

ASCERTAINING THE NATURE OF THE LINK BETWEEN ENLARGING AND REFORMING THE EUROPEAN UNION: WHITHER THE COPENHAGEN ABSORPTION CAPACITY CRITERION?

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Some, although not all, past reforms of the EU were connected to the accession of new Member States, and, likewise, the current reform proposals are often presented in the context of the Union's possible next round of enlargement. This nexus between reforming and enlarging the Union has been formalised and justified as the Copenhagen absorption capacity criterion. But does this explanation actually hold up? This article examines the nature of the link between reforming and enlarging the EU against the backdrop of the newly discovered enlargement enthusiasm. The contribution demonstrates that, first, the current reform suggestions go much beyond what is actually needed to make the next round of enlargement possible, although they are framed in the enlargement discourse. Second, this article shows that in the past, reforms of the Union were only occasionally and partially necessitated by its enlargement, even when they were tied to it politically. It is suggested that the connection between enlarging and reforming the Union cannot be explained by the Copenhagen absorption capacity criterion alone. Instead, enlargement acts as a catalyst for reforms, providing a good political opportunity to resolve problems facing the Union irrespective of enlargement plans.

1 INTRODUCTORY REMARKS

There are two 'evergreen' topics that have been reappearing as high-priority items on the political agenda of the EU in recent decades, shaping the bloc's legal evolution and generating sizeable amounts of literature: enlargement and reforms. Throughout the Union's history, these two often went hand-in-hand due to how politicians and scholars alike presented the former as requiring the latter.¹ The 2004 'big bang'² enlargement may serve as just one compelling example of this link. Still fresh in the memory, the Union's biggest round of enlargement thus far 'was undertaken with considerable trepidation',³ for it posed an unprecedented challenge to the Union's institutional structure, governance mechanisms, and decision-making processes.⁴ Ten new countries were about to join the Union, making it

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¹ When studying the relationship between reforming and enlarging the Union, scholars observe certain 'interdependencies' between the two. See Bernard Steunenbergh, 'Enlargement and Reform in the European Union' in Bernard Steunenbergh (ed), *Widening the European Union: The politics of institutional change and reform* (Routledge 2002) 7-8.

² Andrea Ott, '20 Years of the EU's Big Bang Enlargement: From the Return to Europe to the Escape from Europe?' (2024) 31(5) *Maastricht Journal of European and Comparative Law* 553, 554.

³ Mark A Pollack, 'Europe United? The Impact of the EU's Eastern Enlargement, Five Years On' (2009) 8(2) *European View* 239, 240.

⁴ See Frank Emmert and Siniša Petrović, 'The Past, Present, and Future of EU Enlargement' (2014) 37(5) *Fordham International Law Journal* 1349, 1379-1382.

bigger, more diverse and, apparently, much harder to govern. Responding to this challenge, the Nice Treaty⁵ was meant to finish the job started in Amsterdam⁶ and prepare the Union for the accession of ten new countries, ensuring that it would remain functioning and efficient.⁷

Designed initially as three Communities⁸ for just the ‘Inner Six’,⁹ the Union changed and adapted throughout its history, accommodating a much higher number of participating countries through reforms of its legal architecture and policies. The current situation resembles the late 1990s and the early 2000s to a great degree.¹⁰ Just like back then, there are ten candidate countries wishing to join the Union.¹¹ And just like twenty years ago, the Union’s institutions – the European Parliament,¹² the Commission,¹³ and the European Council¹⁴ – declared that a far-reaching reform of the EU is needed to make the next round of enlargement possible. Several specific and detailed proposals have already been tabled. The EU’s ‘capacity to absorb new members’¹⁵ becomes crucial for the outcome of the candidate countries’ membership bid, intertwining their EU aspirations with the Union’s internal constitutional transformations and predicating their accession on the success of the Union’s reform journey, which is, in its turn, likely to be long, complicated, and arduous.

These latest developments warrant a closer look at the nature of the connection between the EU’s enlargement and reforms. On the surface, this link is formalised, justified, presented, marketed, and structured as one of the conditions that needs to be fulfilled for the next round of enlargement, namely the Copenhagen absorption capacity criterion. Yet, when analysed from a legal viewpoint and when tested against the practice of reforms and enlargement, does this actually hold up? Is the Copenhagen absorption capacity criterion a good explanation for how reforms of the Union are being tied to its enlargement and vice versa, in theory and in practice? These are the questions that this article undertakes to answer.

The analysis begins by briefly presenting the Copenhagen absorption capacity criterion and, particularly, by reflecting critically on how it functions as a legal requirement for the Union’s enlargement under Article 49 TEU. Then, the article proceeds to examine the status quo and study how the current calls for reforms of the Union are being connected to

⁵ Treaty of Nice amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [2001] OJ C80/1. For an overview of the Treaty, see René Barents, ‘Some Observations on the Treaty of Nice’ (2001) 8(2) *Maastricht Journal of European and Comparative Law* 121.

⁶ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C340/1. For an overview of the Treaty, see Philippe Manin, ‘The Treaty of Amsterdam’ (1998) 4(1) *Columbia Journal of European Law* 1.

⁷ See Finn Laursen, ‘The Treaty of Nice: The Inadequate Preparation of Enlargement’ in Finn Laursen (ed), *Designing the European Union: From Paris to Lisbon* (Palgrave Macmillan 2012).

⁸ On the beginnings of the Communities, see F Roy Willis, ‘Origins and Evolution of the European Communities’ (1978) 440(1) *The Annals of the American Academy of Political and Social Science* 1, 3-7.

⁹ Uwe W Kitzinger, ‘Europe: The Six and the Seven’ (1960) 14(1) *International Organization* 20, 20.

¹⁰ See Eleanor Sharpston, ‘Further EU Enlargement – a “Brave New World”, or More like “Back to the Future”?’ (2024) 25 *ERA Forum* 275, 275–276.

¹¹ European Commission, ‘2024 Communication on EU enlargement policy’ COM(2024) 690 final, 1.

¹² European Parliament resolution of 29 February 2024 on deepening EU integration in view of future enlargement (P9_TA(2024)0120; 2023/2114(INI)).

¹³ European Commission, ‘Communication on pre-enlargement reforms and policy reviews’ COM(2024) 146 final.

¹⁴ European Council Strategic Agenda: 2024-2029.

¹⁵ Copenhagen European Council (21-22 June 1993) (1993 *Bulletin of the European Communities* No 6) para I.13.

the possible next round of enlargement. After that, this article focuses on the relationship between EU reforms and enlargement phases in the past. Having demonstrated that the Copenhagen absorption capacity criterion cannot explain the link between reforms and enlargement in either the past or the present, this contribution investigates the actual nature of the nexus between enlarging the Union and reforming it, arguing that this link goes beyond the Copenhagen absorption capacity criterion and functions in a more complicated manner than previously thought.

2 THE COPENHAGEN ABSORPTION CAPACITY CRITERION

As studied in detail in the following two sections, the prospects of enlargement are often tied to the reform discourse taking place in the Union. The way this connection is theorised and legalised, at least since 1993,¹⁶ is the so-called Copenhagen absorption capacity criterion. Also known as the ‘integration capacity’¹⁷ criterion, it might look like a suitable, ready-made explanation for the nexus between reforming and enlarging the Union. Before looking into whether this explanation holds up, the criterion has to be studied briefly from a theoretical perspective. As demonstrated below, the absorption capacity criterion is an unusual legal construct that has certain conceptual incongruities, which, in the end, undermine its ability to explain the nexus between reforming and enlarging properly.

Article 49 TEU, the only provision in the primary law of the Union that regulates accession to the EU,¹⁸ reads: ‘The conditions of eligibility agreed upon by the European Council shall be taken into account’.¹⁹ This sentence has been successively interpreted as referring to the conditions adopted by the European Council in 1993,²⁰ better known as the Copenhagen Criteria,²¹ ‘a checklist of political and economic benchmarks for aspiring member countries’.²² Apart from several political and economic requirements for

¹⁶ It has to be noted that the Union’s or, at that time, the Communities’, ability to successfully integrate new members was given consideration in the enlargement rounds before the 1993 European Council, which indeed ‘codified’ the previously existent practice. See Christophe Hillion, ‘The Creeping Nationalisation of the EU Enlargement Policy’ (2010) Report No. 6 SIEPS (Swedish Institute for European Policy Studies) 26.

¹⁷ The expression ‘integration capacity’ was introduced as a better alternative to ‘absorption capacity’ by the Commission in 2006. See European Commission, ‘Enlargement Strategy and Main Challenges 2006 – 2007 Including annexed special report on the EU’s capacity to integrate new members’ COM(2006) 649 final 17.

¹⁸ For an overview of the enlargement law, see Serhii Lashyn, ‘The Finalité of the European Union’s Enlargement’ (2025) 26 ERA Forum 249, 251–255; Dimitry V Kochenov and Elena Basheska, ‘Ukraine and the EU Enlargement: What Is the Law and Which Is the Way Forward?’ [2025] European Journal of Risk Regulation 1, 5–13.

¹⁹ Consolidated version of the Treaty on European Union [2012] OJ C326/13 Art 49.

²⁰ Susanna Fortunato, ‘Article 49 [Accession to the Union]’ in Hermann-Josef Blanke and Stelio Mangiameli (eds), *The Treaty on European Union (TEU): A Commentary* (Springer 2013) 1363–1366; Rudolf Geiger, ‘Article 49 [Accession of New Member States]’ in Rudolf Geiger, Daniel-Erasmus Khan, and Markus Kotzur (eds), *European Union Treaties: A Commentary* (C H Beck & Hart Publishing 2015) 181; Friedrich Erlbacher, ‘Article 49 TEU’ in Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (Oxford University Press 2019) 314–315.

²¹ For an overview of the Criteria, see Christophe Hillion, ‘The Copenhagen Criteria and Their Progeny’ in Christophe Hillion (ed), *EU Enlargement: A Legal Approach* (Hart Publishing 2004).

²² Danijela Dudley, ‘European Union Membership Conditionality: The Copenhagen Criteria and the Quality of Democracy’ (2020) 20(4) Southeast European and Black Sea Studies 525, 527.

membership,²³ the criteria also provide that '[t]he Union's capacity to absorb new members'²⁴ is 'an important consideration in the general interest of both the Union and the candidate countries'.²⁵ This particular condition is known as the absorption capacity criterion, 'the often forgotten internal aspect of the Copenhagen criteria'.²⁶ Although, as Article 49 TEU provides, this criterion shall only 'be taken into account',²⁷ it has become an indispensable and important part of the Union's enlargement that continues to play a significant role in each accession process.²⁸

When examined from a theoretical perspective, the Copenhagen absorption capacity criterion presents some conceptual challenges that are rather difficult to disentangle. To begin with, unlike other Copenhagen Criteria, the absorption capacity criterion is a requirement for the Member States to fulfil, not for the candidate countries.²⁹ It is the Union that must satisfy this criterion, although its fulfilment or non-fulfilment has a bearing only on the candidate countries, as it directly impacts the outcome of their bid to join the Union. There is no feasible way for the candidate countries to directly influence the EU's absorption capacity. Before becoming a Member State, any candidate country has no say in the Union's policies and decision-making, let alone its constitutional reforms.³⁰ Presented as an accession requirement that has to be fulfilled before any individual accession may take place, the Copenhagen absorption capacity criterion can be satisfied only by the Union itself. These unusual, even counterintuitive, mechanics lead to the possibility of utilising the absorption capacity criterion as an 'emergency brake'³¹ in any accession process that enables the Union to delay or prevent the admission of a third country even when it fulfils all other Copenhagen Criteria.

In light of this, one may question whether the absorption capacity criterion may be regarded as an accession criterion in the first place. If this is not for the candidate countries to fulfil, can it be plausibly called an accession criterion at all? While this issue requires more space to be addressed properly than this article can provide, it suffices to say the following. First, the European Council presented the absorption capacity criterion together with other accession criteria,³² and the absorption capacity has been regarded as an accession criterion ever since. It is illustrative that, in the literature, the absorption capacity criterion is often

²³ For a detailed overview, see Kirstyn Inglis, *Evolving Practice in EU Enlargement: With Case Studies in Agri-Food and Environment Law* (Martinus Nijhoff Publishers 2010) 57-93.

²⁴ Copenhagen European Council (n 15) I.13.

²⁵ *ibid* I.13.

²⁶ Nicolai von Ondarza, 'Getting Ready Ukraine's Potential Accession and EU Institutional Reform' (*Verfassungsblog*, 22 December 2022) <<https://verfassungsblog.de/getting-ready/>> accessed 1 May 2026.

²⁷ TEU Art 49.

²⁸ See Inglis (n 23) 60-69.

²⁹ Marc Maresceau, 'EU Enlargement: Origins and Practice' in Mathieu Segers and Steven Van Hecke (eds), *The Cambridge History of the European Union* (Cambridge University Press 2023) 428.

³⁰ Nevertheless, it has to be mentioned that, as observed in the literature, the Union's relationship with a candidate country may, under certain circumstances and to a limited degree, cause some changes in the Union's policies, laws and institutional structures. See Antoaneta L Dimitrova and Rilka Dragneva, 'How the EU-Ukraine Association Agreement and Its Consequences Necessitated Adaptation and Drove Innovation in the EU' (2023) 61(6) *JCMS: Journal of Common Market Studies* 1454.

³¹ Hillion, 'The Creeping Nationalisation of the EU Enlargement Policy' (n 16) 26.

³² Copenhagen European Council (n 15) para I.13.

referred to as ‘the fourth’ criterion,³³ meaning it is actually perceived as one of the accession criteria. Second and more importantly, if the absorption capacity is indeed not a condition for acceding to the Union *sensu stricto*, it is certainly a condition for the enlargement of the Union. All other Copenhagen Criteria may be better referred to as the accession criteria proper, meaning the requirements that the candidate countries have to fulfil if they wish to be admitted to the Union. The absorption capacity criterion is, in contrast, a requirement for the EU’s enlargement, not for the accession of new countries. While other Copenhagen Criteria make sure that the candidate countries are ready to join, the absorption capacity criterion is there to verify that the Union is ready to admit those countries.

Another notable characteristic of the Copenhagen absorption capacity criterion is that the logic of this criterion goes against the essence of the principle of *nemo iudex in causa sua* (no one should be a judge in their own case). With regard to other Copenhagen criteria, the EU and the Member States decide how exactly those criteria can be satisfied, the candidate countries work towards fulfilling those criteria, and then it is the Union and the Member States who are the ultimate arbiters of their success. With the absorption capacity criterion, things work in a completely different and quite uncommon manner: the EU itself establishes what the criterion exactly means in a given historical moment, how it can be fulfilled, and the Union decides, in the end, whether it has succeeded in fulfilling this criterion.³⁴ As aptly noted by commentators, ‘the EU’s absorptive capacity for further enlargement is going to be what its leaders choose it to be’.³⁵ The Union’s leaders are also the ones who decide whether the absorption capacity criterion is satisfied, further proving that its actual function might be acting as the ‘emergency brake’ mentioned above.

A particularly significant problem with the absorption capacity criterion that flows from the previously mentioned characteristics is that it is, as commentators rightfully observe, ‘vague and ill-defined’.³⁶ Although other Copenhagen Criteria are also not outstandingly specific,³⁷ the absorption capacity criterion is particularly opaque. Handing down a judgment on whether the accession of new Member States is possible in light of the Copenhagen absorption capacity criterion is very difficult and depends on numerous variables, as well as on how one perceives the course of European integration and its prospects. It is unclear how exactly the Copenhagen absorption capacity criterion should be fulfilled, particularly because nobody can predict when the next enlargement round will happen and which countries will join the Union, hence making it unlikely that a specific set of reform proposals can be plausibly presented as the fulfilment of this criterion at a certain point in time. Even ascertaining what the absorption capacity means in general terms, not in the context of a particular enlargement phase, is quite difficult.

³³ Hillion, ‘The Creeping Nationalisation of the EU Enlargement Policy’ (n 16) 26; Inglis (n 23) 60; Geoffrey Edwards, ‘Reforming the Union’s Institutional Framework: A New EU Obligation?’ in Christophe Hillion (ed), *EU Enlargement: A Legal Approach* (Hart Publishing 2004) 41.

³⁴ Christophe Hillion, ‘Enlargement of the European Union: A Legal Analysis’ in Anthony Arnall and Daniel Wincott (eds), *Accountability and Legitimacy in the European Union* (Oxford University Press 2002) 413.

³⁵ Michael Emerson et al, ‘Just What Is This “Absorption Capacity” of the European Union?’ (2006) 113 CEPS Policy Brief 22.

³⁶ *ibid* 1.

³⁷ For example, on the political criterion, see Dimitry V Kochenov, ‘Behind the Copenhagen Façade. The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law’ (2004) 8(10) *European Integration Online Papers* 1.

There is no Enlargement Methodology for the absorption capacity criterion; there are no benchmarks that would give a more or less precise idea of the specific content of this criterion. Shortly before the Commission presented its vision of the content of the absorption capacity criterion in 2006, some authors wrote that it was comprised of many elements and suggested a non-exhaustive list of such elements,³⁸ among them the capacity of the Internal Market to accommodate new Member States, the budgetary capabilities of the Union, its institutional capabilities, and even the ‘capacity of society to absorb new member states’,³⁹ as well as the capability of the Union ‘to assure its strategic security’.⁴⁰ In its influential communication,⁴¹ the Commission then defined absorption capacity as ‘a functional concept’,⁴² the purpose of which is ‘to ensure [the Union] can maintain its capacity to function’.⁴³ The Commission interpreted it as ‘about whether the EU can take in new members at a given moment or in a given period, without jeopardising the political and policy objectives established by the Treaties’.⁴⁴ As to the specific content, the Commission’s view was similar to what commentators suggested, although it was narrower and, particularly, did not include the societal dimension. From the Commission’s standpoint, the Copenhagen absorption capacity criterion contained three essential elements: institutions, budget, and policies.⁴⁵ In all of these areas, the Commission’s understanding of the absorption capacity can be boiled down to making sure that, first, the EU is prepared for an increase in the number of Member States and, second, that enlargement will not jeopardise European integration. Yet, the integration capacity of the Union might be interpreted quite widely. Particularly, some researchers see it as including external and internal dimensions.⁴⁶ For them, the absorption capacity of the Union relates not only to its own preparedness to integrate candidate countries but also to its ability to transform those countries with a view to eventually admitting them to the EU.⁴⁷ While all these may be quite helpful in picturing the Union’s absorption capacity in broad strokes and perhaps determining some general direction for enhancing it, the lack of specifics is still tremendous. It is rather unsurprising that, as further shown in this article, the political actors can stretch or narrow the absorption capacity criterion as the situation requires.

A notable consequence of the theoretical flaws of the absorption capacity criterion and its significant conceptual uncertainties is that the discussion of it is frequently mixed up with the discourse on deepening and widening the EU.⁴⁸ There is ‘a considerable body of

³⁸ Emerson et al (n 35) 9.

³⁹ *ibid.*

⁴⁰ *ibid.*

⁴¹ Although the communication dates back to 2006, the EU continues to steer its enlargement policy on the basis of the principles laid down in that communication, see Barbara Lippert, ‘Ukraine’s Membership Bid Puts Pressure on the European Union: A Security Policy Flanking, Not a Revision of EU Enlargement Policy, Is Advisable’ [2022] *Stiftung Wissenschaft und Politik Comment No. 21*.

⁴² Commission, ‘Enlargement Strategy and Main Challenges 2006 – 2007’ (n 17) 17.

⁴³ *ibid.* 20.

⁴⁴ *ibid.* 17.

⁴⁵ *ibid.* 20-22.

⁴⁶ Tanja Anita Börzel, Antoaneta Dimitrova, and Frank Schimmelfennig, ‘European Union Enlargement and Integration Capacity: Concepts, Findings, and Policy Implications’ (2017) 24(2) *Journal of European Public Policy* 157, 160-163.

⁴⁷ *ibid.*

⁴⁸ For an example, see Stefan Lehne, ‘A Reluctant Magnet: Navigating the EU’s Absorption Capacity’ *Carnegie Endowment for International Peace: Carnegie Europe* (21 September 2023)

scholarship⁴⁹ that looks into the link between the two processes. The ‘large and established literature⁵⁰ on widening and deepening of European integration is primarily concerned with the effects of the former on the probabilities and success of the latter.⁵¹ The vocabulary of widening and deepening often pops up in the Union’s absorption capacity discourse.

For example, after the 2006 summit where the issue of the absorption capacity played a prominent political role,⁵² the European Council declared that ‘[i]t will be important to ensure in future that the Union is able to function politically, financially and institutionally as it enlarges, and to further *deepen* Europe's common project’.⁵³ More frequently, the widening-deepening dilemma sneaks into the scholarly discourse on the absorption capacity. For example, some authors write: ‘Concerns about the Union’s integration capacity have been part of the widening versus deepening debates that marked the wake of every enlargement round’.⁵⁴ Recently, when discussing the possibilities for treaty revisions in anticipation of the next round of enlargement, others wrote decisively and explicitly: ‘Widening cannot go without deepening’.⁵⁵

The reason for the overlaps between the absorption capacity and the widening-deepening discussion is the similarity between the two key terms: deepening and reforms. Widening is quite difficult to interpret divergently, and its meaning is the same as the meaning of enlargement: admitting new countries to the Union and increasing its membership. What concerns deepening, a danger of confusion appears to be significant here, as it might be temptingly easy to equate it with reforming. This is, however, not the case. Reforming the Union to prepare it for another round of enlargement does not mean deepening integration.⁵⁶ Instead, it means adjusting the Union’s structures and policies in a manner that would make them suitable for a larger number of Member States. Deepening is something different. Deepening essentially relates to the extension of the Union’s competencies and tilting the balance in favour of supranationalism. Reforming the Union with the purpose of enhancing its absorption capacity to successfully integrate new Member States does not mean more European integration, while deepening certainly does. It is true that enlarging the Union without properly addressing the issue of its absorption capacity first will likely prevent deepening of European integration or, at least, make it much more difficult.

<<https://carnegieendowment.org/research/2023/09/a-reluctant-magnet-navigating-the-eus-absorption-capacity?lang=en>> accessed 1 May 2026.

⁴⁹ Ann-Christina L Knudsen, ‘European Union History’ in Kennet Lynggaard, Ian Manners, and Karl Löfgren (eds), *Research Methods in European Union Studies* (Palgrave Macmillan 2015) 37.

⁵⁰ Lucas Schramm, ‘Navigating Widening and Deepening: The European Council, Geopolitical Motives, and Union Enlargement’ (2025) 47(8) *Journal of European Integration* 1 (1197), 2.

⁵¹ For an overview of the scholarship on this matter in the domains of international relations and political science, see Roger Daniel Kelemen, Anand Menon, and Jonathan Slapin, ‘Wider and Deeper? Enlargement and Integration in the European Union’ (2014) 21 *Journal of European Public Policy* 647, 648-650.

⁵² Emerson et al (n 35) 2.

⁵³ Presidency Conclusions of the Brussels European Council (15-16 June 2006) (10633/1/06 REV 1) para 53, emphasis added.

⁵⁴ Börzel, Dimitrova, and Schimmelfennig (n 46) 159.

⁵⁵ Dominique Ritleng, ‘How to Amend the EU Treaties? Legal Ways and Deadlocks’ (2025) 30(4) *European Law Journal* 1 (473).

⁵⁶ In fact, as rightfully suggested by some scholars, deepening European integration actually makes enlargement more difficult. Tom Casier, ‘The New Neighbours of the European Union: The Compelling Logic of Enlargement?’ in Joan DeBardeleben (ed), *The Boundaries of EU Enlargement: Finding a Place for Neighbours* (Palgrave Macmillan 2008) 21.

The process of enhancing the absorption capacity through reforming the Union is, however, distinct from the process of deepening European integration.

Last but not least, one of the core questions here is whether reforming the Union is absolutely necessary for its enlargement. Does the absorption capacity of the Union matter that much? Is it really as decisive as it is usually presented? The logic behind advocating for internal reforms of the EU to fulfil the absorption capacity criterion builds upon the fundamental premise that, once the number of Member States increases, making decisions gets more difficult because more parties need to find common ground.⁵⁷ This probably explains why one of the most noticeable and repeated reforms undertaken in the treaty revisions is moving from the unanimity rule to qualified majority voting in the Council. Yet, this premise is not as coherent as it might seem at first glance. If the Treaties require unanimity in a certain area, a single vote against is capable of vetoing the decision. This is possible in the Union of 27 or 37 Member States just as much as in the Communities of 6 countries. The risk of paralysis in the Union's decision-making has been present since the very inception of the European project, so remedying this risk is a challenge that exists independently from the increase in the number of Member States, although such an increase indeed elevates this risk.

Reflecting on the 2004 and 2007 rounds of enlargement, Mark Pollack observes that, 'even in the absence of fundamental constitutional change, EU institutions, both individually and collectively, have proven remarkably adaptable in the face of enlargement'.⁵⁸ This is true. Of course, one should not belittle the achievements of the Nice Treaty. It is undeniable that the reforms undertaken before 'the most challenging expansion of the Union'⁵⁹ in 2004 had positive effects on preserving the Union's functionality after the drastic increase in the number of Member States. Nevertheless, even without the Treaties of Nice and Amsterdam, the Union would still have been able to admit new Member States. Making enlargement conditional upon an institutional reform was foremost a political decision. Commentators recall that the Lisbon Treaty was indeed designed as 'enlargement-proof'.⁶⁰ While one can hardly deny that many improvements would be welcome, and some are very much desired or even urgently needed, whether revising the Treaties is absolutely indispensable for the next round of enlargement is questionable.

The short overview above demonstrates how problematic the construction of the Union's absorption capacity is at the theoretical level. Nevertheless, the Copenhagen absorption capacity criterion is, above all, a legal construct. The criterion is even seen by some commentators as encapsulating a legal obligation of the Union to reform its institutional structures.⁶¹ The criterion was introduced by the European Council and, by means of the reference in Article 49 TEU, is a part of Union law. Whether this criterion can actually explain the nature of the link between reforming and enlarging the Union is the primary question this article is concerned with. In the two sections below, this article

⁵⁷ See A Maurits van der Veen, 'Enlargement and the Anticipatory Deepening of European Integration' (2014) 21(5) *Journal of European Public Policy* 761, 762.

⁵⁸ Pollack (n 3) 240.

⁵⁹ Börzel, Dimitrova, and Schimmelfennig (n 46) 157.

⁶⁰ Olivier Costa, Gaëlle Marti, and Karine Caunes, 'A Roadmap for Enlarging and Reforming the European Union: Taking the Report of the "Group of Twelve" Seriously' (2025) 30(4) *European Law Journal* 466.

⁶¹ Edwards (n 33) 27.

ascertains the nature of this nexus by looking into the current reform proposals and how enlargements and reforms were connected in the past.

3 CURRENT REFORM CALLS

At the moment, there are a number of specific reform proposals debated by politicians, policymakers, and scholars. Some commentators explicitly base their pleas for a change on the prospects of enlargement: ‘Reform the European Union for Enlargement!’.⁶² Borrowing the expression of Elise Muir, the ‘winds of treaty change’⁶³ are indeed blowing. The history of European integration has entered a new chapter due to ‘an existential crisis leading to a European *Zeitenwende*’,⁶⁴ which has arguably revealed that ‘the process of European integration is in need of a changed institutional setting’⁶⁵ and other reforms. There are currently four major sets of such proposals: the results of the Conference on the Future of Europe, the 2023 resolution adopted by the European Parliament, the report of the Group of Twelve, and the Commission’s communication on pre-enlargement reforms and policy reviews. Below, these four sets of EU reform suggestions are examined in turn. The analysis below is, however, limited only to whether and how these proposals are being connected to the upcoming round of enlargement. The aim of this section is to investigate, first, to what extent the current reform proposals are linked to the prospects of enlargement and, second, whether the Copenhagen absorption capacity criterion can fully explain this link.

The current reform discourse began in 2021 when three EU institutions formally decided to convene the Conference on the Future of Europe.⁶⁶ The Conference was presented as ‘a citizens-focused, bottom-up exercise’⁶⁷ designed specifically ‘to give citizens a say on what matters to them’.⁶⁸ The Conference was a notable effort of the Union to involve ordinary citizens in the process of making decisions on the fundamental questions of European integration.⁶⁹ A ‘novel experiment for the EU’,⁷⁰ the Conference had an ambitious

⁶² Christian Calliess, ‘Reform the European Union for Enlargement! Proposals to Prevent an “Overstretch in Integration”’ (*Verfassungsblog*, 6 July 2023) <<https://verfassungsblog.de/reform-the-european-union-for-enlargement/>> accessed 1 May 2026.

⁶³ Elise Muir, ‘Winds of Treaty Change? Taking Fundamental Rights in the EU yet More Seriously’ (2023) 30(5) *Maastricht Journal of European and Comparative Law* 543.

⁶⁴ Marianne Riddervold and Pernille Rieker, ‘Finally Coming of Age? EU Foreign and Security Policy after Ukraine’ (2024) 33(3) *European Security* 497, 497.

⁶⁵ Federico Fabbrini, ‘The War in Ukraine and the Future of the EU: Prospects for Reform’ in Bart Vanhercke, Sebastiano Sabato, and Slavina Spasova (eds), *Social policy in the European Union: state of play 2022: Policymaking in a permacrisis* (ETUI aisbl 2023) 21.

⁶⁶ Joint Declaration of the European Parliament, the Council and the European Commission on the Conference on the Future of Europe: Engaging with citizens for democracy – Building a more resilient Europe [2021] OJ C091I/1 (CoFoE Declaration). For some reflections on the Conference, see Federico Fabbrini, ‘The Conference on the Future of Europe: Process and Prospects’ (2020) 26(5-6) *European Law Journal* 401; Alberto Alemanno, ‘Unboxing the Conference on the Future of Europe and Its Democratic Raison d’être’ (2020) 26(5-6) *European Law Journal* 484; Sandra Seubert, ‘The Conference on the Future of Europe as a Chance for Democratic Catching up? Towards a Citizen-Centred Perspective on Constitutional Renewal in the European Union’ (2023) 13(2) *Global Constitutionalism* 429; Karolina Borońska-Hryniewiecka and Lucy Kinski, *The Parliamentary Dimension of the Conference on the Future of Europe: Synergies and Legitimacy Clashes* (Routledge 2024).

⁶⁷ CoFoE Declaration (n 66) para a.

⁶⁸ *ibid* b.

⁶⁹ Seubert (n 66) 429–431.

⁷⁰ Fabbrini, ‘The War in Ukraine and the Future of the EU: Prospects for Reform’ (n 65) 17.

and far-reaching mandate. The report presented as the result of the Conference contained a voluminous catalogue of diverse suggestions.⁷¹ Most of the plenary's proposals are rather general, requiring more action from the EU or more robust policies in some areas, without, however, providing specific suggestions.⁷² While the majority of those proposals can be implemented without any treaty changes,⁷³ some of them require a full-scale revision of the Treaties, which is indeed 'a formidable obstacle'.⁷⁴

Chronologically, the Conference and its reform recommendations precede the current phase of enlargement marked by granting the candidate status to Ukraine and Moldova in 2022.⁷⁵ It is not surprising that the Conference's proposals are generally not connected to enlargement. Only a few suggestions refer to the probable accession of new countries. For example, the Conference recommended 'agreeing on a strong vision and a common strategy to consolidate the unity and decision taking capacity of the EU in order to prepare the EU for further enlargement'.⁷⁶ Also, in the context of upholding the rule of law and other European values, the Conference rather cautiously noted that '[e]nlargement of the EU should not undermine the EU *acquis* with relation to fundamental values and citizens' rights'.⁷⁷ An even more cautious, if not sceptical, attitude towards enlargement can be found in an attached document titled 'Our vision of Europe: Opinions, ideas and recommendations'⁷⁸ which represents a shortened and translated version of the original report based on the work of citizens' panels in the Netherlands. Published in December 2021, the report presents a somewhat unenthusiastic outlook for enlargement, suggesting that the EU should admit new countries 'if enlargement brings added value'⁷⁹ and only after ensuring that 'the current club is stable'.⁸⁰

Now, after more than two years have passed since the Conference's conclusion, it is now unlikely that the Conference itself will bring about any large-scale changes in the constitutional edifice of the EU. More importantly for the subject matter of this article, the Conference presented its vision for the development of the Union without framing it in the context of the upcoming enlargement. On the one hand, this could be plausibly explained by the fact that the Conference took place mostly in 2020-2021, before the widely felt enlargement fatigue was replaced by some significant enthusiasm.⁸¹ On the other hand, the Conference remains the latest initiative to reform the Union's structure and policies that builds upon EU citizens' direct participation. It is not surprising that EU citizens are more concerned with the problems and challenges inside the Union, also not wishing to make

⁷¹ Conference on the Future of Europe: Report on the Final Outcome 2022 (CoFoE Final Report).

⁷² Just one example may be 'preserving and reforming our multilateral rules-based international trade architecture, and partnership with like-minded democracies' – *ibid* 63.

⁷³ According to the Council, '95 % of the Conference's proposals [...] can already be implemented within the current Treaty framework'. The Council's follow-up to the Conference on the Future of Europe 2023 (Council of the European Union: General Secretariat).

⁷⁴ Federico Fabbrini, 'Reforming the EU Outside the EU? The Conference on the Future of Europe and Its Options' (2020) 5(2) *European Papers* 963, 977.

⁷⁵ European Council meeting (23 and 24 June 2022) – Conclusions (EUCO 24/22) para 11.

⁷⁶ CoFoE Final Report (71) 64.

⁷⁷ *ibid* 68.

⁷⁸ *ibid* 281-306.

⁷⁹ *ibid* 287.

⁸⁰ *ibid* 288.

⁸¹ See Matteo Bonomi and Irene Rusconi, 'From EU "Enlargement Fatigue" to "Enlargement Enthusiasm"?' (2023) 19 *ÖGfE Policy Brief*.

a wide-ranging reform of the Union tightly connected to the prospects of enlargement. This is reflected in the content of the proposals made by the Conference, which predominantly do not relate to the institutional structure of the Union and the efficiency of its decision-making. The Conference's results retain their importance as a product of direct democracy, and, for that reason, the absence of a strongly expressed link between reforming and enlarging the Union in the Conference's vision for the future of the Union shall not be overlooked or ignored.

In recent times, the European Parliament has made consistent calls to revise the Treaties. In 2022, the Parliament officially requested the Council to launch the ordinary revision procedure under Article 48 TEU.⁸² The Parliament based its call on the outcome of the Conference on the Future of Europe.⁸³ It also noted that the current version of the Treaties dates back to 2009 and established that 'the Treaties need to be amended urgently to make sure the Union has the competence to take more effective action during future crises'.⁸⁴ As commentators observe, contrary to the wording of the Treaties,⁸⁵ the Council did not hand over the proposals to the European Council for deciding on whether to convene a Convention.⁸⁶ Despite the apparent failure of this attempt to launch a major reform, the European Parliament later adopted a set of specific proposals for the amendment of the Treaties.⁸⁷ The 2023 resolution contains a long list of revision suggestions.⁸⁸ These revisions are aimed at making the Union more legitimate in the eyes of EU citizens, as well as to increase its capacity to act.⁸⁹ The resolution suggests, among other things, giving more powers to the Parliament,⁹⁰ establishing a defence union,⁹¹ as well as more action across a wide spectrum of policies. More importantly, unlike the 2022 resolution based on the outcome of the Conference on the Future of Europe, the 2023 resolution is somewhat situated in the context of enlargement. Particularly, the Parliament observed that the institutional framework of the EU was 'barely adequate'⁹² for the Union of 27 countries and that 'the prospect of future enlargements makes a reform of the Treaties inevitable'.⁹³ The list of reform proposals includes many institutional changes that may indeed make the EU more efficient in the event of its enlargement, such as extending qualified majority voting to more areas or limiting the college of commissioners to 15 members.⁹⁴

⁸² European Parliament resolution of 9 June 2022 on the call for a Convention for the revision of the Treaties (2022/2705(RSP)) [2022] OJ C493/130.

⁸³ *ibid.*

⁸⁴ *ibid.* 4.

⁸⁵ TEU Art 48(2).

⁸⁶ Andrew Duff, 'Five Surgical Strikes on the Treaties of the European Union' (2023) 8(1) *European Papers* 9, 9.

⁸⁷ European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (P9_TA(2023)0427; 2022/2051(INL)) (EP Treaties Amendment Proposals).

⁸⁸ For an overview, see Robert Böttner, 'The Proposals of the European Parliament to Amend the European Treaties' in Marcel Szabó, Laura Gyeney, and Petra Lea Láncoš (eds), *Hungarian Yearbook of International Law and European Law* (Nomos 2024).

⁸⁹ EP Treaties Amendment Proposals (n 87) para B.

⁹⁰ *ibid.* 5-6.

⁹¹ *ibid.* 22.

⁹² *ibid.* D.

⁹³ *ibid.*

⁹⁴ *ibid.* 4, 7.

The 2023 treaty amendment proposals were reportedly passed to the European Council.⁹⁵ So far, the Parliament's resolution has not brought about any real changes, and no clear plan for treaty revision based on the Parliament's blueprint is currently in sight.⁹⁶ For the present study, the Parliament's 2023 resolution is notable because of the following. The resolution is essentially a bridge between the Conference on the Future of Europe and the current EU reform discourse. This is probably the reason why the Parliament's plan also does not build upon the nexus between enlarging and reforming the Union. The Parliament's blueprint aims mostly at remedying the problems and insufficiencies that are present now and which are of immediate concern to EU citizens of the current Member States. The implementation of the Parliament's suggestions is not presented as preparation for the next round of enlargement and is to be pursued irrespective of whether and when more countries join the Union. Nevertheless, the prospects of a new enlargement round play a certain role in the Parliament's resolution, particularly justifying the urgency of the reform calls and elevating their priority on the political agenda of the Union.

One of the latest additions to the reform discourse has been the quite influential report written by a group of twelve experts coming from Germany and France.⁹⁷ The report is notable because, although it was produced by a small group of professors and researchers selected by just two Member States,⁹⁸ it managed to gain visibility and received some attention in the literature. The report places itself in the context of the crisis discourse, presenting the reform suggestions as a response to the multiple challenges facing the Union.⁹⁹ The link to the probable next round of the Union's enlargement is, however, quite evident here. Particularly, the specific question that the group of experts undertook to respond to was officially formulated in the following way: 'How can the EU be made enlargement ready while also improving its capacity to act, protecting the rule of law, enhancing democracy and preserving fundamental European values?'¹⁰⁰ This was the mandate given to the group by the German and French ministers responsible for European affairs. The way the question was formulated reveals a few important assumptions that underpin the political and scholarly discourse on the matter. The mandate assumes that the Union is not ready for the next round of enlargement, and changes are necessary to make it possible. However, the changes needed for enlargement are not being linked immediately to other reforms of the Union. The second part of the question quoted above is introduced by the phrase 'while also', meaning that the four objectives named in that question are to be achieved in parallel with making the EU enlargement-ready.

The approach taken by the Group of Twelve towards the nexus between reforming and enlarging the Union flows from the above-quoted mandate. On a more general note, the report suggests that '[t]oday's situation differs decisively from that of the early 2000s',¹⁰¹ without, however, explaining how exactly it differs. In fact, the present situation resembles

⁹⁵ Muir (n 63) 545.

⁹⁶ Böttner (n 88) 411–412.

⁹⁷ Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century 2023. For an overview, see Costa, Marti, and Caunes (n 60).

⁹⁸ Sailing on High Seas (n 97) 51.

⁹⁹ *ibid* 11.

¹⁰⁰ *ibid*.

¹⁰¹ *ibid* 12.

the late 1990s and early 2000s to a considerable degree, as some commentators observe.¹⁰² More importantly, the report specifically stipulates that the probable next round of enlargement is not the sole ground for reforms. According to the Group of Twelve, '[t]he EU's internal functioning and its capacity to act should not only be improved because enlargement is back on the agenda'.¹⁰³ In the triangle of goals to be pursued by the reforms, preparing the Union's institutional framework for enlargement is only one of the angles. The report calls this objective 'central',¹⁰⁴ but also specifically recognises that 'reforms aiming to strengthen the EU's capacity to act, the rule of law and fundamental values and democratic legitimacy should be pursued even if enlargement was substantially delayed'.¹⁰⁵ This statement further separates the domains of enlargement and EU reforms, essentially reflecting that, even if there were no candidate countries wishing to join the EU, changes would still be absolutely needed. The content of the report evidences that enlargement was, in fact, not the foremost issue or the main concern for the Group of Twelve. The first problem dealt with in the report is preserving the rule of law in the EU by means of enhancing budgetary conditionality and the Article 7 TEU procedure.¹⁰⁶ Another part of the report focuses on institutional reforms.¹⁰⁷ However, out of the five respective areas, only one is presented as linked to enlargement. Specifically, the report proposes limiting the size of the European Parliament and switching to the Cambridge formula,¹⁰⁸ turning from presidency trios to quintets in the Council, and limiting the size of the Commission or, should that fail, dividing the college of commissioners into two tiers with possible rotations.¹⁰⁹

The report vividly demonstrates how elusive and uncertain the link between reforming and enlarging the Union actually is. Although this link is much more visible in the report than in the Parliament's resolutions or the Conference's recommendations, it is still thin. The report is reflective of the scholarly discourse and may, therefore, be perceived as authoritative expert advice. Yet, even in the eyes of experts, reforms are needed independently of enlargement prospects and the difficulties that might arise theoretically as a result of enlargement are apparently less serious than the problems currently present in the Union.

Finally, the latest contribution to the ongoing reform discourse has been made relatively recently by the Commission. In 2024, the Commission published a Communication on pre-enlargement reforms and policy reviews.¹¹⁰ The Commission observed that, '[w]hile reforms were necessary before, with enlargement they become indispensable'.¹¹¹ The Commission suggested that reforming and enlarging the EU will have to 'advance in parallel'¹¹² and that enlargement should be used 'as a catalyst for progress'.¹¹³

¹⁰² Sharpston (n 10) 276.

¹⁰³ *Sailing on High Seas* (n 97) 14.

¹⁰⁴ *ibid.*

¹⁰⁵ *ibid.*

¹⁰⁶ *ibid* 15-17.

¹⁰⁷ *ibid* 18-29.

¹⁰⁸ For an overview of the Cambridge formula, see Geoffrey R Grimmett, 'European Apportionment via the Cambridge Compromise' (2012) 63(2) *Mathematical Social Sciences* 68.

¹⁰⁹ *Sailing on High Seas* (n 97) 18-20.

¹¹⁰ Commission, 'Communication on pre-enlargement reforms' (n 13).

¹¹¹ *ibid* 1.

¹¹² *ibid* 2.

¹¹³ *ibid.*

The Communication mostly consists of policy suggestions. Only one section is dedicated to institutional reforms under the heading of governance.¹¹⁴ Notably, the Commission took a cautious approach,¹¹⁵ observing that there was no consensus on whether and how the Treaties should be changed.¹¹⁶ Furthermore, the Commission favours ‘using to the full the potential of the current Treaties’.¹¹⁷ This means, among some other suggestions, taking advantage of the *passerelle* clauses¹¹⁸ and reactivating the reduction of the college of commissioners already envisaged in the Treaties.¹¹⁹

When analysing the Commission’s proposals, one has to bear in mind that the Commission has certain capabilities of steering the political discourse in the Union.¹²⁰ The way the Commission does this is by setting the agenda, initiating policies and implementing them, and facilitating decision-making processes.¹²¹ This is why Communication should be seriously considered in the context of this article’s subject matter. The approach taken by the Commission is quite sober when it comes to the link between reforming and enlarging the EU. While definitely not opposing treaty revisions with the aim of enhancing the Union’s efficiency and furthering European integration, the Commission does not see a reform of the Treaties as a precondition for the next round of enlargement. Just like the Group of Twelve, the Commission also explicitly acknowledges that the necessity to reform the Union had existed before another round of enlargement became a probable scenario. What makes the Commission’s Communication particularly notable in this context is the language it uses, which reveals the nature of the current connection between enlarging and reforming the Union: the former is ‘a catalyst’¹²² for the latter. The upcoming round of enlargement is seen by the Commission essentially as a good opportunity to introduce institutional reforms and policy changes that have been long overdue. As further explored below, this approach to the relationship between reforms and enlargement is not exactly new and has existed for quite some time.

4 EU ENLARGEMENT AND REFORMS IN THE PAST

In the course of its history, ‘the EU has widened from 6 to 27 member states’.¹²³ This section looks into how enlarging and reforming the Union interacted in the past. The purpose of the below is, however, not to provide a detailed account of all previous enlargement rounds and all reforms of the Union. This article’s analysis is limited to investigating whether and how reforming and enlarging the EU were connected to each other in the past, as well as

¹¹⁴ Commission, ‘Communication on pre-enlargement reforms’ (n 13) 19-20.

¹¹⁵ Federico Fabbrini, ‘The Impact of the War in Ukraine on the Enlargement of the European Union: “Securing the Blessings of Liberty” and Its Challenges’ (2025) 74(1) *International and Comparative Law Quarterly* 123, 140.

¹¹⁶ Commission, ‘Communication on pre-enlargement reforms’ (n 13) 19.

¹¹⁷ *ibid.*

¹¹⁸ For a short overview of *passerelle* clauses, see Andrew Duff, *Constitutional Change in the European Union: Towards a Federal Europe* (Palgrave Macmillan 2022) 28-29.

¹¹⁹ Commission, ‘Communication on pre-enlargement reforms’ (n 13) 19-20.

¹²⁰ See Arndt Wonka, ‘The European Commission’ in Jeremy Richardson and Sonia Mazey (eds), *European Union: Power and policy-making* (Routledge 2015) 93-96, 100-102.

¹²¹ Neill Nugent and Mark Rhinard, ‘The “Political” Roles of the European Commission’ (2019) 41(2) *Journal of European Integration* 203, 207-216.

¹²² Commission, ‘Communication on pre-enlargement reforms’ (n 13) 2.

¹²³ Kelemen, Menon, and Slapin (n 51) 656.

whether this connection can be plausibly explained solely by the necessity to make sure that the Union is capable of accommodating incoming Member States.

A certain connection between the intensification of European integration and the admission of new Member States can be traced back to the very first enlargement of the Communities.¹²⁴ For example, in its opinion on the membership application of the UK, Ireland, Denmark, and Norway, the Commission devoted considerable attention to the prospects of deepening European integration and the issue of proper functioning of the institutions of the Community in light of enlargement. It is quite interesting that the Commission perceived the upcoming enlargement as a ‘problem’.¹²⁵ Against the backdrop of this problem, the Commission wrote of a ‘link between strengthening and enlargement’.¹²⁶ In essence, the Commission feared the weakening of European integration as a possible by-product of the first round of enlargement.¹²⁷ As to the institutional aspect, the Commission linked its suggestions to enlargement but conceded that ‘[t]he problem of improving and strengthening the institutional machinery must be tackled *in any case*’.¹²⁸ Indeed, the problems identified by the Commission, such as the effects of the Luxembourg Compromise¹²⁹ or the lack of budgetary powers of the Parliament and its election not by universal suffrage,¹³⁰ existed before the enlargement round became a realistic scenario and would have remained outstanding issues even if the enlargement had not happened.

The accession of new Member States was preceded by several policy innovations. After de Gaulle’s resignation,¹³¹ the French leadership took advantage of the momentum and insisted on several reforms as a precondition for the accession of the United Kingdom.¹³² Specifically, this concerned the financing of the Common Agricultural Policy¹³³ and monetary cooperation.¹³⁴ France feared that, after the accession of new countries, it would not be able to achieve a reform of the Common Agricultural Policy financing in its favour.¹³⁵ Also, the withdrawal of the French veto over the UK’s accession was made conditional upon establishing the Economic and Monetary Union.¹³⁶ However, it is important to note that

¹²⁴ For an overview of the first enlargement round, see Emmert and Petrović (n 4) 1360-1365.

¹²⁵ Opinion concerning the Applications for Membership from the United Kingdom, Ireland, Denmark and Norway submitted under Articles 237 of the EEC Treaty, 205 of the Euratom Treaty, and 98 of the ECSC Treaty (Bulletin of the European Communities Vol 2 No 9/10 (1969) Supplement) para 42.

¹²⁶ *ibid* 43.

¹²⁷ *ibid*.

¹²⁸ *ibid* 45, emphasis added.

¹²⁹ On the Luxembourg Compromise, see William Nicoll, ‘The Luxembourg Compromise’ (1984) 23 *JCMS: Journal of Common Market Studies* 35; Anthony L Teasdale, ‘The Life and Death of the Luxembourg Compromise’ (1993) 31(4) *JCMS: Journal of Common Market Studies* 567; Jonathan Golub and Michal Ovádek, ‘Informal Procedures, Institutional Change, and EU Decision-Making: Evaluating the Effects of the 1974 Paris Summit’ (2024) 32(11) *Journal of European Public Policy* 1 (2741), 2-9. For a fresh take, see ‘Not Dead yet. Revisiting the “Luxembourg Veto” and Its Foundations’ (2017) 13 *European Constitutional Law Review* 1.

¹³⁰ Commission’s 1969 Opinion on the Applications of the UK, Ireland, Denmark and Norway paras 47, 48.

¹³¹ Neil Rollings, *British Business in the Formative Years of European Integration, 1945–1973* (Cambridge University Press 2007) 167-168.

¹³² Schramm (n 50) 6-7.

¹³³ For an overview, see Alan S Milward, ‘The Hague Conference of 1969 and the United Kingdom’s Accession to the European Economic Community’ (2003) 9 *Journal of European Integration History* 117.

¹³⁴ Final communiqué of the Conference 2 December 1969 (Bulletin of the European Communities Vol 3 No 1 (1970) pp 11-16) paras 5, 8.

¹³⁵ van der Veen (n 57) 766.

¹³⁶ André Szász, *The Road to European Monetary Union* (Palgrave Macmillan 1999) 15.

those reforms were not a prerequisite for the enlargement, and the UK, Ireland, and Denmark could accede without those reforms. The link between those novelties and the first round of enlargement was rather political, if any at all. Of course, the policy changes were chronologically connected to the accession of new Member States, so one may suggest that the very first enlargement was accompanied by some deepening of European integration. At the same time, it has to be acknowledged that both enlargement and deepening could have happened independently. The increase in the number of Member States from six to nine did not create any new problems in the decision-making processes or institutional structures, but could only exacerbate the problems already present. Those problems existed before and continued to manifest themselves after the accession of new countries. In essence, political actors took advantage of the circumstances and used their leverage to push for some changes. The first round of enlargement was not preceded by an increase in the integration capacity of the Communities or enhancements in their decision-making processes, so there are no sufficient grounds to speak of a substantial nexus between reforms and enlargement in that specific period.

The anticipation of the next two rounds of enlargement, namely the accession of Greece in 1981 and of Portugal and Spain in 1986,¹³⁷ gave the already ongoing discussions on the efficiency of the institutional framework of the Communities a new impetus. This resulted in two reports, namely the 1979 Spierenburg report and the 1980 report authored by Barend Biesheuvel, Edmund Dell, and Robert Marjolin. Both shed some light on whether and how internal reforms of the Communities related to the accession of new Member States.

The Spierenburg report largely focused on the place of the Commission within the wider institutional structure of the Communities.¹³⁸ The report recommended reducing the number of commissioners, particularly in light of the upcoming accession of three more countries.¹³⁹ Also, a reduction in the number of directorates-general was advised.¹⁴⁰ However, these proposals were not subsequently implemented. The report of Biesheuvel, Dell, and Marjolin, also known as the report of the Three Wise Men,¹⁴¹ was wider in its scope and contained recommendations relating to virtually all the institutions except for the Court.¹⁴² Notably, the report contained a separate chapter dedicated to enlargement.¹⁴³ In that chapter, the challenges posed by enlargement were seen twofold. According to the report, some difficulties would arise in decision-making processes due to the increase in the number of Member States, and other problems would appear in accommodating the interests of new

¹³⁷ For an overview, see Emmert and Petrović (n 4) 1365-1371. Also see Robert Bideleux, 'The Southern Enlargement of the EC: Greece, Portugal and Spain' in Robert Bideleux and Richard Taylor (eds), *European Integration and Disintegration: East and West* (Routledge 1996). For a very short overview, see Frank Hoffmeister, 'Earlier Enlargements' in Andrea Ott and Kirstyn Inglis (eds), *Handbook on European Enlargement* (TMC Asser Press 2002) 88-89.

¹³⁸ Proposals for reform of the Commission of the European Communities and its services. Report made at the request of the Commission by an Independent Review Body under the chairmanship of Mr. Dirk Spierenburg (1979) para 6.

¹³⁹ *ibid* 38, 43-44.

¹⁴⁰ *ibid* 49-50.

¹⁴¹ See Andrew Duff, 'The Report of the Three Wise Men' (1981) 19(3) *JCMS: Journal of Common Market Studies* 237.

¹⁴² For a detailed account of the report in the broader context, see Edmund Dell, 'The Report of the Three Wise Men' (1993) 2(1) *Contemporary European History* 35.

¹⁴³ Report on European Institutions by Barend Biesheuvel, Edmund Dell and Robert Marjolin (1980) 67-72.

members in the enlarged Communities.¹⁴⁴ The report decisively rejected what it called a ‘two-tier’¹⁴⁵ model, meaning differentiation and fragmentation of European integration. Instead, some suggestions to streamline decision-making processes were made, particularly the wider use of majority vote.¹⁴⁶ Many more improvement suggestions were, however, made outside of the enlargement context. Particularly, the report called for a more prominent role of the European Council,¹⁴⁷ strengthening of the Council’s presidency,¹⁴⁸ keeping only one commissioner per Member State along with the reduction of directorates-general,¹⁴⁹ and closer cooperation between the Parliament, the Council, and the Commission.¹⁵⁰

Neither of the two reports led to any specific reforms. Yet, an attentive reading of the report of the Three Wise Men may shed some more light on the relationship between enlargement and reforms at that time. While the chapter on enlargement linked the report to the accession of new members, it explicitly recognised that a certain ‘*lourdeur*’,¹⁵¹ the French word for clumsiness or heaviness, was very much already present in the Communities. The problems identified in the report existed before the admission of three new Member States and had to be dealt with anyway. One of the authors of the report later wrote that, ‘if the institutions, and especially the Commission, were ineffective in a Community of nine, they could not cope with a Community of twelve’.¹⁵² This is why the report said that the Community ‘must put its own house in order’,¹⁵³ meaning that the next round of enlargement would only exacerbate the already existent problems rather than cause new ones. This further demonstrates how enlargement was perceived not really as the reason for reform but rather as an opportunity to review the status quo and push forward some long-awaited improvements. Also, some Member States again took advantage of their leverage in the enlargement discussions and used it to change agricultural policies in their favour.¹⁵⁴

The first substantial revision of the Treaties came in the form of the 1986 Single European Act.¹⁵⁵ By that time, three rounds of enlargement had taken place, doubling the number of Member States from the initial six to twelve.¹⁵⁶ The latest addition of Spain and Portugal took place shortly before the signing of the Act.¹⁵⁷ However, the adoption of the Single European Act was not primarily driven by the enlargement of the Communities. At the time of the Act’s drafting and adoption, there were no more candidate countries, and further enlargement of the Communities seemed rather improbable. The enquiry into

¹⁴⁴ Report on European Institutions by Barend Biesheuvel et al (n 143) 67.

¹⁴⁵ *ibid* 68-69.

¹⁴⁶ *ibid* 70.

¹⁴⁷ *ibid* 15-26.

¹⁴⁸ *ibid* 27-48.

¹⁴⁹ *ibid* 49-56.

¹⁵⁰ *ibid* 57-62.

¹⁵¹ *ibid* 67.

¹⁵² Dell (n 142) 36.

¹⁵³ Report on European Institutions by Barend Biesheuvel et al (n 143) 68.

¹⁵⁴ Sebastián Royo and Paul Christopher Manuel, ‘Some Lessons from the Fifteenth Anniversary of the Accession of Portugal and Spain to the European Union’ (2003) 8(1-2) *South European Society and Politics* 1, 14.

¹⁵⁵ Single European Act [1987] OJ L169/1. For an overview, see Hans-Joachim Glaesner, ‘The Single European Act’ (1986) 6(1) *Yearbook of European Law* 283; Desmond Dinan, ‘The Single European Act: Revitalising European Integration’ in Finn Laursen (ed), *Designing the European Union: From Paris to Lisbon* (Palgrave Macmillan 2012).

¹⁵⁶ Maresceau (n 29) 412.

¹⁵⁷ Dinan (n 155) 125.

an institutional reform launched at the Fontainebleau summit¹⁵⁸ did not link it to past or future enlargement rounds either.¹⁵⁹ The resulting Dooge report made an array of suggestions, some of which today sound, however, quite familiar in the context of enlargement, such as limiting the unanimity voting requirement and empowering the Commission while reducing the number of its members,¹⁶⁰ but they were also not framed in the enlargement context. The White Paper prepared by Jacques Delors concerned market matters only, likewise being prepared outside of the enlargement context.¹⁶¹ The conclusions of the 1985 European Council did not mention enlargement and identified the completion of the internal market as one of the key objectives to be pursued by the upcoming treaty revision.¹⁶²

It shall be noted that one of the Act's main reforms, namely moving away from the unanimity requirement to a qualified majority in the Council,¹⁶³ was put forward by the Commission in the run-up to the previous enlargement rounds against the backdrop of the ensuing difficulties in making decisions.¹⁶⁴ Yet, it is also true that a certain 'pressure'¹⁶⁵ on the Member States to limit the unanimity vote existed before the prospects of enlargement, which rather 'enhanced'¹⁶⁶ it. At the same time, the key objective of that reform was also to bring about the completion of the internal market by the end of 1993,¹⁶⁷ and not to preserve the Union's efficiency after the next rounds of enlargement. Overall, the novelties brought by the Act made the Union certainly more efficient and better adjusted for the increased membership, particularly the extension of qualified majority voting. However, its reforms and enlargement were not explicitly linked and could have taken place separately. The Communities had managed to increase from six to twelve members without any major treaty revision even before the Act; this evidences how widening European integration can proceed without substantially deepening it or undertaking some far-reaching institutional reforms.

Just like in the case of the Single European Act, the adoption of the Maastricht Treaty¹⁶⁸ was not immediately connected to enlargement, and its context was not largely shaped by the prospects of the accession of new Member States.¹⁶⁹ The Maastricht European Council mentioned enlargement, noting that a number of countries expressed their desire to join the Union, but did not link the reforms brought by the Treaty on European Union to the possible accession of new members.¹⁷⁰ Indeed, the changes introduced by the Treaty were not designed to prepare the Union for its enlargement, but were rather aimed at opening

¹⁵⁸ For an overview, see Roy Pryce, 'Relaunching the European Community' (1984) 19(4) *Government and Opposition* 486.

¹⁵⁹ 1984 European Council meeting at Fontainebleau – Conclusion of the Presidency para 7.

¹⁶⁰ Ad Hoc Committee for Institutional Affairs – Report to the European Council (Brussels, 29-30 March 1985) 25-31.

¹⁶¹ Completing the Internal Market – White Paper from the Commission to the European Council (Milan, 28-29 June 1985) COM(85) 310 final.

¹⁶² European Council in Milan (28-29 June 1985) – Conclusions.

¹⁶³ Single European Act (n 155) Art 7.

¹⁶⁴ Émile Noël, 'The Single European Act' (1989) 24(1) *Government and Opposition* 3, 12.

¹⁶⁵ Kelemen, Menon, and Slapin (n 51) 657.

¹⁶⁶ *ibid.*

¹⁶⁷ Single European Act (n 155) Art 13.

¹⁶⁸ Treaty on European Union [1992] OJ C191/1.

¹⁶⁹ van der Veen (n 57) 768.

¹⁷⁰ Maastricht European Council (9-10 December 1991) (1991 Bulletin of the European Communities No 12) para I.4.

a new chapter in the history of European integration in light of the major changes in the political landscape of Europe at that time,¹⁷¹ particularly the fall of the Berlin Wall and the reunification of Germany.¹⁷²

Some of the key reforms brought by the Maastricht Treaty were the establishment of the EU, the creation of Union citizenship,¹⁷³ and the introduction of a single currency.¹⁷⁴ Also, quite importantly, the Maastricht Treaty extended qualified majority voting to several more areas.¹⁷⁵ While this certainly increased the efficiency of the Union's decision-making, especially against the backdrop of the increased membership, the reason why the Maastricht Treaty is mentioned herein is that it granted several opt-outs to Denmark and the United Kingdom,¹⁷⁶ particularly in the area of the common currency.¹⁷⁷ The literature often speaks of a certain fear of 'overstretching'¹⁷⁸ European integration due to the admission of new countries. The Maastricht Treaty shows, however, that fragmentation of European integration may very well take place without an increase in the number of Member States. Stalling the progress of integration is so often seen as a likely consequence of enlargement that will happen unless sufficient precautions are taken. The Maastricht Treaty evidences that the legal structure of the Union may crumble even without the external pressure produced by enlargement. Moreover, one has to remember that treaty revisions may scare off some Member States, deepening European integration at the cost of its overall coherence.

The pace and spirit of European integration changed dramatically in the 1990s, largely due to the drastic and large-scale geopolitical shifts after the demise of the Soviet Union.¹⁷⁹ These events opened a historic window of opportunity for a number of European states to join the EU.¹⁸⁰ This was the time when enlargement started to shape the development of the Union to a considerable degree. For example, the famous Ioannina Compromise¹⁸¹ was essentially a response to the changes in the power balance in the Council as a result of the Union's enlargement. Later, at the Corfu European Council, it was decided that 'institutional conditions for the proper functioning of the Union'¹⁸² were deemed requisite in the context of enlargement and that their creation had to take place before accession negotiations with Central and Eastern European states could begin.¹⁸³ The trajectory for

¹⁷¹ Finn Laursen and Sophie Vanhoonacker, 'The Maastricht Treaty: Creating the European Union' in *Oxford Research Encyclopedia of Politics* (Oxford University Press 2019).

¹⁷² Julie Smith, 'How 1989 Changed the History of European Integration' (2009) 8(2) *European View* 255, 257-259.

¹⁷³ For a study of the interaction between EU citizenship and enlargement, see Serhii Lashyn, 'The Effects of Enlargement on European Union Citizenship' [2026] *Yearbook of European Law*.

¹⁷⁴ For an overview of the Treaty, see Colette Mazzucelli, 'The Treaty of Maastricht: Designing the European Union' in Finn Laursen (ed), *Designing the European Union: From Paris to Lisbon* (Palgrave Macmillan 2012).

¹⁷⁵ Michael H Abbey and Nicholas Bromfield, 'A Practitioner's Guide to the Maastricht Treaty' (1994) 15 *Michigan Journal of International Law* 1329, 1331-1332.

¹⁷⁶ On opt-outs generally, see Maya Sion-Tzidkiyahu, 'Comparing Opt-Outs: How Different Is Differentiated Integration' in Thomas Giegerich, Desirée C Schmitt, and Sebastian Zeitzmann (eds), *Flexibility in the EU and Beyond: How Much Differentiation Can European Integration Bear?* (Nomos 2017).

¹⁷⁷ Laursen and Vanhoonacker (n 171).

¹⁷⁸ Callies (n 62).

¹⁷⁹ See Pierre-Henri Laurent, 'European Integration and the End of the Cold War' (1990) 1(3) *Diplomacy & Statecraft* 147, 151-157.

¹⁸⁰ Smith (n 172) 259-261.

¹⁸¹ Declaration by the representatives of the Member States of the European Union (Ioannina, 30 March 1994).

¹⁸² Corfu European Council (24-25 June 1994) para I.13.

¹⁸³ Corfu European Council (n 182).

the Amsterdam Treaty was determined, however, earlier at the 1993 Copenhagen European Council, which proclaimed that the countries of Eastern Europe ‘shall become members of the European Union’.¹⁸⁴ Apart from this promise to admit new Member States, the European Council in Copenhagen also made another historic step when it declared that the admission of those countries would also depend on ‘[t]he Union’s capacity to absorb new members’.¹⁸⁵ Apparently, the Amsterdam Treaty was seen, at least partially, as an effort to fulfil this absorption capacity criterion. Yet, the Treaty cannot be reduced to playing this role only.

In the 1995 report prepared by the so-called Reflection Group, the next round of enlargement was regarded as ‘a political imperative’.¹⁸⁶ At the same time, the report described enlargement as ‘not an easy exercise’¹⁸⁷ that would require quite a lot of effort. Importantly, the report demonstrates that the Amsterdam Treaty was prepared not solely because of the upcoming enlargement and maybe not even primarily for it. In fact, enlargement was named only third among the reasons for revising the Treaties, after internal challenges, such as unemployment, environmental problems, the lack of security, and external challenges, namely the uncertainty after the end of the Cold War and growing globalisation.¹⁸⁸ This demonstrates that the probable next round of enlargement was not the only factor shaping the preparation of the Treaty. Similarly to the current situation, the report explicitly made the success of the next round of enlargement dependent on the success of the reforms.¹⁸⁹

As scholars observe, the Amsterdam Treaty ‘was informed by fears concerning the potential institutional effects of the Union’s impending enlargement’¹⁹⁰ and was, therefore, the ‘first attempt’¹⁹¹ to make the Union ready for its biggest enlargement. The real changes in this context were, however, modest, if not poor, likely explaining why some found the Treaty rather ‘disappointing’.¹⁹² The Amsterdam Treaty managed to remove the unanimity requirement in the Council in several areas but kept it in many. The most contentious and important issues, namely the composition of the Commission, weighing of votes in the Council, and extension of qualified majority voting, were left to be decided later in the Treaty of Nice.¹⁹³ In one of the declarations attached to the Treaty, three Member States noted that ‘the Treaty of Amsterdam does not meet the need [...] for substantial progress towards reinforcing the institutions’¹⁹⁴ and that such reinforcing was ‘an indispensable condition’¹⁹⁵ for the accession of new members. Overall, the Amsterdam Treaty differs appreciably from the Maastricht Treaty and the Single European Act in how it was initiated by the upcoming round of enlargement. At the same time, saying that its content was designed with the sole purpose of preparing the Union for enlargement and fulfilling

¹⁸⁴ Copenhagen European Council (n 15) para I.13.

¹⁸⁵ *ibid.*

¹⁸⁶ Reflection Group’s Report (1995) II.

¹⁸⁷ *ibid.*

¹⁸⁸ *ibid.* 5-6.

¹⁸⁹ *ibid.* 7.

¹⁹⁰ Kelemen, Menon, and Slapin (n 51) 657.

¹⁹¹ Sophie Vanhoonacker, ‘The Amsterdam Treaty: Modest Reforms’ in Finn Laursen (ed), *Designing the European Union: From Paris to Lisbon* (Palgrave Macmillan 2012) 180.

¹⁹² Edwards (n 33) 33.

¹⁹³ Bruno de Witte, ‘The Impact of Enlargement on the Constitution of the European Union’ in Marise Cremona (ed), *The Enlargement of the European Union* (Oxford University Press 2003) 215-216.

¹⁹⁴ Amsterdam Treaty (n 6) 144.

¹⁹⁵ *ibid.*

the Copenhagen absorption capacity criterion in mind would be wrong. Although these were the main objectives, the wider context and other problems influenced the preparation of the Treaty too. What is notable is how some Member States insisted on making a successful institutional reform, which later materialised in the Nice Treaty, a prerequisite for the accession of new countries.

The Treaty of Amsterdam apparently failed to make the Union fully prepared for the 2004 ‘unprecedented’¹⁹⁶ enlargement, necessitating another revision in the form of the Treaty of Nice.¹⁹⁷ As the Commission observed, the institutional reforms introduced by the Amsterdam Treaty were indeed ‘only partial’¹⁹⁸ and had to be substantially enhanced. Scholars rightfully observe that the Nice Treaty was, therefore, ‘almost exclusively an effort to prepare for enlargement’.¹⁹⁹ Apparently, this effort was driven by ‘[t]he widespread belief that Eastern enlargement would impair the effective functioning of EU institutions and lead to decision-making paralysis’.²⁰⁰ The Nice Treaty remains probably the highest point when the connection between the Union’s reforming and enlarging was particularly evident.

Particularly, this flows from how the Cologne European Council linked treaty revision explicitly to the prospects of enlargement. An institutional reform of the Union was launched specifically ‘[i]n order to ensure that the European Union’s institutions can continue to work efficiently after enlargement’.²⁰¹ Subsequently, the European Council also made enlargement dependent on the success of the institutional reform, noting that only afterwards would the Union ‘be in a position to welcome new Member States’.²⁰² The key purpose of the Nice Treaty could, therefore, be boiled down to ensuring that the Union institutions will stay ‘properly functioning, efficient and legitimate’²⁰³ after the next round of enlargement. Later at the Nice European Council, the link between successful completion of the reform and the enlargement prospects was reconfirmed.²⁰⁴

The core reforms brought by the Nice Treaty, sometimes referred to as Amsterdam ‘leftovers’,²⁰⁵ were limiting the number of commissioners to one per Member State with a subsequent reduction once their number reached 27, reweighting of votes in the Council, redefining qualified majority voting, and extending it to more areas.²⁰⁶ At the same time, the novelties brought by the Nice Treaty were not limited to those areas. Most notably, the Treaty made some changes to the so-called closer cooperation, renaming it enhanced cooperation.²⁰⁷ This demonstrates that, although the Treaty of Nice introduced much-needed

¹⁹⁶ David Phinnemore, ‘Beyond 25—the Changing Face of EU Enlargement: Commitment, Conditionality and the Constitutional Treaty’ (2006) 8 *Journal of Southern Europe and the Balkans* 7, 8.

¹⁹⁷ Ritleng (n 55) 5; Smith (n 172) 260.

¹⁹⁸ Agenda 2000: For a stronger and wider Union 1997 (Bulletin of the European Union – Supplement 5/97) 12.

¹⁹⁹ Pollack (n 3) 240.

²⁰⁰ Kelemen, Menon, and Slapin (n 51) 657.

²⁰¹ Cologne European Council 3-4 June 1999 – Presidency Conclusions para 52.

²⁰² Conclusions of the Helsinki European Council: extract concerning preparations for enlargement (10–11 December 1999).

²⁰³ Conclusions of the Santa Maria da Feira European Council (19–20 June 2000) para 3.

²⁰⁴ Nice European Council (7-10 December 2000) – Conclusions of the Presidency para 6.

²⁰⁵ Laursen, ‘The Treaty of Nice’ (n 7) 196.

²⁰⁶ Edwards (n 33) 23-24.

²⁰⁷ Peter Katz, ‘The Treaty of Nice and European Union Enlargement: The Political, Economic, and Social Consequences of Ratifying the Treaty of Nice’ (2003) 24 *University of Pennsylvania Journal of International Economic Law* 225, 253-254.

institutional reforms to enable the next round of enlargement, it also contributed to what is sometimes seen as the fragmentation of European integration.²⁰⁸ While the Nice Treaty is a clear case of how institutional reforms of the Union aimed at fulfilling the Copenhagen absorption capacity criterion were immediately linked to enlargement, one should also not forget that the Treaty of Nice is, in essence, a continuation of the Treaty of Amsterdam and that it did what the Amsterdam Treaty failed to achieve in the first place.

Finally, preceded by the rejection²⁰⁹ of the Constitutional Treaty,²¹⁰ the Lisbon Treaty²¹¹ remains the latest major treaty revision. Signed between 27 Member States, it entered into force after six rounds of enlargement had already taken place. The Treaty is, therefore, not chronologically connected to enlargement. As to the substance, the intergovernmental conference mandate did not frame the Treaty as necessitated by another round of enlargement either.²¹² The Lisbon Treaty was certainly a major step forward in the direction of deepening European integration. It further extended qualified majority voting in many more areas, making it the default option. Also, the Treaty finally reduced the number of commissioners to two-thirds of the number of Member States, although this rule still does not apply after the Council decided so in response to the negative outcome of the first Irish referendum.²¹³ All these and other changes brought by the Lisbon Treaty were not, however, meant to make the accession of some specific countries possible. Moreover, the drafting and conclusion of the Lisbon Treaty took place against the backdrop of the widely felt enlargement fatigue, which probably resulted in adding a reference to the Copenhagen Criteria in Article 49 TEU.²¹⁴

5 THE LOGIC OF THE NEXUS BETWEEN ENLARGEMENT AND REFORMS

As Pierre Vimont aptly notes, ‘EU enlargements and reforms have been constant if not always friendly travel companions’.²¹⁵ Indeed, it is hardly deniable that a certain connection between the enlargement of the EU and its reform exists and has been accepted by political actors, institutions, and commentators who base their policy proposals and visions for the future of the Union on that connection,²¹⁶ although not necessarily looking closely into the nature of it. At present, these two topics go almost always hand-in-hand and are rarely

²⁰⁸ As some commentators rightfully observe, enhanced cooperation is a ‘part of the reality of differentiation in European integration’ and its threatening potential shall not be overlooked. Robert Böttner, ‘The Instrument of Enhanced Cooperation: Pitfalls and Possibilities for Differentiated Integration’ (2023) 7(3) European Papers 1145, 1162.

²⁰⁹ For an overview, see David Phinnemore, *The Treaty of Lisbon: Origins and Negotiation* (Palgrave Macmillan 2013) 16-46.

²¹⁰ Draft Treaty establishing a Constitution for Europe [2003] OJ C169/1.

²¹¹ Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community [2007] OJ C306/1.

²¹² Brussels European Council (21-22 June 2007) – Presidency Conclusions.

²¹³ Finn Laursen, ‘The Lisbon Treaty: A First Assessment’ (2011) 362 L’Europe en Formation 45, 53.

²¹⁴ Sonia Piedrafitá, ‘The Treaty of Lisbon: New Signals for Future Enlargements?’ [2008] Eipascope 33.

²¹⁵ Judy Dempsey, ‘Judy Asks: Will Enlargement Spur EU Reform?’ (*Carnegie Endowment for International Peace: Carnegie Europe*, 27 June 2024) <<https://carnegieendowment.org/europe/strategic-europe/2024/06/judy-asks-will-enlargement-spur-eu-reform?lang=en>> accessed 1 May 2026.

²¹⁶ For a recent and very illustrative example, see Corina Stratulat et al, ‘A Test of Times: Permachange through Enlargement and EU Reform’ [2025] European Policy Centre.

discussed in isolation from each other, be it in the academic setting or otherwise. In countless policy briefs, research articles, political declarations, and other documents, the possibility and imperativeness of the next round of enlargement serve at least as an introduction to reform proposals or, more often, as an argument supporting the necessity of implementing those proposals. The way this nexus sets the agenda, permeates the relevant commentary, and determines the pace of discussions makes its better understanding particularly important and, in view of the current enlargement hopes, urgently necessary. So, what is the true nature of this connection?

This article contends that the nexus between enlarging and reforming the Union is not as simple as it might look. As flows from the review carried out in the previous two sections, the Copenhagen absorption capacity criterion alone is not able to explain this link for several reasons.

First, in the past rounds of enlargement, various reforms and policy changes were introduced, debated and justified as necessary to enable the accession of new Member States. However, as demonstrated above, those reforms were not always actually necessary to make the next round of enlargement possible. Quite frequently, the push for reforms was tied to the prospects of enlargement for purely political reasons. More often than not, the link between enlargement and reforms was essentially a form of a political bargain, as greenlighting the accession of new Member States was made conditional upon the adoption of certain reforms and policy changes. Second, it has to be pointed out that the current discourse goes far beyond absorption capacity. Enhancing budget conditionality, protecting the rule of law, setting up a defence union, empowering the Parliament – all these can hardly be seen as measures aimed specifically at enabling the Union to admit new Member States. Yet, these topics are central to the ongoing discussions on reforming the Union. A vast number of the current reform proposals are relevant for the EU in its current shape and have to be implemented irrespective of whether and when another round of enlargement takes place. The connection between enlargement and reforms, therefore, goes much beyond the Copenhagen absorption capacity criterion. In order to understand this nexus, one has to analyse it in the broader context and look for the real rationale behind it.

If the nexus between enlarging and reforming the Union cannot be boiled down simply to the fulfilment of the Copenhagen absorption criterion, then how else can it be explained?

A partial explanation for the link between the Union's enlargement and its reforms might lie in the text of the TEU. Specifically, Article 49 TEU allows introducing some 'adjustments to the Treaties on which the Union is founded'²¹⁷ in the accession agreement concluded with a new Member State. Read in a certain way, this provision might be interpreted as offering a unique opportunity to amend the Treaties. Killing two birds with one stone, an accession treaty may fulfil two purposes: formalising the admission of a new country to the Union and reforming the Union at the same time. Revising the Treaties is known to be a profound legal challenge²¹⁸ and, as the Constitutional Treaty showed, may fail unexpectedly. The idea of changing the constitutional framework of the Union by means of accession treaties is, for that reason, quite tempting for politicians and, as Dominique Ritleng

²¹⁷ TEU Art 49.

²¹⁸ For an overview of the Treaties amendment rules, see Fabbrini, 'Reforming the EU Outside the EU? The Conference on the Future of Europe and Its Options' (n 74) 970-974.

writes, ‘original and also puzzling’.²¹⁹ While this might partially explain where the connection between reforming and enlarging the Union comes from, one has to be reminded that a meaningful treaty revision through an accession treaty is not legally viable. Of course, the accession of new countries necessitates, for example, changes in the allocation of seats and votes in the Union's institutions.²²⁰ However, Article 49 TEU has never been intended to go beyond that and serve as a vehicle for large-scale constitutional reforms of the Union. Furthermore, the Court of Justice ruled that the possibility of introducing some adaptations to the Treaties should not be interpreted broadly and shall be used sparingly,²²¹ accommodating new Member States.²²² Any other use of Article 49 will likely be incompatible with EU law.

The possibility for a limited treaty revision presented by Article 49 may explain some of the current reform proposals, but not all of them, particularly not those that suggest changes without rewriting the Treaties. The way enlargement and reforms interact in the current discourse at a deeper level may be better explained through the language of crises so familiar to the Union. As observed in the literature, the discourse produced, shaped, and steered by crises can, to some extent, be seen as a technique of government.²²³ In the EU, crises indeed play this role predominantly. One may often come across the so-called ‘polycrisis’²²⁴ or ‘polycleavage’²²⁵ that the EU has been going through for quite some time. As commentators aptly suggest, the ‘crisis mode has become the normal state of European politics’.²²⁶ The accession of new Member States is often perceived by various actors and commentators alike as yet another crisis the Union faces. The next round of enlargement is seen essentially as a problem that has to be resolved. Reviewing the Union’s policies, changing its institutional set-up and introducing fully-fledged constitutional reforms are presented as a response to that problem, a counter-measure for the crisis. Some authors suggest: ‘In the permapolycrisis era, EUrope should embrace permachange, taking on both enlargement and internal EU reform with courage and ambition’.²²⁷ When presented as overlapping crises, reforms and enlargement are more likely to be dealt with seriously at the political level.

Here, it is useful to recall how the current phase of the reform discourse started. As rightfully observed by commentators, the Conference on the Future of Europe was initiated ‘in the need to relaunch the project of European integration after a decade of crises which

²¹⁹ Ritleng (n 55) 4.

²²⁰ See Emmert and Petrović (n 4) 1359.

²²¹ See Fortunato (n 20) 1378.

²²² Case C-273/04 *Republic of Poland v Council of the European Union* EU:C:2007:622 paras 45-46.

²²³ Jessica C Lawrence, ‘The EU in Crisis: Crisis Discourse as a Technique of Government’ in Mielle K Bulterman and Willem JM van Genugten (eds), *Netherlands Yearbook of International Law*, vol 44 (TMC Asser Press 2014) 190-192.

²²⁴ On the notion of polycrisis in the EU context, see Edoardo Bressanelli and David Natali, ‘Tested by the Polycrisis: Reforming or Transforming the EU?’ (2023) 11(4) *Politics and Governance* 246. On polycrisis in the global context, see Michael Lawrence et al, ‘Global Polycrisis: The Causal Mechanisms of Crisis Entanglement’ (2024) 7 *Global Sustainability* e6, 2-5.

²²⁵ See Jonathan Zeitlin, Francesco Nicoli and Brigid Laffan, ‘Introduction: The European Union beyond the Polycrisis? Integration and Politicization in an Age of Shifting Cleavages’ (2019) 26(7) *Journal of European Public Policy* 963, 965-966.

²²⁶ Nicolai von Ondarza, ‘The Crisis Governance of the European Union More Responsibility Requires More Democratic Legitimacy’ [2023] *Stiftung Wissenschaft und Politik Research Paper* 10 5.

²²⁷ Stratulat et al (n 216) 65.

have increasingly exposed the unsustainability of the EU status quo'.²²⁸ The subsequent 2023 resolution of the Parliament was also situated in the context of the polycrisis and may be seen, at least partially, as a response to it.²²⁹ In a similar vein, the report of the Group of Twelve embeds itself in this discourse, citing the crises previously faced by the Union.²³⁰ Finally, the Commission's set of reform proposals situates itself in the context of the many previous crises the Union had to respond to.²³¹ Apparently, being now attached to the prospects of enlargement, the current discussion of the EU reforms is rooted in the attempts to respond to previous crises. Seen through this prism, the next round of enlargement can be perceived as a new crisis in the longer chain of crises, explaining why the current reform proposals contain so many suggestions unrelated to enlargement despite being generally framed as necessitated by it.

Why does the EU need to perceive a certain challenge as a crisis to start acting decisively? The answer may be simple: political convenience. As a particularly notable and formidable crisis, enlargement presents itself as a perfect occasion to tackle long-lasting problems and make some long-awaited improvements to the Union's edifice. As observed in the literature, previous enlargements acted as '*catalysts* of constitutional change'²³² in the Union. Borrowed from the scientific language of chemistry, the word 'catalyst' succinctly describes the nature of the nexus between enlargement and EU reforms. It is not surprising that the Commission uses this word to describe what role the prospects of enlargement actually play for the fate of the Union's reform.²³³ The problems found in the Union's institutional structure and decision-making processes exist independently and manifest themselves irrespective of whether the EU is going to enlarge. Those problems, such as democratic backsliding or deadlocks in the Council, present a profound challenge that demands decisive action and strategic thinking. It is not surprising that politicians, for different reasons, are reluctant to take on those challenges. This is where the issue of enlargement comes into play. The accession of new members essentially acts as an outside force that makes the Member States and the Union respond to the pre-existing internal problems. Enlargement serves as a political catalyst for resolving issues that are perhaps too complicated and intimidating to approach on their own.

The effects of this nexus are manifold. On the one hand, the political pressure of enlargement forces the Union to make its institutional structure, decision-making processes, and policies more efficient. The crisis connection between enlargement and reforms, therefore, stimulates the Union's evolution and development to a certain degree. On the other hand, there are some negative effects of how reforming and enlarging the EU are being made dependent on each other. The possibility of the next enlargement is now preconditioned upon EU reforms. In their turn, the reforms are often presented as something necessitated by the next round of enlargement or, at least, specifically tailored for

²²⁸ Fabbrini, 'The Conference on the Future of Europe: Process and Prospects' (n 66) 403.

²²⁹ See Manuel Müller, 'Crisis Learning or Reform Backlog? The European Parliament's Treaty-Change Proposals During the Polycrisis' (2023) 11(4) Politics and Governance 311.

²³⁰ Sailing on High Seas (n 97) 11.

²³¹ Commission, 'Communication on pre-enlargement reforms' (n 13) 3, emphasis added.

²³² de Witte (n 193) 209.

²³³ Commission, 'Communication on pre-enlargement reforms' (n 13) 2.

it. While this link of interdependence allows for capturing political momentum, it also presents some dangers.

First of all, the chances of joining the Union by the current candidate countries depend on the successful outcome of the reform process. This is something that none of the candidate countries has any influence on. In essence, the fate of those countries' accession hinges upon reforming the Union, which is in itself a profound challenge and an extremely cumbersome venture, both legally and politically. Commentators point out how unpredictable the process of EU enlargement becomes,²³⁴ and this surely adds more uncertainty to it. Second, the destiny of the EU reform process is tied to the success of enlargement. It means that, if the next round of enlargement does not take place, then the whole process of the Union's reform would look purposeless. This is further complicated by the incalculability of the accession of new Member States. It may be the case that, out of the current candidate countries, only a few will eventually join. Also, it is unclear when this will happen. Put simply, the current discourse ties reforming the Union to a probable event in the future whose specific form and shape are unknown and hardly predictable. It remains to be seen whether it is wise to link so tightly important constitutional reforms of the Union to the next rounds of enlargement, whose contours are blurry and hard to estimate.

6 CONCLUDING REMARKS

The link between the Union's enlargement and its reforms functions in a complicated, historically changing way and cannot be simply boiled down to the Copenhagen absorption capacity criterion. The way this nexus is being construed, justified, repeated, debated, and relied upon reveals many uncertainties about the bigger, existential questions that pertain to the future of the EU. How the Union should develop, what would be the best response to its current problems, whether and how European integration shall deepen – the connection between reforming and enlarging the EU grows from the doubts over how to approach these difficult issues.

The Copenhagen absorption capacity criterion is perceived as a legal requirement for the Union's enlargement. It is presented as a functional, almost technical, concept. Yet, when examined closely from a theoretical standpoint and tested against the past and current developments in the Union, the absorption capacity criterion fails to explain the link between reforming and enlarging. The nexus is not legal and functional at all; instead, it is political and discursive. Enlargement acts, in the best case, as the catalyst for reforms against the backdrop of another crisis manifesting the urgency and necessity of reforms. Attempts to analyse the current EU reform discussions and study the ongoing trajectory of reforms in the Union solely on the basis of the Copenhagen absorption capacity criterion are, for these reasons, unlikely to yield coherent results.

One can hardly deny 'the importance of enlargement as a geostrategic investment in peace, security, stability and prosperity'.²³⁵ This explains why the subject of enlargement has

²³⁴ Elena Basheska, 'EU Enlargement in Disregard of the Rule of Law: A Way Forward Following the Unsuccessful Dispute Settlement Between Croatia and Slovenia and the Name Change of Macedonia' (2022) 14 *Hague Journal on the Rule of Law* 221, 225-227.

²³⁵ European Council Strategic Agenda: 2024-2029.

‘returned to the top of the policy agenda’²³⁶ of the Union and experiences some clear ‘revitalisation’.²³⁷ Any individual accession to the Union is, however, a profound challenge with no guarantee of success. The Union’s enlargement is very much ‘an ongoing story’,²³⁸ whose finale is difficult, if not impossible, to foretell, particularly due to how the Union’s ‘complex enlargement labyrinth’²³⁹ is regulated legally.²⁴⁰ Commentators are certainly right when pointing out how the prospects of enlargement shed light on ‘the different hopes, wills and needs of member states to reform the EU, which push the integration process in different directions while being intrinsically connected’.²⁴¹ This is especially evident when one looks at the nexus between enlarging and reforming the Union.

Although the next round of enlargement, ‘a very hot topic’²⁴² at the moment, adds a certain sense of urgency to the discourse on EU reforms, it does not necessarily mean there will be more determination to transform and change the Union.²⁴³ The way reforming and enlarging the EU are linked together has certain transformative potential, but to fully grasp the nature of that link, one has to look at it not only through the lens of the Copenhagen absorption capacity criterion.

²³⁶ Andi Hoxhaj, ‘How to Make EU Enlargement a Fairer and Merit-based Process: A Legal and Policy Analysis’ (2024) 30(4) *European Law Journal* 571, 571.

²³⁷ Fabbrini, ‘The Impact of the War in Ukraine on the Enlargement of the European Union: “Securing the Blessings of Liberty” and Its Challenges’ (n 115) 4.

²³⁸ Emmert and Petrović (n 4) 1354.

²³⁹ Maresceau (n 29) 412.

²⁴⁰ On how the current regulation of enlargement creates uncertainties, see Lashyn (n 18).

²⁴¹ Matteo Bonomi and Raffaele Mastrococco, ‘Reforming by Hope, Will or Necessity? EU Integration in Times of Enlargement’ (2024) 64 *Istituto Affari Internazionali Commentaries* 5.

²⁴² Levente Nádasi and Zsuzsanna Trón, ‘How Decisive Are the Copenhagen Criteria for EU Enlargement?’ (2023) 26(2) *Európai Tükör* 49, 49.

²⁴³ See Ben Crum, ‘Models of EU Constitutional Reform: What Do We Learn from the Conference on the Future of Europe?’ (2024) 13(2) *Global Constitutionalism* 392, 407-408.

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