

# Reversing Brexit: why, how and when

Andrew Duff

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# Table of contents

<b>Executive Summary</b>	3
<b>The back and forth</b>	3
<b>The first entry</b>	4
<b>Britain's objectives</b>	5
<b>Fast forward</b>	5
<b>Reviewing Johnson's Brexit deal</b>	6
<b>Terms and conditions of re-entry</b>	7
<b>Regulation</b>	8
<b>Services</b>	8
<b>Law and justice</b>	9
<b>Geopolitics</b>	9
<b>Foreign, security and defence policy</b>	10
<b>EU reform</b>	10
<b>U-turn now</b>	12
<b>The process of admission</b>	13
<b>Endnotes</b>	14

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# Executive Summary

The UK has a history of flip-flopping on Europe. The new government has no well-prepared post-Brexit programme. Its declared intention to “reset” the country’s relations with the EU has little content and will hardly contribute to the overriding national need to boost economic growth. Prime Minister Keir Starmer’s hostility to reintegration condemns his ministers to tinkering at the edges of Boris Johnson’s Trade and Cooperation Agreement — a time-consuming, costly and ultimately frustrating exercise.

The EU, for its part, is not ready to welcome the UK back to the fold. It has other priorities, not least Ukraine and its own efforts to raise productivity. Nonetheless, both sides stand to benefit economically were the UK to re-enter a customs union and the single market. The departure of British representatives from EU politics and law-making leaves a gap. Britain is needed to make a significant contribution to the EU’s fast developing common security and defence policy.

## The back and forth

The British are well known for changing their minds about Europe. After 1945, Britain led the moves to create new European alliances with the Americans against the Russians. The UK refused to join the first European Community (for coal and steel), settling for an association agreement instead.<sup>2</sup> Harold Macmillan’s Tory government applied for UK membership of the European Economic Community in 1961, although opposed by Labour and rebuffed by France. In 1967 Harold Wilson’s Labour government resurrected the membership bid, but when Edward Heath’s Conservative government eventually joined the Community in 1973, Labour was again opposed. Back in government, Wilson sought a renegotiation of the Tory terms of entry, and in 1975 won a referendum to stay in (67.2% versus 32.7%).

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In the 1980s Margaret Thatcher first fought to get her money back from the EC budget, then helped build the European single market before mounting a rearguard action against fearful European federalism. Her Tory successor, John Major, rescued the Treaty of Maastricht which Thatcher opposed, but opted out of the main thrust of the new European Union. In 1997, Tony Blair’s Labour government jettisoned some of the Maastricht opt-outs (social policy and justice and home affairs) but kept others (the euro and democratic reform), and then fell out badly with his EU partners over foreign policy. Blair sought to

Andrew Duff speculates that Starmer will eventually follow the example of previous prime ministers and make a U-turn on Europe. Economic facts and geopolitical necessity must outweigh British nationalism. Ukraine’s passage towards the EU will revive interest in a European vocation for the UK. The return of Donald Trump to the White House forces Britain to recalibrate its values and interests.

The paper outlines the probable terms of renewed British membership and describes a possible accession process, including another referendum following the next general election.<sup>1</sup> But the UK needs to drop its traditional opposition to the deepening of European integration and the strengthening of governance at the EU level. The UK could then take a stable and enduring place among the leaders of Europe.

undermine EU proposals for a more federal, constitutional treaty and a Charter of Fundamental Rights. David Cameron embarked on a second, fruitless (and arguably pointless) renegotiation of terms of membership. In 2016 Cameron lost a referendum on staying in (48.1% versus 51.9%). Next up, Theresa May tried in vain to negotiate a new EU association agreement retaining access to the customs union and single market for goods. Her successor, the Brexiteer Boris Johnson, crashed out of the Union altogether in 2020 without an association agreement but with a minimalistic Trade and Cooperation Agreement (TCA).

In the lead up to Brexit, Starmer campaigned for a third referendum to reverse the verdict of the second. Once he became leader of the opposition in 2020, however, he apparently decided he would have to try to “make Brexit work”. He not only refused to countenance rejoining the Union but also ruled out a new customs union or single market deal and, specifically, rejected freedom of movement of people. Starmer became prime minister after the general election on 4 July 2024 amid much speculation about whether he would spring a surprise on his EU policy.<sup>3</sup> But the position he had taken in opposition stuck. Starmer and his ministers have travelled around Europe amiably, but nothing dramatic has happened. Instead, the new government is trying to work out how to lessen the worst effects of Johnson’s TCA. Labour’s goodwill towards the EU is evident but so is disappointment over Starmer’s lack of ambition among pro-Europeans at home and abroad. Certainly, it is not obvious that tinkering on the edges of the TCA will go very far.

Historians will marvel at the consistent dithering that has characterised British European policy under 16 prime ministers over a period of 80 years. Contemporary critics

may be forgiven for wondering whatever next. On the EU side there is enormous suspicion about Britain's attempts to cherry-pick their way back into the EU while disrespecting the principles of the EU treaties, not paying their full dues to the EU budget, and failing to implement EU law. There is concern about the lack of consensus among the British political class about how to handle the European question. That the Conservative party, again in opposition, is swinging markedly to the anti-European right suggests that a bipartisan approach to Britain's EU strategy is farther away than ever. Even now, many Tories are campaigning to ditch the European Convention on Human Rights (ECHR), first initiated by Winston Churchill. Any reversal of Brexit promises to split the Tory party asunder and definitively.<sup>4</sup>

More cheerfully, Britain's left-leaning minority parties are all consistently pro-European, as is a large majority of voices from UK business, trade unions, academia, churches, cultural bodies and non-governmental organisations. Such liberal metropolitan consensus is, of course, precisely what so enrages the Brexiteers who espouse a raft of nationalist and mainly simplistic policies. Poor old Ted Heath remains a bogeyman to Britain's far right movement. Presumably Starmer's ultra-caution on the matter of 'going back' is

motivated by his wish to avoid Heath's historic fate. He is also nervous about losing his large 2024 majority in the House of Commons at the next election (while enjoying a landslide in terms of seats, Labour won less than 34% of the popular vote). Nigel Farage's far-right Reform party presents an electoral challenge that Labour needs to confront.

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So what has gone wrong? Is Britain's relationship with its European neighbourhood condemned to constant instability and short-termism? Why has a settlement of Europe's British problem been so elusive? How can it be that the UK has played such an important yet ambivalent role in post-war Europe? Could those whom the British call 'the Europeans' have done more, and yet do more, to anchor the UK to the project of European integration?

## The first entry

Addressing these questions, it can be instructive to return to the arguments that swirled around Britain's initial accession to the European Community – just as hotly contested then as Brexit is now.

As soon as General de Gaulle left office in May 1969, the Six, led by France's new President Georges Pompidou and German Chancellor Willy Brandt, revived hopes for the European Community. The Commission was asked to refresh its original opinion on the matter of UK membership.<sup>5</sup> The new opinion emphasised the need for an enlarged Community to guarantee both cohesion and dynamism: "Only a strong Community can provide a suitable framework for receiving the applicant States".<sup>6</sup> This set the mood for a historic summit meeting in The Hague on 1 and 2 December 1969 that established the threefold objective of completion, enlargement and deepening. The Six, which along with France and West Germany included Belgium, Italy, Luxembourg and the Netherlands, agreed to open accession negotiations with the British. For the leaders, global considerations were uppermost. Enlargement "would undoubtedly help the Communities to grow to dimensions more in conformity with the present state of world economy and technology".

Negotiations began on 30 June 1970 and lasted nineteen months.<sup>7</sup> They were conducted on two levels. At the high level, which culminated in a bilateral meeting between Heath and Pompidou in May 1971, it was Britain's place in the world that dominated. The Six had embarked on

what proved to be a very long process of cooperation in foreign policy. Progress was difficult, especially on the issue of the future of the transatlantic relationship and of détente with the Soviet Union. Side discussions took place with the UK in the forum of the intergovernmental Western European Union (WEU) that the British had been instrumental in originating as long ago as 1954. Gaullist suspicion of Anglo-Saxon conspiracy outlived its inaugurator. Pompidou needed to know if Great Britain was "ready to come in from the wide seas which had always drawn her".<sup>8</sup> Above all, would the UK respect the Luxembourg Compromise of 1966 under which France had obtained an effective national veto on decisions of the Council of Ministers? The answer from Heath was yes. The pact lasted indeed. Tony Blair was the last leader of any EU member state who still seemed to revere the Luxembourg Compromise.

At the official level, however, the accession negotiations focused on a few sensitive but essentially technical matters: the length of any transition period, the UK contribution to the EC budget (notably towards the common agriculture policy), fisheries, sugar exports from the Commonwealth, and the reliance of New Zealand on British trade.<sup>9</sup> The UK had been joined by Denmark, Ireland and Norway in bidding for EC membership, but that left outstanding the Community's relationship with the remaining countries in the European Free Trade Area (EFTA): Austria, Iceland, Finland, Portugal, Sweden, and Switzerland.

# Britain's objectives

In July 1971 the UK government issued a substantial white paper setting out its objectives in the accession negotiations.<sup>10</sup> The government admitted that in the early post-war years Britain had been “less immediately conscious of the need for us to become part of the unity of Europe”. Now, however, the UK was ready to “influence the process of development” of the Community, including that of economic and monetary union (EMU). The current situation saw both a diminishing economic strength of the UK and a diminishing political clout of Europe in world affairs. “A Europe united would have the means of recovering the position in the world which Europe divided has lost ... Europe with the United Kingdom in her councils would be stronger and more influential than Europe without us”, the white paper noted.

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No alternative grouping of states, not excluding the Commonwealth, could offer what the European Community offered. More could be achieved by acting together with the Six than by the UK acting alone across a whole range of economic and political issues, including the environment. EC membership would help the UK strike a more balanced relationship with the US, Russia and potentially China. The Six were going ahead anyway to increase their cooperation and as the UK found itself in agreement with their aims, it should choose to join them.

*“There is no question of any erosion of essential national sovereignty; what is proposed is a sharing and enlargement of individual national sovereignties in the general interest.”*

Heath's white paper appealed in aid to Harold Wilson's own frustrated bid for membership of 1967. To no avail. On 28 October 1971, after three days of robust debate, the House of Commons voted on whether to accept the outcome of the negotiations. Wilson had no strong case to make against entry, but he voted against it nevertheless.

## Fast forward

Several decades later, clear thinking is still very much needed about the future of Europe. The EU again needs to adapt its institutions to the exigencies of the modern world. No other international or regional grouping of states is viable for Britain, and the Commonwealth has receded. Europe's alliance with the US is in trouble. Relations with both Russia and China give new cause for alarm.

The government won by 356 votes to 244. Thirty-nine Tories voted with the opposition. Sixty-nine Labour MPs crossed the floor to vote with the government, led by Roy Jenkins who was to become the first (and only) British President of the European Commission.

The EC-UK negotiations were brought to a successful conclusion in the drafting of the accession treaty. A transition period was to last no longer than five years. Arrangements were agreed for the scaling down of tariffs and customs duties, the easing of border checks and the adjustment of fishing rights. For the Six, the prospect of an imminent improvement in international relations featured highly. They were now to take on obligations for the British Commonwealth. France, in particular, hoped that the enlarged Community would quickly acquire a stronger voice in its relationship with the US. The Commission's final opinion on UK membership saw the enlargement as “a decisive advance towards the culmination of the efforts for European unification undertaken after the second world war”.<sup>11</sup> Both sides evinced satisfaction.

The Treaty of Accession was signed at a solemn ceremony in the Palais d'Egmont in Brussels on 22 January 1972. In an unfortunate hint of things to come, Ted Heath had a bottle of ink thrown at him by an irate British woman. Having changed his suit, the prime minister declared:

*“Clear thinking will be needed to recognise that each of us within the Community will remain proudly attached to our national identity and to the achievements of our national history and tradition. But, at the same time, as the enlargement of the Community makes clear beyond doubt, we have all come to recognise our common European heritage, our mutual interests and our European destiny. ... An end to the divisions which have stricken Europe for centuries. A beginning of another stage in the construction of a new and greater united Europe.”*

Looking forward, Heath argued that the Community would need to adapt its institutions to its new situation. He hoped the New Europe would be able to improve relations with the Soviet Union and be “alive to its great responsibilities in the common struggle of humanity for a better life.” A summit meeting was organised for October in Paris to chart the way onwards.

The UK has amply demonstrated that it retained its “essential national sovereignty” by deploying the EU's secession clause and leaving the club.<sup>12</sup> Brexit left UK relations with the Union marked by distrust, disappointment, and a sense of betrayal. The EU is smaller, weaker and poorer after the departure of one of its largest member states. Its international credibility is tarnished.



Internally, the EU leadership came together in marked solidarity to minimise the adverse effects of Brexit on the budget, on the shape of common policies, and on the operation of the institutions. But no deeper reflection has taken place about losing the Brits overboard. At present, there is surely no political will or coherent strategy on behalf of the Union to reverse Brexit. Faced with its many other challenges, the UK takes low priority. Britain's friends across Europe can be forgiven for their impatience in waiting for the UK to produce a convincingly detailed post-Brexit prospectus.

The UK, for its part, should ask itself why, if the motives for British entry were valid in 1971, those same motives should not apply today. The Labour government wants to 'reset' relations with Europe and shows no signs of wanting deliberately to diverge from current EU norms — which rather negates the whole point of Brexit. In his memoirs, Johnson asks rhetorically of Brexit: "Would we be able to do things differently from the EU? If not, why were we leaving?"<sup>15</sup> Indeed.

As in the 1960s, the sluggish state of Britain's economy is aggravated by tensions with Europe. The current assumption of the Office for Budget Responsibility (OBR) is that operating under the Trade and Cooperation Agreement has reduced the long-term productivity of the British economy by 4%.<sup>14</sup> Both exports and imports will be around 15% lower in the long run because of Brexit. The Tory government's new trade deals after Brexit, most of which just roll over the previous EU trade deals, are too underwhelming to have any material impact on the economy. Net inward migration has risen to 315,000 a year, though its shape has shifted from Europeans to Asians and Africans. The OBR warns that there "remains significant uncertainty both around some

of the outstanding elements of our future economic relationship with the EU as well as the response of firms and households to the new trading arrangements".

Most other independent evaluations of the economy post-Brexit estimate a reduction of UK GDP of between 4 and 5%.<sup>15</sup> The UK lags behind other G7 countries in economic recovery after the pandemic. It is routinely bottom in the OECD's ranking of investment intensity. The recent report by Mario Draghi on EU productivity is equally applicable to the UK, if not more so.<sup>16</sup> According to the Office for National Statistics (ONS) 47% of UK trade is still with the EU, but supply chain difficulties created by Brexit, arduous rules of origin obligations and practical delays at the borders impede UK-EU trade. Unfortunate restrictions have been placed on the movement of students and professionals. Northern Ireland's predicament is especially precarious, strung out as it is between retaining functional ties with the EU's single market while losing ties with the UK's internal market.

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The re-election of Donald J. Trump to the US presidency has scuppered any hope of there being an acceptable US trade deal for Britain. Worse, Trump threatens a tariff war with the rest of the world which, like in the 1930s, nobody can win. Britain faces the frightening prospect of being squeezed under a retaliatory tariff battle between its two largest trading partners.

## Reviewing Johnson's Brexit deal

The Trade and Cooperation Agreement allows for a review of the way it is being implemented five years after its entry into force — that is in 2026.<sup>17</sup> There is plenty to talk about because the TCA is not being fully implemented, especially not by the British. But the EU will be bound to stick to the letter and refuse to allow any wider or more general review of UK relations unless Starmer reverses his red lines and accepts freedom of movement of goods, people, services and capital.

The TCA is not a comprehensive settlement of the cross-border relationship. Negotiations are still ongoing on Gibraltar, citizens' rights, the UK's border management, the Windsor Framework of the Northern Ireland Protocol, and the EU's system of electronic travel authorisation. Provisional arrangements are due to expire over the next three years in the fields of data adequacy, equivalence rules for the City of London's clearing houses, the imposition of the EU's Carbon Border Adjustment Mechanism (CBAM), fisheries, and trading in energy. They need replacing.

Supplementary agreements to the TCA, such as the much-needed veterinary agreement on sanitary and phytosanitary rules (SPS), are in order but will need to accord with EU law under the supervision of the Court of Justice. The SPS agreement can be negotiated under the auspices of a specialised committee set up under the TCA, but there will be no SPS agreement based merely on the passive mutual recognition of each party as equivalent.<sup>18</sup> Switzerland has a mutual recognition agreement with the EU only to the extent that it accepts the oversight of the European Court of Justice. Other supplementary agreements will be complicated and long-winded to negotiate, as well as costly to implement. In any case, the number of new deals that can be struck within the scope of the TCA is relatively few.<sup>19</sup>

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I have speculated previously that Starmer is very likely to get so fed up fiddling at the margins of the TCA that he, just like Macmillan in 1961, will suddenly announce a volte-face, ditch his red lines, and apply for membership of the EU under the terms of Article 49 TEU.<sup>20</sup> Such a change of course would require him to publish a major white paper aimed at convincing MPs that, having

exhausted the reset of EU relations, and in the light of new circumstances, Brexit must be reversed. The white paper could usefully be supplemented by a new version of the political declaration on the UK's future relations with the EU. This declaration would supersede that of Boris Johnson, made as a formal part of the Brexit process in November 2019.<sup>21</sup>

## Terms and conditions of re-entry

However speculative this turn of events may be, it is surely worth discussing what terms and conditions would be put in place by the EU on a return of the prodigal Brits. Under current conditions, some things are certain. The UK would join on the basis of equality with other member states. That means that the UK will have to agree to the teleology of “ever closer union”, forever eradicating the memory of the package foolishly granted by the European Council to David Cameron in 2016 which would have allowed the UK to opt out of that cardinal mission of the Union.<sup>22</sup> Britain newly joined up as a member state would need to embrace the indivisibility of the four principles of free movement of goods, people, services and capital — principles whose indivisibility was, if anything, strengthened by the Union's unexpected and unfortunate encounter with the first secession of a member state, and the attendant risk of disintegration.

The economic case for the UK to join the European Union is not difficult to make. More attention is needed on how UK accession would help the political economy of the EU. From day one, the UK will be a net contributor to the EU budget. It has already sacrificed its previous privilege, won by Thatcher, of the abatement on its annual budgetary contribution.

The UK would not be offered another permanent opt-out from the euro but only a derogation.<sup>23</sup> Like all new member states, Britain would have to commit formally to the goals of EMU, subject to the stipulated convergence criteria. The chancellor of the exchequer would be obliged to treat her economic policy as “a matter of common concern” with the rest of the EU.<sup>24</sup> The British economy would be subject to surveillance and reports by the Commission, supplementing those regularly received from the IMF, the OECD and the UK's own Office for Budget Responsibility. But as a non-eurozone state the UK would not be subject to the coercive means of remedying excessive deficits.<sup>25</sup> Whether or not the UK will ever adopt the euro in place of sterling is a matter for another day: at present there is little prospect of Britain meeting the convergence criteria for the single currency even if the political will to do so were there.

It is estimated that the UK's self-imposed departure from the European Investment Bank (EIB) has, since 2017, cost it £44 billion in lost investment since 2017 in critical infrastructure and development projects aimed at boosting the economy.<sup>26</sup> The EIB is closed to non-EU states.<sup>27</sup> The UK as a member state would again expand the EIB's capital holding, and the government could be expected to support a broadening of the scope of the

Bank's loan activities, including into the hitherto taboo field of defence.

The Labour government's emerging 10-year industrial strategy chimes well with the policies of the European Commission that also seek to redress persistently low levels of investment and productivity. A recent green paper is frank about the country's economic woes — although predictably no conclusion is yet drawn about reversing Brexit.<sup>28</sup> The UK's priorities are to invest heavily in the life sciences, digital transformation, net zero and the defence industries, all of which would help economic growth throughout the EU. Close coordination is desirable between the UK's industrial strategy and the Commission's moves to implement the reforms recommended by Draghi. He insists that investment at scale is needed if Europe is to compete with the US and China.

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The UK has much to offer — notably wind power from the North Sea — in the EU's chase to net zero. Trade in electricity can be much enhanced only once the restrictive conditions of the TCA are surpassed. Both the EU and the UK have already stumbled upon a common goal of doubling the output of renewable energy sources over the next decade. The EU would benefit from regaining access to the UK's carbon storage facilities, lost at Brexit.

Beyond the economy, the UK, with Ireland, would retain its former position outside the battered Schengen Area — with the choice to opt in at some future date.<sup>29</sup> Britain would be expected, nonetheless, not to abuse its insular position by running scared of the Union's struggle to develop a workable and comprehensive asylum and immigration policy. Starmer's ambition to stem the flow of irregular migrants across the Channel can best be achieved by securing a dedicated partnership with the EU. ‘Take back control’ over immigration was a battle cry of the Brexiteers. In reality, Brexit meant stopping EU citizens from migrating to the UK for work. In their place came non-Europeans. No British government can stem immigration when demand for labour is heavy and supply elastic. It would be worthwhile for Labour ministers to admit this.

# Regulation

The EU would greatly extend the scope of its regulatory power – the ‘Brussels effect’ – were the UK to accept the overarching framework on offer. Britain would be required to overhaul its regulatory regime to enable it to participate directly in the work of more than 30 EU executive agencies, surveillance authorities and technical networks already established. For British business, which in any case has to conform to EU norms if it wishes to export goods and services into the internal market, the prospect of a return to the EU’s assured regulatory framework will largely be good news. Brexit has exposed many weaknesses in UK regulation. The sudden removal of the Commission’s regulatory authority upon Brexit induced a scramble to substitute home-grown regulators, often underpowered and under-resourced, like the Food Standards Agency. As at the birth of the internal market in 1992, the creation of one single EU regulator would again simplify the life of business and reduce costs.

Reorientation towards the EU should be the main task of the Labour government’s soon-to-be-established Regulatory Innovation Office. The regulatory change will be particularly beneficial in the field of the environment where the work of UK public bodies, such as the Office for Environmental Protection, the Environment Agency, and Natural England, has not inspired complete confidence. In general, the lofty prospects held out by Brexiteers to UK

agriculture have been confounded. Returning to the CAP will not disadvantage British farmers, at least financially. In Brussels, the UK’s voice will be an important addition in the perennial debate over CAP reform. At home, stable long-term planning for agriculture and horticulture after the disruption of Brexit is sorely to be wished for.

In the field of public health, the readmission of the UK’s Medicines and Healthcare products Regulatory Agency (MRHA) under the umbrella of the European Medicines Agency (previously headquartered in London) should also be widely welcomed by health services on both sides of the Channel as well as by the pharma industry.

The reappearance of British ministers, officials and MEPs at the heart of the law-making process of the Union should strengthen the voice of those who favour a permissive and not a prohibitive approach to regulation. Opaque, officious and interfering regulation of Kafkaesque proportions has too often been the EU’s default position, making it especially hard for start-up companies to navigate EU law. A UK government committed to innovation might be expected to favour a more liberal approach to regulating the digital market, including a revision of the EU’s General Data Protection Regulation (2016) and the Artificial Intelligence Act (2024).

# Services

The services sector will profit immediately from a return to freedom of movement. UK scientists will welcome their reintegration into EU networks and the larger opportunities for funding R&D. Full participation in the Horizon programme was habitually profitable for UK universities and research institutes. Students will benefit from the unfettered freedom to study at universities across the EU, often supported by sponsorship under the Erasmus+ programme. By returning to the liberty of free movement, musicians and artists will have their travel and working conditions eased. Life will improve for the millions of EU citizens living in the UK and UK citizens living in the EU. Tourists will find that passport checks at the ports will be lighter and queues shorter.

The City of London may deprecate the disruption of the Brexit years, but it has survived in a somewhat changed shape as a global financial centre. Membership of the EU would expand the size of the capital pool available to London-based finance houses. The Bank of England will revert to its former place in the European System of Central Banks and within the ecosystem of the supervisory bodies of the financial services industry, which was created after the banking crash and sovereign debt crisis of 2008-12. This time around, the UK should not repeat Gordon Brown’s mistake in resisting a strengthening of the European Securities and Markets

Authority (ESMA). The UK’s Competition and Markets Authority and Financial Conduct Authority will be subject once again to the competition policy of the Commission. Should the British government step up to assume a leading political role in this area, more progress should be possible towards the completion of the EU’s stalled legislation of the Capital Markets Union and Banking Union. The UK as a member state could bring fresh vigour into Council debates on financial services and banking reform, one of the key steps identified by Draghi.

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UK membership of the Union will greatly enlarge the internal market in services and enhance the status of Britain’s professional and business services sector, the export of which should act as a catalyst for the development of services across the Union. The British service industry would widen effective choice for the EU consumer. British ministers hoping to improve on the TCA are up against the



fact that the EU will not guarantee in law the practice of mutual recognition among the professions, including the right of establishment, unless the UK also accepts systemic dynamic alignment under the supranational oversight of the Commission and Court. More generally, following the

strategy of Thatcher's European Commissioner Arthur Cockfield, British lawmakers in the EU should work to ensure that integration does not simply add an additional EU tier to regulation without abolishing redundant national regulators.<sup>30</sup>

## Law and justice

In the field of law, justice and public administration the return of the UK to the EU could have significant political as well as legal benefits. Starmer's government would be expected to join the vanguard of member states working in enhanced cooperation to fight international organised crime, strengthen Eurojust (the EU's criminal justice agency), and increase cooperation in police operations.<sup>31</sup> The UK would be certain to join the Council majority attempting to clamp down on member states in breach of the rule of law, and who are backsliding from liberal democracy.

British lawyers would be welcomed back to the bar of the European Court of Justice in Luxembourg. The UK should aim to bolster the efforts of the Commission and Court to enforce the uniform application of EU law. An early step should be taken to readmit the UK to the Lugano Convention which simplifies the enforcement of cross-border court judgments. British courts may need a refresher course in EU law, taking particular note of recent developments in EU case law in respect of EU citizenship and the rising influence of the Charter of Fundamental Rights, originally spurned by Blair's government.

## Geopolitics

The UK will find that the European Union it would be applying to rejoin is markedly different from the one it voted to leave in 2016. Defence is now a principal driver of European integration, and President Ursula von der Leyen has created a defence portfolio in her new Commission. The EU has assumed other competences — notably, since the pandemic, in the field of public health. And common borrowing has been scaled up to unprecedented heights to aid recovery.

Nearly 20 years on from the signing of the Treaty of Lisbon, however, decision-making is sluggish. Pressure is mounting for another major bout of internal reform without which further enlargement of its membership may paralyse the government of the Union.<sup>32</sup> The European Parliament is more sharply divided than ever not just between left and right but also along the fault line between federalism and nationalism. Both the Parliament and the European Council of heads of government have lost coherent leadership.

The spur for renewed enlargement has been Russia's invasion of Ukraine in February 2022. Pushing the frontiers of the EU further eastwards and southwards to the Balkans is accepted as a necessary strategy to blunt further incursions by the Kremlin. Ukraine is certainly keen to join the EU as soon as possible; alongside neighbouring Moldova, it has already been formally recognised as a candidate state. Ukraine's own association agreement with the EU, dating from 2014, gives Kyiv privileged access to the single market and tantalises with the promise of close political cooperation possibly leading to full accession. In the mindset of Brussels, Ukraine is already far in front of the UK in the pecking order.

As long ago as 2008, Ukraine was promised eventual NATO

membership. The Alliance, however, is rather divided on when, and how, to accommodate Ukraine so long as its war with Russia persists. The US in particular is anxious to avoid escalating its confrontation with Moscow and will not risk opening NATO's door despite the entreaties of Volodymyr Zelensky. For him, a swifter entry to the EU — with no American veto — looks a better bet, especially if it is agreed at the same time to build a much closer strategic and operational partnership between the EU and NATO. Ukraine is evidently more than capable of joining the military core of the Union under the provisions for permanent structured cooperation in defence (PESCO).<sup>33</sup> The EU's treaties also include obligations of mutual cooperation of a military kind among member states.<sup>34</sup> The EU's current efforts to upscale arms procurement are certainly a prize worth having for Ukraine.

One possibility already mooted is that Kyiv is offered a novel, graduated system of entry. It would involve, at the first stage, a form of affiliate membership with partial voting rights in the Council (but no veto) over any single market legislation that is to apply to it.<sup>35</sup> The status of affiliate EU membership may evolve either as a stepping stone to full accession or as a permanent parking place for European states which share the Union's values but do not wish to take on, or cannot fulfil, all the obligations of membership. The concept is certain to be of interest to Iceland and Norway, both founder members of NATO, whose own European Economic Area association agreements with the EU, dating back to 1991, are increasingly outmoded and in want of upgrading. Turkey, another non-EU NATO state, may well — at least if it comes under new leadership — prefer to transform its present, inadequate customs association into EU affiliate membership. For this to happen, however, Ankara will need to drop its boycott of the Republic of Cyprus.

However, in another scenario that should not be discounted, President Trump connives in a ceasefire with Putin that leaves large parts of Ukraine under the government of the Kremlin. Here the EU should be minded to step in immediately and offer Zelensky a fast track to full membership regardless of whether Ukraine met all the strict, formal accession criteria. This raises the question of whether early enlargement that

incorporates Ukraine would, in one form or another, act as a spur to Britain's rejoining the Union. In any event, the UK, which has been a strong supporter of President Zelensky, would hardly avoid becoming a promoter of Ukrainian membership of the EU, whether full or partial. Someone will notice how perverse it is that Britain sponsors the enlargement of the very same club it has just sought fit to leave.

## Foreign, security and defence policy

Britain's accession to the EU would add to the EU's diplomatic weight, not least at the UN, where the UK, along with France, is a permanent member of the Security Council. The UK's armed forces are, if not in a state of readiness, at least battle hardened. Britain, with France and Poland, has the potential to lead developments in EU common security and defence policy. The new government would seem not to obsess that the EU's increased role in defence policy will compete with that of NATO. France, equally, no longer agitates over NATO's role in Europe. This is propitious, especially as NATO's future is thrown into doubt by Trump's return.

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### **NATO's future is thrown into doubt by Trump's return.**

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Starmer's government wants closer collaboration with the EU in security matters, but it cannot rely on warm words alone. Because Johnson refused to include a chapter on foreign, security and defence policy in his Brexit TCA, unless and until the UK rejoins the Union as a full member state a new specific EU-UK defence treaty will have to be drafted and put in place. This will require the unanimous agreement of all 27 member states as well as the EU institutions. Such a treaty would encompass security protocols (doubtless with secret annexes to qualify the sharing of intelligence) as well as political decision-making procedures, budgetary matters, and rules for the military command and control of joint force deployment. The presumption is that the UK will become a fully signed up member of PESCO. It makes sense for the UK to be let back into the EU's Political and Security Committee at

ambassadorial level as soon as possible. Similarly, the UK's chief of defence staff could participate in meetings of the EU Military Committee that oversees the EU's common security and defence missions and operations.

The UK should drop its previous hesitations about participation in the work of the European Defence Agency.<sup>36</sup> The inclusion of the British defence industry in the joint procurement of armaments should be a key and early objective of the Commission's European Defence Industrial Strategy which aims to help member states invest "more, better, together, and European".<sup>37</sup> The UK would be an additional strong competitor within Europe in the field of arms, logistics and cyber security.

Once Britain is anchored firmly within the EU's security nexus, much closer collaboration between the EU and NATO becomes a realistic possibility, even up to the establishment of a joint command to tackle more effectively Russia's aggression against Ukraine and the covert threats of the Kremlin against the eastern members of the EU. Trump's re-election means great uncertainty for NATO and, implicitly, imposes on the EU together with the UK unprecedented responsibility for upholding and reinforcing Western security. Mark Rutte, a veteran member of the European Council and now NATO Secretary General, is well placed to lead discussions about building a systemic partnership between the two organisations.<sup>38</sup>

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## EU reform

The prospect of enlargement to Ukraine, Moldova and at least some of the six countries of the Western Balkans alerts the Union to the need to improve the efficacy of its own system of governance. Even now, decision making is slow, and lines of accountability are blurred. The inevitable tension between intergovernmental and supranational

methods of working has not softened, as some anticipated, but rather sharpened. The jurisprudence of the European Court of Justice, especially on matters of competence, is challenged by several national constitutional courts. The Commission's executive authority has steadily accrued, particularly in times of crisis, but its democratic

legitimacy is curiously elusive. Members of the European Parliament evade the conventional disciplines of political party membership. Strategic leadership of the Parliament is weak. The EU budgetary system is beset with quarrelling between richer and poorer member states. Even the rule of law, that cardinal virtue of liberal democracy, is abused especially (but not only) by Hungary.

The European Council and the Council of ministers are badly run. The threat of the national veto — shades of de Gaulle's Luxembourg Compromise — frequently trumps the smooth running of decision making under the prescribed procedure of the qualified majority vote (QMV). Unsurprisingly, the European Parliament has already made proposals to limit use of the national veto and to extend codecision between the Council and itself to all aspects of EU law making, as befits a modern, bicameral parliamentary democracy.<sup>39</sup>

Habitually, Britain has had a constipated approach to the democratic reform of the EU, seeking always to weaken the force of federalist proposals in favour of inter-state confederal bargaining. Britain reinvented as a member state would have to take sides across the federal fault line. We have already suggested that the new Labour government should place itself in the avant-garde of certain policies, and this applies to constitutional matters too. To facilitate this, the treaty needs to make better provision for more differentiated integration, allowing reluctant member states to stay behind without being able to block enhanced cooperation among those who wish to press ahead.<sup>40</sup>

The alleged inflexibility of EU governance was one contributory factor in the UK's rejection of membership in 2016. It will be difficult to make the case to a sceptical British public for a return to membership of a European Union that is not working better than before. The Labour government should embrace reform of the Union not from its traditional eurosceptic angle but with the express intention of making the EU more capable, effective and democratic. This requires Keir Starmer to consign to history Labour's often contorted European past. Treaty change cannot come soon enough, not least to make arrangements for a speedy Ukraine accession.

Other institutional reforms needed before an enlarged Union can operate well include the reduction in the size of the Commission to two-thirds the number of member states; agreement on an arithmetical formula for the apportionment of seats in the Parliament; abolition of the rotating presidency of the Council of ministers; and the lifting of all prohibitions on the judicial authority of the Court of Justice.<sup>41</sup> The path to negotiating such reforms is by way of a constitutional Convention, gathering all the stakeholders in the future of Europe, including national parliaments and candidate states, in the same place at the same time to debate the same things.<sup>42</sup> UK representatives at the Convention should be expected to make a positive contribution, just as they did in the drafting of the ECHR all those years ago.

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## **Treaty change cannot come soon enough, not least to make arrangements for a speedy Ukraine accession.**

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In his recent pathfinding report, Mario Draghi suggests that treaty reform is indeed inevitable if his recommendations to expand the EU's firepower are achievable. President von der Leyen has commanded a series of 'pre-enlargement papers', to be published early in 2025, on the workings of institutions of the Union as well as on its common policies. One key issue is the financing system for the EU budget, which today relies too much on national contributions paid annually — and grudgingly — on a GNI basis. Instead, new forms of direct revenue should be created at the federal level for expenditure on genuine European public goods, thereby saving national treasuries money. The application of fiscal federalism to the Union will serve to articulate more clearly the principle of subsidiarity, whereby the EU will only act where national governments cannot act with efficacy.<sup>43</sup> To complete the picture, the Commission should appoint an EU treasury secretary with enhanced powers to tax and spend federally. The European Central Bank should become the lender of last resort for the eurozone states. All these reforms will strengthen economic governance and consolidate the single currency, possibly calming British anxieties about EMU.

If von der Leyen ever harboured any doubts about the plausibility of constitutional reform, Trump's re-election must surely dispel them. We will see shortly the seriousness of her intent to prepare the Union for enlargement. Whatever the detail of Trump's future government, he is a right-wing American nationalist whose sympathies are not pro-European. His fellow travellers in Europe, like Viktor Orbán and Nigel Farage, are out to destroy the European Union. Mainstream European leaders must step up their efforts to save the EU and accelerate the pace of integration. The new geopolitical situation surely vindicates France's President Emmanuel Macron, who has made many pleas for the EU to lay claim to sovereign autonomy. Once again, the EU is confronted with the twin imperatives of enlargement and deepening. Ways must be found to quickly admit Ukraine into the EU. Only a stronger, more federal system of government will enable the larger Union to defy the risk of disintegration. And if Ukraine to the east, why not the United Kingdom to the west?

# U-turn now

The case for a U-turn in British European policy is growing fast. As with any EU enlargement, there will be winners and losers among existing member states. But when the time comes, none of the EU's 27 national governments could contemplate vetoing a new UK application to rejoin. Those most directly affected by Brexit — Belgium, France, Holland and Ireland — would be much relieved, but all member states should be able to find something to welcome in the return of the prodigal.

The UK would be a net contributor to the EU budget. It has shown admirable support for Ukraine when others have dithered. A British contribution to the development of EU common security and defence policy is widely anticipated. UK membership would reinforce the EU's position on climate change and international trade, as well as adding to the EU's diplomatic heft. British universities make a notable addition to European science and innovation. Britain's socially liberal and multicultural experience is a welcome antidote to the more conservative, antisemitic and homophobic attitudes that prevail in much of central and eastern Europe. The progressive forces in the European Parliament would welcome back British MEPs who, for the most part, were competent and diligent.

As things stand, Starmer is seen from Brussels and other European capitals as a relatively strong leader in command of a stable majority of the House of Commons. His new government will have some success at improving the political relationship. There will be more meetings with EU officials, including an annual summit meeting between the prime minister and the presidents of the Commission and European Council. The conferences of the European Political Community will be used, as the WEU once was, for constructive talks on the side.

However, a full repair of UK-EU relations will not happen by accident but by embarking on a full-scale renegotiation. At present, the EU Council is in no mood to grant a new mandate to the Commission to reopen trade talks with the UK. No concession on trade will be offered until there is a settlement of the current negotiations on an integrated energy market and on long-term fishing rights. There can be an agreement on a limited youth mobility scheme only if Starmer drops his objections. Another priority for both sides would be the harmonisation of the British position with the EU's carbon emission trading scheme and border tariff.<sup>44</sup> Climate change — specifically support for COP — is one area where the British government can swiftly differentiate its position from that of Trump.

A patchwork of adjustments will beg the question of why partial and gradual conformity with EU rules, sector by sector, is preferable to a wholesale and comprehensive reintegration, eventually taking the form of full membership. Rule taking without a vote is not a British thing. Speculation during the immediate post-referendum period about rejoining EFTA and copying either the Norwegian or Swiss models of association

with the EU got nowhere. Doubtless such options will be explored again, with equally negative results. What was possible for Norway in 1991 is impossible for the UK in 2025.

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Time is of the essence. In the absence of a coherent bid from London clarifying what it wants from Europe, the UK is bound gradually to diverge more from the EU norm. Continuing doggedly with the TCA will be increasingly futile. Britain's political position will grow more unstable. In Brussels and other European capitals, it will not be readily understood why London does not file a fresh membership application. General goodwill towards the new government might easily turn to irritation. The vagaries of the British political timetable and opinion polls will be closely observed in European capitals.

Although the next general election is not due before 2029, there is nothing to stop Starmer from going to the country earlier on a manifesto that reopens the debate about EU membership. Nothing, that is, except himself. Starmer seems stubbornly trapped behind his own red lines. While many of his cabinet ministers and other members of the Labour party want European convergence, the prime minister repeats his mantra of no rejoining, no customs union, and no single market.<sup>45</sup> The truly pragmatic thing to do would be to ditch Labour's commitment to an out-of-date manifesto for which, in any case, only a third of the electorate ever voted. Starmer's position is indeed peculiar because it was he who campaigned in vain (and in my view wrongly) for a second Brexit referendum during the premierships of Theresa May and Boris Johnson. Perhaps he is traumatised by that memory.

One may conjecture, nevertheless, that the harsh realities of geopolitics may soon weigh in on Starmer. As Macmillan, Heath and Wilson discovered, it was the need to redress the balance of power in Europe that clinched the decision to join the European Communities, not the nitty gritty of farming or fisheries. In today's world of bloc politics, the BRICS are challenging the leadership of the West. The conventional transatlantic partnership between like-minded liberal globalists has fractured. Donald Trump has definitively ended US support for the project of European unification, a benign tradition dating back to President Truman. Nobody can be sure where Trump will take America, but at this critical moment it makes no sense for Britain to cling nostalgically to the hope of retaining a 'special relationship' with an aberrant US.



The prospect of taking up a British seat at Europe's top table alongside the French president and the German chancellor should tempt even the most level-headed of lawyers, which Starmer is. The logic of pragmatic inclusion surpasses the lure of glorious isolation. The benefits of participation in EU decision-making for British ministers in the Council and British members of the European Parliament, with a British member of the Commission and British judges at the Court of Justice, must surely be weighed up. Together, these

representatives should be capable of articulating the British national interest on the European plane. Having lost their voice in Europe since Brexit, British business and civil society deserve to be properly represented in the system of EU governance. Why would the British public not respond well to a government willing to fight its corner in Brussels rather than lingering on the sidelines? If the UK under Thatcher could take a lead in the EU, it could surely do so again under another statesmanlike prime minister.

## The process of admission

As and when a UK government eventually files its EU membership bid, the Commission will be asked to produce an opinion on its suitability as a candidate state. This screening will complement the British government's white paper and respond to any revised political declaration on the framework for the future relationship. Due to the legacy of recent membership, most of the 35 chapters in the EU's official accession dossier should be opened and closed rather quickly. Any transition period need not be long. Going back should be a good deal easier, and quicker, than the act of leaving proved to be.

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### One political issue of great sensitivity will be the UK's trustworthiness as an enduring partner.

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One political issue of great sensitivity will be the UK's trustworthiness as an enduring partner. The very last thing anyone will want is a repeat of the parliamentary circus that engulfed the UK's efforts to conclude the Brexit agreement. Whatever state the British Conservative party is in, it will not be 'pro-European'. Nor is it likely that Labour will introduce a proportional system of election to the Commons that would guarantee a bipartisan majority on Europe. The Commission, then, will be asked by the Council to suggest ways of anchoring a British re-entry. In Britain, constitutional entrenchment is not an easy thing to do. Famously, no one parliament can bind its successor. There are, however, some parliamentary mechanisms which may work to stabilise the UK's second term of EU membership.

The EU accession act could provide that its own repeal may only be staged over two parliaments, with a general election in between. The same act could even be exempted from the terms of the constitutive Parliament Act, which would have the effect of giving the pro-European majority in the House of Lords a real power to veto, and not just delay, its repeal. A third option, dangerously federal, would be to give the devolved

parliaments in Scotland, Wales and Northern Ireland the power to halt another UK secession from the EU. Both Scotland and Northern Ireland voted Remain in 2016. Indeed, a strong argument for reversing Brexit, too rarely heard, is that it would bolster solidarity among the provinces of the United Kingdom of Great Britain and Northern Ireland.

Then the country will come to the popular vote. The referendum should not be held before the government's agenda for economic growth is bearing its first fruits: voters want rising living standards, including housing and public transport. The plebiscite should not be targeted at the opening of EU accession negotiations, on a promise of a blank cheque. Rather, the poll should wait until the close of negotiations, specifically on the terms of an accession treaty endorsed by an act of parliament at Westminster. When the full facts are known, disinformation and outright untruths about the future of Europe will be less rampant than they were during Cameron's lame, defeatist campaign of 2016. This time the government's pitch to the nation should promote the liberal values of Europe as well as defining the national interest in terms of security and prosperity.

Already, opinion polls are somewhat encouraging for pro-Europeans. Although Starmer will certainly be required to seek a fresh parliamentary mandate before Britain votes in a referendum on rejoining the EU, Statista finds 55% regretting Brexit against 31% still in favour.<sup>46</sup> Similarly, YouGov finds that in a new referendum, 59% would vote in favour of EU membership and 41% against.<sup>47</sup> Younger voters seem more likely to be enticed by Europe. Social media will be awash with #Brejoiners. U-turns can be very unexpected.

There will be another great debate. There will be demonstrations. There may be riots. The far right in Britain will always be with us, peddling the alchemy of nationalism and xenophobia. But if led strategically in the direction of national recovery, the pro-European majority in the ballot box will vastly outweigh the noise from the street. Changing one's mind as a nation is not wrong. Reversing Brexit will not solve every economic and political problem, but it will put the British state on a more promising trajectory. It will affirm that the United Kingdom is, after all, a modern European country and can punch its weight in Europe and the wider world.



- <sup>1</sup> The author thanks Janis Emmanouilidis, Tim Figures, David Howarth, Almut Möller, Georg Riekkelies and Fabian Zuleeg for comments.
- <sup>2</sup> See Andrew Duff, *The before and after of Brexit: Britain and the Schuman Plan*, EU3D Insights, 29 March 2023.
- <sup>3</sup> See, for example, Aslak Berg, Ian Bond, Zach Meyers, Luigi Scazzieri, *EU-UK relations: Towards a post-election agenda*, Centre for European Reform Insight, 1 July 2024.
- <sup>4</sup> For views of the pro-EU minority in the Tory party, see *Building on the Trade and Cooperation Agreement*, Conservative European Forum, March 2024 – a group led by former ministers David Lidington and Stephen Hammond.
- <sup>5</sup> EC Commission Opinion, 29 September 1967.
- <sup>6</sup> EC Commission Opinion, 1 October 1969.
- <sup>7</sup> The negotiations were led by Jean François Deniau and Edmond Wellenstein for the Commission, and by Anthony Barber, then Geoffrey Rippon, and Con O'Neill for the UK.
- <sup>8</sup> For a fuller discussion of these events, see Andrew Duff, *Britain and the Puzzle of European Union*, Routledge, 2022, especially chapter 2.
- <sup>9</sup> A useful summary of the negotiations is found in the Commission's Fifth General Report on the Activities of the Communities, 1971.
- <sup>10</sup> *The United Kingdom and the European Communities*, Cmnd 4715, July 1971.
- <sup>11</sup> EC Commission Opinion, 19 January 1972.
- <sup>12</sup> Article 50 TEU.
- <sup>13</sup> Boris Johnson, *Unleashed*, 2024, p. 399.
- <sup>14</sup> <https://obr.uk/forecasts-in-depth/the-economy-forecast/brexit-analysis/#assumptions>
- <sup>15</sup> For example, John Springford, *Brexit, four years on: Answers to two trade paradoxes*, Centre for European Reform, January 2024.
- <sup>16</sup> Mario Draghi, *The Future of European Competitiveness*, 9 September 2024.
- <sup>17</sup> OJ L 149, 30 April 2021. Article 776 TCA.
- <sup>18</sup> Articles 69-87 TCA.
- <sup>19</sup> Ignacio García-Bercero, *A trade policy framework for the European Union-United Kingdom reset*, Bruegel Policy Brief 30/2024.
- <sup>20</sup> Andrew Duff, *Going Back: What Britain should do to join the European Union*, European Policy Centre Discussion Paper, 4 March 2024.
- <sup>21</sup> That is, Article 50 TEU. OJ C 384, 12 November 2019.
- <sup>22</sup> Article 1 TEU.
- <sup>23</sup> Article 139 TFEU.
- <sup>24</sup> Article 121(1) TFEU.
- <sup>25</sup> Article 126(9) & (11) TFEU.
- <sup>26</sup> Stephen Hunsaker, *Analysis, UK in a Changing Europe*, 17 October 2024.
- <sup>27</sup> Article 308 TFEU.
- <sup>28</sup> UK Government, *Invest 2035: The UK's Modern Industrial Strategy*, October 2024.
- <sup>29</sup> Protocol No 19.
- <sup>30</sup> We would also advise more active consideration of using the optional extra '28<sup>th</sup> regime' at the EU level, such as the European Company Statute.
- <sup>31</sup> Articles 83(3), 86(1) & 87(3) TFEU.
- <sup>32</sup> Andrew Duff, *Keeping the Promise: Reform of governance in the enlarged European Union*, European Policy Centre Discussion Paper, 2 September 2024.
- <sup>33</sup> Article 42(6) TEU.
- <sup>34</sup> Articles 42(7) TEU & 222 TFEU.
- <sup>35</sup> For a discussion of affiliate membership, see Chapter 7 of Andrew Duff, *Constitutional Change in the European Union: Towards a Federal Europe*, Palgrave Macmillan, Open Access, 2022.
- <sup>36</sup> Article 45 TEU.
- <sup>37</sup> For a fuller discussion, see Andrew Duff, *NATO and the European Union: Bridging the gap*, European Policy Centre Discussion Paper, 13 May 2024.
- <sup>38</sup> Paul Taylor, *Time for a new deal between the EU and NATO*, European Policy Centre Commentary, 4 November 2024.
- <sup>39</sup> In particular, the Parliament wishes to change the unanimity rule behind use of the so-called passerelle clause, Article 48(7) TEU. For reform proposals, see Andrew Duff, *Five Surgical Strikes on the Treaties of the European Union*, European Papers, Vol. 8, No 1, 11 April 2023.
- <sup>40</sup> Fabian Zuleeg, Janis Emmanouilidis, Almut Möller, *Confronting the permacrisis: Time for a supra-governmental avantgarde*, European Policy Centre Discussion Paper, 17 July 2024.
- <sup>41</sup> Andrew Duff, *Towards common accord? The European Union contemplates treaty change*, European Policy Centre Discussion Paper, 21 October 2023.
- <sup>42</sup> Article 48(3) TEU.
- <sup>43</sup> Andrew Duff and Luis Garicano, *A two-tier federal budget for the European Union*, European Policy Centre Discussion Paper, 27 February 2024.
- <sup>44</sup> Sophie Hale, *EU-turn: Resetting the UK-EU relationship through strategic dynamic alignment*, Resolution Foundation, 9 October 2024.
- <sup>45</sup> The Labour Movement for Europe, chaired by Stella Creasy MP, can be expected to agitate for rejoining the EU.
- <sup>46</sup> May 2024. <https://www.statista.com/statistics/987347/brexit-opinion-poll/>
- <sup>47</sup> July 2024. <https://yougov.co.uk/politics/articles/50317-labour-does-not-have-a-mandate-to-take-britain-back-into-the-eu-says-public>

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## MISSION STATEMENT

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