



## **Enlarging without Amending: Can the EU Act Fast Enough within the Cur- rent Treaties?**

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## Foreword

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The European Union's (EU) next enlargement, including the integration of Ukraine, is no longer primarily a technical exercise in legal approximation. It is a geopolitical necessity, unfolding in a security environment that leaves little room for the Union's traditional pace of adapting to challenges. Yet the tools available to manage that enlargement, from unanimity decision-making in the Council to the safeguards written into accession treaties, were largely designed for a calmer era. The question this compilation asks is a simple but pressing one: can the EU meet today's geopolitical urgency without opening the even slower, even more uncertain process of Treaty change?

The four briefings gathered here answer that question from different angles, but converge on a shared conviction. Treaty change is not realistic in the current political climate. What the EU needs instead is the political will to use the tools it already has more rigorously and more consistently.

The first two contributions turn to the problem of vetoes and the duty of loyalty that member states owe one another under the Treaties. Giselle Bosse argues that the EU cannot credibly demand democratic discipline from candidate countries while tolerating strategic obstruction from existing member states, and proposes a Council Loyalty Code, grounded in the existing duty of sincere cooperation, that would make veto use legally reasoned and politically costly. Christian Bissinger builds on this with a concrete precedent, showing how the mechanisms behind the €90 billion Ukraine loan, from enhanced cooperation to the use of Article 122 TFEU, already demonstrate that the EU can act around blockage when the political will exists, and he asks what it would take to make that the rule rather than the exception.

The second pair of briefings looks at the other end of the process, the safeguards and structures that shape what happens once countries actually join. Erik Jones reframes accession itself as only the beginning of a much longer structural transformation, and argues that speeding up the formal negotiation process, rather than slowing it to match the pace of internal adjustment, is both possible within the current rules and the more honest approach. Funda Tekin examines the new generation of safeguard clauses and transitional arrangements now being drafted into accession treaties, cautioning that while these tools can buy the EU time to pursue institutional reform, they cannot be allowed to substitute for it, and that the same scrutiny being applied to future member states needs to apply to the current 27 as well.

Read together, these four briefings make the case that the EU's capacity to act geopolitically is less a question of what the Treaties allow, and more a question of whether member states are willing to use them swiftly enough.

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## About InvigoratEU

InvigoratEU is a Horizon Europe-funded project, coordinated by the EU-Chair at the University of Duisburg-Essen (UDE) together with the Institut für Europäische Politik (IEP) in Berlin. The project, with a duration of 3 years from January 2024 until December 2026, examines how the EU can structure its future relations with its Eastern neighbours and the countries of the Western Balkans. The consortium has received around three million euros for this endeavour.

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About the project: [www.invigorat.eu](http://www.invigorat.eu)

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## Abbreviations

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|             |                                                        |
|-------------|--------------------------------------------------------|
| <b>CFSP</b> | <b>Common Foreign and Security Policy</b>              |
| <b>CSDP</b> | <b>Common Security and Defence Policy</b>              |
| <b>EUCO</b> | <b>European Council</b>                                |
| <b>EU24</b> | <b>24 Member States of the EU</b>                      |
| <b>MFF</b>  | <b>Multiannual Financial Framework</b>                 |
| <b>QMV</b>  | <b>Qualified Majority Voting</b>                       |
| <b>TEU</b>  | <b>Treaty on European Union</b>                        |
| <b>TFEU</b> | <b>Treaty on the Functioning of the European Union</b> |

# 1 When Vetoes Become Disloyal: Safeguarding Geopolitical Enlargement Without Treaty Change

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**Giselle Bosse**

*Professor, Maastricht University and TEPSA Board Member*

The EU cannot credibly demand democratic loyalty from candidate countries while allowing existing Member States to use unanimity in ways that undermine agreed Union objectives. Without Treaty change, the Council should adopt a Loyalty Code that makes veto use legally reasoned, politically reviewable and financially consequential.

EU enlargement has again become a question of European security. The opening of accession negotiations with Ukraine and Moldova, and the renewed focus on the Western Balkans, show that enlargement is no longer only a technocratic process of legal approximation; it is a strategic investment in the EU's capacity to shape its neighbourhood. Yet the EU faces a credibility problem. Candidate countries are subject to demanding conditionality, including democracy, rule of law and fundamental rights requirements under the Copenhagen criteria. Existing Member States, by contrast, can obstruct accession-related decisions even when doing so weakens the Union's agreed geopolitical and democratic objectives.

The starting point should be legal, not merely political. Article 4(3) of the Treaty on European Union (TEU) already imposes a binding duty of sincere cooperation. The Court of Justice has enforced that duty where member state action threatened the coherence of EU external action or bypassed Union procedures, notably in *Commission v Sweden*. Although the case concerned EU external action rather than enlargement, it is relevant by analogy because it confirms that member states must preserve Union coherence when acting in fields where EU procedures and external representation are engaged. A Council Loyalty Code would therefore not create a new Treaty obligation, but would clarify how member states should apply an existing one when exercising unanimity.

Recent enlargement practice shows why this is necessary. Greece's long-standing veto over Macedonia's name was resolved only through the Prespa Agreement; Bulgaria has blocked North Macedonia's accession path through demands linked to history, identity and language; Croatia has used Serbia's accession process to raise bilateral and judicial disputes; and Hungary has repeatedly threatened or used vetoes on Ukraine-related accession and financial decisions while seeking the release of frozen EU funds. The EU's tolerance of such bilateralisation has created a blueprint for strategic blackmail. In the post-2022 security environment, this is no longer a manageable diplomatic inconvenience. It is a vulnerability in the EU's collective security architecture.

A veto should be considered abusive when it is unrelated to the act at stake, disproportionate to the stated concern, aimed at extracting concessions on another file, or designed to import a bilateral dispute into the accession process without a clear link to the *acquis*, democracy, rule of law or fundamental rights. The 2024 Belgian Presidency Future of Europe Progress Report has already pointed in the right direction by exploring a political commitment to limit vetoes to "vital and stated reasons of national policy" directly related to the specific act, in line with sincere cooperation. This should become a formal Council Loyalty Code.

The EU should not create a new Treaty duty, but it can structure how member states exercise unanimity in enlargement-related decisions under existing obligations of sincere cooperation. A practical Code could require three elements: first, a written explanation when a member state uses a veto, identifying the national interest at stake and its direct connection to the file; second, a structured peer discussion in the General Affairs Council to assess whether the veto is file-specific, proportionate, and consistent with agreed Union objectives; and third, a public transparency register documenting repeated unexplained vetoes as evidence of possible Article 4(3) TEU concerns.

This approach would not annul a veto or replace unanimity. Its purpose would be to raise the political and legal cost of strategic obstruction while preserving member states' formal Treaty rights. It would also clarify that unanimity is not a licence for detached or bad-faith blocking tactics. The legal anchor is the duty of sincere cooperation in Article 4(3) TEU, which already requires member states to facilitate Union tasks and avoid jeopardising Union objectives.

Budgetary leverage can only operate within existing law. Regulation 2020/2092 allows measures where rule-of-law breaches affect or seriously risk affecting the sound financial management of the Union budget or the protection of the Union's financial interests in a sufficiently direct way. A veto by itself would not meet that threshold. But where obstruction forms part of a broader pattern of rule-of-law non-compliance, that context may be relevant to political assessments, to the application of existing conditionality tools, and to the design of future funding instruments.

In the next Multiannual Financial Framework (MFF), the EU should more clearly embed respect for Union values, sincere cooperation, and compliance with agreed procedures in programme design and conditionality architecture.

The EU does not need Treaty change to make veto abuse politically costly. It needs to stop treating unanimity as a licence for disloyalty. A larger Union will only be credible if the discipline demanded from candidates is matched by discipline among member states. In a hostile geopolitical environment, arbitrary vetoes do not merely delay enlargement; they create openings for Russia, China and other external actors to exploit uncertainty, polarisation and democracy fatigue.

## 2 Enhanced Cooperation as a Safeguard for Loyalty and Smooth Institutional Governance in an Enlarging EU

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**Christian Maurice Bissinger**

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Leveraging the mechanisms behind the political agreement of the €90 billion MFF headroom-backed Ukraine loan, the EU can encourage loyalty and circumvent veto abuse through existing legal tools, ensuring cohesion without Treaty change.

The €90 billion loan to Ukraine, agreed by 24 member states (EU24) in December 2025 within the European Council (EUCO), offers a practical blueprint for overcoming internal gridlock. As detailed by the [EUCO conclusions on the EU24 Ukraine loan](#), this complemented [Council Regulation 2025/2600](#), which indefinitely immobilised the Russian sovereign assets. Together, these measures enabled EU support for Ukraine for 2026/2027. This case demonstrates how sincere cooperation, veto abuse, and smooth institutional governance can be managed within the current Treaty framework.

First, the Ukraine loan illustrates how enhanced cooperation, anchored in Article 20 TEU and Articles 330 and 332 of the Treaty on the Functioning of the European Union (TFEU), fosters loyalty. Article 4(3) TEU affirms that member states shall ‘ensure fulfilment of the obligations (...) resulting from the acts of the institutions of the Union (...) and refrain from any measure which could jeopardise the attainment of the Union's objectives’. In the EU24 loan case, the use of enhanced cooperation allowed the willing member states to advance a critical EU objective - supporting Ukraine - while legally binding them. This stood in contrast to the non-participating member states Hungary, Slovakia, and the Czech Republic. The logic behind the commitment of member states to ‘support (the Common Foreign and Security Policy (CFSP) actively and unreservedly in a spirit of loyalty and mutual solidarity’ (Article 24(3) TEU) could be extended to enlargement. In light of current geopolitical and –economic realities, member states could pre-commit to a swift(-er) enlargement process, refrain from unilateral vetoes, ensuring that loyalty is not just a principle but a *practical obligation* for all. Conceived as a declarative measure, it would reinforce the accession perspective for candidate countries while simultaneously preparing the EU for internal reforms that would strongly limit the use of vetoes within its current institutional framework.

Second, the EUCO agreement revealed that vetoes become abusive when they systematically block decisions aligned with the EU's strategic interests - such as providing Ukraine with the agreed loan - for domestic gains, despite overwhelming consensus. Hungary's persistent vetoes against both the initially discussed, immobilised Russian assets-based Reparations Loan and [the needed amendment of the MFF](#) until the change of government in Budapest, required for the EU24 loan to be adopted, exemplify this. [The Council's contested use of Art 122 TFEU for asset immobilisation](#) via qualified majority voting (QMV) to bypass unanimity highlights the need for commonly agreed guardrails for smooth governance within EUCO. Such could be non-binding but symbolically powerful, aimed at identifying and naming such abuses, building on precedents of *Gentlemen's Agreements*, but tailored to CFSP (and, where applicable, to Common Security and Defence Policy (CSDP) to reduce the use of vetoes. A veto could be deemed abusive if it contradicts Treaty objectives on EU external action (e.g., Article 21 TEU).

Finally, the Ukraine loan case demonstrates the EU's ability to agree on contentious measures under the existing Treaties, bypassing unanimity within EUCO. These should be systematically exploited: normalise enhanced cooperation for cases of gridlock in certain areas, such as sanctions, defence or energy security, and further differentiated integration. Within CFSP, given the [continuously low levels of constructive abstention](#) (Article 31(2) TEU), [this should be encouraged](#). The stated guardrails for EUCO could be used more broadly for *crisis-driven* economic measures, shifting from unanimity to QMV where possible. In this realm, the Council could politically commit to using QMV for *implementation* decisions, reducing the scope for vetoes. In case of remaining gridlocks, the option of using passerelle clauses, most prominently Article 48(7) TEU, has, since the Lisbon Treaty, been prominently

discussed amongst scholars. However, given the need for unanimous authorisation by EUCO and the implied national (where applicable) and European Parliament's consent, this is no magic bullet to overcome cooperation deficiencies.

Ideally, EU internal reforms, such as the proposals of the 2023 report of the Franco-German group on EU institutional reform, should be implemented in tandem with enlargement. However, given the reduced appetite for Treaty reforms amongst member state capitals, this seems unlikely in the near future.

These reflections complement the [SIEPS analysis on EU Foreign Policy via enhanced cooperation](#) insofar as the EU24 Ukraine loan case proves that differentiated integration and targeted legal workarounds can preserve cohesion and functionality without Treaty reform. For enlargement, the EU should formalise loyalty obligations for member states to advance enlargement, whilst preparing for internal reforms, defining veto abuse through guardrails, and systematising existing legal bases to reduce gridlock. This would allow the Union to enlarge while safeguarding its ability to act.

### 3 Safeguard Clauses and Transitional Periods in Accession Treaties Can Only be Transitional Measures for Preserving the EU's Capacity to Act

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#### **Funda Tekin**

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The new generation of safeguard clauses in Accession Treaties potentially coupled with forms of gradual integration or even some sort of associate membership provides helpful tools for squaring the circle between the time pressure that is driving geopolitical enlargement and the slowness of institutional reform procedures particularly if there is little appetite among member states. However, transitional measures can buy time for institutional reforms – they cannot substitute them.

We are witnessing another cyclical upturn both in the EU's enlargement process and in the debate on the most appropriate way forward. The EU has finally been able to open the first cluster of accession negotiations with Ukraine and Moldova after Péter Magyar lifted Hungary's fundamental and longstanding veto. A letter sent by German Chancellor Friedrich Merz to Brussels outlining a proposal for an "associate membership" for Ukraine and substantial steps for the Western Balkan countries and Moldova on their way to membership marked only the beginning of a series of non-papers: two presenting ideas on how to structure gradual integration of accession countries into the EU; one outlining a catalogue of options for future Accession Treaties.

This comes timely because the EU is about to draft a new generation of Accession Treaties that comprise a new generation of safeguard clauses. This has been coined as “membership on probation” so that new member states cannot undermine the EU’s ability to act.

Two interrelated questions need to be tackled. First, how to structure safeguard clauses without establishing some sort of much apprehended second-class membership for countries entering the EU. Transitional measures and safeguard clauses have always been part of Accession Treaties – mostly in the areas of the Internal Market or Justice and Home Affairs. This sort of flexibility provides new members additional time for adapting to the measures at hand while protecting the functioning of the EU’s *acquis*. The current debate, however, focuses more on safeguards that protect the EU’s ability to act from being affected by backsliding on accession conditions in individual new member states. This results from the experiences with severe rule of law backsliding in Hungary and Poland and the EU’s lack of efficient tools to tackle it on the one hand and Hungary’s persistent veto position in the Council on the other. Hence, proposals for safeguards centre on non-regression clauses as well as withholding veto rights for new member states. For such a safeguard regime to function properly clear-cut definitions are required: what conditions trigger and more importantly terminate the safeguard clause? Who takes the decision on activation and termination? And is there a predefined time limit? Additionally, a tailor-made approach to safeguard clauses might be needed. In the case of Iceland for example, having no veto right upon joining the EU might not facilitate the decision to reactivate its accession procedure. Sovereignty concerns are at the core of the country’s objection to full membership. Additionally, Iceland is already implementing large parts of the Internal Market *acquis* without having a say in decision-making.

The second question is, how can we preserve the EU’s capacity to act beyond introducing new rules for new member states? The spirit of the 2023 Granada declaration stating that the EU’s enlargement and internal reform processes need to run in sync seems to be a relic from the past. Engaging in institutional reforms is a difficult, lengthy and at times painful process. Still, the earlier we start re-engaging the better. Time might be of the essence here, because in 2027 elections are due to take place in four of the five largest EU member states.

The current focus on safeguard clauses in Accession Treaties turns a blind eye to the fact that they address the so-called Copenhagen dilemma for new member states but not for the 27 existing ones. Risks to democratic standards are by far not a characteristic of new member states alone. The EU needs sustainable measures to sanction backsliding on Article 2 TEU values and persisting veto positions addressing all member states.

The Commission’s plans to extend and refine the rule of law conditionality in the new MFF is a good starting point that does not require treaty change. In the long run, however, reforming the Article 7 TEU procedure for suspending voting rights needs to be part of the reform agenda.

Member state vetoes are only abusive if they are used for political leverage for reaching unrelated goals – hence for blackmailing. The most straightforward way for mitigating this risk is extending qualified majority voting to all policy areas by using *passerelle* clauses in the treaties. Proposals for introducing sovereignty safeguard nets or an adaptation of QMV-criteria that can be found in the 2023 [report](#) of the Franco-German Expert Group on institutional reforms might help rendering this reform acceptable to more countries. Yet, a Treaty change would be needed.

## 4 Accession is the Start of the Journey, not the End

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**Erik Jones**

*Director, the European University Institute, Non-resident Scholar at Carnegie Europe and TEPSA Board Member*

Candidate countries will take decades to adapt fully to membership in the EU. That was always the case. Just ask the Irish, the Greeks, the Spanish, or the Portuguese. Not all will succeed. Here, think of the British. The accession agreement is only the start of the journey; it is not and can never be a guarantee that the adaptation to membership will take place.

The process of accession to the EU unfolds along two very different chronologies. The formal part is fast and is prone to accelerate when necessary. Governments can push laws through parliament even faster than members of parliament can read them. They can spin up new agencies to meet new requirements for implementation and enforcement. They can even amend constitutions. And they can roll out a political campaign to explain why all this is necessary even if most people in the country cannot appreciate the full implications of membership.

What is true for the candidate countries is also true for the EU. The European Commission can do its assessments of candidates as fast as necessary. It can come up with an underlying methodology, an overarching strategy, and a collection of common positions. It can build new relationships, find resources for capacity building, and bring in outside consultants as necessary. Then it is up to the Council to give a green light to the different stages of negotiation, but that can also be done just as quickly when the political will exists. Just look at how fast Slovakia went from being excluded from the process for failing to meet the political criteria prior to the Helsinki summit in December 1999 to being ready to sign a Treaty of Accession at the Copenhagen summit three years later.

The more important structural part is slower. Slovakia is still adapting to the implications of joining the EU. Then again, so are Ireland, Portugal, Spain, and Greece. The transformation in all these cases is impressive, but the politics has never been easy. Denmark is an even more peculiar case as a relatively wealthy country that nevertheless demanded a large number of opt outs – including from adopting the single currency. Denmark has also struggled with freedom of movement and voted down important treaty revisions in popular referendums. None of this should be taken as criticism; the point is only that the burdens of adapting to membership are challenging for every member state.

The next enlargement will be no different. The formal parts can be managed as quickly as needed. The structural adjustments required will be long, complicated, and politically contentious. Does that mean it makes sense to slow down the formal process until the structural adjustment is complete? We know structural adjustment is difficult, but we also know that membership provides a supportive environment for such adjustment to take place. It is hard if not impossible to imagine that Ireland, Greece, Portugal, and Spain would have ever joined the single currency if they had not spent more than a decade in preparation as existing member states. The same is also true for Italy and France even if the preparation took many years longer. Just think about how much both countries struggled to remain inside successive

intra-European exchange rate regimes including the European Monetary System. Indeed, it is hard to imagine the process of monetary integration taking place without European institutions to help guide the necessary structural transformations.

What is true for economics is also true for politics. We can see that most clearly in the United States. No democracy is safe when it is not closely tied to into supportive, multilateral arrangements. The temptation to declare exceptional measures as necessary to preserve the spirit of democracy by undermining democratic institutions is always too great. The lesson is not that formal arrangements are worthless. It is that formal commitments are only the start of a longer, more important, process of continuous and collective transformation. This was always true when the European project enlarged to include new member states. There is no reason to believe the next enlargement will be any different. Therefore, the goal should be to frame the formal part of the process to ensure that the structural part takes place no matter how long that may take.

What does this imply for the European Union today? The political will to change the Treaties simply does not exist. But there are parts of the formal process that could be amended in ways that both facilitated decision-making and laid more solid foundations for the structural adjustment that will inevitably follow accession. The most obvious is to minimise the number of votes required in the Council to proceed through accession negotiations. The member states need only give assent that the negotiations are complete. This will reduce bilateral tensions by reducing the moments where individual member states can use their veto power to slow down negotiations in order to extract concessions from candidate countries.

Another change could take place within the European Commission. Right now, the Commission is focused on helping the candidate countries meet the criteria for membership, which includes approximating the *acquis* in each of the negotiation chapters. What they might add to that process is a growing agenda of issues that can be addressed by the candidates after they become member states. This agenda would essentially consist of a list of country-specific recommendations together with a calendar for their implementation. That left-over homework will make it easier for governments on both sides of the negotiations to see the ambitions that will remain once accession takes place. This agenda is not a guarantee of structural adjustment, but it lays a foundation for incorporating the new member states more effectively into the process of macroeconomic and market structural coordination that exists for all member states.

## About InvigoratEU

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### How can the EU invigorate its enlargement and neighbourhood policy to enhance Europe's resilience?

**Our first goal** is to investigate how to reform the EU's enlargement strategy in a new geopolitical phase, HOW TO RESPOND to other actors' geopolitical ambitions in the Eastern Neighbourhood and Western Balkans, and HOW TO REBUILD the EU's foreign policy arsenal in view of a new era of military threats (triple "R" approach) combining the modernisation and geopolitical logics of EU enlargement, leading to new data – e.g. a public opinion survey in Ukraine, a set of scenarios, an external influence index (Russia, China, Turkey), and a social policy compliance and cohesion scoreboard.



**Our second goal** is to elaborate an evidence-based, forward-looking vision for the EU's political agenda and institutional frameworks for co-designing a multidimensional toolbox (i.e. two tailor-made toolkits), together with InvigoratEU's Expert Hub, Civil Society (CS) Network, Youth Labs, Workshops for Young Professionals and Policy Debates in a gaming set up, which will result in context-sensitive and actionable policy recommendations for European and national political stakeholders and (young) European citizens in particular.

**Our third goal** is to deploy a CDE (communication, dissemination and exploitation) strategy aiming at recommendations from Day 1 to maximize our scientific, policy and societal impact in invigorating the EU's enlargement and neighbourhood policies to enhance Europe's resilience. Ultimately, InvigoratEU is a deliberately large consortium respecting the diversity of Europe and political perspectives; 7 out of 18 are from Georgia, Moldova, Ukraine, and the western Balkans (North Macedonia, Montenegro, Serbia), complemented by our Civil Society Network of 9 representatives from all Western Balkan countries, Georgia, Moldova and Ukraine.

InvigoratEU is funded by the European Union.

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