THE GREAT RESET:
RESTORING MEMBER STATE SOVEREIGNTY IN THE EUROPEAN UNION

A TWO SCENARIO PROPOSAL THROUGH
INSTITUTIONAL REFORM FOR A NEW EU
FROM MATHIAS CORVINUS COLLEGIUM AND ORDO IURIS INSTITUTE

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THE GREAT RESET

An Urgent Need for Drastic EU Reform

Understanding the State of the Union: The Need for Reform

Over the past 70 years, the European Union has evolved from a simple economic cooperation project into a powerful supranational entity with its own currency, court, and ability to impose financial sanctions on Member States. What began as a vision of free trade and peaceful coexistence has morphed into an institution shaping nearly all aspects of governance in Europe, ***centralizing power at the expense of national sovereignty.***

Today the EU faces an existential crisis. Some argue for deeper integration, accelerating the trend toward federalization. However, decades of increased centralization have not solved Europe's challenges but rather exacerbated them. The solution lies in a return to the EU's founding principles:

- **National Sovereignty over EU primacy**
- **National constitutions over judicial activism**
- **Representative democracy over technocratic governance**
- **Subsidiarity and respect for national competences over centralization**
- **National interests over self-proclaimed EU values**
- **Free speech over ideological control**

Breaking the Gridlock: Fundamental Flaws of the European Union

Democratic Deficit

The EU's democratic deficit stems from unelected key institutions, opaque decision-making, and the EP's struggle to unite 27 diverse Member States. A national demos, by contrast, grounds governance in the democratic will of individual nations rather than supranational centralization.

Centralization of Power

EU institutions, particularly the European Parliament (EP) and European Commission (EC), have expanded their authority beyond their original mandate, forcing EU laws to override national legislation, weakening Member States' ability to govern independently.

Erosion of National Sovereignty:

The EU is evolving into a quasi-federal state, limiting national decision-making power. The European Court of Justice (ECJ) continues to extend its jurisdiction, reducing Member States' autonomy.

Expansion of Ideology and Bureaucratization in EU Institutions

EU bodies increasingly impose ideologically motivated policies on Member States, without any mandate.

Two Scenarios for Reform

1.

Back to the Roots

This scenario envisions a reformed EU with 20 proposals, bringing it closer to its 1957 model. It emphasizes decentralization, national interests, flexibility, deregulation, and a stronger role for Member States. The goal is to restore sovereignty while maintaining structured cooperation, ensuring national governments retain control over key policy areas.

A Stronger EU Rooted in National Sovereignty

National sovereignty must take precedence with Member States as the EU's true center of gravity. Power must shift back to national governments, curbing the influence of supranational institutions like the EP, EC, and ECJ. The European Council, as the voice of national leaders, should hold the highest authority, ensuring decision-making remains rooted in national interests. A structured set of reforms would reinforce this balance, safeguarding sovereignty while promoting more balanced and cooperative governance within the Union.

Key Proposals for Reform

- ***Flexibility based on national interests*** *(â la carte model of integration) with an opt-out clause allowing Member States to exempt themselves from policies that conflict with their priorities.*
- ***Member States as the Center of Gravity*** *ensuring national sovereignty remains the foundation of the EU.*
- ***European Council as the political core of the Union*** *above all other institutions.*
- ***Reduced Legislative weight*** *of the European Parliament and a modification to its composition to include national delegations to strengthen democratic legitimacy.*
- ***Limiting the primacy of EU law*** *to EU competences and ensuring it never overrides national constitutions.*
- ***Expanding Unanimity in Decision-Making*** *to protect national sovereignty.*
- ***Reforming the European Commission*** *into a more technical body, transforming it into a General Secretariat and eliminate its monopoly on infringements and legislative initiatives.*
- ***Overhaul of the ECJ*** *to limit its authority over national legal systems and prevent judicial activism.*
- ***Establish a 'National Competence Shield'*** *in the TEU, protecting a list of competences from EU interference, ensuring no legislative or judicial impact from the EU.*
- ***Proper enforcement of the Principle of Subsidiarity*** *allowing Member States to reclaim competences if the EU fails to act within its mandates.*
- ***Rename the EU to the European Community of Nations (ECN)*** *to reflect a union of sovereign states, rather than a supranational entity.*

2. A New Beginning

This scenario proposes a complete institutional overhaul, replacing the current EU framework with a flexible, intergovernmental system. It allows states to determine the extent and nature of their cooperation, free from overarching supranational governance.

Intergovernmental Union

Primacy of intergovernmental bodies, with decision-making based on unanimity and an Executive Secretariat overseeing implementation. A European Court of Arbitration would resolve disputes between Member States.

Voluntariness & Flexibility

Introduction of an à la carte model of integration, allowing Member States to participate in core areas of cooperation and opt-in/out of additional projects like border protection, energy security, and scientific research.

Conferral & Subsidiarity

Strengthening the principle of conferral, ensuring clear distinctions between EU and Member State competences, with guarantees for subsidiarity and opt-out options in deeper cooperation.

Primacy of National Constitutions

Upholding national sovereignty by prioritizing national constitutions over EU obligations, allowing adjustments based on domestic legal frameworks while ensuring cooperation within agreed limits.

Transition to a New Union

A gradual transition plan to dissolve the EU and establish a new Union based on the outlined principles, including addressing assets, liabilities, and financing during the transition period.

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FOREWORD

Despite the ambitious goals set by the Lisbon Strategies of 2000 and 2010—to become „the most competitive and dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion"—Europe has experienced an accelerated decline in the 21st Century. While the "greater cohesion" approach has proven to be a resounding failure, it continues to be promoted as the solution to the very difficulties it creates. The European Union is rapidly declining into the status of a third-rate political, economic and scientific backwater. This process has been particularly disappointing for the dynamic and youthful societies of Central Europe, which, having emerges from the communist bloc, viewed the EU as a safe haven for democracy, development, and freedom.

The disintegration of the European dream is unfolding despite the clear intellectual, moral, and entrepreneurial potential of its inhabitants, which remains stifled by the exponentially growing bureaucracy and the internally contradictory policies it produces.

The authors of this report vehemently reject the doomsday scenarios predicting the inevitable collapse of our culture, societies, and nations, and instead undertake the task of analyzing the causes behind the recent decline of the European Union. Originally conceived as a means to avoid past conflicts and as a mechanism to facilitate growth and development, the EU is now facing significant challenges.

Part I of the Report presents the concepts that are rejected by the authors, but currently entertained by the detached EU elites—namely, the notion of repairing the EU through deeper integration—and postulates the need for a "Great Reset" of the prevailing paradigm.

Part II provides a diagnosis of the factors that have led to the disastrous decline of European nations and economies within the current political, social, economic, and ideological framework. It outlines the negative consequences of the current approach, including: (a) the limiting of democracy; (b) the undermining of national sovereignty by EU bureaucracy and through stealth, despite a lack of a Treaty mandate to do so; (c) the trampling of civil liberties through ideological mainstreaming and attempts at total control to protect certain ideologies and their proponents; (d) efforts to eradicate European culture and identity, as expressed in the numerous national and regional variants, through the imposition of so-called "European Values" and "cultural Europeanism," which bear eerie resemblance to the concepts of "Soviet Man" and "Soviet Culture"; (e) the destabilization of security in European countries, cities, and neighborhoods in what appears to be an effort to undermine religious, cultural, and ethnic cohesion in the name of multiculturalism; and (f) the destruction of economic competitiveness at regional, national, and European levels due to the imposition of suffocating bureaucratic requirements and exorbitant costs, both from the bureaucracy itself and its frequently irrational decisions.

Part III of this report—having rejected the false dichotomy that Europe can only exist as a totalitarian European superstate or forgo any possibility of cooperation—presents two scenarios to cure Europe: (SCENARIO I "Back to the Roots") reforming the European Union in accordance with principles that reflect the nature and cultures of the Euro-

pean peoples, or (SCENARIO II "A New Beginning) resetting the EU by disbanding its current structures and establishing a new European Economic Union, based on the same principles.

The principles to be implemented in either approach to restoring Europe include: national sovereignty; the plurality of communities pursuing jointly agreed-upon programs of deeper cooperation; the voluntary and revocable nature of deepened cooperation; the intergovernmental nature of cooperation; strict enforcement of the Principle of Conferral in accordance with national mandates; and rigorous adherence to the principle of subsidiarity.

SCENARIO I – "Back to the Roots" presents 23 proposals for EU organizational reform, aiming at achieving eight key goals to improve the functioning of the EU: (I) Increasing flexibility within the EU to accommodate various levels of integration; (II) Reassessing and enforcing EU competencies as defined; (III) Strengthening and broadening the application of the unanimity rule; (IV) Ensuring the primacy of national constitutions over European law; (V) Redefining the role of the European Commission as a supportive function, under strict control of Member States; (VI) Elevating the role of the European Council and Council of Ministers; (VII) Redefining and reducing the role of the Court of Justice of the European Union to dispute resolution, rather than legislation through interpretation of the Treaties; (VIII) Reducing the role of the European Parliament to a consultative function.

SCENARIO II – "A New Beginning" presents a vision of a radical departure from the current cumbersome, inefficient, and expensive bureaucratic structures, advocating for the dissolution of the EU in its current form and the establishment of a new organizational framework for European cooperation. This new framework would adhere to the fundamental principles of cooperation, ensuring the successful attainment of cooperation goals within Europe.

The choice of scenario for implementation should be guided by an assessment of which approach is more suited to addressing the challenges of the 21st-century landscape, particularly in terms of efficiency, adaptability, cost of cooperation, and the feasibility of integrating the changes into the existing structures.

On behalf of Ordo Iuris

Jerzy Kwaśniewski
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On behalf of Mathias Corvinus Collegium

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I. INTRODUCTION

I.I. Why a Great Reset?

More than 70 years ago, when six Western countries established the European Coal and Steel Community (ECSC), few could have predicted that it would evolve into one of the world's most powerful international organizations – one with its own currency, diplomatic core, administrative apparatus, parliament, autonomous legal order, and even a constitutional court capable of striking down national laws and imposing financial sanctions on non-compliant Member States. Yet, this transformation occurred: Over time, a single organization became three—the ECSC, the European Atomic Energy Community (Euratom), and the European Economic Community (EEC)—which collectively became known as the European Communities. These, in turn, evolved into what is now the European Union.[1] What began as a relatively straightforward vision of free trade, travel and peaceful coexistence among states has culminated in an ambitious project aimed at laying the "building blocks of the new world order"[2], with virtually every aspect of governance in Europe today shaped by the EU in some capacity.[3]

It is widely acknowledged that the EU today faces existential crisis.[4] Some argue that the solution lies in "more Europe"[5] and advocate for "speeding up the integration process"[6]—essentially, euphemisms for further federalization. However, integration has been accelerating for decades, and not only has it failed to prevent the current crisis, but it has also instigated it. In our view, the answer lies elsewhere: in a return to the founding principles of the European project. The focus should not be on "EU sovereignty"[7], but national sovereignty; not judicial legislation imposed by a supranational court of unelected judges, but on the rule of law; not on the dominance of technocratic institutions, but on representative democracy; not on centralization, but subsidiarity; not on imposed regulations, but on the free market; and not on ideological censorship, but on freedom of speech.

1 See more about EU's history: D. Jacobs, R. Maier, European Identity: Construct, Fact and Fiction in M. Gastelaars, & A. de Ruijter (eds.), A United Europe: The Quest for a Multifaceted Identity. University of Utrecht 1998, pp. 13-34.

2 The European Union in the New World Order, speech of José Manuel Durão Barroso President of the European Commission in 2004-2014, https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_14_612 (22.11.2024).

3 Ch. J. Bickerton, D. Hodson, U. Puetter, The New Intergovernmentalism: European Integration in the Post- Maastricht Era, Journal of Common Market Studies 2015, vol. 53, issue 4, p. 703.

4 E.g. EP President Roberta Metsola (https://www.europarl.europa.eu/news/en/press-room/20220429IPR28222/italy-s-prime-minister-draghi-calls-for-faster-eu-integration-to-address-crises). See also D. Engels, The European Union and the Decline of the West, or: Determinism or Determination?, "Erträge" 5/2017, pp. 93-124.

5 Quoted after Teresa Ribera, former Third Deputy Prime Minister of Spain (2021-2024) and Minister for the Ecological Transition (2018-2024), recently proposed by Ursula von der Leyen for the post of executive vice-president of European Commission in charge of environmental affairs, energy transition and competition – see:‚We need more Europe against Trump': Spanish minister Teresa Ribera, France24 interview of 16 February 2024, https://www.france24.com/en/tv-shows/talking-europe/20240216-we-need-more-europe-against-trump-spanish-minister-teresa-ribera (26.11.2024).

6 Quoted after Mario Draghi, former President of European Central Bank (2011-2019) and Italian Prime Minister (2021-2022) - https://www.europarl.europa.eu/news/en/press-room/20220429IPR28222/italy-s-prime-minister-draghi-calls-for-faster-eu-integration-to-address-crises (22.11.2024).

7 Contrary to the famous words of Emmanuel Macron from his address to the European Parliament given in Strasbourg on the 17th of April 2018:‚To cope with upheavals worldwide, we need a sovereignty that is greater than our own, but which complements it: a European sovereignty.'

II. DIAGNOSIS

II.I. The Current State of the European Union

Today, the European Union is not an "ordinary" international organization like the OECD, ASEAN, or even the UN. It is often described as "a special type of organism"[8], "the most significant and intrusive international organization"[9], "less than a federation, more than a regime"[10], "a classic case of federalism without federation"[11], or "a quasi-federal constitutional system"[12]. Some even acknowledge the EU as "a federation of sovereign States"[13] or simply "a Federation of States," drawing parallels with the United State of America—an association of states with its own administration, budget and powers: "It is easy to see the parallels between the EU's institutional structure – European Parliament, Council, Commission—and a federal state with a two-chamber parliamentary system."[14]

However, the European Union still retains characteristics of an international organization (e.g., the predominant role of governments represented in the Council and European Council; major decisions are still based on unanimous voting; even when unanimity is not required, most decisions are adopted by consensus; many areas of public policy remain handled autonomously by individual states; each state retains the right to secede from the organization). At the same time, in other respects, the EU resembles a state (e.g., many decisions are made by qualified or simple majority vote; a common internal market; directly applicable legislation; European citizenship; the Euro as a currency; a supranational civil service; the European External Action Service as a rising diplomatic force; the Charter of Fundamental Rights as a constitutional foundation for common principles; and the establishment of the European Public Prosecutor's Office).[15] Nevertheless, the EU's authority over its Member States remains less extensive than that of the U.S. federal government over its states – at least for now. But who knows how long this will last?

The European Union is consistently evolving in a direction that causes us deep concern, undermining the values we hold dear: representative democracy, sovereignty, respect for national cultural identity, pluralism of opinions, economic freedom and development, the family (husband, wife, and children) as the natural and fundamental unit of society, and internal security.

a) Democratic Deficit

8 P. Uhma, The democratic legitimacy of the European Union and its laws: theoretical challenges and practical examples, „Rocznik Administracji Publicznej" 2023 (9). p. 312.

9 R. O. Keohane, J.S. Nye, The Club Model of Multi-lateral Cooperation and Problems of Democratic Legitimacy, Paper prepared for the American Political Science Association, Washington D.C., August 31–September 3 2000, p. 2.

10 W. Wallace, Less than a Federation, More than a Regime: The Community as a Political System, in: H. Wallace et al. (eds.) Policy- Making in the European Community, 1983, p. 403 et seq.

11 M. Burgess, Federalism and the European Union: the Building of Europe 1950–2000, Routledge 2000, pp. 28–29

12 K. L. Schepelle, D. V. Kochenov, B. Grabowska-Moroz, EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union, Yearbook of European Law 2020, vol. 39, no. 1, p. 13.

13 A. Dashwood, The Relationship between the Member States and the European Union/Community, Common Market Law Review, vol. 41, Issue 2 (2004), p. 356.

14 J. Plottka, M. Müller, Enhancing the EU's Democratic Legitimacy. Short and Long-Term Avenues to Reinforce Parliamentary and Participative Democracy at the EU Level, Institut für Europäische Politik report (2020), p. 12.

15 R. Schütze, From Dual to Cooperative Federalism. The Changing Structure of European Law, Oxford 2009, pp. 13-74.

Firstly, we are concerned about the democratic deficit within the European Union system, a topic that has been widely discussed for years.[16] We do not share the optimism of authors who believe that Europe has managed to create "a democratic international organization," one that is "a union of democratic states enjoying democratic legitimacy of its own"[17].

In our view, the essence of democracy is expressed in the principle of national representation: elected officials who act on behalf of the citizens of a distinct community that shares common culture, history and interests. There is no representation without a political community and there is no genuine political community without a nation.

The European Union faces a critical lack of democracy because most of its institutions are not elected by the people, but rather by politicians, self-proclaimed experts, and selected civil society organizations. These include the European Commission, the Court of Justice, the European Central Bank, and numerous executive agencies. The Council and the European Council suffer from a severe lack of democratic legitimacy, further undermined by their non-transparent decision-making processes and the increasingly widespread use of the principle of majority voting. As a result, "log-rolling in the Council and its preparatory bodies makes EU decision-making more opaque; citizens often cannot hold their governments accountable for negotiations in the Council because they simply do not know what is going on."[18]

The European Parliament formally possesses direct democratic legitimacy, as it is elected by universal suffrage. However, its mandate derives from a conglomerate of 27 nations with distinct histories, cultures, languages and interests. This makes it difficult to determine which "political community" it truly represents. Some identify the democratic deficit in the "increasingly intergovernmental decision-making" and the "sideline role of the European Parliament"[19]. They propose moving the EU closer to the model of a "full parliamentary democracy" with a bicameral system, strengthening the European Parliament while weakening the Council and the European Council.[20] We strongly disagree with this view, as it is based on the false assumption that a "European nation" exists – an assumption that fails to account for the lack of a common demos, a shared public sphere, or citizens who share common memories and experiences.[21]

One possible alternative is the concept of a European "demoicracy"[22], defined as "a Union of peoples who govern together, but not as one"[23], which rejects majoritarian decision-making at the supranational level and instead focuses on transnational deliberation and cooperation within European Council.

16 P. Mair, Popular Democracy and EU Enlargement, East European Politics and Societies 2003, 17(1), p. 62; F. W. Scharpf Legitimationskonzepte jenseits des Nationalstaates, in: G. F. Schuppert, I. Pernice, U. Haltern (eds.), Europawissenschaft, Baden-Baden 2005, pp. 705–742; A. Føllesdal, S. Hix, Why There is a Democratic Deficit in the EU: A Response to Majone and Moravcsik, Journal of Common Market Studies (2006), Vol. 44, No. 3, pp. 533–562; M. Zürn, Politicization compared: at national, European, and global levels, Journal of European Public Policy (2019), Vol. 26, No. 7, pp. 977–995; Plottka / Rebmann 2019; P. Uhma, The democratic legitimacy of the European Union and its laws: theoretical challenges and practical examples, „Rocznik Administracji Publicznej" 2023 (9), pp.312-314.

17 J. Hoeksma, The democratic legitimacy of the European Union, The Loop - The European Consortium for Political Research Political Science Blog (2023), https://theloop.ecpr.eu/the-democratic-legitimacy-of-the-european-union/ (22.11.2024).

18 J. Plottka, M. Müller, Enhancing the EU's Democratic Legitimacy. Short and Long-Term Avenues to Reinforce Parliamentary and Participative Democracy at the EU Level, Institut für Europäische Politik report (2020), p. 9.

19 Ibidem, p. 2.

20 Ibidem, p. 13, 19-22, 28-29.

21 P.G. Kielmansegg, Integration und Demokratie in: M. Jachtenfuchs, B.Kohler-Koch (eds.): Europäische Integration, Wiesbaden 1996, pp. 49–76. Cf. U.K Preuß, Europa als politische Gemeinschaft in: G. F. Schuppert, I. Pernice, U. Haltern (eds.), Europawissenschaft, Baden-Baden 2005, pp. 489–539; D. Innerarity, Does Europe Need a Demos to Be Truly Democratic?, LSE 'Europe in Question' Discussion Paper 77, European Institute 2014.

22 K. Nicolaïdis, Our European Demoïcracy: Is this Constitution a Third Way for Europe? in: K. Nicolaïdis, S. Weatherill (eds.), Whose Europe? National Models and the Constitution of the European Union, European Studies at Oxford Series 2003, pp.137–152; J.W. Müller, The Promise of Demoicracy: Diversity and Domination in the European Public Order, in: J. Neyer, A. Wiener (eds.), The Political Theory of the European Union, Oxford 2011; F. Chevenal, F. Schimmelfennig, The Case for Demoicracy in the European Union, Journal of Common Market Studies 2013, Vol. 51, No. 2, pp. 334–350.

23 K. Nicolaïdis, European Demoicracy and Its Crisis, Journal of Common Market Studies 2012, Vol. 51, No. 2, p. 351

b) Undermining National Sovereignty

Secondly, we confront a new type of threat to the sovereignty of states: the political and legal expansion of international organizations, which progressively strip nations of control over successive areas of public policy. The limits of the Union's powers are supposed to be governed by the so-called "principle of conferral," according to which "the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein. Competences not conferred upon the Union in the Treaties remain with the Member States" (Art. 5(2) of TEU). The law clearly defines which areas the Union can regulate and when it must share its competences with the Member States (Art. 3-4 of TFEU). In reality, however, EU institutions see their role as extending far beyond the limits set by the Treaties. They act even without an explicit legal basis if they believe that particular action is necessary to "ensure the effectiveness" of EU law.

Furthermore, the principle of subsidiarity applies only in theory. Formally speaking, in areas that do not fall within its exclusive competence, "the Union shall act only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at the central level or at regional and local levels, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level" (Art. 5(3) TEU). In practice, however, the Union's institutions tend to assume the opposite—that it is the Union which should typically exercise shared competences, unless Member States prove that they are able to do so effectively.[24] It is only a slight exaggeration to say that competences which, in theory, are shared between the EU and Member States (such as those related to the internal market, energy, or the Area of Freedom, Security and Justice) are, in practice, predominantly exercised by the European Union alone.

Although for many years the Treaties remained formally unmodified, the European Union institutions have continuously expanded their powers through a method of fait accompli: conducting actions without a legal basis, hoping for no opposition from Member States, and subsequently inventing legal justifications for these actions post factum, often relying on vague concepts such as dynamic interpretation, the spill-over effect, or the effet utile principle.

The grand coalition of centralists dominates both the European Parliament and the Council, regarding endless integration as a higher value than national sovereignty. The consequence of this is the inflation of EU law, which manifests in two key ways: first, the gradual monopolization of areas of public policy that were supposed to be shared with the states (such as energy), which, legally, could in theory be assumed by the EU if it is better placed to do so – a clear question of subsidiarity; and second, the harmonization of areas that were meant to remain within the exclusive competence of Member States (such as family law).

The Court of Justice has evolved from being a mere judicial body set up to clarify doubts about the interpretation of EU law in specific cases pending before national courts into something much more: a supreme court[25], whose decisions are binding on all national courts, even in areas not regulated by EU law; a constitutional court[26], overturning national laws deemed contrary to EU law; and even a positive legislator[27], granting national courts and public administrations the authority to in-

24 Cf. Institut Thomas More, Principes, institutions, compétences. Recentrer l'Union européenne, Paris 2019, p. 17.

25 Institut Thomas More, Principes, institutions, compétences. Recentrer l'Union européenne, Paris 2019, p. 22.

26 A. Hinarejos, Judicial Control in the European Union: Reforming Jurisdiction in the Intergovernmental Pillars, Oxford 2009, pp. 1–13.

27 M. Kawczyńska, The Court of Justice of the European Union as a law-maker: enhancing integration or acting ultra vires?, in: M. Florczak-Wątor (ed.) Judicial Law-Making

dependently review the compatibility of national laws with EU law.

The European Commission, on the other hand, has had an unusually influential position from its very beginnings, as an openly supranational institution with a monopoly on setting the Council's agenda and drafting legislation, coupled with control over its implementation in its role as guardian of the Treaties.[28] For many years, the Commission has acted as a "policy entrepreneur" and a "de facto legislator"[29], skillfully using its unlimited legislative initiative, which allows it to directly shape European Union policy almost on an equal footing with the Council and the European Council.

However, the most powerful tool at the Commission's disposal has been—and remains—the initiation of the so-called infringement procedure (Art. 258-260 TFEU), through which Member States accused of violating EU law may be subjected to financial sanctions, with the amounts discretionarily determined by the Court of Justice. The discretionary nature of this procedure, which allows the Commission to initiate proceedings without a precise justification, heightens the arbitrariness of EU actions, thereby undermining a fundamental component of the rule of law: the transparency of the legal and factual basis for authoritative decisions.

Initially, the infringement procedure primarily served to ensure the timely implementation of directives adopted by the European Parliament and the Council. In recent years, however, it has increasingly been discussed as a tool of militant democracy[30]—one used to impose a singular, definitive interpretation of European values, such as the rule of law, on all Member States, regardless of their constitutional rules and traditions. This perspective is not only advanced by academics but also echoed by European leaders, including German Chancellor Olaf Scholz. In 2023, he openly encouraged a more assertive use of this instrument, stating: "So why don't we use the coming discussion on EU reform to strengthen the European Commission to launch infringement proceedings whenever our fundamental values are breached: freedom, democracy, equality, the rule of law, and defense of human rights?"[31]

In 2021, the so-called conditionality mechanism was introduced, enabling the Council, upon a request from the European Commission, to suspend the disbursement of EU funds to a Member State that "breaches the principles of the rule of law" and thereby "affects or seriously risks affecting the sound financial management of the Union budget or the protection of the financial interests of the Union".[32] While, in theory, safeguarding the rule of law is a laudable objective, in practice, this mechanism represents the EU's most powerful—and most dangerous—instrument, as it can serve as a convenient pretext for stronger Member States to exert political pressure on weaker ones by withholding funds that are legally due to them.[33] Given that the concept of the rule of law is inherently vague and susceptible to subjective interpretation, this creates significant potential for abuse—allowing financial

in European Constitutional Courts, London-New York, pp. 203–220. Cf. Institut Thomas More, Principes, institutions, compétences. Recentrer l'Union européenne, Paris 2019, p. 30.

28 Cf. O. Costa, P. Magnette, The European Union as a Consociation? A Methodological Assessment, West European Politics (2003), Vol. 26, No. 3, p. 11.

29 M. Cini, The European Commission: An Unelected Legislator?, Journal of Legislative Studies 2002 8(4), p. 14 and 16.

30 K. L. Schepelle, D. V. Kochenov, B. Grabowska-Moroz, EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union, Yearbook of European Law 2020, vol. 39, no. 1, p. 10.

31 Address by Olaf Scholz, Chancellor of the Federal Republic of Germany as part of the European Parliament's series of plenary debates "This is Europe", 9 May 2023 in Strasbourg, https://www.bundesregierung.de/breg-en/news/address-by-olaf-scholz-2189412 (22.11.2024).

32 Art. 4 (1) of the regulation no. 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

33 The Commission wields exorbitant discretion under this procedure, as it can decide whether to initiate proceedings or not without being required to provide a formal justification for its decision. This lack of obligation to motivate its actions further exacerbates concerns over the politicization of the mechanism.

sanctions to be justified on the basis of political considerations rather than objective legal principles.

Such a strong position for the Commission is not backed by any form of democratic legitimacy. For this reason, the Commission is increasingly perceived as "an elite group of unelected experts making decisions without sufficient input from citizens."[34]

Yet, this spectacular expansion of powers is still not enough for the ruling majority among Europe's elites. In 2023, the European Parliament proposed a sweeping package of treaty amendments, advocating for the expansion of the EU's competences in climate policy, energy, security, the economy, and social policy; the practical abolition of the unanimity principle; an increased role for the Court of Justice; and the transformation of the European Commission into an "Executive" strikingly reminiscent of a federal government.[35]

In the second point of the preamble to its resolution, the European Parliament explicitly references the Manifesto of Ventotene ("having regard to the Manifesto of Ventotene"). This manifesto, written in 1941 by three Italian communists—Altiero Spinelli, Ernesto Rossi and Eugenio Colorni—bears notable parallels in language and ideology to another, written a century earlier: Karl Marx and Friedrich Engels' Communist Manifesto. The Manifesto of Ventotene called for "the abolition of the division of Europe into sovereign nation-states," and the creation of a single federalist European state, a "United States of Europe." Spinelli was even more explicit, stating: "The dictatorship of the revolutionary party will create a new state, and around it—a new, true democracy."

After the war, Spinelli actively worked to advance this federalist-communist vision, holding positions in the European Commission and later in the European Parliament. In 1984, he drafted a proposal for a new treaty to replace the European Communities with a European Union. His ideas influenced the Single European Act of 1986, the Maastricht Treaty of 1992, and ultimately, the Lisbon Treaty of 2007. The creation of a common European government and a unified European army remain the final steps toward realizing his vision. Since 2010, the push for federalization has continued within the European parliament through the Spinelli Group—founded primarily by Guy Verhofstadt—which played a key role in advancing the 2023 treaty reform proposals.

The strongest proponents for further federalization of the European Union are Germany and France. Since 2023, the German chancellor and the French president have repeatedly called for EU reforms aimed at centralizing power within supranational institutions—though the extent of this process remains a matter of debate.[36] In January 2023, German Minister of State for Europe and Climate Anna Lührmann and her French counterpart Laurence Boone commissioned tasked 12 so-called "independent" experts to draft a report on EU institutional reform. In September 2023, the Franco-German Working Group (also known as "the Group of Twelve") published its findings, proposing extensive treaty revisions, including:

- the transfer of all remaining policy areas from unanimity to qualified majority voting (QMV);
- an increase in the QMV threshold from 55% of Member States representing 65% of the EU

34 P. Uhma, The democratic legitimacy of the European Union and its laws: theoretical challenges and practical examples, „Rocznik Administracji Publicznej" 2023 (9), p. 317.

35 European Parliament resolution of 22 November 2023 on proposals of the European Parliament for the amendment of the Treaties (2022/2051(INL)).

36 The EU debate on qualified majority voting in the Common Foreign and Security Policy. Reform and enlargement, commentary of the Centre for Eastern Studies 2023, https://www.osw.waw.pl/en/publikacje/osw-commentary/2023-10-12/eu-debate-qualified-majority-voting-common-foreign-and (22.11.2024).

population to 60 % of Member States representing 60% of the population;

- the harmonization of European Parliament election laws;
- a review of policy areas particularly vulnerable to crises with transnational effects (e.g., finance, health, security, climate, and the environment);
- the establishment of a 'Joint Chamber of the Highest Courts and Tribunals of the EU' to structure dialogue between European and Member States courts. While it would formalize the currently numerous informal contacts between courts, it would not have the authority to issue binding decisions.[37]

French President Emmanuel Macron has frequently championed his own vision of reform under the slogan Power Europe – a political and economic bloc that is self-sufficient in industry, energy, agriculture, and defense, capable of competing with the United States and China. As he put it: "We have delegated everything that is strategic: our energy to Russia, our security – not France, but several of our partners – to the United States, and equally critical perspectives to China. We must take them back."

If this vision of Power Europe comes to life, the European Union will inevitably evolve into a form of "superstate" meant to rival China and the United States. However, this would come at the cost of the ideals of national sovereignty, democracy rooted in the principle of national representation, and the economic and cultural absorption of smaller, less affluent countries by their larger, wealthier counterparts. We are not convinced that this is a price worth paying for the illusion of a rapid political rise of the EU on the global stage. In fact, the EU economy—already suffering from overregulation and the ideological priorities of the European Green Deal and Fit for 55—is no longer competitive with either the Chinese or American economies. Further centralization of the EU would only accelerate this decline.

c) Threats to Civil Liberties and the Imposition of Progressive Ideology

Thirdly, we are witnessing emerging threats to civil liberties—threats that the European Union either disregards or actively endorses. Despite repeated declarations of commitment to human rights, the EU applies these principles selectively. It denies protection to those most in need by undermining the right of Member States to afford unborn children or disabled patients a higher level of protection against abortion and euthanasia.[38] Moreover, it exerts pressure on Member States to legalize abortion on demand.[39] Freedom of conscience is fully guaranteed primarily to non-believers, while religious individuals in some countries must settle for the limited right to practice their faith within designated places of worship, with restrictions on publicly manifesting their beliefs (e.g., in the workplace).[40] Meanwhile, guarantees of freedom of speech are eroded by regulations mandating the criminalization of so-called "hate speech"—a term defined so broadly that it encompasses not only incitement to violence but also any statement deemed offensive according to the subjective sensitivities of certain groups (typically aligned with left-wing ideologies).[41]

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37 Report of Franco-German Working Group on EU Institutional Reform: Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century, Paris-Berlin 2023, pp. 21-29.

38 See e.g. answer of European Commission to Parliamentary question no. E-001484/2017(ASW), 15 May 2017; European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP)).

39 Like European Parliament in case of abortion.

40 CJEU's judgment of 28 November 2023 in case OP v Commune d'Ans, C148/22.

41 E.g. in 2024 European Parliament urged the Council to adopt a decision to include hate speech and hate crime among the criminal offences within the list under Article

For many years, the European Commission has published various documents—termed strategies, recommendation, or guidelines—that, under the pretext of combating discrimination, racism, and xenophobia, in practice impose obligations on Member States to censor and severely penalize any opinions critical of selected social groups, primarily homosexual and transsexual communities[42], as well as Muslims[43]. Moreover, under the guise of fighting disinformation, the Commission is systematically constructing a comprehensive system for monitoring and censoring the media—both state and private—as well as global social networking platforms.[44] In 2022, the Digital Service Act entered into force, consolidating various EU legislative measures and self-regulatory practices to establish more effective state oversight of the Internet, ostensibly to suppress "unlawful," "discriminatory," or "hate speech" content.[45] However, these terms remain imprecisely defined, creating opportunities for potential abuses that infringe upon freedom of expression. Without clear legal definitions of prohibited content, this regulation can be used to restrict online manifestations of right-wing views on topics such as immigration, religion, or abortion by classifying them as "hate speech" or "discriminatory content."

The principle of equality between women and men is being undermined in some countries due to a misguided tolerance of radical Islamic minorities who, often with the tacit complicity of EU immigration policies, establish quasi-autonomous enclaves where Sharia law takes precedence over the Charter of Fundamental Rights of the European Union.[46][47]

d) The Abusive Notion of "European Values"

Fourthly, EU institutions contribute to the erosion of distinct cultural and historical identities of Member States by imposing a new, artificial "European identity" and promoting a form of "cultural Europeanism." The primary objective of this process appears to be laying the groundwork for further political and economic integration.[48] For reasons that remain unclear, the European Union seems to distance itself from Europea's rich heritage, which encompasses Roman legal thought, Greek philosophy, Christian religion, ethics, and the opulence of unique national cultures. Instead, the Union seeks to forge a new collective identity by invoking banal and nebulous concepts such as diversity, respect for freedom, rights and dignity, the rule of law, equality, political pluralism, the separation of powers, democracy, protection of minorities and respect for civil society.[49] These ideas are vaguely reflected in five official symbols of the EU: the Union's flag (a circle of twelve golden stars on a blue background), the anthem (the "Ode to Joy" from Ludwig van Beethoven's Ninth Symphony), its motto ("Unity in diversity"), the

83(1) TFEU (resolution of 18 January 2024 on extending the list of EU crimes to hate speech and hate crime (2023/2068(INI))).

42 E.g. Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Regions, COM/2020/698 final.

43 ECRI revised General Policy Recommendation No. 5 - European Commission against Racism and Intolerance (ECRI), adopted on 16 March 2000, revised on 8 December 2021.

44 See more at: EU: Going Full Orwell :: Gatestone Institute, https://www.gatestoneinstitute.org/13532/eu-full-orwell (09.01.2025).

45 Para. 12 of the preamble of the regulation (EU) 2022/2065 of the European Parliament and of the Council of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act).

46 The example of which are so-called vulnerable areas (utsatta områden) and most vulnerable areas (särskilta utsatta områdenin) in Sweden, usually dominated by immigrant Islamic minorities, attempting to impose their way of life on local population, including customs contrary to the national law.

47 It is essential to highlight that Sharia law is pertinent to both EU and European law, as certain provisions of Sharia law conflict with the fundamental rights enshrined in the Charter of Fundamental Rights of the European Union and the European Convention on Human Rights.

48 U. Tekiner, The 'European (Union) Identity': An Overview, e-International Relations 2020, https://www.e-ir.info/2020/04/15/the-european-union-identity-an-overview/ (22.11.2024).

49 B. Sträth, A European Identity: To the Historical Limits of a Concept, European Journal of Social Theory 2002, 5(4), pp. 387-401; V. Havel, Is There a European Identity, Is There a Europe?, Project Syndicate 2000, https://www.project-syndicate.org/commentary/is-there-a-european-identity--is-there-a- europe?barrier=accesspaylog; A. Shehaj, How Is a European Identity Significant to the Future of the European Union?, Open Democracy, 2015, https://www.opendemocracy.net/en/can-europe-make--it/how-is- european-identity-significant-to-future-of-european-union

euro currency, and the celebration of Europe Day on May 9th throughout the Union. It is evident that "Europe confusedly tries to forge a post-national identity by mimicking some aspects of nation building"[50]. Many enthusiasts of the EU argue that "the project of peace demands the sacrifice of national identities to the benefit of universal values, whilst the project of power demands the development of a European identity"[51]. However, the question arises: why should European countries relinquish values that have been cherished for centuries? Despite the European Union's institutional efforts, "the 'people of Europe' have simply not embraced the 'European idea' in the way that was hoped for or predicted by people who thought that an economic and political Europe would automatically lead to a 'people's Europe'. The methods used by the European Union did not lead to the desired result. The adaptation of symbols and other 'old' strategies that were traditionally used by nations, could not unite the European people"[52].

e) The EU Undermining Europe's Security, Especially Through Mass Migration

Fifthly, the European Union has failed to adequately address contemporary threats to internal security. EU law has granted new rights to those who exploit these provisions: thousands of economic migrants from Asia and Africa, who, since 2015, have been applying en masse for asylum in European countries not due to the dangers they face in their country of origin, but to gain access to the labor market and the social welfare systems. The borders of countries such as Spain, Lithuania, and Poland have been overrun by illegal immigrants, some of whom resort to violence against border guards and soldiers. Despite this, the European Union continues to uphold irrational regulations that permit anyone to enter if they apply for asylum, without first verifying whether they meet the criteria for refugee status or if they pose a potential threat to the host country.[53] While some argue that increased immigration should be welcomed as a solution to labor shortages, the tax burden on the working-age population, and the quality of health and elderly care systems[54], we believe that multicultural policies have failed to foster societal inclusion. Instead, these policies have legitimized the formation of segregated groups that reject many of the customs of their host societies, isolate themselves, and accentuate their way of life—even when it contradicts national laws[55].

f) An Excess of Bureaucracy and Centralization that Kills the EU's Competitiveness

Sixthly, the European Union, once an engine of economic growth, is slowly becoming an obstacle to it. For most of the history of European integration, economic development has been the priority. Initially, the EU was a force of deregulation – the European market, based on the free movement of goods, capital, services, and labor, was one of its greatest achievements. Unfortunately, the Union did not stop there. The free market was not enough; it had to also be "harmonized." Each year, the

50 Wilfried Martens Centre for European Studies report (by A. P. DeBattista), The EU and the Multifaceted Nature of European Identity, Brussels 2022, p. 17.

51 L. van Middelaar, Pourquoi forger un récit européen ? La politique identitaire en Europe. Nécessités et contraintes d'un récit commun, in A. Arjakovsky (dir.), Histoire de la conscience européenne, Editions Salvator, „ Collège des Bernardins „, 2016, p. 31-56.

52 J. Pekel, Europeana: Building a European Identity, University of Amsterdam 2011 (Master Thesis), p. 24.

53 Art. 10 (1) and Art. 51 (2) of the Regulation no. (EU) 2024/1348 of the European Parliament and of the Council of 14 May 2024 establishing a common procedure for international protection in the Union (OJ L, 2024/1348).

54 J. Springford, Europe must choose: Multiculturalism or stagnation?, Centre for European Reform 2024, p. 5, https://www.cer.eu/sites/default/files/insight_JS_demo_9.5.24%20%281%29.pdf (22.11.2024).

55 It can be seen that, paradoxically, the doctrine of multiculturalism is in fact a doctrine of eliminating the diversity of cultures, understood as national cultures. All national cultures are to disappear, replaced by one common culture based on a universal leftist ideology.

Union produces hundreds of new regulations. For example, between 2017 and 2024, the EU rulebook added 562 new pages and 511 new articles on data and privacy, as well as 271 new pages and 247 new articles on e-commerce and consumer protection. The number of new restrictions reached nearly 2,500 for data and privacy and 1,200 for e-commerce and consumer protection.[56] These regulations lack economic justification. On the contrary, many of them—particularly those included in the European Green Deal and the Fit for 55 plan—are driven by leftist climate and ecological ideologies. They harm key sectors of the economy (e.g., the automotive industry, transport, construction), artificially raise energy prices, leading to energy poverty in EU societies, and are also devastating for European agriculture.

Overregulation is detrimental to the economic competitiveness of Member States in the global marketplace. According to a study prepared by the Bank of Spain, each increase in the regulatory complexity index is associated with a 0.7% drop in the sector-level employment share. Several distorting effects occur at the sector level: labor intensity significantly decreases, and investment rates decline in response to increased regulation. The negative impact of regulatory complexity is particularly concentrated in smaller and younger firms. A 10% increase in new regulations is associated with a 0.5% relative decline in the number of workers employed by firms with less than 10 employees.[57]

Criticism of the European Union in its current form does not imply a rejection of the idea of European cooperation. This cooperation should, however, aim to complement Member States in areas where they are struggling, rather than entirely substituting them with supranational institutions. It should be based on respect for fundamental values such as sovereignty, national identity, the principle of conferral, the principle of subsidiarity, and representative democracy, grounded in a real community of people united by common culture, history and interests.

56 O. G. O. do Roy, Rules Without End: EU's Reluctance to Let Go of Regulation, European Centre for International Political Economy 2024, https://ecipe.org/blog/rules-without-end-eu-regulation/

57 J. S. Mora-Sanguinetti, J. Quintana, I. Soler, R. Spruk, Sector-Level Economic Effects of Regulatory Complexity: Evidence from Spain, Banco de España 2023, pp. 20-21, https://repositorio.bde.es/bitstream/123456789/29854/1/dt2312e.pdf (21.11.2024).

III. TWO ALTERNATIVE SCENARIOS

The new model of European cooperation can be built based on one of two scenarios:

- The "Back to the Roots" Scenario
- The "New Beginning" Scenario

Under the "Back to the Roots" scenario, the existing legal framework of the European Union should be reformed through decentralization, deregulation and democratization. Rather than pursuing "an ever-closer union between the peoples of Europe," the focus should shift to fostering "close cooperation between the peoples and nations of Europe"[58]. EU regulations that promote common economic development should be retained, while those that impede it should be discarded.

According to the "New Beginning" scenario, the European organization must be rebuilt from the ground up, based on a new treaty, new institutions, and a new common legal order. The new treaty should establish a flexible legal regime that allows Member States to develop their cooperation at their own pace, should they deem it necessary. Simultaneously, it should define a core of cooperation in which all Member States are required to participate, alongside optional segments of cooperation that states can freely join or leave at any time.

The choice between these two scenarios depends on whether the European Union is reformable. If it is, then the direction of these reforms must be determined in order to achieve the postulated target model. If not, the question must the be addressed as to what the EU should be replaced with and how that transition should take place.

SCENARIO I: Back to the Roots

a) Rationale: Main Principles on Which European Cooperation Should be Based

National Sovereignty

Respect for the sovereignty of each state should be the fundamental principle of the reformed European cooperation. National sovereignty is not only a principle of international law but also a natural right of any people wishing to preserve their unique culture, language, historical memory, and customs. As Hungarian Prime Minister Viktor Orbán rightly stated: "Every nation and Member State has the right to decide on how to organize its life in its own country."[59]

The concept of European sovereignty, in which the European Union itself would stand as an autonomous power above nation-states, should be firmly rejected. We strongly disagree with the view that "it is possible to guarantee the rights of every European citizen under the umbrella of su-

58 See more about this concept – Institut Thomas More, Principes, institutions, compétences. Recentrer l'Union européenne, Paris 2019, pp. 13-15.

59 Address by Prime Minister of Hungary Viktor Orbán in the debate on the so- called "Sargentini Report",11 September 2018, https://eu-brusszel.mfa.gov.hu/assets/23/13/07/675d7452ea8b2d816844a3fb15665406f05b6c50.pdf

pranational sovereignty, which is the future of all its citizens."[60] We believe that a democratic state, in which those in power are directly accountable to the people, is better equipped to safeguard citizens' rights than distant supranational institutions, often governed by unelected officials who are accountable only to themselves.

Currently, the principle of sovereignty of Member States is primarily expressed through the option of remaining in or withdrawing from the European Union (Art. 50 of TEU). This choice, however, is too limited for two reasons. First, membership in the European Union usually entails both benefits and losses simultaneously, making withdrawal an ultimate decision that few leaders are willing to make. The desirability of participation in certain areas of the EU legal system depends on the interests of individuals states. Typically, if a state loses in one area but gains in another, it chooses to remain in the Union, even at the cost of surrendering another portion of its sovereignty. Second, an expansive interpretation of the European Union's competencies has led to a situation in which the obligations of Member States increases, even when the Treaties do not change. When a state ratifies the EU Treaties, it is not fully aware of all the obligations that will be imposed upon it, as the European Commission and the Court of Justice of the European Union (CJEU) can always "derive" entirely new obligations from the general principles of EU law. Therefore, Member States should be given the flexibility to adjust the intensity of their cooperation to align with their national interests.

Plurality of Communities Pursuing Agreed-upon Joint Programs of Deeper Cooperation

The reformed European cooperation should not resemble a monolithic structure in which the strongest nations dictate the direction for all others. Rather, it should be an association of sovereign states, each of which retains the right to determine the areas in which they wish to pursue common policies. Some states benefit from the EU's policy of promoting renewable energy sources, while others are not; some gain from common agricultural regulations, while others do not; some gain benefits from the free movement of workers, while others seek limitations. While it is impossible to satisfy every state, it is possible to ensure that countries can participate in areas that benefit them, while opting out of those that do not.

A natural consequence of adopting this approach would be the formation of "sub-organizations" within the reformed European cooperation, each pursuing different development models. This aligns with the previously mentioned concept of differentiated integration.

Voluntary Cooperation and Revocability of Deeper Cooperation Programs

Among the three models of differentiated integration mentioned earlier, the most suitable appears to be à la carte differentiation, potentially incorporating elements of variable geometry. Only this model ensures that democratically elected governments retain full control over the scope of the international obligations.

To prevent the failure of the reformed European cooperation from the outset, a comprehensive analysis of the political and economic conditions of individual Member States is essential. This analysis should identify areas of common interest, where deeper cooperation would be mutually beneficial, and areas of divergence, where such cooperation would be disadvantageous. Based on the findings of this assessment, the treaties of the new EU should establish:

60 S. Salihu, Sovereignty and Integration in the European Union: Reduction or Unification and Strengthening?, The Review of European Affairs 2023, vol. 7, no. 1, p. 70.

- A core set of minimum commitments that would serve as the sine qua non of membership (e.g., the customs union).

- Optional commitments in areas where only certain Member States share common interests (e.g., energy).

Intergovernmental Nature of Cooperation

We advocate for the principle of intergovernmentalism, traditionally defined as "a theory of integration and a method of decision-making in international organizations that allows states to cooperate in specific fields while retaining their sovereignty. In contrast to supranational bodies in which authority is formally delegated, in intergovernmental organizations states do not share the power with other actors and take decisions by unanimity."[61] In other words, the European Union should take a step back so that nation-states can take a step forward.

Our interpretation of intergovernmentalism does not entirely preclude the existence of certain supranational structures, provided they remain subordinate to intergovernmental institutions. The framework of reformed European cooperation should be built on the primacy of intergovernmental institutions, such as the European Council and the Council of the European Union, which possesses indirect democratic legitimacy—since presidents, prime ministers, and ministers participating in them hold a mandate from their nations to make decisions affecting their citizens.

Technocratic institutions without a democratic mandate—such as the European Commission—should play a subordinate role to intergovernmental bodies.[62] The Court of Justice of the European Union should be restored to its proper role as the servant of the law, rather than its creator.

Principle of Conferral of Competences Under a Strict National Mandate

The principle of conferral, as outlined in Article 5 of the Treaty on European Union (TEU), has largely remained ineffective in practice. As noted earlier, EU institutions have continuously expanded their own competences without regard for the letter of the treaties, treating "the effectiveness of EU law" as an unlimited source of new powers. To address this issue, the treaties must incorporate strict guarantees ensuring full adherence to the principle of conferral. Intergovernmental institutions should be vested with the authority to review whether the actions of supranational institutions comply with this principle.

Principle of Subsidiarity

The principle of conferral should be closely linked to the principle of subsidiarity, which serves as "the sole mechanism that respects the different cultures coexisting in Europe and the value systems that underpin such cultures. It does so without denying that some shared principles and cultural similarities still unite Europeans"[63]. As noted earlier, while the principle of subsidiarity is formally guaranteed by Article 5(3) of the TEU, in practice, it remains of marginal significance. This must change.

We concur with the view that "the Union should primarily be seen as the protector of its members' integrity, autonomy, independence, and identity, and not as an agent of uniformity and centralization. Subsidiarity should thus urge not only EU institutions but each member state to accept and

61 The Concise Oxford Dictionary of Politics, e-version, https://www.oxfordreference.com/display/10.1093/oi/authority.20110810105138102 (22.11.2024).

62 Similar position was taken by Institut Thomas More, Principes, institutions, competences. Recentrer l'Union européenne, Paris 2019, p. 28. According to Marine Le Pen, leader of French National Rally, European Commission should be „a simple administrative secretariat with no decision-making role" (un simple secrétariat administratif sans rôle décisionnaire) –, quote after: Le Rassemblement national revoit de fond en comble sa politique européenne, Les Echos of 15 April 2019, https://www.lesechos.fr/elections/europeennes/le-rassemblement-national-revoit-de-fond-en-comble-sa-politique-europeenne-1009464

63 Wilfried Martens Centre for European Studies report (by A. P. DeBattista), The EU and the Multifaceted Nature of European Identity, Brussels 2022, p. 34.

tolerate other members' values and preferences, however different they may be from theirs"[64].

Consequently, it should not be the responsibility of Member States to demonstrate that they are better suited to exercise the shared competencies; rather, the Union should bear the burden of proof that addressing a particular issue requires harmonization.

The observance of principle of subsidiarity should be safeguarded by the intergovernmental institutions of the reformed European cooperation.[65]

b) Proposals: Recommendations 1 to 23 for a Reform of the EU Treaties

The following recommendations are structured into nine key areas, each encompassing multiple proposals critical to addressing pressing issues within the European Union. These reforms are imperative not only to rectify long-standing challenges but also to recalibrate the roles and functions of EU institutions. They aim to strengthen democratic legitimacy, restore the balance of power between the EU and its Member States, and ensure a more rigorous application of the principles of subsidiarity and national sovereignty across all levels of governance.

I. A More Flexible European Union to Accommodate the Will and Capacity of Integration of All Member and Candidate States

Proposal 1: Rename the European Union to the "European Community of Nations"

The European Union was originally established as the European Economic Community (EEC), emphasizing economic cooperation among sovereign states. The shift to the European Union (EU) with the Maastricht Treaty in 1993 marked a significant political transformation, reinforcing the notion of an "ever-closer union" with federalizing tendencies. This proposal advocates for renaming the EU as the "European Community of Nations" (ECN) to reflect a recalibrated vision—one that prioritizes national sovereignty, intergovernmental cooperation, and voluntary alliances rather than supranational integration. By returning to the foundational principles of the European project, the ECN would emphasize flexibility, respect for national identities, and decision-making grounded in state sovereignty. The proposed name underscores a departure from federalist ambitions and a reaffirmation of the EU as a cooperative framework of independent nations, rather than a centralized political entity. This renaming would not only align with the revised institutional and legal framework but also enhance public legitimacy by accurately representing the Union's evolving purpose.

Proposal 2: Introduce a specific provision in the Treaties to enshrine the principle of flexibility, allowing Member States to adjust their level of integration and cooperation within the EU based on their national interests.

The primary challenge to advancing European integration lies in the differing—and at times diverging—interests that may exist between Member States. To prevent further fractures within the European Union, it is essential for the Treaties to better account for these national differences. It is therefore necessary to find a more tailored and incremental approach to integration in line with national specificities – one that respects the economic priorities, cultural identities, and constitutional and political traditions of each Member State.

64 F. O. Reho, Subsidiarity in the EU: Reflections on a Centre–Right Agenda, European View 18/1 (2019), p. 10.

65 Similar view: Institut Thomas More, Principes, institutions, compétences. Recentrer l'Union européenne, Paris 2019, p. 6.

Proposal 3: Introduce a general opt-out clause in the Treaties, enabling Member States to suspend their participation from an existing legislation or opt out of a newly adopted legislation, in line with the principle of flexibility based on national interest.

Expanding the scope of opt-outs could be an effective tool for implementing the principle of flexibility outlined earlier. Under this approach, a Member State could choose not to apply new legislation by simply notifying the Council of Ministers. This would eliminate the need to negotiate opt-outs with other Member States, though a debate could still take place if a qualified majority of the European Council deemed it necessary. This revised opt-out mechanism could apply to all areas except the internal market, thereby preserving the EU's original purpose of economic integration. Additionally, flexibility could be further enhanced through a reversal of the legislative procedure for enhanced cooperation, allowing a group of four Member States to collectively oppose the application of new legislation.

Proposal 4: Apply the principle of flexibility based on national interest to the EU enlargement process, allowing integration to be tailored to the needs and capacities of both the Union and the candidate states.

It is essential to move away from the ineffective all-or-nothing approach of recent years and adopt a more gradual and partial strategy. This would focus initially on objectives related to the internal market, with further stages of integration following once the first phase of accession is completed. The current methodology has not yielded significant results – several states in the Western Balkans, for instance, have faced prolonged delays in joining the EU. To address this, it is also necessary to increase the frequency of inter-state meetings within frameworks that avoid rigid supranational approaches. The European Political Community, while not a substitute for EU membership, could serve as a valuable complement for addressing enlargement challenges and fostering closer cooperation during the accession process.

II. Reassessing and Enforcing EU Competences:

Proposal 5: Establish a new protocol to strictly enforce the principle of conferral of competences as outlined in Article 5(2) of the Treaty on European Union, which states: "Competences not conferred upon the Union in the Treaties remain with the Member States." This protocol would explicitly apply to the Court of Justice of the European Union and its case law, with the possibility of retroactive application if decided by the European Council.

Many of the crises currently facing the European Union stem from long-standing issues with the division of competences, which have become a major source of tension. The EU frequently exceeds its competences, a problem that lies at the heart of conflicts with national constitutional courts, such as those in Poland and Germany, and undermines public trust in the Union. While Article 5(2) of the Treaty on European Union explicitly states that competences not conferred upon the EU remain with Member States, this principle has largely been ignored or circumvented by the European Commission, the co-legislators, and the Court of Justice of the European Union. This disregard has fueled disputes over the proper limits of EU authority. To resolve these tensions and prevent further crises, Article 5(2) must be interpreted and applied literally as the cornerstone of the EU's legal framework. All EU institutions should explicitly adhere to this provision, ensuring a clear and balanced division of powers between the Union and its Member States.

Proposal 6: The European Council should serve as the ultimate authority in resolving

The frequent conflicts of competence, particularly concerning legislative proposals and the interpretation of rulings by the Court of Justice, have led to significant tensions within the European Union. These conflicts often result in infringements of Article 5(2), undermining national sovereignty and creating legal uncertainties. The Court of Justice, which is meant to serve as an impartial arbiter, has failed to remain objective in these matters, making it increasingly unsuitable to act as the final decision-maker. Consequently, the European Council should assume the responsibility of resolving these conflicts, ensuring that decisions reflect a balance of power between the Union and its Member States.

In instances of legally ambiguous legislative proposals, the Council of the EU, at the ministerial level, should hold a debate if requested by any Member State. A qualified majority will decide whether to proceed with the proposal, but a blocking minority of four Member States can refer the issue to the European Council for a final resolution. Additionally, Member States should have the right to opt out of such legislation based on their national interests, preserving their sovereignty.

To further reinforce the role of Member States in decision-making, a simple majority of national parliaments should be able to raise a competence conflict. An absolute majority can directly bring the issue before the European Council, and if three-quarters of national parliaments oppose the proposal, it will be automatically abandoned. This approach ensures that the Court of Justice is not the ultimate authority in resolving competence disputes, while protecting national sovereignty and promoting more flexible and balanced governance within the Union.

Proposal 7: Implement a strict application of the principle of subsidiarity through an ex-ante decision by the Council of the European Union, with an appeal process to the European Council, to be enshrined in a new and more effective protocol. If the Union fails to meet its objectives, Member States should have the ability to reclaim control. National parliaments must be given a much more prominent role in this process than they currently have.

The principle of subsidiarity is a „two-way street," not one that solely consolidates EU competences in a given area. Currently, the assessment of compliance with subsidiarity in legislative proposals is weak and superficial, often lacking a well-founded justification. When Member States determine that the EU is no longer the most appropriate level of governance, they should have the ability to repatriate competences, either through an individual opt-out or a general repatriation. To address this, national parliaments should be more strongly involved, as outlined in Proposal 6, ensuring they are actively engaged in assessing the necessity of EU intervention. Re-establishing subsidiarity at the core of the European Union's functioning will ensure that all stakeholders – including the European Commission, Member States, and their national parliaments – take responsibility for creating a more efficient and citizen-centered Union.

Proposal 8: Initiate a comprehensive audit of current EU competencies, particularly at the legislative level and in the case law of the European Court of Justice, to provide Member States with the opportunity to consider general repatriations or individual opt-outs.

After decades of complex and confusing legislative actions and jurisprudential developments, a thorough and comprehensive screening of EU competences is indispensable. This process

will allow Member States to reassess the level of national sovereignty they are willing to delegate, providing clarity and enabling them to defend their interests more effectively within the framework of the European Treaties.

Each State Party shall have the right to submit specific acts of the acquis communautaire for audit. The audit process will be conducted by the Committee of Member States, which will assess the compliance of the analyzed secondary legislation with the principles of conferral and subsidiarity. The primary objective of this audit is to facilitate the implementation of the principle of Voluntary Cooperation and Revocability of Deeper Cooperation Programs (see Section III.i.a).

Based on the audit findings, the Council shall, by unanimous vote, determine the core set of minimum commitments that constitute the sine qua non of EU membership. Additionally, the Council will identify optional commitments in policy areas where only certain Member States share common interests, thereby allowing for a more flexible and differentiated approach to integration.

Proposal 9: Establish a „national competences shield" by including in the Treaty on European Union a specific provision that outlines a list of competences legally protected from any EU interference. The EU shall have no direct or indirect impact on these areas, whether through legislative or judicial means. This list should include family, public order, moral order, and education.

The European Commission and the Court of Justice of the European Union have often prioritized political and ideological objectives over adherence to the provisions set out in the treaties. To safeguard against such violations of the principle of the distribution of powers, it is essential to protect certain areas from EU interference. This „sanctuary" approach would allow Member States to swiftly address concerns by submitting an individual opt-out request to the European Council.

III. A Strengthening and Extension of the Unanimity Rule:

Proposal 10: Unanimity among Member States in the field of external relations should prevail and be explicitly enshrined in the treaties, where applicable. The mechanism of constructive abstention should be allowed, provided that dissenting Member States consent to it.

The current highly tense geopolitical context reveals a lack of consensus among the 27 Member States regarding the next steps on various international issues. These differing perspectives stem from varying, and often divergent, national interests. Member States are being asked to adopt positions that contradict their economic interests, particularly in areas such as energy supply. This approach only serves to deepen divisions within the European Union. International relations must be an area where national interests are preserved, and red lines respected. No Member State should be legally bound by decisions that go against its national priorities. To safeguard unity, in cases of disagreement, the mechanism of constructive abstention should be allowed, enabling dissenting Member States to refrain from a decision without preventing others from proceeding. Any decision to move forward should be made only with the explicit agreement of the dissenting Member States, ensuring that national interests are adequately protected in the decision-making process.

Proposal 11: Article 114 of the TFEU, which currently enables the EU to act in a field without an explicit legal basis, should only be triggered by unanimity, rather than by a qualified majority. Additionally, when this provision is invoked, Member States should have the option to opt out.

Article 114 of the TFEU is a highly controversial provision, often distorted from its original purpose, which allows the EU to act without an explicit legal basis in a given field. This has led to the unlawful extension of the EU's competence, particularly in areas that do not fall within its jurisdiction, such as the media sector, where the Media Freedom Act has been justified under this article despite media regulation not being an EU competence. The application of this provision threatens the principle of the division of competences, as it could potentially be used to integrate various areas under the internal market framework, thereby undermining national sovereignty.

Moreover, the European Court of Justice has failed to adequately ensure the fair implementation of this provision, further exacerbating concerns about its misuse. Given these issues, unanimity is the only appropriate solution to protect national sovereignty and prevent the EU from extending its mandate without explicit legal authorization. Strict interpretation and the requirement of unanimity for triggering Article 114 would safeguard the integrity of national competences, ensuring that no Member State is forced into decisions that contravene its national interests. This approach would restore the balance between the EU and its Member States, ensuring that any extension of EU competence is both justified and agreed upon by all.

IV. Primacy of National Constitutions Over European Law

Proposal 12: Introduce a new provision in the EU Treaty that explicitly revokes the European Court of Justice's jurisprudence asserting the primacy of European law over national constitutions. Instead, the Treaty must clearly establish that the competence to confer powers to the EU rests solely with the Member States, and that national constitutions take precedence over European law.

The principle of the primacy of EU law, established through rulings such as Costa v. ENEL (1964), Internationale Handelsgesellschaft (1970), and State Finance Administration v. Simmenthal SpA (1978), has long been a source of tension between the Court of Justice of the European Union, national constitutional courts, and Member State governments. This principle has often been interpreted beyond the letter and spirit of the European treaties, which originally intended for primacy to apply only in areas where Member States had explicitly transferred sovereignty to the EU. However, the assertion of primacy in areas where the EU lacks clear competence is both unlawful and contrary to the principle of subsidiarity.

A strict and balanced approach to primacy is urgently needed. In clearly defined fields where the EU has competence, the primacy of primary and secondary EU law is acceptable, provided it respects national sovereignty. Member States must retain the right to implement individual opt-outs or repatriate competences following a comprehensive review of EU powers, as outlined in Proposals 2, 4, and 5. Furthermore, Member States should have the ability to reject the application of measures that fall outside the scope of competences explicitly conferred to the EU, ensuring a proper balance between national constitutional frameworks and EU governance.

Proposal 13: Establish a consultative assembly of constitutional courts tasked with monitoring and providing recommendations on adherence to the principles of the primacy of national constitutions, the conferral of competences, and subsidiarity. In the event of a conflict between the Court of Justice of the European Union and the national constitutional courts, a single Member State may request the involvement of the European Council to address the issue.

Recent cases have underscored the recurring tensions between the European Court of Justice (ECJ) and national constitutional courts,

demonstrating the need for reform to address these conflicts. In Poland (2021), the Trybunał Konstytucyjny (Constitutional Tribunal) ruled that certain ECJ decisions were incompatible with the Polish Constitution, asserting the primacy of national constitutional law in areas not transferred to the EU. Similarly, in Germany (2020), the Bundesverfassungsgericht (Federal Constitutional Court) challenged the ECJ's authority over the European Central Bank's Public Sector Purchase Programme (PSPP), emphasizing that EU institutions cannot extend their powers beyond what has been explicitly conferred by Member States. A similar situation arose in Romania (2021), where the Curtea Constituțională a României (Constitutional Court) refused to recognize the validity of ECJ decisions in matters falling within national competences. These examples highlight the recurrent conflicts stemming from attempts to expand EU powers without clear legal basis, underscoring the necessity of establishing a consultative assembly of constitutional courts to monitor and provide recommendations on such disputes, ensuring respect for the principles of subsidiarity, conferral, and the primacy of national constitutions in areas not explicitly governed by EU law.

V. A European Commission at the Service of Member States

Proposal 14: Transform the European Commission into a General Secretariat operating in the service of and under the supervision and direction of Member States. The Commission would relinquish its quasi-monopoly on legislative initiatives, transferring this authority to the Council of Ministers within the framework of the ordinary legislative procedure. Its legislative proposals would be strictly limited to implementing and developing legally binding Council conclusions. Furthermore, the Commission would only represent the EU externally when explicitly delegated by the Council of Ministers, and never at the level of Heads of State or Government.

The European Commission was originally intended to function as a General Secretariat within a European Community with limited competences, not as the powerful and often unaccountable institution it has become today. As the EEC evolved into the EU, the Commission retained and expanded its competences and prerogatives, leading to an accumulation of excessive power that conflicts with its original purpose, particularly in an organization with more competences and a growing number of Member States. To restore balance, the Commission's legislative role must be restricted to drafting proposals that implement legally binding Council Conclusions, with its prerogatives under the codecision procedure, such as assessing amendments and withdrawing proposals, removed. Additionally, the EU's external representation, which has been a source of confusion and tension, must be clarified. At the level of Heads of State and Government and in international forums such as the G7 and G20, the European Council should represent the EU, while the Commission's external role should be limited to ministerial-level representation, strictly under delegation from the Council of Ministers.

Proposal 15: The Commission's prerogatives under the current infringement procedures must be more clearly defined to prevent arbitrariness. Furthermore, the Commission should play no role in the implementation of Article 7 TEU concerning the Rule of Law. Lastly, cooperation among Member States in areas outside the EU's exclusive competences, such as the European Semester, should be coordinated by the Council of Ministers rather than the Commission.

Under the current infringement proceedings, the European Commission, as the guardian of the Treaties, wields unchecked discretion to initiate or refrain from initiating infringement actions against Member States without any obligation to justify its decisions. This outdat-

ed prerogative has led to blatant arbitrariness and an excessive concentration of power, necessitating urgent reform. Similarly, the Rule of Law mechanism, devised and managed by the Commission without a clear mandate, has become a politicized tool that fosters division within the EU. Under a revised Article 7 procedure, the Commission should play no role. Additionally, the „open method of coordination" has allowed the Commission to centralize significant power without legitimacy, as seen in the European Semester, where recommendations increasingly carry binding implications tied to financial penalties. To address this, any intergovernmental cooperation outside the EU's exclusive competences should be coordinated by the Council of Ministers, ensuring a more balanced and legitimate approach.

Proposal 16: Reduce the salaries and allowances of EU civil servants, particularly those in the highest ranks, while increasing their accountability. No EU official should receive a monthly net salary exceeding €10,000. Additionally, to prevent undue ideological influence, the principle of neutrality within the European civil service should be enshrined in the Treaties. The appointment of key positions must adhere to the principles of collegiality and full transparency.

The European civil service has become a source of tension and democratic deficit due to its lack of accountability, excessive salaries for top officials, and increasing ideological influence. Many high-ranking officials are overpaid, with salaries detached from the realities of European citizens, fueling sentiments of detachment and disregard for democratic values. Salaries and allowances must be reformed, ensuring no EU civil servant earns more than €10,000 net per month. Furthermore, the civil service, particularly within the Commission, the European Parliament, and the European External Action Service, has strayed from the neutrality expected of public servants funded by taxpayers. To address this, the principle of neutrality must be enshrined in the Treaties. Additionally, the current system of appointing and promoting top officials is opaque, overly centralized within the Commission President's cabinet, and plagued by arbitrariness, conflicts of interest, and power games. A transparent, merit-based process that respects geographical balance must replace the current practices.

VI. Prominence of the European Council and the Council of Ministers

Proposal 17: Elevate the European Council to the ultimate decision-making body within the European Union, holding a position hierarchically superior to all other institutions. The European Council would possess legislative authority through legally binding conclusions that establish the framework for secondary law. It would also serve as the final arbiter on matters of Enlargement, Rule of Law (should this policy persist), and disputes over competences. Additionally, the European Council would be responsible for reviewing and formally approving Member States' requests for opt-outs or the implementation of measures in alignment with their national interests.

The European Council already plays a significant role in the European Union's framework, but its authority must be strengthened to ensure it becomes the political and legal cornerstone of the Union. This is essential to enshrine the primacy of national legitimacy and sovereignty as the fundamental principles guiding the EU. To achieve this, a new Treaty should affirm the European Council's hierarchical supremacy over all other EU institutions, including the European Court of Justice. Its decisions, particularly Council conclusions, should be made legally binding and precise, serving as the definitive legal framework within which the European Commission, European Parliament, and Council of Ministers operate.

Furthermore, the European Council must act as the ultimate referee on critical political matters, including disputes over competences, the flexible involvement of Member States based on their national interests, and the preservation of their democratic mandates. This reform is vital for safeguarding democratic legitimacy within the EU, given that the European Commission lacks democratic accountability and often functions as an overbearing bureaucratic entity. Decision-making power must be returned to the Member States, with the European Council at the forefront, ensuring it becomes the final arbiter on all major issues. By reclaiming control over institutions like the European Commission and the Court of Justice of the European Union, the European Council can restore balance and preserve the democratic foundations of the Union.

Proposal 18: The European Council shall hold the exclusive prerogative to request the resignation of the President of the European Commission and appoint a replacement. This decision shall be made by consensus among the Heads of State and Government, without requiring consultation or approval from the European Parliament.

Currently, under Article 17(8) TEU, only the European Parliament can dismiss the European Commission, making it accountable solely to MEPs rather than the Member States. This creates an imbalance, as the Commission—responsible for implementing EU policies—should answer directly to the European Council, which represents the sovereign governments of the Union. By transferring this authority to the European Council, this reform enhances democratic legitimacy and ensures that the Commission remains aligned with the collective will of the Member States rather than supranational political groups. It also strengthens accountability, addressing concerns over the Commission's detachment from national interests. Additionally, removing the European Parliament's role in dismissal streamlines decision-making and prevents political maneuvering from obstructing necessary leadership changes. This reform will reaffirm national sovereignty within the EU and restore trust by ensuring the Commission remains answerable to those responsible for implementing its policies.

Proposal 19: Establish the primacy of the European Council over the European Parliament in the legislative decision-making process by significantly amending the current „ordinary legislative procedure" (formerly codecision). This reform would ensure that, in cases of disagreement, the Council of Ministers has the final say.

Under the current ordinary legislative procedure, the Council of Ministers and the European Parliament are placed on equal footing, which undermines national sovereignty as the primary source of legitimacy for the European Union. To restore this balance, it is essential to amend the ordinary procedure and return to a simplified version of the cooperation procedure established under the Treaty of Amsterdam. This earlier mechanism allowed for the involvement of the European Parliament without granting it equal status with the Council, thereby preserving the primacy of Member States in decision-making.

While some argue that increasing the European Parliament's role enhances the EU's democratic legitimacy, recent years have shown that this institution often disregards the principle of national sovereignty, leading to tensions between Member States and the EU's centralized structures. As a result, priority must be given to strengthening and expanding the role of the European Council to reaffirm national sovereignty and provide the democratic legitimacy necessary for the Union's operations. This reform would restore a more balanced and functional legislative process, better reflecting the democratic mandates of Member States.

VII. The End of the Hegemony of the European Court of Justice

Proposal 20: Redefine the Court of Justice of the European Union as primarily a two-tier administrative court, limiting its role and excluding it from resolving conflicts of competences between the EU and Member States. Such disputes will instead be addressed in cooperation with an assembly of peers composed of constitutional or supreme national courts. The European Court of Justice will no longer have the authority to interpret the Treaties or impose financial sanctions under infringement procedures. Additionally, the appointment of judges will be subject to stricter scrutiny to prevent conflicts of interest, ensuring that former high-ranking EU officials are ineligible to serve as judges.

The EU Court of Justice presents several systemic issues that demand reform. First, it operates without counterbalances and is uniquely exempt from the oversight of the European Convention on Human Rights. Second, it combines the functions of an international, constitutional, and administrative court while remaining isolated from national high courts, such as constitutional or supreme courts. Many of its decisions cannot be appealed, further centralizing its authority. Third, the Court has a well-documented history of overstepping its mandate ("ultra vires") by encroaching on national competences and interpreting European law with an ideological bias favoring federalism, progressive ideologies, and the erosion of national sovereignty. Its expansive doctrine on the primacy of European law exemplifies this overreach. To address these issues, the primacy of European law should not override national constitutions and must be strictly confined to the EU's competences. Moreover, the Court should play no role in conflicts of competences, the Rule of Law mechanism, or matters concerning the national judicial organization of Member States. Finally, stricter standards must govern the nomination of judges to eliminate conflicts of interest, such as appointing former high-ranking European Commission officials to the Court. While such appointments may be considered for the General Court, they are inappropriate for the Court of Justice itself.

VIII. The European Parliament as a Consultative Assembly: A Secondary Role to the Council in Legislative Matters

Proposal 21: Transform the European Parliament into primarily a consultative assembly, particularly in areas where national interests are involved, with limited legislative authority subordinate to the Council of Ministers. Its role in the adoption of the budget should be eliminated. Additionally, the principle of subsidiarity should be applied to its operations, ensuring that the Parliament's legislative and political functions remain strictly confined to the competencies of the European Union.

The European Parliament has significantly exceeded its original role, distorting its democratic legitimacy and deepening the disconnect between European citizens and their representatives, despite being directly elected. To address this, the Parliament should be fundamentally reformed, with its functions and competencies redefined. It should primarily serve as a consultative assembly rather than a co-legislator. Its legislative authority should be restricted to non-essential areas, such as the internal market, and always remain within the EU's competencies. Furthermore, under a revised co-decision procedure, the Parliament would only act on equal footing with the Council of Ministers during the first reading. Its authority to establish ad hoc committees of inquiry should be revoked, and the composition of parliamentary committees should require approval from the Council of Ministers. Additionally, the Parliament's role in budget adoption should be limited to consultation.

Proposal 22: Restructure the European Parliament as a mixed assembly comprising directly elected Members and delegations from national assemblies. The Treaties should explicitly affirm the primacy of national constituencies in European elections and reinforce the exclusive authority of the European Council to appoint the President of the European Commission. The European Parliament's role in this process will be limited to providing a consultative vote on the College of Commissioners, without the power to elect the President of the Commission.

The current structure of the European Parliament, despite being directly elected and having expanded competences, has paradoxically widened the gap between European citizens and their representatives. It has failed in its primary mission to bring citizens' perspectives into the EU's decision-making process. To address this, the Parliament should be restructured, at least partially, to include delegations from national parliaments, which are better positioned to bridge this divide. Additionally, any efforts to introduce pan-European constituencies or transnational lists should be explicitly prohibited in the Treaties. The Parliament's role in the appointment of the European Commission should be limited to providing a consultative vote after the European Council appoints the President, who then forms the College of Commissioners, subject to approval by the Council of Ministers.

IX. Comprehensive Audit and Review of the European Budget and Publicly Funded Projects

Proposal 23: Upon the entry into force of the reformed Treaty, the European Council will conduct a comprehensive audit of the EU budget and all publicly funded projects to ensure financial accountability, transparency, and alignment with the national interests of Member States. This review will focus on identifying:

- Financial mismanagement
- Political Interference
- Preferential Treatment & Interest Groups (GIPIs – Groups of Interest, Pressure, and Influence)
- DEI (Diversity, Equity, and Inclusion) Advocacy
- Projects Misaligned with National Interests and Values

To ensure integrity and accountability, all funding and projects under review will be temporarily frozen until the audit is completed. The results of the audit will inform necessary budgetary reallocations, regulatory changes, and safeguards against future financial or political misuse.

A comprehensive audit of the EU budget is essential to restoring financial integrity and public trust. As the budget is funded by taxpayer contributions from Member States, resources must be allocated efficiently and responsibly. Reports from the European Court of Auditors (ECA) have repeatedly highlighted cases of mismanagement, making a structured review necessary to eliminate wasteful spending and ensure EU funds serve tangible national interests. Beyond financial concerns, the audit will examine the risk of political interference and whether EU funds disproportionately benefit specific organizations or lobbying entities (GIPIs – Groups of Interest, Pressure, and Influence). EU resources should not be used to shape national political landscapes, override Member State sovereignty, or favor certain groups without justification. Scrutinizing such projects will reinforce the EU's commitment to political neutrality, fairness, and the autonomy of its members.

A growing concern is the increasing allocation of funds to DEI (Diversity, Equity, and Inclusion) initiatives, which often promote ideological agendas that may not align with all Member States' values. Under Article 4(2) TEU, national identity

and constitutional traditions must be respected, making it imperative to ensure EU spending supports development rather than ideological advocacy. Furthermore, the review aims to align EU spending with national priorities. Projects should reflect local realities rather than centralized EU objectives. If certain initiatives are deemed irrelevant or contrary to a Member State's social, economic, or political values, their funding should be reconsidered. A more tailored funding approach will enhance legitimacy and public trust in European cooperation.

To safeguard the integrity of the process, all funding under review will be temporarily frozen. This precaution prevents further mismanagement while ensuring that financial resources are directed appropriately. Essential funding for critical infrastructure, security, and economic development will remain protected, allowing for necessary adjustments without disrupting fundamental EU operations. Ultimately, this proposal aims to restore financial discipline, enhance transparency, and ensure that EU budget allocations align with Member State interests. By eliminating waste, preventing undue influence, and refocusing EU spending on legitimate priorities, the European Council can reinforce the credibility and fairness of the EU's financial framework.

SCENARIO II: A New Beginning

a) Rationale: Tabula Rasa? A Union Re-Envisioned

The recommendations proposed in the previous chapter constitute an invitation to reform the model of European cooperation. They focus on amending the existing treaties of the European Union and reshaping the functioning of the Union (the "Return to Roots" scenario). However, these guiding principles can also inspire a courageous, out-of-the-box approach to a new founding treaty and a new, simple, and effective arrangement for European cooperation (the "New Beginning" scenario). The following remarks constitute an outline of this scenario.

A new Union treaty would provide an opportunity to leave behind the mid-20th century paradigm of interventionism and management via regulatory measures. This shift would enable a more responsive and distributed governance structure that implements the principle of subsidiarity most appropriately, promising to ensure the highest global competitiveness and adaptability of the European economy. These same features lead to the return of a structure built around sovereign state communities as the dominant actors in the new Union.

The new Union would offer a framework focused on economic cooperation, free market principles, strict limits on regulatory interventions, and the full exercise of the four basic freedoms (movement of goods, persons, services, and capital) under international law guarantees, with utmost respect for the full sovereignty of Member States. The structure of the new Union should provide the highest level of flexibility, allowing cross-border projects to be undertaken among specific groups of Member States. This approach would create opportunities for a "free market of ideas" that is responsive to dynamic global conditions.

The list of principles of cooperation (national sovereignty, voluntary cooperation, revocability of deeper cooperation programs, the inter-

governmental nature of cooperation, conferral of competences under a strict national mandate, and subsidiarity) should be developed into a more specific outline for the new, freedom and sovereignty-centered modus operandi of the European organization.

1. National sovereignty.

2. Firm primacy of intergovernmental bodies over bureaucratic ones with a presumption of the unanimity rule in the decision-making process.

3. Integration based on an à la carte differentiation model (multi-speed integration projects) and an opt-out clause.

4. Strong formal guarantees for the execution of the principles of conferral and subsidiarity, with clear delineation of the competences of the organization and Member States.

5. Affirmation of the primacy of national constitutions.

I. National Sovereignty

The only subjects of international law will be the sovereign Member States, not the new Union. The new Union will have no legal personality, nor any symbols of statehood, such as a flag, anthem, coat of arms, motto. Foreign and defense policy should be the responsibility of sovereign nation-states, although coordination on actions with economic dimensions (e.g., sanctions or aid actions) may be possible in specific situations. There should be an explicit provision in the new treaty that the Union has no competence in political matters. Likewise, the constitutional system, legal order, protection of civil rights and freedoms, social affairs, family, education, culture, and moral issues will be the exclusive competence of nation-states. It should be explicitly written into the new treaty that neither the European Economic Union (EEU) nor individual states are allowed to interfere in the internal affairs of other Member States.

II. Intergovernmental Character of the New Union

The structure of the new Union should be based on the firm primacy of intergovernmental institutions, as streamlined as possible, with decision-making processes predominantly based on unanimity (qualified majority voting should be an exception implemented mostly in secondary, formal issues) of all Member States or unanimity of Member States involved in particular project.

The permanent intergovernmental body (the Council), composed of Heads of States or Governments, should serve as the sole decision-making body. A subsidiary body, such as a Conference of Ministers, may be convened as necessary; however, any arrangements made by this subsidiary body must receive approval from the Council.

To ensure the effective functioning of the Council and to oversee the implementation of its decisions, as well as to manage the new Union's finances, an Executive Secretariat should be established. This secretariat will serve as a purely technical body without legislative or regulatory competence.

A European Court of Arbitration should be established to resolve disputes between Member States that cannot be addressed by the Council. Any disputes of competence can only be subject to the Council's review, deciding by a qualified majority. And any dispute over the interpretation of the Treaty can only be resolved by the Council unanimously, applying the principle of presumption of competence on the part of the Member State.

The establishment of a parliamentary forum (Parliamentary Assembly), consisting of national delegations from Member States, should be considered. The functions of such a body would be purely consultative and advisory, with no legislative powers.

All other bodies or agendas of the European Union should be dissolved, and their powers should be transferred either to the Council and Executive Secretariat or – preferably – back to the Member States.

III. Voluntariness and Reversibility of Involvement in Deeper Integration Projects

The new treaty should establish a flexible legal regime, based on the à la carte differentiation model, which permits Member States to develop their cooperation at their own pace, should they deem it necessary. Concurrently, it should delineate a core area of cooperation in which all Member States are obliged to participate, as well as optional segments of cooperation that Member States may join or exit freely at any time.

The Union should primarily facilitate cooperation among Member States in the domains of economy, scientific research, and technological development. In all domains, it should be left to individual states to determine with whom and to what extent they will cooperate, as well as to establish the rules governing such „enhanced cooperation."

This could pertain, for instance, to matters such as border protection, internal security (including counterterrorism efforts, combatting cross-border crime, and addressing illegal immigration), energy security, food security, and environmental protection. Foreign policy and defense policy should remain the prerogative of sovereign nation-states, although coordination of actions with economic implications (e.g., sanctions or aid initiatives) may be feasible in specific circumstances.

IV. Effective Regulation of the Conferral Principle

The principle of conferral is present in the current Treaty on the European Union; however, as demonstrated in the first part of our report, it does not prevent EU institutions from expanding their authority at the expense of the sovereignty of Member States. Thus, the new Treaty should provide a robust guarantee to ensure respect for the principle of conferral within the framework of the new organization. It is essential to draw a clear distinction between the competences of the European Economic Union (EEU) and those of the Member States.

The founding principle of subsidiarity, protecting the new Union from the ineffective centralization of power in decision-making, will be guaranteed by both a unanimity rule and a lasting opt-out option from deeper cooperation projects.

V. Primacy of National Constitutions.

Following the principles of international public law, domestic laws of the Member State shall not preclude them from executing obligations undertaken under the new Union mechanisms of cooperation. Nevertheless, with procedural guarantees of sovereignty: unanimity and open opt-out options, primacy of national constitutional orders will be upheld by granting every Member State the possibility to adjust the scope of cooperation and integration to national, constitutional frameworks and their limits.

The introduction of the above-mentioned principles of cooperation serve as an initial outline of the framework for the new Union treaty, which will lead to the dissolution of the European Union and the establishment of the new Union.

The detailed structure of the new Union and the transition plan will need to be negotiated.

Preparations for the "New Beginning" scenario may be undertaken by all or just a group of European Union Member States. Multiple specific issues will require addressing. It may be necessary for certain provisions of the EU to remain in force for a limited period, and a list of these acts should be included in an annex to the treaty. The process of fundamental realignment of the Union cannot be accomplished overnight. A transition period and detailed arrangements must be stipulated to address important matters such as EU assets and liabilities, including the division of debt; severance payments for dismissed employees; pension obligations for former EU employees, with the transfer of these responsibilities to the Member States concerned; decisions regarding potential further financing for significantly advanced infrastructure projects; and an audit for the liquidation of the EU.

While the "Back to the Roots" scenario presents a realistic vision that can be achieved with the existing structure of political forces in the EU, the "New Beginning" project requires a new political dynamic for its effective emergence, involving not only determined political elites and leaders but, above all, a broad grassroots movement.

REVIEW OF THE REPORT BY PROF. RYSZARD LEGUTKO

I would like to thank the authors for this important report. In my opinion, it effectively diagnoses the main problems facing the European Union and identifies methods to address them.

I have always been struck by two phenomena regarding the European Union. The first is the fact that Article 5, which discusses the limits of Union authority and the principles of conferral, subsidiarity, and proportionality, is effectively a dead letter, as evidenced by the lack of any litigation before the Court of Justice of the European Union concerning breaches of these principles.

The second phenomenon is that the organization appears to operate for the benefit of political parties rather than the citizens of Europe. While the omnipotence of the political parties may be limited by a reduction of their authority, the absence of accountability for Members of Parliament undermines their credibility. In fact, in its current form, the institution is harmful, and its very existence poses a significant risk of becoming a mechanism for the seizure of power by pan-European parties, detached from national electorates and without accountability to anyone.

All institutions of the European Union require a significant reduction of power. The very concept of a political union comprising such diverse partners in size and power necessitates the urgent implementation of effective anti-autocratic mechanisms. In the event of a conflict of interest between Germany and France, on one side, and Slovenia and Cyprus, on the other, the smaller partners will always be dominated, as this is the nature of things. Currently, the system inherently favors unequal treatment of various countries. To disguise this blatant inequality, the concept of "leadership" has been fabricated, which, to the best of my knowledge, lacks any basis in the Treaties and, moreover, is extremely dangerous. There cannot be a Franco-German leadership of the European Union, because such an institution does not exist in the Treaties. Advocating for such leadership invites lawlessness and, ultimately, the complete removal of what remains of national sovereignty.

However, there is an equally dangerous concept that is rooted in both Treaties and the Charter: the formula of the "ever closer union," which contradicts the idea of constitutionalism. Constitutions are meant to establish permanent boundaries of competence among institutions, which the concept of an "ever closer union" blurs, thus encouraging the exceedance of those boundaries. As the authors correctly pointed out, although the Treaty has not changed, there has been a remarkable shift of power from nation-states toward European institutions and informal centers of power, such as the so-called "leadership." This is the "ever closer union" in action.

The principle of accountability, which is fundamental to parliamentarianism, does not exist in Parliament. It is a mockery of parliamentarianism when members of Parliament, who are not accountable to the Polish or Hungarian electorate in any way and who do not face any

electoral sanctions, decide to impose financial penalties on Poland or Hungary.

While it is true that American states have less power than European Union member states in relation to their respective capitals, the practical functioning of the European Union is predicated on stripping power away from member states, particularly the weaker ones. As a result, American states feel more secure in their relationship with Washington than Poles, Hungarians, and others feel toward Brussels.

The proposal to remove powers from the Court of Justice of the European Union is a step in the right direction and would resolve many issues, one of which is the Article 255 Committee established under the Treaty on the Functioning of the European Union (TFEU). This committee is tasked with giving opinions on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court. This committee is a mechanism for co-optation of judges and should be abolished. In fact, all co-optation mechanisms currently present in the structures of the European Union should be dismantled.

Finally, all unclear, imprecisely defined, and deceitful terms should be purged from the language of the Treaties and regulations of the European Union. A prime example of such concepts is "shared competencies," which can be reserved at any time for the sole discretion of the Union and removed from the competencies of member states. Another concerning concept is the positioning of the European Commission, an executive body with virtually no democratic legitimacy, as the guardian of the Treaties.

The above suggestions supplement, explain, and justify the measures proposed by the authors of the report, and if implemented, would significantly rein in the runaway Brussels bureaucracy and establish effective control over the current rule by political parties. I commend the authors for their work and for this valuable contribution to the discussion on proposed reforms of the European Union.

Professor Ryszard Legutko

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I commend the authors for their work and for this valuable contribution to the discussion on proposed reforms of the European Union.

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