security policy 'is high on the political agenda',[6] there are still clear divergences between decisions adopted in the context of CFSP/CSDP and other policy areas. With regard to the CFSP/CSDP, the Council is the main decision-making body, but unlike most other Union policies, the Commission plays a marginal role, and the High Representative (HR) holds a central position because of their pivotal responsibilities. According to Article 30(1) TEU 'any Member State, the HR of the Union for Foreign Affairs and Security Policy, or the HR with the support of the Commission', may submit proposals to the Council. The HR plays a key role in CFSP and holds the position of Vice-President of the Commission (Article 17 TEU). The HR's role is clearly upgraded in the Lisbon Treaty. It can be argued that the HR is the most important person in the field of external relations because of his/her pivotal role.[7] The President of the European Council exercises their external tasks 'without prejudice to the powers conferred on the HR of the Union for Foreign Affairs and Security Policy' (Article 15(6) TEU). The HR is appointed through qualified majority by the European Council with the agreement of the President of the Commission. The HR implements the common foreign and security policy of the Union (Article 18(2) TEU), chairs the Foreign Affairs Council (Article 15 TEU), assists the Council and the Commission in achieving a consistent policy (Article 21 TEU), together with the Council and ensures compliance with the policy by the Member States (Article 24(3) TEU). There is no doubt that the HR is entrusted by the Treaties to play a significant role in CFSP/CSDP.

The European Parliament has a much more limited role in CFSP. Although the Parliament is consulted by the HR (Article 36 TEU), the fact that legislative acts are excluded in the field of CFSP seriously limits the role of the Parliament in this area.[8] For instance, CSDP missions are normally established by the Coun-

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6 Wessel R. A. and Szép V. (footnote 4), p. 11.

7 Ibid., p. 22.

8 See Wessel R. A., Legal aspects of parliamentary oversight in EU foreign and security policy, in Santos Vara J. and Rodríguez Sánchez-Tabernero S. (eds.), The Democratisation of EU International Relations through EU law, Routledge 2019, p. 137.

cil on the basis of Article 42(4) TEU acting unanimously on a proposal from the HR or an initiative from a Member State. The HR is entrusted, under the authority of the Council and in close and constant contact with the Political and Security Committee, to ensure the coordination of the civilian and military aspects of these missions.[9]

As regards the role of the Court of Justice in CFSP, Article 24(1) TEU generally excludes judicial review by EU courts in relation to provisions of primary law relating to the CFSP and legal acts adopted by the institutions. The Treaty of Lisbon has introduced for the first time two exceptions to the generalised exclusion of judicial review of the CFSP. The carve-out includes two claw-backs. First, the CJEU is responsible for monitoring compliance with the clause of non-mutual affectation between CFSP and other areas of EU action, provided for in Article 40 TEU. Second, the Courts of the EU have jurisdiction to review the legality of decisions taken by the Council based on CFSP provisions imposing restrictive measures against natural or legal persons. The limited jurisdiction of the EU courts in the field of CFSP has been clearly nuanced through the case-law of the CJEU. Since the entry into force of the Treaty of Lisbon, the CJEU has developed a consistent line of case law that has contributed significantly to strengthening the jurisdiction of EU courts in the field of CFSP.[10] The CJEU has interpreted the limitation of jurisdiction in CFSP as an exception to the general jurisdiction of the EU Courts based on Article 19(1) TEU that must be interpreted narrowly. The role of EU Courts in the field of CFSP is considered as it is governed by the same principles, in particular the principle of effective judicial remedies as laid down in Article 47 of the Charter of Fundamental Rights.[11] On 10 September 2024, the CJEU delivered the long-

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9 Article 43(2) TEU.

10 See *Tanzania*; Case C-72/15 *Rosneft*, ECLI:EU:C:2017:236; Order of the General Court (First Chamber) of 9 November 2016, *Jenkinson v. Council and Others*, ECLI:EU:T:2016:660; Judgment of the General Court (Ninth Chamber, Extended Composition) of 25 October 2018, *KF v. European Union Satellite Centre (SatCen)*, ECLI:EU:T:2018:718; C-43/17 P, *Jenkinson v Council and others*, 5 July 2018, ECLI:EU:C:2018:531; C-134/19 P, *Bank Refah Kargaran v Council*, 7 October 2020, ECLI:EU:C:2020:793.

11 This topic has attracted the attention of many authors in the last years. See: Santos Vara J., 'The judicial control of foreign policy: towards the normalisation of CFSP in the EU legal order (within the context of the *Bank Refah Kargaran* case), (2021) 68 Revista de Derecho Comunitario Europeo, pp. 159–184; Butler G., Non-contractual liability and actions for damages regarding restrictive measures through FSP Decisions: Jurisdiction of the CJEU confirmed, EU Law Live (7 October 2020); Koutrakos P., Judicial Review in the EU's Common Foreing and Security Policy, (2018) 67 International Comparative Law Quartely, pp. 1–35; Hillion C., Conferral, cooperation and balance in the institutional framework of the EU external action, in Cremona M. (ed.), Structural Principles in EU External Relations Law (Hart Publishing, 2018); Verellen T., *H v. Council*: Strengthening the Rule of Law in the Sphere of the CFSP, One Step at a Time (2016), 1 European Papers – European Forum, p. 1; Johansen S.

awaited judgments in Joined Cases *KS* and *KD v Council and Others* (C-29/22 P and C-44/22 P) and *Neves 77 Solutions* (C-351/22).[12] In *KS/KD*, the CJEU held that its jurisdiction may be based on the fact that the acts and omissions at issue are not directly related to the political or strategic choices made by the institutions, bodies, offices and agencies of the Union in the context of the CFSP.

III. The implications of unanimity in CFSP

Direct vetoes refer to situations in which a particular Member State blocks the adoption of decisions in a particular topic. In the past, clear public examples of this scenario were rare. Often, when a veto is anticipated on a legally binding decision, a formal proposal is not even presented. As it has been argued, 'sometimes, no voting takes place when it is clear that no agreement can be reached'.[13] In the context of CFSP, one could argue that the possibility of vetoes was an accepted feature of the system, but the unanimity rule is also widely viewed as a constraint on the Union's effectiveness on the global stage. Between 2016 and 2022, a total of 30 instances of vetoes, veto threats, or delays have been identified.[14] Of these, 60 percent (18 cases) involved Hungary, while the remaining 12 cases were attributed to eight other Member States: Greece (4), Cyprus (2), and Austria, Czech Republic, Italy, France, Malta, and Romania (1 each).

It is becoming increasingly common for EU Member States in the last years to block or delay the adoption of certain CFSP decisions. A particularly striking example was the blockade by Hungary of the delivery of military aid tranches to Ukraine under the European Peace Facility (EPF). The EPF is the EU's off-budget fund used to reimburse Member States for expenditures related to selling or donating weapons and ammunition. In May 2023, Hungary announced it would veto the 8th tranche of EPF funding, valued at EUR 500 million. Hungary's veto remained in place throughout the rest of 2023 and into 2024. Officially, Hungary cited its demand that Ukraine remove the Hungarian OTP Bank from its list of 'international sponsors of war', but the veto was

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Øby, *H v. Council et al.* – A Minor Expansion of the CJEU's Jurisdiction over the CFSP, (2016) 1 European Papers – European Forum; Wessel R. A., *Lex Imperfecta*: Law and Integration in European Foreign and Security Policy, (2016) 1 European Papers: A Journal on Law and Integration, pp. 439–468.

12 Judgment of the Court of Justice of 10 September 2024, *KS and KD v Commission, Council and EEAS*, Joined Cases C-29/22 P and C-44/22 P, EU:C:2024:725; Judgment of the Court of Justice of 10 September 2024, *Neves 77 Solutions*, C-351/22, EU:C:2024:723.

13 Wessel R. A. and Pomorska K., Editorial: Qualified Majority Voting in CFSP: A Solution to the Wrong Problem?, (2021) 26 European Foreign Affairs Review, p. 351.

14 Wessel R. A. and Szép V. (footnote 4).

widely interpreted as part of a broader ‘hostage-taking’ strategy to gain leverage on other issues, such as its frozen rule-of-law funds. The blockade was so complete that the EU established in March 2024 the Ukraine Assistance Fund (UAF), a separate fund within the EPF designed to allow future aid to flow, with Hungary abstaining.[15]

The EU institutions are even developing instruments to avoid direct vetoes by Hungary. In May 2024, the Council agreed that extraordinary net profits generated by the immobilisation of Russian assets (so-called “windfall profits”) should be used to support Ukraine through the EPF.[16] Hungary reportedly chose to abstain from this decision. Subsequently, the EPF Committee adopted a decision specifying that these profits should be allocated to the Ukrainian armed forces. It has been held that ‘as these profits are primarily sourced from Russian assets, and do not originate from the EU budget or Member States (as the EPF does), a Member State cannot oppose their use to support Ukraine if a qualified majority (required by Article 215 TFEU for the EU sanctions regime) of Member States so decides’.[17] Hungary challenged the EPF Committee decision, in a case currently pending, alleging that the EPF Committee infringed Article 31(1) TEU ‘as it took the view that Hungary was not entitled to participate in the vote because, allegedly, it was not a “contributing Member State”, as a result of which its vote was disregarded’.[18]

The decision to freeze Russian assets under Article 122(1) TFEU was adopted to circumvent vetoes in the future by Hungary or another country. On 12 December 2025, the Council adopted Regulation 2025/2600 to freeze Russian state assets permanently.[19] The assets had already been frozen under the EU sanctions regime established by Council Decision 2014/512/CFSP which required unanimous approval for renewal every six months.[20] In the past, Hungary in particular has threatened to withhold its consent to renewal. In the long term, given that the frozen assets also serve as a security for the newly agreed loan

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15 EU cash for Ukraine: The bloc agrees on a €5B weapons fund, Politico, 13 March 2024.

16 Council Decision (CFSP) 2024/1471 of 21 May 2024 on the allocation of the amounts of the financial contribution paid to the European Peace Facility pursuant to Decision (CFSP) 2024/1470, OJ L 2024/1471, 22.5.2024.

17 European Parliament Research Services, Ukraine, the European Peace Facility and additional financing, 3 September 2024.

18 Case T-457/24 *Hungary v Council and European Peace Facility Committee*.

19 Council Regulation (EU) 2025/2600 of 12 December 2025 on emergency measures addressing the serious economic difficulties caused by Russia’s actions in the context of the war of aggression against Ukraine, OJ L 2025/2600, 13 *December* 2025.

20 Council Decision 2014/659/CFSP of 8 September 2014 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia’s actions destabilising the situation in Ukraine, OJ L 271, 12.9.2014.

of EUR 90 billion for Ukraine, the impossibility to freeze the assets in the future will have a serious impact on the loan itself.[21] Unlike previous measures, the Russian Assets Regulation relies on Article 122(1) TFEU. Therefore, the Regulation was adopted by qualified majority and there is no need not renew the sanctions every six month. This issue has led to a very interesting debate on the scope of Article 122(1) TFEU that goes beyond the purpose of this contribution.[22]

As regards the outrageous crimes committed by Israel in the war in Gaza, the EU has been unable to exercise any substantial pressure on Israel. The EU has repeatedly expressed concerns about the humanitarian crisis in Gaza, calling for an immediate and durable ceasefire, protection of civilians, and unhindered delivery of humanitarian aid consistent with international law. On multiple occasions, Hungary has blocked EU positions that reflected a common EU position on the Gaza conflict. In February 2024, Hungary vetoed an EU call for an immediate humanitarian pause and ceasefire. The proposed text called for an immediate ceasefire, condemned rocket attacks from Hamas, and reiterated the EU's support for a two-state solution, while also stressing the need for proportionality from Israel.[23] The consequence was that the EU was unable to speak with one voice. Finally, the former HR Borrell issued a statement in his own name, but he made a point to publicly state that it was supported by 26 Member States. Similarly, the reaction of the EU on the aftermath on the illegal intervention by the United States in Venezuela also exposed the incapacity to condemn the violation of the most basic principles of international law and the internal division caused by the veto of a single country. The EU limited itself to state that it is essential to respect the principles of international law. The statement also was adopted by the HR Kallas with the support of 26 Member States.[24]

IV. Political calls for qualified majority voting in CFSP

In light of the growing number an obstructions and vetoes in the field of CFSP, not only the institutions but also many EU governments have increasingly call for a gradual transition from unanimity to QMV in CFSP matters. While calls

21 See European Commission Press release, Europe greenlights €90 billion of essential funding for Ukraine (19 December 2025).

22 See Leichsenring T., Popp J., *From Security to Economics: Freezing Russian Assets under Article 122(1) TFEU Violates the Treaties*, *Verfassungsblog*, *23 December* 2025.

23 See 26 EU countries call for immediate 'humanitarian pause' in Gaza, *France 24* (19 February 2024).

24 See Venezuela: Statement by the High Representative on the aftermath of the U.S. intervention in Venezuela (4 January 2026).

for the introduction of QMV are nearly as old as the CFSP itself, the political efforts to move away from the general requirement of unanimity have intensified in the last years. Between mid-2013 and mid-2022, at least 25 major political initiatives calling for a shift from unanimity to QMV in the CFSP have been identified.[25]

In 2013, the European Parliament proposed applying qualified majority voting to CFSP matters as laid down in Article 31(2) TEU and to formally explore an expansion of QMV through the use of the *passerelle clause*.[26] In 2014, Parliament also initiated an own-initiative procedure that resulted in two reports by the AFCO Committee, published in late 2016 and early 2017, which examined ways to further improve the functioning of the EU. In 2017, the Parliament adopted another resolution on 'Improving the functioning of the European Union by building on the potential of the Lisbon Treaty,' in which the Parliament observed that the Treaties 'have not yet been exploited to their full potential' and urged again the activation of the *passerelle clauses*.[27] In 2022, in the context of Russian aggression against Ukraine, the Parliament adopted a recommendation addressed to the Council and the HR calling for the introduction of QMV in specific foreign policy areas, including sanctions.[28] Finally, following the outcome of the Conference on the Future of Europe, the Parliament adopted a new resolution on 9 June 2022 calling for a Convention for the revision of the Treaties, including again a proposal to move from unanimity to QMV in areas such as sanctions.[29]

In his 2017 State of the Union speech, former Commission President Jean-Claude Juncker declared that he wants the EU 'to become a stronger global actor. In order to have more weight in the world, we must be able to take foreign policy decisions quicker. This is why I want Member States to look at which foreign policy decisions could be moved from unanimity to [QMV]. The Treaty already provides for this, if all Member States agree to do it. We need [QMV] in foreign policy if we are to work efficiently'.[30] In his 2018 State of the

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25 Wessel R. A. and Szép V. (footnote 4).

26 European Parliament, 2013 Review of the Organisation and Functioning of the EEAS (2013).

27 European Parliament, European Parliament Resolution of 16 February 2017 in Improving the Functioning of the European Union Building on the Potential of the Lisbon Treaty (2014/2249(INI)).

28 European Parliament, Report on a European Parliament Recommendation to the Council and the Vice-President of the Commission/High Representative of the Union for Foreign Affairs and Security Policy on the EU's Foreign, Security and Defence Policy after the Russian Invasion of Ukraine, A9-0164/2022 (2022).

29 European Parliament resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties (2022/2705(RSP).

30 Juncker Jean-Claude, State of the Union Address 2017 (2017).

Union speech, former Commission President Jean-Claude Juncker reminded MEPs that 't]he geopolitical situation makes this Europe's hour: the time for European sovereignty has come. It is time Europe took its destiny into its own hands. It is time Europe developed what I coined '*Weltpolitikfähigkeit*' – the capacity to play a role, as a Union, in shaping global affairs. Europe has to become a more sovereign actor in international relations'.[31]

In March 2020, the Commission and the HR submitted a joint proposal on the use of QMV in a specific field of the CFSP. The proposal recommended the adoption of a European Council Decision identifying the strategic interests and objectives of the Union pursuant to Article 22(1) TEU through the EU Action Plan on Human Rights and Democracy for the period of 2020–2024.[32] However, the Member States rejected the use of QMV to implement the Action Plan. In the following years, Borrell continued to advocate in favour of applying QMV in the field of CFSP. In 2022, Borrell argued that the best answer to today's challenges is 'to remove the dead weight of unanimity rule' and proposed to advance with 'super QMV that would imply 27 [Member States agreeing on an issue] minus 2 or 3, so as not to be blocked by one or two single countries'.[33]

In 2022, former German Chancellor Olaf Scholz argued that the European Treaties are not set in stone and their rules can be changed in case needed. He further held that '[i]f together we come to the conclusion that the Treaties need to be amended so that Europe makes progress, then we should do that'. Chancellor Scholz also referred to the Conference on the Future of Europe, the outcome of which showed that 'the public wants an EU that delivers'.[34] His reform proposals include in particular a shift from unanimity voting to QMV in not just sanctions policy and human rights issues, but also in foreign and tax policy.[35] The French President Emmanuel Macron has also called to move from unanimity to QMV. In August 2022, he argued that Europe is going 'through [...] a big shift, a big upheaval [...] a series of serious crises', including the war in Ukraine and unprecedented droughts due to climate change. France and Europe are expected to face difficulties in public finance, resource shortages, and

31 European Commission, State of the Union 2018: The Hour of European Sovereignty (2018).
32 European Commission and High Representative, Joint Proposal for a Recommendation of the Council to the European Council on the Adoption of a Decision Identifying the Strategic Objectives of the Union to Be Pursued through the EU Action Plan on Human Rights and Democracy 2020-2024, JOIN(2020) 6 final (25 March 2020).
33 Borrell Josep, The Geo-Political Imperative for the EU Is to Both Widen and Deepen, EEAS Website (2022).
34 European Treaties 'aren't Set in Stone', Says Scholz, EurActiv (29 August 2022).
35 Ibid.

breakdowns in supply chains'.[36] For this reason, he considered that CFSP decisions should be adopted in a more effective way.

The discussion on introducing QMV into CFSP decision making is also reflected in other political initiatives such as the Franco-German Meseberg Declaration of June 2018 on 'Renewing Europe's promises of security and prosperity'.[37] Both countries agreed on the need to 'look into new ways of increasing the speed and effectiveness of the EU's decision-making in our [CFSP]. We need a European debate on new formats, such as an EU Security Council and means of closer coordination, within the EU and in external fora. We should also explore possibilities of using [QMV] in the field of the [CFSP] in the framework of a broader debate on majority vote regarding EU policies'.[38]

In May 2023, a number of EU Member States launched an initiative called 'Group of Friends to foster Qualified Majority Voting (QMV) in the EU's Common Foreign and Security Policy (CFSP)'.[39] The objective of the Group of friends is to improve effectiveness in CFSP decision-making. Against the backdrop of Russia's war of aggression against Ukraine and the growing international challenges the EU is facing, the members of the Group are convinced that EU foreign policy needs adapted processes and procedures in order to strengthen the EU as a foreign policy actor. The group aims to reach progress in improved decision-making in CFSP in a pragmatic way, focussing on concrete practical steps and building on provisions already provided for in the Treaty on European Union. The group is integrated by Belgium, Finland, France, Italy, Luxembourg, the Netherlands, Slovenia and Spain (later joined by Romania, Sweden and Denmark).

Despite the recent calls to improve the efficiency of foreign policy decision-making, not all Member States share the same position. QMV is often opposed by some Central and Eastern European Member States. In particular, Hungarian Prime Minister Viktor Orbán has strongly criticised the potential move from unanimity to QMV in CFSP matters. In conclusion, the political calls for introducing QMV in CFSP have not succeeded so far.

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36 Macron Warns French Sacrifices Will Be Needed as Tough Winter Looms, Reuters (2022).

37 Meseberg Declaration – Renewing Europe's Promises of Security and Prosperity, Elysée (19 June 2018).

38 Ibid.

39 See Bendiek A., Majority Voting on Foreign Policy Decisions: A transitional approach needs parliamentary oversight, Stiftung Wissenschaft und Politik (2023).

V. Expanding the Use of Qualified Majority Voting in CFSP: Existing Legal Options

Although unanimity remains the general rule in CFSP matters, the Lisbon Treaty includes legal avenues for moving from unanimity to QMV within the CFSP framework. In particular, Article 31(2) TEU offers four possibilities to adopt decisions by QMV. The common feature to the four options is that once the high-level political objective has been agreed upon unanimously, the ensuing technical or operational decisions can be adopted by qualified majority voting.

First, 'when adopting a decision defining a Union action or position on the basis of a decision of the European Council relating to the Union's strategic interests and objectives, as referred to in Article 22(1)' (Article 31(2) TEU first indent). This provision allows the European Council, acting unanimously, to adopt a decision defining the Union's strategic interests and objectives in one or more specific areas of the CFSP. Once the European Council has established the strategic objectives and guiding principles, the Council may then adopt, by qualified majority, all decisions implementing those strategic decisions.

Second, 'when adopting a decision defining a Union action or position, on a proposal which the High Representative of the Union for Foreign Affairs and Security Policy has presented following a specific request from the European Council, made on its own initiative or that of the High Representative' (Article 31(2) TEU second indent). This provision enables the European Council, acting unanimously to invite the HR to submit a proposal to the Council for a decision defining a Union action or position. In such cases, the Council would act by qualified majority.

The third possibility to adopt decisions by QMV refers to a situation 'when adopting any decision implementing a decision defining a Union action or position' (Article 31(2) TEU third indent). This provision applies where the Council has adopted an initial action or position unanimously, after which all subsequent implementing decisions would be taken by qualified majority.

Fourth, 'when appointing a special representative in accordance with Article 33' (Article 31(2) TEU fourth indent). Special Representatives are entrusted with mandates relating to specific Common Foreign and Security Policy issues. In practice, the use of qualified majority voting has functioned effectively, enabling swift decision-making without the need for formal votes. As in other areas where qualified majority applies, the appointment of Special Representatives has consistently been made by consensus.

Even if QMV is allowed to a limited extent in CFSP, the Treaties still allows the Member State concerned, based on Article 31(2) TEU, to oppose the adoption of a CFSP decision to be taken by QMV if that act would go against its 'vital and stated reasons of national policy'. In such a situation, the HR shall search for a solution in close consultation with the Member State concerned and in case of failure, the Council by QMV can refer the matter to the European Council for a unanimous decision.

The *passerelle* clause of Article 31(3) TEU represents the most direct instrument of reducing the reliance on unanimity in CFSP decision-making. It enables the European Council, acting unanimously, to adopt a decision providing that the Council shall act by qualified majority when adopting CFSP decisions. Its scope is nevertheless limited, as it cannot be applied to decisions with military or defence implications (Article 31(4) TEU). Although the activation of the clause requires unanimity in the European Council, it offers an interesting avenue to introduce more efficient decision-making in CFSP in case the Member States are willing to move forward. This clause has never been activated so far. However, in the last years, we have witnessed discussions at the highest level on the use of the special CFSP passerelle clause. In particular, there is broad agreement among the Member States that the results of the Conference on the Future of Europe must be followed up, but they are not willing to open the process to reform the Treaties. In September 2022, the eventual activation of the *passarelle* clause was discussed by the General Affairs Council. During that meeting, divergent views were expressed regarding the potential expansion of qualified majority voting. While most Member States were open to considering the use of *passerelle* clause in certain areas on a case-by-case basis, several others called for additional time to analyse a shift from unanimity to qualified majority voting.[40] Despite the fact that not progress has been achieved so far, the very fact that the use of the passerelle clauses is now being actively discussed can already be regarded as a success.[41] In the past, such debates at the highest political level would have been unthinkable. Reaching agreement on the use of qualified majority voting in CFSP matters is likely to require additional time, and the prospect of a broader package deal may help facilitate compromise in the negotiations.

The constructive abstention offers an option to overcome the inefficient decision-making process in CFSP. Constructive abstention allows a small group of Member State(s) to abstain from a vote without blocking it, provided they issue

[40] Council of the EU, General Affairs Council (20 September 2022).
[41] Wessel R. A. and Szép V. (footnote 4), p. 77.

a formal declaration.[42] By abstaining, the state concerned is not obliged to apply the decision but accepts that the decision binds the Union. Furthermore, the abstaining state is required to 'refrain from any action likely to conflict with or impede Union action based on that decision'. However, 'if the members of the Council qualifying their abstention in this way represent at least one third of the Member States comprising at least one third of the population of the Union, the decision shall not be adopted'. Although this mechanism does not change the default rule to qualified majority voting, it serves as a crucial political tool, enabling a small minority to express dissent without leading to complete paralysis in the decision making process. In practice, constructive abstention was used only once in the past when in 2008 Cyprus abstained on establishing the EULEX Kosovo crisis management mission.[43] The war in Ukraine let to invoke constructive abstention once again in February 2022. As it was mentioned above, one of the most relevant political decisions has been the activation of the EPF, to provide military aid, including lethal weapons, to Ukraine.[44] This was the first time that the EU decided to provide lethal equipment to third states. Three Member States above – Austria, Ireland and Malta – abstained regarding the Council Decision on an Assistance Measure under the EPF for the supply to the Ukrainian Armed Forces of military equipment.[45] All of them submitted formal declarations to the Foreign Affairs Council on 27 February 2022, citing different reasons for their abstentions and outlining alternative ways in which they would contribute to supporting Ukraine. The three countries opted for constructive abstention in order to avoid blocking this critical support for Ukraine. In October 2022, the constructive abstention was yet again invoked by Hungary in relation to setting up a Military Assistance Mission in support of Ukraine (EUMAM Ukraine).[46] In conclusion, the constructive abstention allows a small group of Member States to dissent without resorting to a veto in relation to a specific issue that raises concerns for them.

42 Blockmans S., Differentiation in CFSP, in Blockmans S. (ed.), Differentiated Integration in the EU. From the Inside Looking Out, Centre for European Policy Studies, 2014, p. 46.

43 See Marquardt S., The Institutional Framework, Legal Instruments and Decision-Making Procedures, in Blockmans S. and Koutrakos P. (eds.), Research Handbook on the EU's Common Foreign and Security Policy, Edward Elgar 2018, p. 30.

44 Council Decision (CFSP) 2021/509 of 22 March 2021 establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528, OJ L 102, 24 *March* 2021.

45 Council of the EU, 'Summary Record – Extraordinary Meetings of the Permanent Representatives Committee: 22, 24, 27, 28 February, 1, 3 and 4 March 2022'.

46 Council of the EU, 'EU sets up a military assistance mission to further support the Ukrainian Armed Forces' (17 October 2022).

VI. The nexus between trade and CFSP

Although CFSP is subject to 'special rules and procedures', in practice there are many links between CFSP and non-CFSP issues, and the EU external objectives do not differentiate between CFSP and non-CFSP activities. It is possible to rely on a non-CFSP legal basis to attain foreign policy objectives, thereby mitigating potential decision-making complexities.[47] While unanimity undoubtedly remains the dominant rule in CFSP matters, QMV is increasingly employed in EU external action, even in areas closely connected to the CFSP.

We can observe an interesting evolution as regards the interaction between trade and CFSP in the last years.[48] The traditional differentiation between foreign policy and trade matters has been mitigated in specific areas in the last years. It should be emphasised that the link between trade and non-trade objectives has been further strengthened given that the CCP and CFSP are guided by the principles and values laid down in Articles 3(5) and 21(1) TEU.[49] EU acts adopted on the basis Article 207(2) TFEU are subject to ordinary legislative procedure which means the use of QMV in the Council. Examples of such actions include the Anti-Coercion Instrument, the new framework for the screening of foreign direct investments and the Anti-Torture Regulation.

The Anti-Coercion Instrument was adopted with the aim to protect the EU's strategic autonomy.[50] It is intended to defend the EU capacity to act autonomously when and where necessary and with partners wherever possible. It enables the EU to take action in cases of economic coercion of the EU or its Member States by non-EU countries. The objective is to deter coercion, and if necessary, to respond to it. Under the regulation, 'economic coercion' refers to a situation whereby a third country seeks to pressure the EU or an EU Member State into making a particular choice by applying, or threatening to apply, measures affecting trade or investment. Such practices unduly interfere with the legitimate sovereign choices of the EU and its Member States. One of the events that let the EU to adopt the new Anti-Coercion Instrument was China's

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47 See Santos Vara J., The 'Normalisation' of CFSP International Agreements in the EU Legal Order: Mauritius and Tanzania, in Butler G. and Wessel R. (eds.), EU External Relations Law: The Cases in Context, Hart Publishing 2021, pp. 713–723.

48 On the relations between CFSP and trade matters see Eeckhout P., EU External Relations Law, 2nd ed., Oxford University Press 2011, p. 168.

49 See Ott A., Van der Loo G., The Nexus between the CCP and the CFSP: Achieving Foreign Policy Goals through Trade Restrictions and Market Access, in Blockmans S. and Koutrakos P. (footnote 43), pp. 232–234.

50 Regulation (EU) 2023/2675 of the European Parliament and of the Council of 22 November 2023 on the protection of the Union and its Member States from economic coercion by third countries, OJ L 2023/2675, 7 *December* 2023.

decision in 2021 to block all imports from Lithuania.[51] China blocked imports due to Lithuania's decision to open a representative office by Taiwan in Vilnius, as part of the Baltic state's wider foreign policy efforts to support Taiwan's fight for freedom. It has discussed the possibility to deploy the Anti-coercion instrument after President Donald Trump threatened to impose tariffs if Denmark does not agree to sell the territory of Greenland, but not formal proposal has been presented by the Commission. At the beginning of 2026, the USA also threatened to impose new tariffs on Norway, Sweden, France, Germany, the UK, the Netherlands and Finland for having sent soldiers to Greenland in support of Denmark. Therefore, the Anti-Coercion instrument is an instrument that allows the EU to react to any interference into EU's policy choices.

The EU's Foreign Direct Investment (FDI) Regulation is another instrument based on Article 207(2) TFEU that is clearly connected to CFSP.[52] The objective of the FDI Regulation is to make sure that the EU is better equipped to identify, assess and mitigate potential risks to security or public order, while remaining among the world's most open investment areas. It fully applies since 11 October 2020. Due to the high degree of integration within the EU, foreign direct investment in one Member State could pose risks to security or public order in another Member State, or in the whole Union. On 24 January 2024, the Commission adopted a few initiatives to strengthen the EU's economic security amid growing geopolitical tensions and rapid technological shifts.[53] One of these initiatives proposed an upgraded framework for screening foreign investments to better protect the EU's security and public order. This was built on the experience gained from reviewing more than 1,200 transactions until the beginning of 2024 under the existing FDI Screening Regulation, as well as the Commission's own evaluation.[54] Finally, the EU's Anti-torture Regulation reflects the EU's commitment to the eradication of torture and the death penalty through measures to prevent the trade in certain goods that could be

51 See European Parliamentary Research Service, EU anti-coercion instrument (March 2024).

52 Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union, OJ *L 79I, 21 March 2019.*

53 European Commission, Commission proposes new initiatives to strengthen economic security, Press release (24 January 2024).

54 European Commission, Commission staff working document evaluation of Regulation (EU) 2019/452 of the European Parliament and of the Council of 19 March 2019 establishing a framework for the screening of foreign direct investments into the Union Accompanying the document Proposal for a Regulation of the European Parliament and of the Council on the screening of foreign investments in the Union and repealing Regulation (EU) 2019/452 of the European Parliament and of the Council, COM(2024)23 (24 January 2024).

used for capital punishment or torture or other cruel, inhuman or degrading treatment.[55]

VII. Concluding remarks

As it has been pointed out in this contribution, the debate on how to overcome the unanimity in CFSP has been going for many years. However, recent developments turn this issue more pressing that ever. First, beyond Hungary's longstanding obstructionism, the unanimity requirement has become increasingly problematic in light of Fico's scepticism towards CFSP and the increasing support of extreme right parties in many Member States progressively constraining the effectiveness of CFSP and the influence of the EU. Second, the EU is confronted with increasingly geopolitical changes and uncertainties, and with constant criticism and challenges coming from the United States, as the conflict about Greenland well demonstrates.

The political context makes formal Treaty revision unlikely. This contribution has analized what can be achieved within the current Treaty framework. The Treaties include a range of mechanism, such as the *passerelle* and enabling clauses, constructive abstention, and forms of differentiated integration, that offer instruments to overcome the unanimity in CFSP and take into account the interests raised by certain Member States.

Many interesting proposals have been raised by EU lawyers to overcome the constrains of qualified majority. In the case of sanctions, it has been argued the CFSP decision should be limited to establish 'the essentials of the intended approach' and leaving the details of implementation to the TFEU regulation, which is adopted by qualified majority.[56] Obviously, all Member States should accept the adoption of the thin decisions, something that cannot easily taken for granted. However, it should not be ignored that the introduction of QMV in CFSP entails some costs. It has been rightly pointed out that it might lead to decrease 'the ownership of this policy by the Member States'.[57] Even though QMV entails advantages, it has also some disadvantages. The introduction of

55 Regulation (EU) 2019/125 of the European Parliament and of the Council of 16 January 2019 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment (codification), OJ L 30, 31 *January* 2019.

56 Schäffer J., *EU Sanctions and the Mirage of Unanimity: Overcoming the Hungarian Veto One Step After Another Under the Letter of EU Law*, *Verfassungsblog*, 8 October 2025.

57 Wessel R. A. and Pomorska K. (footnote 13).

QMV represents no only a change in decision-making in CFSP, but also a change in the negotiations since there is no need to keep everyone on board.[58]

In conclusion, it is not acceptable that a small group of Member States can block the whole EU in the field of CFSP. The systematic practices followed by Hungary to block many CFSP decisions in the last years demonstrate a challenge to the EU fundamental values. What is at stake is a political problem that negatively affects EU foreign policy and the credibility of the EU as a reliable actor. The mechanisms analysed in this contribution offer solutions to overcome specific difficulties, but not to overcome the reasons that lie behind the political problem.

58 Ibid.

Restoring the Rule of Law in Frontsliding EU Member States

Gábor Halmai

Table of Contents

I. Introduction

This paper concerns one of the crucial problems of transitional constitutionalism after a period of democratic and rule of law backsliding, how to restore the principle of the rule of law.[1] Are there circumstances, when during this restoration the principles of the rule of law are allowed to be violated? For instance, when the violation of the rule of law was an important tool to exercise arbitrary power, as it was the case before the 1989–1990 East-Central European democratic transitions. Or is this also allowed lateron? For instance, if a democratically elected government violates the rule of law, and the newly elected government either does not have the qualified majority that is necessary to reverse such violations in the constitution or in laws adopted by a qualified majority by the previous government, or if it wants to fire veto players entrenched by them. The former case has been happening in Poland since October 2023, and the latter in Hungary since April 2026, when new democratic government have been elected.

[1] Dixon Rosalind and Landau David call this process restorative constitutionalism, as the opposite to 'abusive constitutionalism', which attacks the core institutions and commitments of constitutionalism. See Rosalind Dixon and David Landau, Healing Liberal Democracies: The Role of Restorative Constitutionalism, 36 Ethics & International Affairs 427 (2022).

The constitutional history of the regime changes in East-Central Europe after 1989 teaches us that all of these countries used transitional constitutionalism, meaning exceptions to the traditional principles of constitutionalism, such as the rule of law while transitioning from an autocratic to a democratic regime.[2] This happend for instance when they introduced transitional justice measures, like retroactive justice, lustration, reparations for confiscated private property, access to the files of the previous secrete police. The exceptional constitutional solutions, such as the violation of the rule of law for the sake of restoring it were used more frequently in countries with a rupture type of transition, like in Czechoslovakia and its successor states, the Czech Republic and Slovakia, or in the former Geman Democratic Republic (GDR), than in Poland and Hungary with negotiated transitions.[3] The German and the Czech constitutional courts approved the retroactive punishment of perpetrators that had not been persecuted during communism for political purposes despite the expiration of the statute of limitation. In contrast, the Hungarian Constitutional Court in its decision 11/1992. (III. 5.) AB declared this approach unconstitutional because it violates legal certainty as a crucial requirement of the rule of law. The founding President of the Court, László Sólyom famously argued in the reasoning of the decision that 'The rule of law cannot be achieved against the rule of law.'

The current situation differs in so far from that of the early 1990s when there were hardly any democratic and rule of law antecedents of the change as nowadays the democratic renewal happens after liberal democratic systems started to autocratize[4] or backslide into competitive authoritarianism.[5] While according to the 2024 V-Dem report Hungary still belonged to the electoral

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2 On transitional constitutionalism see Sadurski Wojciech, Transitional Constitutionalism: Simplistic and Fancy Theories, in Rethinking the Rule of Law After Communism, in Czarnota Adam, Krygier Martin and Sadurski Wojciech (eds.), 2005.

3 See this conclusion in Halmai Gábor, Transitional justice, Transitional Constitutionalism and Constitutional Culture, in Gary Jacobsohn and Miguel Schor (eds.), Comparative Constitutional Theory, Edward Elgar 2018.

4 Autocratization as the opposite of democratization, or its synonym concept of backsliding is a process, in which the executive power becomes less and less bound by other branches of government, most importantly by the legislature and by courts of both ordinary and constitutional jurisdiction, and also more and more oppresses civil society and citizens. Autocratization means that a country is making moves towards more autocracy, regardless of its starting point. This definition is used by the annual Democracy Reports of the Varities of Democracy (V-Dem) Institute. See the latest: DEMOCRACY REPORT 2024 Democracy Winning and Losing at the Ballot, V-Dem., <https://www.v-dem.net/documents/44/v-dem_dr2024_highres.pdf>.

5 In the political sceince literature the term of competitive authoritarianism is used by Levitsky Steven and Way Lucan. See Levitsky Steven and Way Lucan, Competetitive Authoraitarianism, CUP, 2010., and The New Competitive Authoritarianism, Journal of Democracy 31, 2020 (1), pp. 51–65.

autocracies, Poland even before the October 2023 parliamentary election when the authoritarian political party Prawo i Sprawiedliwość (Law and Justice, PiS) govenment has been overthrown was considered as and autocratizing electoral democracy.[6] After the 'episode of regime transformation' a new democratization period seemed to be starting, which can be called democratic frontsliding.[7] However, the victory of PiS' candidate, Karol Nawrocki at the June 2025 presidential election can be another backslash of liberal democracy,[8] which may entrenched an 'autocratic enclave'[9] into the process of 'democratic frontsliding' raising the question, whether the restoration of the rule of law by the government is possible without 'restorative disobedience', in other words, without violating it. In Hungary, on 12 April 2026 the former Hungarian governing party, Fidesz, lead by Viktor Orbán, was voted out after 16 years, and the challenger Tisza Party, lead by Péter Magyar received a constitution-making two-thirds majority of the parliamentary seats. The majority of two thirds enables Magyar's party faction to change the Fundamental Law and other cardinal laws also requiring such a qualified majority. However, it is disputed, if the mandate of incumbent high public officials can be terminated with retroactive effect.

Restorative disobedience is defined as transgressive actions to dismantle autocratic enclaves when ordinary legislative means are blocked in a state, the overall legitimacy of which is accepted, while particular laws, institutions, or official actions may lack this legitimacy.[10] As we'll see, the difficulty with the acceptance of individual measures of disobedience lies in the exact interpretation of each elements of the definition. How to differenciate between autocratic enclaves and necessary and effective checks of the executive branch: is a president or a high court elected by the ideological opponents of a government an autocratic enclave or a legitimate balance to that government? Is a presidential veto an autocratic block or democratic check of the legislative power? In the EU context there is a normative mandate for restorative disobedience by the EU institutions against member states, which do not comply

6 2023 was the reporting year of V-Dem's Democracy Report 2024.

7 The term is first used in Ginsburg Tom and Huq Aziz Z., The Pragmatics of Democratic 'Frontsliding', Ethics and International Affairs, (36) 2022 (4), pp. 437–453.

8 See Kuisz Jaroslaw and Wigura Karolina, Why Poland's Liberals Lost, Journal of Democracy, June 2025; Zomerski Wojciech, Anatomy of a Liberal Fall: Poland's 2025 Presidential Election, Verfassungsblog, 11 June 2025.

9 See the term first used in Andrew Arato, Democratic Legitimacy and the Forms of Constitutional Change, Constellations, Volume 24, 2017, Issue 3, pp. 447–455.

10 Christophe Hillion, Tommaso Pavone and Antoinette Scherz, Democratic Frontsliding in the European Union: The Problem of Autocratic Enclaves and the Case for Restorative Disobedience, SSRN, 22 June 2025. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5287007>.

with the joint binding values to restore the principles of liberal democracy through infringement actions, the conditionality mechanism, or even Article 7 procedure. But in the two national contexts we'll discuss below, in cases where EU law does not apply, and where national constitutions, such as the 1997 liberal democratic Polish one may contain the primacy of the constitution it isn't easy to define the rules violating the rule of law, let alone determine the conditions under which you can break them, even if you do not have the necessary majority to do that. This is also, because the institutions (presidents or constitutional courts) labelled as autocratic enclaves by the governments aiming at restoring the rule of law claim their constitutional power to veto or annul bills and legislative acts repectively.

II. Scholarly Discussion in Hungary in 2022

Before the 2022 parliamentary election there was a slight chance that the authoritarian government of Viktor Orbán after three consequtive electoral victory can be replaced by the coalition of all opposition parties. Nobody expected that the opposition's victory can result in constitution-making $^{2}/_{3}$ majority, hence the question was raised how the new government can reinstate the rule of law, dismantled by the Orbán governments and entrenched in their own Fundamental Law.

The main question of the academic debate was as to how an eventual new government with a simple majority can restore the principles of the rule of law without being able to replace the Fundamental Law. It was clear that even if Fidesz loses a national election, and a new government is formed, the latter will not be able to function whether in the legal, economic or cultural domains. On the foundation of the Fundamental Law, a great deal of power will remain in the hands of its present holders or those near to them. The new government would not be able to really govern; all or most of its measures can be sabotaged by state officials, the so-called 'autocratic enclaves', among them constitutional judges who cannot be removed or replaced under the Fundamental Law, during the next parliamentary term.

If therefore, a democratically elected government would wish to replace the autocratic system institutionalized by the Fidesz government, with a constitutional system, the question arises, whether it can free itself from the Fundamental Law.

1. Legal Positivists

Legal positivists, like András Jakab rejected any changes which require two-third majority, and argued that the new government should do the changes that a simple majority allows and aim at a constitutional-making at the next parliamentary elections.[11] Jakab also opposed the sudden fireing of the whole judiciary, not just because of rule of law concerns, but also because, according to him, not all judges appointed by the Orbán regime were 'mindless droids'.[12] The late Dániel Karsai too argued that even though Fidesz appointees can make the governing of the country more diffcult, they cannot make it impossible.[13]

The main reference point of the legal positivist argument has been the mentioned 11/1992. (III. 5.) AB decision of the first Constitutional Court led by László Sólyom. The decision declared the bill introduced by some members of Parliament of the first democratically elected government on certain retroactive justice measures against previous communist leaders and collaborators as violating the rule of law. The bill concerned the prosecution of criminal offenses committed between 21 December 1944 and 2 May 1990. The text provided that the statute of limitations started over again as of 2 May 1990 (the date on which the first elected Parliament took office) for the crimes of treason, voluntary manslaughter, and infliction of bodily harm resulting in death – but only in those cases where the "state's failure to prosecute said offenses was based on political reasons." The President of Hungary, Árpád Göncz, did not sign the bill but instead referred it to the Constitutional Court.

The Constitutional Court in its unanimous decision, 11/1992 (III. 5.) AB, struck down the Parliament's attempt at retroactive justice as unconstitutional for most of the reasons that Göncz's petition identified. The court said that the proposed law violated legal security, a principle that should be guaranteed as fundamental in a constitutional rule-of-law state. In addition, the language of the law was vague (because, among other things, 'political reasons' had changed so much over the long time frame covered by the bill and the crimes themselves had changed definition during that time as well). The basic princi-

11 See Jakab András, How to Return from a Hybrid Regime into a Constitutional Democracy? Hypothetical Constitutional Scenarios for Hungary and a Few Potential Lessons for Poland, in Bobek M., Bodnar A., von Bogdandy A., Sonnevend P. (eds.), Beiträge zum ausländischen öffentlichen Recht und Völkerrecht Transition 2.0, Nomos, 2023, pp. 145–225.

12 András Jakab, 'How to Return from a Hybrid Regime to Constitutionalism in Hungary', Verfassungsblog, 11 December 2021, <https://verfassungsblog.de/how-to-return-from-a-hybrid-regime-to-constitutionalism-in-hungary/>.

13 Karsai Dániel, A feles alkotmányozás paradoxona [The Paradox of Constitution-making with Simple Majority], 25 October 2021, p. 444.

ples of criminal law – that there shall be no punishment without a crime and no crime without a law – were clearly violated by retroactively changing the statute of limitations; the only sorts of changes in the law that might apply retroactively, the court said, were those changes that worked to the benefit of the defendants. Citing the constitutional provisions that Hungary was a constitutional rule-of-law state and that there could be no punishment without a valid law in effect at the time, the court declared the law to be unconstitutional.[14]

The decision has been criticized ever since its delivery. For instance, the Historian Ferenc Horkay Hörcher, close to the first democratically elected governing party, MDF has striked a very critical tone towards the attitude of the constitutional justices. He argued that the Constitutional Court interdicted the implementation of the Antall government's first plans for retroactive justice concerning the previous regime, arguing that "legal security based on objective and formal principles enjoys primacy over a sense of substantive justice that is always partial and subjective". By refusing to stray from a strict notion of legal continuity, thus, according to Horkay, the Constitutional Court produced the regime transition's justice deficiency, foregoing the possibility of satisfying popular perceptions and needs of truth and justice from the very start, thereby alienating large masses from the ideal of constitutionalism.[15]

In the 2022 debate Gábor Attila Tóth argued that the 1992 reference to legal security is absurd after almost one and a half decade of the Orbán regime, because its legal system has been chaotic, characterized by overnight legislation and arbitrary lawmaking.[16]

Thirty years after the decision, amidst the scholarly discussion in a private letter President Sólyom was asked about the meaning of his thesis that 'The rule of law cannot be achieved against the rule of law.' According to the published

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14 The English language translation of the decision has been published in L. Sólyom and G. Brunner, *Constitutional Judiciary in a New Democracy. The Hungarian Constitutional Court* (The University of Michigan Press 2000), pp. 214-228. (Hereafter, this book will be abbreviated as Sólyom/Brunner.)

15 See Hörcher F. Horkay, Az értékhiányos rendszerváltás. Jogelméleti és politikai filozófiai megfontolások [A regime transition devoid of values. Legal theory and political philosophy considerations], Fundamentum, No. 1, 2003, pp. 62–72, at p. 64. Later, Horkay saw these neglected values and principles manifested in the 2011 Fundamental Laws and especially their chapter entitled National Creed. Cf. Hörcher F. Horkay, A Nemzeti hitvallásról [On the National Creed], in Jakab A. and Körösényi A. (eds.), Alkotmányozás Magyarországon és máshol [Constitution-making in Hungary and elsewhere], MTA TKPTI, Új Mandátum Kiadó, 2012, pp. 286–309.

16 Tóth Gábor Attila, Autokráciából demokráciába [From autocracy to democracy], Fundamentum 2022/1-2, p. 17.

correspondance, Sólyom never considered the thesis as a formalistic legal approach to the rule of law, and did not exclude exceptions to it, also for the eventual restoration of the rule of law in contemporary Hungary.[17]

2. Ius Resistendi Revolutionists

The other extreme position has been represented by Imre Vörös, a former member of the Sólyom Court. According to him, the newly elected Parliament can ignore the Fundamental Law even if lacking a two-third majority, and they can do that in two steps. First, the new Parliament on its first day in office with a law of nullification passed by a simple majority can eliminate all the essential measures of the Orbán system that were lifted into the Fundamental Law. It can similarly withdraw the appointment of all state officeholders chosen by two-thirds majority but without consensus. Vörös would replace the Constitutional Court left without members by the body of Parliament itself.[18]

According to the argument of Vörös, the new parliamentary majority is authorized to revise the Fundamental Law by simple majority, by the fact that in 2011 a stealth coup has smashed the rule of law state, and put an autocratic system in its place. This state of affairs is the legal fondation for resistance to arbitary rule, one found both in the 1989 Constitution and the Fundamental Law itself. Disobedience under such conditions does not represent injury to the principle of the rule of law, but carries out a duty under Article C (2) of the Fundamental Law on the right to resistance (*ius resistendi*), which is crucial for restoring constitutional order.[19] However, in 2013, when two individuals sought a constitutional review of Fidesz's actions, the Constitutional Court dismissed the case due to a lack of standing, failing to fulfil its role as protector of the constitutional order.

Somewhat later Vörös, accompanied by two former ministers of justice, declared in a newspaper article that 'in the case of change of government the restoration of the rule of law must begin with a new republican constitution that would be ratified after the parliamentary vote by a popular referendum' in other words, there was no need for a two-thirds majority even for the en-

17 See Kis János, Átmenet a jogállamba – akkor és most [Transition to the Rule of Law – Then and Now.], Fundamentum, 2024/1, pp. 4–21.

18 Vörös Imre, Államcsínytevők [Coup Plotters], Noran, 2021.

19 Vörös Imre, 'A jogállami alkotmányosság helyreállítása. Vitaanyag – a "Civil Bázis" csoport felkér-ésére a 2021. március 13-án tartott előadás alapján' [The restoration of the rule of law. The transcript of a presentation held on 13 March 2021].

actment of a new constitution, but merely a referendum sufficed although it remains unclear according to what rules of participation and validation.[20]

3. Middle-way 'Restorative Obedience'

Many legal scholars participating in the discussion opted for some concessions to the legal positivist approach. András Sajó argued that although during revolutionary processes, new constitutions are often established in defiance of prior procedural rules, but he added that an opposition win by a simple majority in the 2022 elections wouldn't be a true revolution. Therefore, for a 'legal revolution' to be acceptable he puts certain conditions: it must be temporary, proportionate, address severe violations of the rule of law, uphold fundamental legal principles, avoid serving those in power, maintain checks and balances, and have an independent oversight mechanism.[21] If those conditions are met, Sajó suggests suspending the Fundamental Law and convening a constitutional convention with referendums on divisive issues to ensure legitimacy and prevent societal division.[22]

János Kis, former dissident, later first chairman of the liberal party, and now political philosopher, in essence, accepts the proposal by Vörös regarding the law of nullification, but would rather delay its enactment to a time when the narrow parliamentary majority can be certain of expressing the will of an overwhelming popular mobilization.[23] According to him, only such a support guarantees that the measures can be actually carried out. Thus, he regards the time of the enactment of nullification to be a political rather than constitutional question. At the same time, Kis rejects the Vörös-Bárándi-Forgács notion of constitution making by simple majority andonly suggests the change of the provisions that are most opposed to the rule of law without using the two-third amendment rule. According to Kis, if the one-sided enactment of the Fundamental Law in 2011 without any consensus with opposition parties, civil society oreganizations was illegitmate – as also claimed by Vörös – the constitution making by simple majority cannot be legitmate a decade later either.

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20 See <https://nepszava.hu/3119199_azonnal-kezdjen-el-alkotmanyt-irni-az-ellenzek-ha-kormanyvaltas-utan-nem-akar-guzsba-kotve-tancolni>.

21 Sajó András, Militant Rule of Law, Verfassungsblog, 20 December 2023, <https://verfassungsblog.de/militant-rule-of-law/>.

22 Sajó András, Alkotmányozz a Fidesszel! [May you enact a constitution with Fidesz!], Magyar Narancs (20 October 2021), <https://magyarnarancs.hu/publicisztika/alkotmanyozz-a-fidesszel-242802>.

23 See <https://hvg.hu/360/20210520_Kis_Janos_az_onkeny_alkotmanyarol_Ha_gyoz_az_ellenzek>.

Similar to Sajó, Kis too identifies prerequisites for overwriting supermajority laws: a legitimate aim, necessity, risk minimization, and proportionality, as being all conjunctive requirements.[24] Gábor Attila Tóth also formulates a condition for the support of a temporary 'negative', 'confrontative' phase to invalidate authoritarian legislation, followed by a 'cooperative' effort to draft a new constitution that emphasizes inclusivity over a strict two-third majority.[25]

In a contribution to the discussion together with Andrew Arato we likewise argued that the replacement of the Fundamental Law is necessary, with a rule of law constitution that restores freedom.[26] The new document should be one created by a democratic constituent power according to newly enacted rules. In the process of drafting the role of the 1989 round table can be a model, even if we cannot count on the acceptance of its new constitutional draft by two-third of the parliament. We stress that constitution making as we imagine it would be revolutionary only in its content, and procedurally only by not following the amendment rule of the Fundamental Law. Seeking to avoid civil war and violence, at all costs, we envisioned to be a legitimate process of achieving new constitution making rules.

As a reaction to the scholarly discussion, the Orbán govenment and public official loyal to it started to cry about a 'constitutional coup'. At a conference titled Values and Institutions in the Ten-Year Old Fundamental Law, András Zs. Varga the newly elected President of the Supreme Court (Kúria) warned the professional and the general public about the planned coup attempt. Also Tamás Sulyok, President of the Constitutional Court at that time, meanwhile President of Hungary, asserted that 'the constitution is the foundation of social peace and public order, and attacks against it threaten social order, the lives, physical integrity and security of the citizens and their property.'[27]

III. Restoring Judicial Independence in Poland

The change of government in Poland in October 2023 can be considered an even less radical transition, because although the previous goverment lead by

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24 Kis János promotes the idea of a compromise between the various positions, A keskeny ösvény [The narrow path] (2022) Fundamentum 1-2, pp. 95–113, 101–106.

25 Tóth Gábor Attila, Autokráciából demokráciába [From autocracy to democracy], Fundamentum, 2022/1-2, pp. 16–19.

26 See Andrew Arato and Gábor Halmai, So That the Name Hungarian Regain Its Dignity, Verfassungsblog, 2 July 2021, <https://verfassungsblog.de/so-that-the-name-hungarian-regain-its-dignity/>.

27 See <https://telex.hu/belfold/2021/06/25/a-kuria-elnoke-szerint-alkotmanyos-puccs-megtervezese-folyik>.

PiS violated the rule of law entrenched in the country's 1997 liberal democratic constitution, the autocratization process was less advanced (than for instance in Hungary which almost went back to the pre-1989 period with only partly free and fair elections).[28] Hence, if we tie the use of transitional constitutional measures ('restorative obedience') to more unlimited power of the government, it is even less justified in Poland after 2023.[29]

Also in the Polish academic discourse, we can detact the legal positivist, the revolutionary and the middle-way restorative obedience arguments. Legal positivist, for instance, criticize the Tusk government for ignoring the captured Constitutional Tribunal by ignoring interim rulings blocking reforms of the National Media Council, Public Prosecutor's Office, and the prosecution of the PiS-affiliated governor of the Central Bank, for cease to publish the Tribunal's decisions by rendering them technically ineffective under Polish law, and also the parliamentary majority for boycotting appointments to the Tribunal until it is reformed.[30]

Wojciech Sadurski, when arguing for the dissolution of the 'fake' Constitutional Tribunal, represents the Polish revolutionary approach. He refers to Radbruch's seminal distinction of statutory lawlessness (gesetzliches Unrecht) and supra-statutory law (übergestzliches Rechts) to support his argument that the legitimacy and validity of a law may be grounded in supra-statutory law rather than strict positivism.[31] Victoria Kristan suggests viewing the Tusk government's intention as to completely renew the Tribunal's membership by differentiating between 'violating' and 'departing' from formal legality which in the case of PiS' governance was an illiberal legality violating the rule of law. Therefore, she asks the question as to how the reform of the Tusk government can violate the absent rule of law.[32] For the same reason, Kristan rejcts all critiques

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28 For instance, in 2020, according to the Varieties of Democracy project ("V-Dem"), both countries were listed among the "autocratizers," but Hungary was already considered as electoral autocracy, Poland still an electoral democracy. Varieties of Democracy, Democracy Report 2020: Autocratization Surges – Resistance Grows 26 (2020).

29 About the current debate on Polish academia on complying with the rule of law while restoring it, see Wojciech Sadurski, *Extinguishing the Court: Why There Is No Salvation for the Current Polish Constitutional Court*, *Verfassungsblog*, 14 August 2022, <https://verfassungsblog.de/extinguishing-the-court/> and Marcin Matczak, *Pandering to peoples' emotions is no solution: An essay on how to fix Poland's rule of law issues*, *Verfassungsblog*, 12 *September* 2022, <https://verfassungsblog.de/pandering-to-peoples-emotions-is-no-solution/>.

30 See Jakub Sawicki and Andrzej Schultz, Polish(ing) Broken Tribunal, Verfassungsblog, 22 March 2024.

31 Wojciech Sadurski, "Hercules or Sisyphus?" Verfassungsblog, 12 April 2024.

32 Kristan Victoria M., Beyond Formal Legality: The Restorative Effect of an Episodic Infringement, Verfassungsblog, 11 February 2025. Based on the Hungarian experiences and future

of the government's reforms, including the ones reforming the Constitutional Tribunal and the ordinary judiciary expressed, for instance, in the opinions of the Venice Commission.

Let us see these reforms and whether their critics can be considered representing legal positivism or rather restorative obedience.

1. The Constitutional Tribunal and their 'judges-doubles'

As in Viktor Orbán's playbook written after 2010, in Poland too, after 2015, undermining the rule of law started with the dismantlement of constitutional review by packing the Constitutional Tribunal. As of December 2024, all 15 judges of the Tribunal were appointed by PiS, including the new President who had been appointed earlier that month among the current judges by that-time President Duda at that time, himself being loyal to the PiS.[33] At the same time, the new coalition refused the nominate candidates for President and for two other vacant positions as it regarded the Tribunal in its current form as illegitimate.[34] According to a 2021 judgment of the European Court of Human Rights the Tribunal cannot be considered as a proper 'tribunal established by law'.[35]

On 13 September 2024, the Sejm, the lower house of the Polish parliament adopted a new Act on the Constitutional Tribunal and another Act on provisions introducing the Act on the Constitutional Tribunal, which were subsequently submitted to President Duda for his signature. On 7 October 2024, the President sent the two acts to the packed Constitutional Tribunal for a review of their constitutionality. In the meantime, a draft with amendments to the Constitution related to the functioning of the Constitutional Tribunal are being discussed in the Senate, the parliament's upper house.

The Act on the Introductory provisions to the Act on the Constitutional Tribunal deals with the following question: What should be done with judgments of the previous Tribunal rendered by panels of judges that included unconstitutionally appointed members? It is clear that the invalidation of the decisions of the Constitutional Court issued with the participation of persons that are

development, Tímea Drinóczi supports Kristan's approach. See Drinóczi Tímea, Post-Formalist Constitutionalism for Democratic Reconstruction: Post_Formalist Constitutionalism for Democratic Reconstruction, Verfassungsblog, 17 June 2025.

33 See <https://notesfrompoland.com/2024/12/09/president-picks-new-chief-justice-of-polands-dispute-constitutional-court/>.

34 See <https://notesfrompoland.com/2024/12/02/head-of-polish-constitutional-court-steps-down-and-prepares-to-elect-successor/>.

35 Case of XERO FLOR w POLSCE sp. z o.o. v. POLAND, (Application no. 4907/18), <https://hudoc.echr.coe.int/eng#{"itemid":["001-210065"]}>.

not authorised to adjudicate has been derived from the decisions of the Constitutional Tribunal declaring the incompatibility of the election of 3 judges by the Sejm of the 8th term ('judges – doubles') with the Constitution. In its judgment of 9 December 2015 (K 35/15), the Constitutional Tribunal held the provisions unconstitutional. And on that basis, the Sejm of the 8th term elected others to the Court in place of the previously duly elected three judges. From the judgment, it follows that the 'judges-doubles' never became judges at the Constitutional Court and that their election was unconstitutional. Therefore, they should not sit in the Constitutional Tribunal. But from that alone, it cannot be concluded that the judgments rendered with the participation of the 'judges-doubles' can be invalidated by a declaration of the legislature, because the Constitution does not contain any provision which authorizes the Sejm to do so. In the absence of such authorization the law relies on the concept of non-existence borrowed from the civil procedural law. The draft refers to Article 379 (4) of the Code of Civil Procedure, which reads as follows: "The proceedings are invalid if the composition of the adjudicating court was contrary to the law or if a judge excluded by law took part in the examination of the case." In other words, this quote invoked in the reasoning of the law does not refer to the concept of non-existent judgment (sententia non-existent), but to invalidity. This means that the civil procedure provides the opportunity for the parties to apply to a court for the invalidation of a decision. The same must happen with the decisions of the Constitutional Tribunal issued with the participation of 'judges-doubles'.[36] Similarly, the opinion of the Venice Commission of 6-7 December 2024 holds that the *ex lege* invalidation of all such judgments with *ex tunc* effect is disproportionate to its aim, and therefore does not safeguard legal certainty, as well as does not follow from the judgments of the European Court of Human Rights (ECtHR).[37] On the contrary, Kim Lane Scheppele thinks that the Venice Commission in its opinion changed its mind and prioritized formal, poorly national legality over substantive judicial independence required by transnational law.[38] Similary to the Venice Commission, the Office for Democratic Institutions and Human Rights (ODIHR) of the Organization for Security and Co-operation in Europe (OSCE) in its opinion that was elaborated with the contribution of the author of this article recommended to

36 See a similar argument in Polish constitutional law scholarship: Szwed Marcin, *Rebuilding the Rule of Law: Three Guiding Principles*, *Verfassungsblog*, 29 April 2024, <https://verfassungsblog.de/rebuilding-the-rule-of-law/>.

37 CDL-AD(2024)035-e, Poland – Opinion on the draft constitutional amendments concerning the Constitutional Tribunal and two draft laws on the Constitutional Tribunal, adopted by the Venice Commission at its 141st Plenary Session (Venice, 6–7 December 2024), para 72.

38 Kim Lane Scheppele, Blinded by Legality: The Venice Commission's Change of Heart on Restoring the Rule of Law in Poland, Verfassungsblog 23 December 2024, <https://verfassungsblog.de/blinded-by-legality/>, DOI: 10.59704/15d128d43218f87c.

reconsider the *ex lege* declaration that all judgments of the Tribunal rendered with the involvement of "persons not entitled to adjudicate" are null and void.[39]

2. The National Judicial Council of the Judiciary and the 'neo-judges'

In 2017, the PiS placed the National Council of Judiciary (NCJ), the body responsible for the nomination of judges that had previously been elected by judges, under the political control of the parliamentary majority. This move has had serious effect on the independence of about 2.500 out of Poland's 10.000 judges. The Act Introducing Amendments to the Act on the National Council of the Judiciary of Poland adopted by the Sejm on 12 April 2024 forsees the *ex tunc* invalidation of all resolutions of the Council regarding the appoinment of judges, implying that around one quarter of all Polish judges appointed between 2017 and 2023 were never legally appointed.

According to the urgent joint opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law, 'the wholesale blanket exclusion of such a large cohort of judges lackes individual assessment, and thus raises questions of proportionality'.[40] Therefore, the opinion recommended a case-by-case assessment of the purpose, effects and circumstances of an early ending of the mandate. Kim Lane Scheppele has applied her critique of prefering formal legality over substantive rule of law to this opinion as well, although the Venice Commission made it clear that by allowing the exclusion of certain judges based on a case-by-case evaluation is already an exception to the constitutional principle of the security of the judges' tenure.

IV. Conclusion

In Poland, the approach of limited substantive rule of law and judicial independence also supported by the Venice Commission and OSCE/ODIHR, in my view, fulfills the requirement that deviations from the principle that the rule of law cannot be restored by violating its principles must be exceptional, temporary as well as proportionally tailored. It takes into account the specific Polish

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39 Opinion on two Bills of the Republic of Poland onthe Constitutional Tribunal (SEJM PRINTS NO. 253 and 254, as of 24 July 2024). OSCE Office for Democratic Institutions and Human Rights, Warsaw (24 August 2024), Opinion-Nr.: JUD-POL/502/2024 [TN], <https://www.osce.org/files/f/documents/b/b/575707.pdf>, para 107.

40 See Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law (DGI) on European Standards Regulating The Status of Judges Adopted by the Venice Commission at its 140th Plenary Session (Venice, 11–12 October 2024), <https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)029-e>, para 43.

situation where the previous government's measures violating both the Constitution and transnational obligations to enforce the judgments of the Court of Justice of the European Union and the ECtHR aimed to use arbitrary power which warrants the temporary and proportional violations of certain rule of law principles, such as the irremovability of judges in this case. Exceptions like this need to be made while providing constitutional guarantees, such as the right to appeal of the judges concerned. This is all the more important and timely, because, after loosing popularity[41] recently, the new government started to use certain populist policies which may occasionally violate fundamental rights.[42] Furthermore, a survey found that more Poles believed the rule of law has got worse than better in the year since the coalition took office.[43] Despite this result, when Tusk reshuffled his goveernment in July 2025, he replaced Justice Minister Adam Bodnar by Waldemar Żurek, a career judge and one of the most persecuted judicial figures during the PiS years. This appointment seems to send a message that the government is ready to escalate the fight to overturn the changes of the PiS-era, maybe even by violating some principles of the rule of law.[44] After taking office, the Minister announced that he is going to withdraw the request for the Venice Commission opinion about the acts on the NCJ and the neo-judges. Commenting on this move, Wojciech Sadurski quoted earlier for his revolutionary ideas in an oped piece published in Gazeta Wyborcza wrote: "And please note: it is probably no longer necessary to seek the opinion of the Venice Commission. With the utmost respect for this distinguished expert body, we already know what the Commission's opinion is on the complex political situation in Poland after 2023 – that it applies the same criteria to Poland as it does to Norway or Germany – i.e. consolidated democracies with only minor problems."[45]

41 See <https://www.project-syndicate.org/commentary/polish-democracy-coalition-facing-hurdles-and-gains-by-far-right-but-hope-remains-by-slawomir-sierakowski-2024-10>.

42 See <https://www.euronews.com/2024/11/01/is-illiberalism-in-poland-truly-so-hard-to-beat?fbclid=IwZXh0bgNhZW0CMTEAAR2Wz-_CZFBbIw5rF4o7O-reKHD10FCmbaSSRfYY0HtVpe7LBw-cs7Uvzjo_aem_6pdXh0HMRUi1YXY6o1VtCA>.

43 See <https://notesfrompoland.com/2025/01/05/more-poles-believe-rule-of-law-has-worsened-under-tusk-government-than-improved/>.

44 See <https://notesfrompoland.com/2025/07/23/tusk-reshuffles-polish-government-replacing-justice-and-interior-ministers-creating-two-super-ministries/>.

45 See <https://wyborcza.pl/7,75968,32139899,do-sztambucha-ministrowi-zurkowi-szybciej-usunac-te-gruzy.html#s=S.opinion-K.P-B.1-L.1.zw>. Interestingly enough the Venice Commission Commission just was rightly criticised for for the unequal treatment of 'old' and 'new' democracies. See Scholtes Julian, The Venice Commission and the Mental Map of European Constitutionalism, Hague J Rule Law (2025), <https://doi.org/10.1007/s40803-025-00257-4>.

Also, the election of the PiS friendly new President, which from the perspective of the Tusk government represents a long-lasting autocratic enclave but from PiS' point of view a strong balancing power of the government seems to indicate that a constitutional settlement might also be the interest of the current governing parties, which may use their majority after the 2027 Sejm election.[46] This scenario would be similar to the one proposed by Andrew Arato and myself in the case of Hungary.[47] Maybe this way to two front-runners of the democratic transition negotiated in 1989, who in the meantime became extremely divided socities can restore their rule of law regimes.

In Hungary, after the landslide victory of the Tisza Party in the April 2026 elections seems to be a consensus among constitutional scholars supporting the renewal that the restoration must be a two-tier process, starting with the necessary and quick amendments to the 'illiberal' Fundamental Law followed by a longer process of a new constitution-making.[48] Even the first leg of the two-tier amendment process can have two phases: a) the adoption of the most urgent changes to the Fundamental Law, and b) the a more systemic repeal of all its ideologically loaded provisions, mostly in the National Awoval.[49]

The urgent action that needs to be taken to avoid the blocking of the democratic transition would be to get rid of the mentioned authoritarian enclaves. If it is to happen with deviations from the principle of the rule of law, such as the prohibiton of retroactive legislation, these must be exceptional, temporary, serving a legitimate aim of reinstating constitutional democracy, and proportionally tailored, and supported by the general public. After taking these

46 See with such a suggestion Kisilowski Maciej and Wojciuk Anna, A Constitutional Settlement Is Poland's Only Hope, Verfassungsblog, 18 June 2025.

47 Ibid. footnote 26.

48 See, e.g., Sonnevend Pál, Constitutional Repair!: Mapping the Context, Needs and Limits of Rebuilding Constitutional Democracy in Hungary, *Verfassungsblog*, 9 May 2026, <https://verfassungsblog.de/hungary-constitutional-repair/>, DOI: 10.59704/eda09e33835feea5. Csaba Tordai represents the minoriry view, which rejects the neceesity of the long constitution-making process. Tordai Csaba, Közvetlen elnökválasztást! – avagy mire jó, és mire nem jó a kétharmad (Direct Presidential Election – What the Two-Third is Good and Not Good For), Válasz Online, 16 April 2026, <https://www.valaszonline.hu/2026/04/16/tordai-csaba-jogallam-rendszervaltas-ketharmad-alkotmany/#gsc.tab=0>.

49 This position seems to be shared by Csaba Győry in the Hungarian language discussion. See Győri Csaba, Nem elég lebontani a NER-t: meg is kell előzni – avagy miért nem elég néhány gyors alkotmánymódosítás (It Isn't Enough to Unbuild the System of National Cooperation (NER), It Must Also Be Prevented – Why Aren't Some Quick Constitutional Amendments Enough), Válasz Online, 29 April2026, <https://www.valaszonline.hu/2026/04/29/ner-lebontasa-alkotmanymodositas-uj-alkotmany-tisza-rendszervaltas-jog/?fbclid=IwY2xjawRpyZJleHRuA2FlbQIxMQBicmlkETF4eUFWTFA0SEd6NkJ6Um42c3J0YwZhcHBfaWQQMjIyMDM5MTc4ODIwMDg5MgABHuZ4AF4w5FCaiRcOkIiU3WFreYpSRKUWr2pdM7oc6W0N45OVN1p55-_Pg-6P_aem_OcNGqQSHYrU-oSuF6gs1Tg#gsc.tab=0>.

urgent steps, the new government should start a cooperative effort by creating a diverse constituent power to draft a new constitution that emphasizes inclusivity over a mere two-thirds majority. This deliberative constitution making process can contribute to transferring the current europhoria in the country into 'constitutional enthusiasm'.

It is hoped that both Poland and Hungary will have a sucessful restoration of liberal democracy that can serve as a positive model to countries that have followed its autocratic illiberal model, like the US, India and also member states of the EU, and therefore contribute to a reverse process of global de-democratization in general and democratic backsliding within the EU as well.

European integration is under pressure as war, geopolitical rivalry, institutional strain, and digital transformation test Europe's capacity to act. Based on contributions presented at the 16th Network Europe Conference in Belfast, this volume examines the future of Europe's security architecture and the role of institutions such as the EU, NATO, the United Nations, and the OSCE. It explores the impact of Russia's war of aggression against Ukraine and considers how states, including neutral Switzerland, can contribute to institutional reform and collective security. Further chapters analyse the uneven paths of European integration in Ukraine, Armenia, Georgia, and the Western Balkans. The experience of Northern Ireland highlights the fragility of peace, reconciliation, and prosperity even decades after violent conflict. The volume also addresses qualified majority voting in the Common Foreign and Security Policy, the restoration of the rule of law after democratic backsliding, and systemic risk governance under the Digital Services Act. Together, the contributions reveal both the scale of the challenges confronting Europe and its continuing capacity for adaptation and reform. It features contributions from Eka Akobia, Michael Ambühl, Tobias Baumgartner, Jelena Ceranic Perisic, Gábor Halmai, Indrė Isokaitė, Anna Khvorostiankina, Lee McGowan, Nora Meier, Juan Santos Vara, Haroldas Šinkūnas, and Kseniia Smyrnova.

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