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*EU-UK Relations after the War in Ukraine:  
Options to Re-Engage Post-Brexit*

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# EU-UK Relations after the War in Ukraine: Options to Re-Engage Post-Brexit

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## **Abstract**

The article examines the relationship between the UK and the EU after Russia's aggression of Ukraine, discussing options to deepen cooperation post-Brexit. The article outlines the current framework of EU-UK relations, emphasizing the limited partnership in place today under the Trade & Cooperation Agreement (TCA). It then highlights the possibilities offered by the TCA review, mandated in 2026, to expand bilateral relations. Moreover, the article maps broader developments occurring in the European institutional landscape following the war in Ukraine, including the establishment of the European Political Community and the renewal of the North Atlantic Treaty Organization and the Council of Europe, and discusses how they create new opportunities for the UK to reconnect with the EU. Finally, the article considers how transformations in the EU constitutional framework, and the process of enlargement to Ukraine, impact on European integration, with possible consequences for the position of the UK.

## **Keywords**

Brexit, War in Ukraine, Trade & Cooperation Agreement, European Political Community, Reform

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## 1. Introduction

The decision of the United Kingdom (UK) to withdraw from the European Union (EU) – Brexit – represents a historical event and a unique process. No member state of the EU had previously withdrawn from what constitutes arguably the most successful project of regional integration worldwide. Moreover, multiple challenges surrounded the UK efforts to leave the EU. Not only did the UK have to navigate very rough seas, through a process that took almost four years and challenged a country with high administrative capacity; but the destination reached by the UK after exit appears also highly sub-optimal, both from an economic and political standpoint. In fact, the main treaty governing EU-UK relations today – the Trade & Cooperation Agreement (TCA) – establishes only a rather limited framework for bilateral trade in goods and cooperation in a finite set of policies. As a result, post-Brexit the UK is largely cut off from the single market of the EU, its closest trading partner, and outside the EU governance structures with no influence on its decisions and direction.

Yet, this state of affairs is increasingly at odds with geo-political transformations in the European continent. In particular, the Russian illegal war of aggression against Ukraine has profoundly changed the context in which EU-UK relations play out. On the one hand, the war in Ukraine has led to strengthening pre-existing pan-European and transatlantic organizations, such as the Council of Europe (CoE) and the North Atlantic Treaty Organization (NATO), and to creating a new entity, the European Political Community (EPC). On the other hand, the war in Ukraine has also fostered a constitutional evolution within the EU, with the revival of the enlargement process and the debate on treaty reforms. This inevitably has a bearing on EU-UK relations and their future. Moreover, the TCA need not be the inevitable end-point of EU-UK relations. To begin with, from a legal viewpoint, the TCA explicitly enshrines a review mechanism, by which the parties can periodically take stock of their relationship, and potentially enhance it – with the next *rendez-vous* scheduled in 2026. Moreover, from a political viewpoint, UK public sentiment vis-à-vis the EU have recently evolved. A growing number of voters regrets leaving the EU. In February 2023 the EU and the UK have agreed on the Windsor Framework in 2023, which has resolved outstanding tensions between the parties on the post-Brexit arrangements related to Northern Ireland. And in July 2024 the Labour Party has won a landslide in the UK general elections, returning into government after 14 years of Conservative rule. This makes it more likely that the UK may in the future deepen its relationship with the EU again.

The purpose of this article, therefore, is to analyze what are the options for deepening EU-UK relations in light of the war in Ukraine, thus contributing to the debate on external differentiated integration in the EU post-Brexit. Specifically, the article seeks to outline several avenues by which the UK can reconnect with the EU, in light of changing geo-political circumstances, and evolving domestic political preferences. As such, the article examines three aspects. First, it considers how EU-UK cooperation can be expanded within the framework of the TCA, looking at the *rendez-vous* provision of the treaty and its process. Second, the article summarizes the changing governance landscape on the European continent – with the renewed centrality of the CoE, and NATO, and the launch of the EPC – and reflects on how these forums allow the UK to reconnect more closely with the EU. Third, the article assesses the constitutional evolution of the EU itself, pointing out how the war and the prospect of a major Eastward enlargement, including Ukraine’s accession to the EU, have forced the EU to address difficult questions of decision-making and treaty changes – as recommended also by the Conference on the Future of Europe – and what this means for the UK.

As the article argues, the project of European integration is currently going through a lively and experimental moment – both within the EU and outside it. The barbaric Russian large-scale invasion of Ukraine has strengthened the bonds that keep member states together – whether in the EU, or in the CoE, or in NATO or the new EPC. In fact, the war in Ukraine has pushed new countries either to join NATO, or to seek EU membership, or to re-energize their bilateral partnership. This impacts EU-UK relations, and creates opportunities for the two parties to revisit their cooperation,

and re-adjust it in light of the new geo-political reality. With a TCA review foreseen by 2026, there is soon a window to do so, especially as in July 2024 the UK has elected a new, more pro-European government led by Keir Starmer, and the EU has commenced a new institutional cycle. Brexit has proved to be a major act of self-harm for the UK, and increasingly opinion polls in the UK have revealed that a majority of the population has regretted the decision to leave the EU. But – short of rejoining the EU – there are multiple options the UK, and the EU could explore to strengthen their cooperation in order to regain some of what was lost with Brexit, so this article maps what may be avenues for new external differentiated integration post-Brexit.

As such, the article is structured as follows. Section 2 outlines from the theoretical perspective of external differentiation the limited partnership currently in place between the EU and the UK. Section 3 considers possible ways to expand EU-UK cooperation within the framework of the TCA, and the political window of opportunity to do so. After that, sections 4 and 5 map both Europe's changing governance landscape, and the EU constitutional evolution, and highlight their significance for EU-UK relations. Finally, section 6 concludes.

## **2. The current framework of limited EU-UK cooperation**

When the UK was a member of the EU it was the paradigmatic case of internal differentiated integration (Schimmelfenning & Winzen 2020): the UK had an opt-out from the euro, it did not participate to the border-less free movement zone known as Schengen, and it had a bespoke status in other EU policies, for example in the field of justice and home affairs. Following Brexit, however, the UK has left the EU and therefore its relationship with the EU is now an external, rather than internal, one. As a result, EU-UK relations can today be examined through the perspective of external differentiated integration (Chiocchetti, Laffan, Telle, 2024, in this issue). Specifically, the terms of EU-UK relationship are governed by two separate treaties: the Withdrawal Agreement (WA), concluded in early 2020, and in force since 1 February 2020; and the TCA, concluded on Christmas Eve 2020 and entered into force provisionally on 1 January 2021, and fully on 1 May 2021. The WA regulates the modalities of UK exit from the EU (Fabbrini 2020), and introduces temporary rules, among others to protect the rights of EU citizens resident in the UK before exit (and vice versa, UK citizens resident in the EU before Brexit); to determine the financial contributions the UK owes to the EU; and finally, to deal with the special situation of Ireland/ Northern Ireland – a topic to which a special Protocol is dedicated (Fabbrini 2022). The TCA, instead, regulates the new framework of EU-UK relations (Fabbrini 2024).

The TCA is a peculiar international agreement. Contrary to all other Free Trade Agreements (FTAs), which are concluded between countries that want to integrate their economies, removing barriers to trade, the TCA has been negotiated between the EU and a former member state, with the aim to manage a process of disintegration, mitigating the economic effects of the UK's withdrawal from the EU. The TCA is a complex and lengthy legal document. However, content-wise, it remains a rather thin agreement, covering only a limited number of policy areas. In particular, the centerpiece of the TCA is the chapter on movement of goods, with the removal of custom duties, and favorable rules of origin (Moran 2024). Moreover, the TCA has also provisions on services and investments (Artiran 2024), procurement and capital movement (de Amstalden 2024), as well as other economic cooperation provisions in the areas of aviation and transport (Lazowski 2024) and fisheries (Butler 2024). Finally, the TCA also created a framework for EU-UK partnership on some transnational matters like health, energy and cyber (Fahey 2024), internal security and criminal justice (Garner 2021), as well social security coordination and participation in EU programs (Petit 2024).

Nevertheless, the scope of the TCA is limited – especially compared to what the UK enjoyed for almost 50 years as a member state of the EU, its internal differentiation notwithstanding. To begin with, the TCA does not cover most of what constitutes the core of the EU internal market, including

free movement of people (Barnard and Leinarte 2021) and services – viz. financial services which are only mentioned in terms of regulatory cooperation for financial stability (Moloney 2021). Moreover, the TCA has only scattered provisions on data protection, digital technology, artificial intelligence (Celeste 2021), green investment, and the fight against climate change – thus failing to regulate some of the most cutting-edge policy areas, which increasingly require transnational cooperation to address global challenges. Lastly, the TCA establishes only a partial EU-UK partnership on internal security matters and the fight against international crime – but entirely leaves out cooperation on foreign affairs and defence (Tonra 2021). As such, the EU and the UK do not have at present a treaty framework for discussing common positions on international affairs, or for providing mutual defence assistance in case of external military threats.

Needless to say, the limited remit of the TCA is entirely deliberate (Fabbrini & Zaccaroni 2021). In the negotiations of the TCA the UK explicitly pushed for a maximum sovereignty position, seeking to clearly distance itself from the EU. In doing so, the UK Government reneged on the political commitments it had agreed to in October 2019 in the Political Declaration attached to the WA, which envisaged a much deeper partnership with the EU. In fact, in pushing for a rather thin TCA the UK also frustrated the hopes of the EU, which had consistently expressed an interest in maintaining an ambitious and all-encompassing partnership with its former member state. As Brigid Laffan (2021: 250) has pointed out, however, under the Johnson Government the UK pursued a sovereignty first Brexit, and its ‘preoccupation with sovereignty, which dominated its discourse, demands and action, dramatically narrowed what the UK could agree to and what the EU could offer.’ In the end therefore, rather than the association agreement which the EP envisaged concluding with the UK under Article 217 TFEU (European Parliament 2019), the TCA turned out to be rather a dissociation treaty.

### **3. The possible adjustments within the TCA**

Yet, despite the limits of the current TCA, the partnership between the EU and the UK can be expanded. This section examines the changing context of EU-UK relations, the possibilities offered by the TCA review, and the process to be followed to deepen bilateral cooperation within the TCA framework.

#### ***3.1. Changing context***

The limited scope of the TCA is increasingly at odds with global developments. Most importantly, Russia’s large scale invasion of Ukraine in February 2022 – which no one could anticipate at the time of Brexit – has profoundly changed the geo-political context of EU-UK relations. The return of war on the European continent has pushed the EU and the UK to face jointly with the United States (US) and other Western countries an imperialist Russia violating international law (Schwarzer 2024). Moreover, the war and the pandemic have accelerated a trend towards a new form of globalization, based on blocs, a new industrial policy, and technological friend-shoring (James 2024) – creating incentives for democracies based on the rule of law to partner against common enemies. As Chiocchetti, Laffan & Telle (2024, in this issue) pointed out, increased geopolitical competition initiated a new phase of external differentiated integration: “With Russia’s War against Ukraine, this benign security situation has arguably been shattered. Consequently, the rationale of EDI is now shifting from a logic of economic interdependence to a logic of security interdependence.” In this scenario, in line with public goods theory of differentiated integration (Kölliker 2007), the demand, and need for, EU-UK cooperation have clearly increased as of late.

Otherwise, the domestic social and political developments in the UK have impacted on EU-UK relations, creating an opening for closer relations between the parties. On the one hand, the economic consequences of Brexit have increasingly manifested themselves since 2022, with lower growth, higher inflation, more labor unrest and many documented cases of undersupply of foods – all resulting from the new Brexit trade rules, and the end of free movement of persons. In this context, for the first time since the 2016 referendum, polls have reported that a majority of UK voters now regret the decision to leave the EU (Mitchell 2023). On the other hand, political developments since 2022 have had an impact on the UK approach towards the EU: following a number of political scandals, in July 2022 Prime Minister Johnson was forced to resign, and after the disastrous stint of Liz Truss as Prime Minister in September 2022, Rishi Sunak became UK Premier. Facing a diminished economy, Sunak has embraced a much less confrontation stance vis-à-vis the EU than his two predecessor, charting a more pragmatic path.

Under Sunak's leadership, in March 2023 the UK and the EU have approved the Windsor Framework (Araujo 2024a) – a deal designed to clarify, and adjust, the operation of the Protocol on Ireland / Northern Ireland attached to the WA. The Protocol had been designed to deal with the unique circumstances of Northern Ireland, and had introduced special rules, effectively keeping Northern Ireland in the EU internal market and customs union, thus erecting a trade border in the Irish sea – between Northern Ireland and Great Britain (Moran 2022). The Protocol however had caused major tensions within Northern Ireland. Moreover, under Prime Ministers Johnson and Truss, the UK had breached its obligations to implement the Protocol in good faith, generating major distrust between the EU and the UK. Through the Windsor Framework, however, the EU and the UK have agreed to revise some of the most problematic provisions of the original Protocol – both through a targeted amendment of the Protocol's text, and via implementing measures to be approved by the institutions created by the WA. These amendments have endeavored to address the alleged democratic deficit of the Protocol (Araujo 2024b). Technicalities aside, the approval of the Windsor Framework has removed a stumbling block on EU-UK cooperation, and rebuilt trust between them.

The dividends of a more positive EU-UK relationship resulting from the Windsor Framework have quickly spilled over to areas beyond those related to the Protocol on Ireland/Northern Ireland. In particular, in May 2023, the European Commission finally published the draft memorandum of understanding (MoU) establishing a framework for financial services regulatory cooperation with the UK – which had been negotiated in March 2021 and agreed at technical level but then suspended and never formally approved due to the quarrel over Northern Ireland. Moreover, in September 2023, the EU and the UK reached an agreement to allow the UK to re-join both the EU research framework Horizon Europe and the EU space programme Copernicus – hence expanding the UK participation in EU programmes envisaged by the Part V TCA. Finally, in December 2023, the EU and the UK agreed to a three-year extension of the rule of origins provisions of the TCA, as far as electric vehicles are concerned. This deal avoided the risk of 10% tariffs, that were due to kick-in in January 2024, with the aim to support the green transition in both the EU and the UK.

Furthermore, in the UK general elections held on 4 July 2024, the Labour Party led by Keir Starmer has obtained a landslide victory, securing 412 seats out of 650 in the House of Commons (a +215 increase from the last general elections in 2019). Labour's victory ended 14 years of unruly Conservative government, with the Tory party suffering a major defeat and securing only 121 seats (a -252 decrease from 2019). Admittedly, the general elections highlighted a good performance also of the Reform Party (a follow up to the Brexit Party and previously the UK Independence Party (UKIP)), which was the third most voted political force across the country, but secured only 5 seats in Westminster, including one for its leader Nigel Farage, who promises to be a vocal player against reconnecting with the EU. Yet, the significant Labour majority gives the Starmer government ample wiggle room to begin new negotiations with the EU, and while the Prime Minister himself has spoken prudently about deepening trade and political ties with the EU (Parker 2023), its Foreign Secretary,



David Lammy, an outspoken Europhile, has made clear that this is one of the priorities of the new UK foreign policy based on progressive realism (Lammy 2024).

### 3.2. Review

In fact, the TCA as it currently is does not prevent an expansion of EU-UK cooperation towards new domains. As subjects of international law endowed with legal personality, the EU and the UK remain free to conclude new treaties between themselves – if need, be through mixed agreements which require ratification also by EU member states (Wessel and Larik 2020). The TCA explicitly allows the EU and the UK to conclude supplemental agreements, going beyond the TCA itself. As stated in Article 2 TCA ‘Where the [EU] and the [UK] conclude other bilateral agreements between them, such agreements shall constitute supplementing agreements to this Agreement, unless otherwise provided for in those agreements. Such supplementing agreements shall be an integral part of the overall bilateral relations as governed by this Agreement and shall form part of the overall framework.’ According to Article 775 TCA, moreover, ‘This Agreement and any supplementing agreement apply without prejudice to any earlier bilateral agreement between the United Kingdom of the one part and the Union and the European Atomic Energy Community of the other part. The Parties reaffirm their obligations to implement any such Agreement.’

Crucially, then, the TCA has enshrined a review clause. According to Article 776 TCA ‘The Parties shall jointly review the implementation of this Agreement and supplementing agreements and any matters related thereto five years after the entry into force of this Agreement and every five years thereafter.’ Article 776 TCA introduces a *rendez-vous* obligation, committing the EU and the UK to take stock of the TCA five years after its entry into force – hence by 2026. The existence of a review clause in the TCA is in itself not unique, as other international treaties have analogous provisions. But in the context of the TCA, the review clause provides a window of opportunity for the parties to reassess the state of their relationship. This is particularly salient from a political viewpoint because, as mentioned, in summer 2024 the UK voted in a new Labour government, and, following EP elections, the EU also started a new institutional cycle. At the time of the first TCA-mandated *rendez-vous*, therefore, both the EU and the UK have a new leadership ready to take advantage of this moment to further expand the bilateral partnership.

### 3.3. Process

In terms of process, a review of the TCA would likely follow a traditional international negotiation. While Article 776 TCA is silent on the matter, it is to be expected that the EU and the UK, if they agree to reconsider and expand the scope of their cooperation, would initially take up the matter in the institutions created by the TCA itself, namely the Partnership Council. From a governance viewpoint, in fact, the TCA established a relatively lean institutional structure. Besides a number of specialized committees and technical working groups, according to Article 7 TCA the main governance body is the Partnership Council, which comprises representatives of the parties on an equal basis, and is co-chaired by the EU Commission and the UK Government. The Partnership Council has a broad remit, as under Article 7(3) TCA it ‘shall oversee the attainment of the objectives of this Agreement and any supplementing agreement. It shall supervise and facilitate the implementation and application of this Agreement and of any supplementing agreement. Each Party may refer to the Partnership Council any issue relating to the implementation, application and interpretation of this Agreement or of any supplementing agreement.’

Moreover, pursuant to Article 7(4), the Partnership Council, can *inter alia* ‘adopt decisions in respect of all matters where this Agreement or any supplementing agreement so provides’; ‘make recommendations to the Parties regarding the implementation and application of this Agreement or of any supplementing agreement’; and ‘adopt, by decision, amendments to this Agreement or to any

supplementing agreement in the cases provided for in this Agreement or in any supplementing agreement’. According to Article 10 TCA the decisions of the Partnership Council are taken by mutual consent, and ‘shall be binding on the Parties.’ As such, most likely the Partnership Council could directly approve a number of amendments to the TCA. Moreover, it could lay out a further set of changes for the parties to adopt in the form of supplemental agreements. In the EU case this would require a Council decision authorizing the Commission to enter negotiations as per Article 218(2) TFEU. At the same time, in performing its task, the Partnership Council could also draw input from the mechanisms of inter-parliamentary cooperation and civil society participation envisaged in Articles 11 and 12 TCA. These set up a parliamentary partnership assembly between the EP and the UK Parliament, as well as domestic advisory groups and a civil society forum with consultative functions on bilateral relations.

If new agreements supplementing the TCA were to be negotiated and concluded between the parties, their approval would have to follow standard constitutional rules on treaty ratification. In the UK, the approval of international treaties is governed by the Constitutional Reform and Administrative Governance Act (CRAG) 2010 – although this statute was suspended both for the approval of the WA in 2019 and of the TCA in 2020, as ad hoc legislation was passed by Parliament on both occasions. Since the making of treaties is a prerogative power, CRAG only requires the Government to lay a treaty before Parliament, which has 21 sitting days to consider it, after which the agreement may be ratified. In the EU, instead, the approval of international treaties is regulated by Article 218(6) TFEU. According to this provision, the Council shall adopt a decision concluding the agreement. Except where the agreement relates exclusively to EU Common Foreign and Security Policy (CFSP), however, the Council must obtain the consent of the EP for the most important treaties, including association agreements, agreements establishing a specific institutional framework or carrying important budgetary implications for the EU, or agreements covering fields that are subject to the ordinary legislative procedure within the EU. Since the EP approved the TCA it is all but certain it would have a vote on any amendment.

#### **4. The changing governance landscape of the European continent**

This section examines broader changes in the European governance landscape triggered by the war in Ukraine, and their impact on EU-UK cooperation. It maps the renewed significance of CoE and NATO, and the setup of the EPC – three forums in which the UK is a party, together with EU member states.

##### ***4.1. Council of Europe***

In the aftermath of the war in Ukraine the CoE has acquired a renewed significance. Originally established in 1949, by a treaty concluded in London, as the first post-WWII forum for pan-European cooperation, the CoE focuses on the protection of fundamental rights, and the promotion of democracy and the rule of law, and constitutes the institutional framework of the European Convention on Human Rights (ECHR) and its court (Schmahl and Breuer 2017): the European Court of Human Rights (ECtHR), which since the approval of Protocol 11 in 1998 acts as the court of last instance on judicial review of human rights claims raised against any of the contracting parties (Fabbrini 2014). The CoE had become the organization with the wider membership in the European continent, and as of early 2022, it included 47 member states: all 27 EU countries, and 20 others, including Russia. Following the illegal military invasion of Ukraine, however, in March 2022 the CoE decided to suspend Russia, which eventually withdrew from the CoE – a step that had occurred only once in the past, when Greece temporarily exited the ECHR in the 1960s, during the Colonels’ dictatorship.



The UK has traditionally had both an important and ambiguous relationship with the CoE, and especially the ECHR. On the one hand, the UK championed the establishment of the CoE, of which it was a founding member; and it originally played a key role in drafting the ECHR, which was largely inspired by the long-time British experience of protecting civil and political rights. On the other hand, however, over the years the UK became more wary of the ECtHR, especially following the approval of the Human Rights Act 1998, which domesticated the ECHR in UK law. Conservative Governments, in particular, complained that the ECtHR was limiting the ability of the UK political branches of government to deal with salient domestic issues, like the fight against terrorism, or prisoner voting. In fact, before Brexit, several Tory leaders had argued in favor of leaving the ECHR, rather than the EU. In this context, during the 2010s, the UK was at the forefront of diplomatic efforts to limit the ECtHR (Christoffersen and Rask Madsen 2011) – a process which started with the Brighton Declaration and concluded with the approval of ECHR Protocols 15 and 16, enshrining the principle of subsidiarity and margin of appreciation in the ECHR’s preamble and a preliminary reference system by which national courts can request advisory opinions from the ECtHR.

Nevertheless, following the illegal Russian aggression of Ukraine, all members of the CoE have rallied around the organization established to promote democracy, human rights and the rule of law. In particular, in a major summit held in Reykjavik on 16-17 May 2023 the heads of state and government of the now 46 member states of the CoE reaffirmed their unity around the common values of freedom and democracy. In what constituted only the 4<sup>th</sup> summit of heads of state and government since the establishment of the CoE, the contracting parties adopted a Declaration expressing unwavering support for liberal-constitutional principles and ‘recommitting to the convention system as the cornerstone of the Council of Europe’s protection of human rights’ (Council of Europe 2023). Needless to say, whether this high-level commitment will result in UK domestic political changes remains to be seen. Indeed, the ECHR has remained contentious in some UK political quarters, especially as it limits the draconian immigration policies pursued by the Sunak Government. Yet, the geo-political context has made the UK more likely to collaborate with like-minded democracies in the CoE, which has also close cooperation with the EU, including ongoing work to secure the EU’s accession to the ECHR (Council of the EU 2023a).

#### ***4.2. North Atlantic Treaty Organization***

Another European – and transatlantic – organization which has experienced a new burst of life following the war in Ukraine is NATO. NATO was originally established in 1949, with the Washington Treaty, by the US, with Canada and 10 Western European countries, among which of course the UK was a founding member. As a defensive military alliance set up in the aftermath of WWII, NATO had progressively expanded during the Cold War, incorporating West Germany in 1955, and eventually enlarged to most of Central and Eastern Europe after the fall of the Berlin wall (Jacoby 2004). In fact, NATO had played a role also during the so-called war on terrorism, with its core provision Article V – which enshrines a mutual defence pledge by all members – triggered for the first time ever after 11 September 2001. Yet, the function of NATO had become increasingly questioned in recent years, also due to recurrent quarrels among its members – which by early 2022 included 30 member states. Most famously, in 2019 French President Emmanuel Macron had called the alliance “brain dead”, and despite diplomatic attempts to re-define its purpose (NATO 2020), its role had become less clear at a time when Russia seemed more a partner than a threat.

Russia’s illegal aggression in Ukraine, however, represented a turning point. The return of war on the European continent revitalized NATO, which quickly became the main institutional framework to coordinate military assistance to Ukraine, including war materiel and intelligence. Moreover, the Russian invasion, which had often been presented in the regime propaganda as an attempt to prevent a NATO encirclement, produced exactly the opposite effect. Most strikingly Finland and Sweden – two EU member states which had historically embraced the principle of neutrality – jointly applied

to enter NATO in 2022; Finland was admitted in April 2023 and Sweden in March 2024 after Türkiye, and Hungary, removed their veto in exchange for several concessions, including on EU enlargement. While NATO also promised to Ukraine that its future is in the alliance – but ‘when Allies agree and conditions are met’ (NATO 2023) – the accession of Finland and Sweden is highly significant, not only because it increases NATO member states to 32, but also because it reduces the number of EU member states who are not in NATO to just four relatively small countries, namely Austria, Cyprus, Ireland, and Malta.

This has implications also for EU-UK security cooperation. Traditionally, the UK opposed expanding the defence role of the EU, by preferring NATO as the centerpiece of the European security architecture and a bridge to transatlantic relations. In fact, the main developments in Common Security & Defence Policy (CSDP) only occurred after the Brexit referendum, when the UK stopped vetoing projects such as Permanent Structured Cooperation (PESCO), which was launched by the Council of the EU in 2017. Otherwise, while the EU has significantly scaled up its capacity in CSDP since the start of the war in Ukraine, inter alia by deploying a brand new European Peace Facility (EPF) to fund the provision of weapons to Ukraine, and by passing an Act in Support of Ammunition Production (ASAP) to beef up common defence procurements (Fabbrini 2023), clearly NATO has emerged from the war as the primary organization for European security. This implies that the UK can reconnect with the EU through NATO, both because 23 EU member states are party to the alliance, and because the EU itself is increasingly a key institutional partner to NATO on a plurality of war-related and post-conflict tasks (EU-NATO 2023).

### ***4.3. European Political Community***

In addition to re-energizing the CoE and NATO, the war in Ukraine has also led to the establishment of a new entity: the EPC, which at this stage is more a forum than an organization. The EPC is the brainchild of French President Emmanuel Macron, who launched the idea to create it on 9 May 2022 – at the concluding event of the Conference on the Future of Europe. According to Macron (2022), ‘This new European organization would allow European democratic nations abiding by our core set of values to find a new space of cooperation on political affairs, security, in the field of energy, transport, investment, infrastructure, movement of persons, and especially youths.’ From this viewpoint, the EPC would serve as a larger forum connecting both states which, like Ukraine, aimed at joining the EU – but also states, like the UK, which had just left it. As Macron also stated in the same speech, joining the EPC ‘would not foreclose future accession to the European Union, necessarily, as it would not be closed to those who have left the latter.’

President Macron’s idea – which was further developed in a non-paper by the French Government, and admittedly drew on older proposals in favor of a European Confederation (Letta 2022) – was quickly endorsed by the European Council on 23-24 June 2022 (European Council 2022). Consequently, the first meeting of the EPC was held in Prague, the Czech Republic – the EU member state then holding the rotating presidency of the Council of the EU – on 6 October 2022. The second meeting of the EPC occurred in Chisinau, Moldova, on 1 June 2023. The third meeting took place in Granada, Spain, on 5 October 2023. And the fourth summit was hosted in July 2024 at Blenheim Palace in the UK. So far EPC meetings have been attended by all 27 EU member states and the leaders of the EU institutions, plus 20 other countries, including the UK and Ukraine. Essentially, the 47 members of the EPC match almost *pari passu* the members of the CoE, with minor exceptions – e.g. Kosovo, which is part of the EPC but not the CoE, and San Marino, which is part of the CoE but not the EPC. There is instead ambiguity with regard to Türkiye, a CoE member which attended the first EPC meeting, but not the subsequent summits.

At this stage, the EPC remains fairly underdeveloped. As Bruno de Witte (2024) has perceptively pointed out, the EPC founding summit ‘did not adopt any formal written document apart from press releases by various participants, nor did it create a secretariat or other organ for the EPC.’

From this point of view, ‘the EPC is not an organization, nor a structure, nor even a process’ (ibid 2024). However, the use of the term *Community* to define the EPC is not meaningless. The EU emerged out of the European Coal and Steel Community and European Economic Community, and indeed a European Political Community was negotiated in 1954 in conjunction with the European Defence Community – which ultimately failed. As such, while the concrete achievements of the EPC are so far limited, the forum holds potential. The EPC can serve not only as an ante-chamber for EU membership – which is admittedly the primary driver for this initiative, born out of the awareness that the accession of Ukraine to the EU will take some time (Petrov and Hillion 2022). The EPC can also become a platform to enlarge cooperation between the EU and the UK.

## **5. The constitutional evolution of the EU**

This section considers how the constitutional evolution of the EU also affects EU-UK relations. To this end, it surveys the relaunch of the enlargement process and its consequences for the EU’s future outlook, also in terms of options for concentric circles integration.

### ***5.1. Conference on the Future of Europe***

The Conference on the Future of Europe – originally envisaged by French President Emmanuel Macron in March 2019 as a way to relaunch the project of European integration in the aftermath of Brexit – took off, after delays due to the Covid-19 pandemic, on 9 May 2021, and came to a close a year later on 9 May 2022, when the war in Ukraine was already raging (Avbelj 2023). The Conference was organized as a citizen-focused, bottom-up exercise designed to gain input from European citizens on the key questions facing the EU. This innovative participatory process unfolded through a multilayered structure. The core of the Conference was represented by 4 European citizens’ panels of 200 participants each, selected randomly to reflect the socio-demographic reality of the EU, which met both in person and remotely over several months. The input from the European citizens’ panels – together with that resulting from analogous national processes – were then reported to the Plenary of the Conference on the Future of Europe, which deliberated on it. Ultimately, the Plenary endorsed 49 proposals with a list of 326 detailed recommendations, which were submitted to the Executive Board and released in a final report published on Europe Day, 9 May 2022 (Conference on the Future of Europe 2022).

The Conference’s final report explicitly identified a number of shortcomings in the current EU constitutional structure and made the case for several substantive and institutional amendments to the EU treaties. The Conference, in particular, called for a strengthening of EU powers, with the expansion of EU competences among others in the fields of health, energy, digital technology, migration and foreign affairs. Moreover, the Conference requested an overhaul of the EU decision-making system, with the overcoming of the unanimity rule, particularly in the field of foreign affairs and defence, and a clarification of the roles of the EU institutions. Finally, the Conference also underlined the importance of endowing the EU with the financial means to back up its actions, including by reproducing the “Next Generation EU” (NGEU) funding model beyond the Covid-19 pandemic. At the same time, the Conference pleaded for ‘reopening the discussion about the [EU] constitution’ on the understanding that ‘A constitution may help to be more precise as well as involve citizens and agree on the rules of the decision-making process.’ (Ibid, Proposal 39, recommendation 7). All in all, therefore, the Conference called for a more sovereign EU.

In fact, a number of policy-makers immediately embraced the ambitious outcome of the Conference on the Future of Europe. Both French President Emmanuel Macron and then Italian Prime Minister Mario Draghi endorsed the idea of amending the EU treaties (Macron 2022; Draghi 2022); European Commission President Ursula von der Leyen voiced support for this prospect (von der

Leyen 2022); and the EP called for a comprehensive follow up to the Conference's outcome, including via treaty changes (European Parliament 2022a), and subsequently put forward a detailed list of amendments to the current treaties, calling for the establishment of a Convention under Article 48(3) TEU (European Parliament 2023b). Nevertheless, in a joint non-paper of May 2022, 13 member states from Northern and Eastern Europe chilled this enthusiasm indicating that they did 'not support unconsidered and premature attempts to launch a process towards Treaty change.' (Government of Sweden 2022). As a result, the implementation of the Conference's outcome has stalled: while some of its recommendations have been implemented within the current EU treaty framework, its most ground-breaking proposals have so far remained on hold.

## ***5.2. Enlargement***

Yet, the debate about EU constitutional reforms has increasingly interplayed with that of EU enlargement – which the war in Ukraine has brought back to the forefront. As is well known, following Croatia's accession to the EU in 2013, the EU had not further enlarged. Former European Commission President Jean-Claude Juncker had clarified in 2014 that no new state would join the EU under his watch (Juncker 2014). Moreover, a major row erupted among member states in 2019 on whether to authorize accession talks with Albania and North Macedonia (European Council 2019). In particular, France – with the backing of Denmark and the Netherlands – objected to any bureaucratic automaticity in the accession process, and called for greater political steering on decisions about enlargement (Government of France 2019). In the absence of the necessary unanimity within the European Council, the issue was referred back to the European Commission, which in February 2020 put forward a new methodology for accession negotiations (European Commission 2020): this confirmed a credible EU membership perspective for the Western Balkans, but also subjected the enlargement talks to further conditionality, with negotiations on the fundamentals, including the rule of law, to be opened first and closed last, and with the possibility of suspending tout court the accession talks. In the end, however, no real progress occurred.

Yet, circumstances changed with the war in Ukraine. Reacting to the brutal Russian war of aggression, the EU reactivated its enlargement process. On 23-24 June 2022 – just six weeks after the conclusions of the Conference on the Future of Europe – the European Council granted to Ukraine, and Moldova, the status of EU candidate country, while also recognizing the European perspective of Georgia (European Council 2022). Moreover, based on a Commission report released in November 2023 (European Commission 2023), on 14-15 December 2023 the European Council decided to open accession negotiations with Ukraine and Moldova (European Council 2023), and eventually, on 25 June 2024 the EU officially started accession talks with Ukraine, and Moldova, through a first intergovernmental conference on enlargement (Council of the EU 2024).

Otherwise, EU enlargement also interplayed with the setup of the EPC, and the expansion of NATO. On the one hand, in the awareness that the process of enlargement may take some time, in its June 2022 conclusions granting candidate status to Ukraine the European Council also endorsed the idea to create a EPC as a forum to engage with the wider Europe, and the third EPC meeting in Spain in October 2023 coincided with the key decision by the European Council to advance with the enlargement process (Grenada Declaration 2023). On the other hand, ahead of the NATO summit in Vilnius, on 11 July 2023, Türkiye agreed to remove its veto on Sweden's accession to NATO also in view of political reassurances offered by European Council President Charles Michel that the EU would re-energize its ties with Türkiye, whose EU membership application has been pending since 1987 (Stevis-Gridneff 2022). Consequently, in November 2023 the European Commission and the EU High Representative for Foreign Affairs published a joint communication on the state of play of EU-Turkey political, economic and trade relations, which suggested among others a pathway to upgrade the EU-Turkey customs union (European Commission & High Representative 2023).



All in all, therefore, it seems that the EU is increasingly projected towards a new Eastward expansion. Yet this raises profound internal constitutional challenges for the EU. On the one hand, the experience of prior enlargements has revealed that pre-accession conditionality has not always worked, particularly as a number of new member states such as Hungary and Poland have increasingly experienced democratic backsliding, known as the rule of law crisis. On the other hand, future enlargements would further strain the governance structures of the EU, which heavily depend on unanimous decision-making in the Council and the European Council. Yet, if taking decisions as 27 has proved daunting, especially in areas related to CFSP, CSDP and financial matters, increasing the number of member states to possibly 35 (including the Western Balkans) will only make things worse. In this context, growing calls have been made for the EU to adjust its institutional structures to be ready for enlargement.

### 5.3. Options

Given the difficulties in advancing towards treaty change, discussed above, among the constitutional options more recently debated in the EU to prepare for a larger union is changes to the decision-making rules through the use of *passerelle* clauses, particularly on CFSP (Wessel & Szép 2022). *Passerelles* allow for a shift from unanimity voting to qualified majority voting (QMV) in the Council of the EU, *à traité constant*. Article 48(7) TEU foresees generally that when the EU treaties provide ‘for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case.’ Moreover, specific *passerelle* clauses are scattered across the treaties for specific policies. Building on this, on 4 May 2023, 9 member states – Belgium, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Slovenia, and Spain: all but one from Western Europe – released a joint statement launching the group of friends of QMV in CFSP (German Federal Foreign Office 2023). This was followed by a supportive resolution of the EP on 11 July 2023, which called for using *passerelle* at the earliest opportunity (European Parliament 2023a).

Yet, the strategy to leverage the *passerelle* clauses has its hurdles. On the one hand, triggering a *passerelle* would still require unanimity in the European Council, which is not a given, due to the hold-out position of several member states. Furthermore, Article 48(7) TEU empowers a single national parliament to block the use of a *passerelle*, even if approved by heads of state and government in the European Council, within six months. Lastly, the same provision explicitly prohibits applying the *passerelle* ‘to decisions with military implications or those in the area of defence.’ On the other hand, there is no escaping that the *passerelle* can achieve only so much. For example, a greater role for the EP in fiscal and budgetary matters is a democratic need, especially after the establishment of the NGEU, but this can be achieved only through revisions of several treaty provisions, including Articles 122, 311 and 312 TFEU. The EU governance structure suffers a number of shortcomings, and enhancing the legitimacy and effectiveness of the EU requires adjustments which can only be addressed through proper treaty changes (Fabbrini 2022).

Given the limitations connected to the *passerelle* clauses, and the obstacles towards a full blown treaty change, however, alternative options may have to be considered ahead. In particular, a group of experts jointly appointed by the French and German Government proposed in September 2023 a series of recommendations to reform and enlarge the EU for the 21<sup>st</sup> century (Franco-German working group 2023). Their report outlined six options for reforms, including the approval of a supplementary reform treaty between willing member states if there is deadlock on treaty change. Indeed, there are precedents of groups of vanguard member states that have concluded separate inter-se intergovernmental agreements on the side of the EU, for instance in the field of economic governance; and proposals have been made for a core group of EU countries to conclude a Political Compact to federalize their relations, while leaving laggard member states behind (Fabbrini 2020a).



Yet, such a scenario would have relevant consequences for a former member state like the UK. If the EU were ultimately to restructure around a more integrated core, and a more loose periphery, this could enable the UK to become an associated member with participation in some EU policies, deepening the current modalities of external differentiated integration.

## 6. Conclusion

With Brexit the UK has moved from inside to outside the EU. Yet, the current state of EU-UK relations is increasingly at odds with the geopolitical context. As this article has pointed out, the war in Ukraine has had profound consequences for transnational cooperation and sovereignty-sharing across the continent. The CoE has regained centrality. NATO has expanded. A new EPC has been created. And the EU has re-opened the enlargement process, and with it, the construction site of constitutional reforms. All of that matters for EU-UK relations. Following its withdrawal from the EU, the parties negotiated a very limited FTA – the TCA, which currently governs EU-UK cooperation. This reflected the UK's desire to achieve maximum national sovereignty, unshackled from the EU. The reality however has proved to be different. Brexit has made the UK worse off. In fact, polls reveal that increasingly the British population is regretting its choice. Nevertheless, the recent approval of the Windsor Framework settled lingering discords between the EU and the UK on Northern Ireland, and contributed to rebuilding trust between the parties. Moreover the outcome of the UK general elections in July 2024, with the rise to power of Labour led by Keir Starmer, creates a window of opportunity for the UK to deepen its cooperation with the EU again.

As this article has pointed out, in fact, the UK and the EU can go beyond the TCA – if there is the political will to do so. In particular, a number of legal options are available for them to expand their partnership, in a dramatically transformed geo-political environment. First, the UK and the EU can exploit the opportunities offered by the TCA's *rendez-vous* clause. As foreseen in Article 776 TCA, a review of the treaty is due by 2026 at the latest, and this offers a way to enrich the treaty's scope and content. Secondly, the parties can also explore the opportunities offered by the changing European governance landscape. In their own ways, and through mechanisms of pooling sovereignty which are different from those of the EU, the CoE, NATO and the EPC constitute young or rejuvenated platforms in which the UK and the EU or its member states can re-engage. Thirdly, constitutional evolutions within the EU also represent developments which the UK should monitor closely. The Conference on the Future of Europe recommended treaty changes. The enlargement process and the prospect of an EU of 35 member states, including Ukraine, strengthen this case. But EU constitutional changes remain challenging, which leaves open the possibility for a future restructuring of the EU along a system of concentric circles. If such scenario were ever to materialize, the UK could find a spot in the EU's periphery, as an associated member, while a vanguard group of EU member states at the core integrate even further.

In conclusion, the framework of EU-UK cooperation remains in flux. The TCA is currently the international treaty governing post-Brexit bilateral relations. It is a limited agreement, covering a finite set of policies, and establishing a light institutional structure – a very loose form of external differentiated integration in the EU. Yet, the TCA foresees mechanisms for review – which the parties should pursue, as early as 2026. Beyond the TCA, moreover, there are broader transformations in the wider Europe that will affect EU-UK relations in a more positive direction. In fact, the large-scale Russian military invasion of Ukraine, which started in February 2022, roughly a year after the TCA's entry into force, has contributed to strengthening the bonds that tie together European states, and reminded everyone of how *l'union fait la force*. In this context, the TCA, as the output of a 'sovereignty first' Brexit, designed to sever as many ties as possible with the EU, appears to be increasingly anachronistic. This should provide the momentum to further deepen EU-UK

cooperation, increasing the degree of external differentiated integration of the UK in the EU, and several options exist to do so in a renewing Europe.

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