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A more United European Union to confront the challenges of a less secure world

Brexit is an economic, political and strategic disaster of historical significance for the United Kingdom (UK). Its consequences will also be negative for the European Union (EU). Admittedly, it is to be hoped that the UK, a major European country, hitherto attached to the same fundamental values as the EU, will remain close to it for its trade and in the main lines of its foreign policy. Besides, the UK sometimes prevented the deepening of the EU, particularly in terms of security policy, while it was always pushing for rapid enlargement. However, the internal balance of the EU will change and its weight on the international scene will be reduced. But the world is changing and becoming less secure. Will the EU27 be able to effectively help its Member States to face the challenges of the coming years, without being thoroughly reformed? [1]

The first imperative would be for its States to form a united family. Recent years were marked by divisions. The 19 members of the euro area do not agree on sufficient strengthening of the economic and monetary union, which remains fragile. The 28 EU Member States have a different interpretation of the principle of solidarity and the fundamental values of the EU. Some of them, and not the least important, defy European law by not respecting the Rule of Law. This reveals the hasty preparation of the EU enlargements in 2004 and 2008, despite their undeniable economic success. This was due to historical reasons. However, it reinforces the doubts about the Balkan States becoming EU members soon, as they are now far from fulfilling the required conditions and that, in any case, the EU is currently not able to accommodate new members.

The European Parliament elections will be followed by the election of a new Commission and the negotiation of the Union's multiannual budget for 2021 to 2027. Despite the efforts of the Juncker Commission, everything has not improved during the term of the legislature. Admittedly, economic growth has come back, millions of jobs have been created, purchasing power has increased, EU countries are among those with the lowest inequality in the world, the EU is at the forefront of the fight for environmental protection, the

largest donor of aid to the poorest countries and the largest trading power in the world.

But important problems remain. Solving them will require more solidarity among Member States, long-term vision, courage and political commitment from national leaders for a more united EU.

The problems

One of the most worrying problems is the fact that some Member States are moving away from fundamental European values. The EU is built on these values. As soon as a member State no longer respects the Rule of Law, including its obligations towards the EU, it undermines the very foundations of the Union. A Union whose law would no longer be respected by its members would be in mortal danger. It is imperative to react to put an end to this.

Moreover, the financial crisis of 2008 has, admittedly, been overcome in most Member States. But its social consequences - a rapid and unacceptable aggravation of inequalities - and policies - the advent of demagogues - are far from having been overcome. In addition, a new financial crisis cannot be ruled out. However, the euro area remains handicapped by its

[1] This article was published in the "[Schuman Report on Europe, State of the Union 2019](#)" Editions Marie B, collection lignes de repères, Paris, March 2019

initial shortcoming: the centralization of monetary policy and the decentralization of economic and budgetary policies. Progress is insufficient. The risks will remain as long as the resilience of the euro area to crises has not been strengthened.

Similarly, illegal immigration is less important than perceived by the public. It is now under control, but its political effects are not. Added to the excessive inequalities, they feed the rejection of national authorities. Illegal immigration in Europe may well resume in the future, given the opposite demographic trends in Europe and Africa. Each Member State alone is unable to address this issue. A long-term EU cooperation policy with third countries is needed. It has been initiated, but it needs to be strengthened. The EU must use all the means at its disposal. It must also ensure solidarity between Member States, which has been lacking in recent years with regard to Greece and Italy.

The economic crisis and austerity policies, the acceleration of globalization and technological innovations, the massive increase in inequalities, have increased the number of people left behind. For the first time in generations, many fear the worst for their children. Despair, fear of the future and anxiety are increasing. People in power and elites have lost the trust of the less well-off. Demagogues and xenophobes' benefit. European States cannot ignore this despair, whether it is caused by difficulties which are real or perceived as such. The election of Donald Trump in the United States, the vote for Brexit in the UK, the election of governments close to the extreme right in some Member States, the violent protests of the "yellow vests" in France are examples. All these movements are accelerated by a massive and uncontrolled use of social networks, often manipulated without the knowledge of their users.

The world is less safe. The greatest power in the world, which, since the last century, has been the leader of Western countries, of their alliance and of their values, now diverges more and more in favour of a nationalistic policy and folds in on itself. The US President is

playing with the idea that Article 5 of the NATO Treaty on Collective Self-Defence might no longer be automatically implemented. The Union and its Member States have to face this change which may be lasting. However, external challenges are steadily increasing. This ranges from Vladimir Putin's aggressive Russian policy to the assertion of China's immense power, the proliferation of quasi-dictatorial rulers, such as in Brazil, the Philippines or Turkey, to the disorders of the Arab world and terrorist threats. Finally, our planet, struggling with uncontrolled pollution and climate change, is at the mercy of States' decisions. The leaders of these States are inclined to make short term decisions, according to their national political calendar, while the international order -which took a long time to be established- is deliberately shaken by the United States. On this point too, the EU is a model for the world, and will gain from a close association of the UK with a more active European foreign policy.

Given this state of play, can the EU limit itself to dealing with current problems, which it does rather well? or should it tackle these big challenges where it has the necessary means and, failing that, which is more frequent, by helping its Member States to do so? does it need to be reformed in order to react more pro-actively?

SUGGESTIONS TO BE DISCARDED

Leave the EU and its specific legal order

A first option would be to follow the line of Brexit supporters in the UK, or Donald Trump in the US, and return to conventional intergovernmental relations and classic international law. At the global level, progress made in the last century towards an international order of multilateral cooperation and peaceful settlement of disputes would be abandoned. In Europe, if the ideals of the EU were no longer shared by its Member States and its citizens, one should admit its failure. This would allow the strongest, either commercially, or through their money or their military power, to impose their views.

We are not yet there. Throughout Europe, the painful implementation of Brexit has had the effect of reinforcing pro-European sentiments: in the October 2018 Eurobarometer, 68% of EU citizens think that their country is benefiting from the EU. This explains why the sovereigntists themselves no longer propose anymore to leave the EU or the euro. They now claim their wish to transform the EU from within, by making it a classic organization grouping Nation States, abandoning any partial share of sovereignty.

Unfortunately for its economy, its citizens, its future and its place in the world, the UK is demonstrating that the EU is not creating any new problem for its Member States. It does not increase their difficulties, quite the opposite! At best, when they conferred powers upon it, it helped them to solve their problems. In the other case, it does nothing more than recommending them advice of good governance. In any case, it costs little and its benefits are much greater than its costs.

Refounding Europe

Some defend the idea of a refoundation of the EU. This would mean negotiating a quasi-federal treaty between EU Members States who wish to do so. This would allow them either to leave the EU or to remain in it, as its hard core, if the new treaty were compatible with the EU Treaties. One should not forget that, to do this would require the consent of the other EU Member States. If not, should interested States leave the EU using Article 50 TEU? Could they continue to participate in the EU but while establishing also another organization? On what subjects would a sufficient number of Member States be able to agree on a sharing of their sovereignty, while even the 19 members of the euro area have heterogeneous policies on essential issues? So many questions that remain unanswered. This shows that this idea is utopian or that, at the very least, it is neither for the short, nor for the medium term.

Reforming the current Treaties

This option takes more or less radical forms according to his supporters. According to them, Member States

are too heterogeneous to develop the same policies together (economy, immigration, foreign policy, etc.). Therefore, the EU should be divided into more or less permanent concentric circles, the vanguard States being in the smallest circle. Thus, with Brexit, some have suggested that the UK could continue to participate in the internal market of goods and services, while refusing free movement of persons.

The [think-tank Bruegel proposed in September 2018](#) a "Europe of Clubs". Member States could choose to participate only in a "core" EU, limited to the customs union and the common commercial policy and the internal market without the free movement of persons. Four clubs would be optional, including a first one on the economic and monetary union, a second on migration issues, asylum and Schengen and a third one on foreign and security policy. These clubs would share the institutions of the core EU, but the composition of the Parliament and the Council would vary depending on the participating States. Clubs could also use intergovernmental procedures.

The description of such a scheme will shock supporters of a more understandable, better coordinated and more united Europe. Institutional complexity, partly inevitable, must not be increased. Which club would symbolize Europe and speak on its behalf? The one which would lead foreign policy? The euro area one, sharing a common monetary policy and coordinated economic policies? Or the club developing a policy of free movement of EU citizens and a common immigration policy?

On the other hand, who does not see the obvious links between the foreign policy and the trade policy, for example when dealing with Russia or Iran? or with the immigration policy, when dealing with the countries of North Africa or sub-Saharan Africa? or even with the common monetary policy, as are showing today the US sanctions against Iran?

4

**A SIMPLE SUGGESTION: BETTER APPLYING
THE EXISTING TREATIES**

Any revision of the EU Treaties is excluded in the short or medium term. Most Member States do not want any revision. In addition, all the potentialities of the current Treaties are far from having been used. It is better, therefore, to examine ways of improving the application of the Treaties. The European Parliament was right in concluding in its "Resolution of 16 February 2017 on improving the functioning of the EU by making the most of the potential of the Lisbon Treaty": "5. Points out that not all the provisions of the Lisbon Treaty have yet been fully exploited, even if they contain the necessary instruments the implementation of which could have prevented some of the crises the Union is going through today, or which could be used to meet the current challenges without starting a revision of the treaty in the immediate future. "

Moreover, it cannot be overemphasized that the EU globally works well. The institutions initiate (the Commission) and adopt (European Parliament and Council) common policies. It is the Member States that implement and manage them. The results of these policies benefit all its Member States and all its citizens: internal market, environmental protection, consumer protection, trade policy, gender equality, human rights, minimum social standards, cooperation of railways, roads, energy, European sky, assistance to disadvantaged regions. There are few countries in the world, outside the EU, in which citizens enjoy such a high quality of life. This is certainly due mainly to the Member States, but also partly to the EU, its values and its common policies.

On the other hand, it is necessary to be realistic about the limits of what the EU can do. The EU is an organisation which is extremely decentralised. It is not sovereign in every domain, as States are. Its powers are limited to those conferred on it by its Member States in the Treaties.

Its human resources, 43000 civil servants, are not comparable to those of its Member States: about five

million each for France, Germany or the UK, about three million for Italy or Poland. Only four-Member States have fewer civil servants than the EU: Luxemburg, Estonia, Slovakia and Malta.

The EU budget is also very limited. It was 137 billion € in 2017, i.e. less than 2 % of the 7000 billion of the total national budgets of its Member States. Moreover, the EU only uses 6% of its budget for its administrative expenses. Most of the rest goes back directly or indirectly to its Member States.

This explains why some Member States, though subject to the same European regulations and sharing the single market and common policies, do better or worse than the others. This is the case in many fields, such as economic growth or employment, education, health or research, or in reducing inequalities or meeting the needs of their citizens. Member States have retained in many areas much more resources and powers than they have conferred upon the Union. Economic growth, policies on employment, social policy, education and health are the responsibility of the Member States, such as those for territorial security and the fight against terrorism. The EU has little power to help them. Nobody is suggesting to modify this political architecture. In some cases, the Treaty FEU even prohibits the EU institutions from harmonising national legislations: on employment (art 149 second sub-paragraph), on education, vocational training, youth and sport (art 166(4), on culture (art 167(5), on public health (art 168(4), on industry (art 173(3, first sub-paragraph), on tourism (art 195(2), on civil protection (art 196(2) and on administrative cooperation (art 197(2).

**Demanding that Member states respect the
fundamental values of the European Union**

According to Article 2 TEU: « "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including rights of persons belonging to minorities. These values are common to the Member States in a society characterized by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. "

Article 7 of the TEU allows the Council, deciding by a four-fifths majority to "find that there is a clear risk of a serious breach by a Member State of the values referred to in Article 2". Once the risk is confirmed, that article then allows the Council to "note the existence of a serious and persistent violation by a Member State" of those values. It must make that determination deciding by unanimity, with the exception of the vote of the representative of the Member State directly concerned. This means that the State in question will easily be able to receive the support of another Member State, as is the case today with Hungary and Poland, which give each other mutual support. Admittedly, Article 7 plays an important deterrent role, but not much more.

However, the EU requires third countries to respect its fundamental values before agreeing to conclude trade agreements with them. Could it continue to do so, if those values would be violated by its own Member States?

That would not be acceptable. The institutions must react, as the guardians of the treaties and of the values which are their foundations. The CJEU is the Constitutional Court of the EU. The fact that a Member State would ignore these values when taking a decision within the scope of the EU Treaties should be pursued by the Commission before the CJEU. This is independent of the general case of "serious and persistent violation by a Member State of the values referred to in Article 2" provided for in Article 7 and of the special procedures mentioned therein. Respecting Article 2 is an absolute prerequisite to participate in the EU, not only at the time of accession, but subsequently as well, for any measure taken by a Member State within the scope of the EU Treaties.

Every act or legal decision of a Member State that violates Article 2 TEU and the EU Charter of Fundamental Rights in areas falling within the scope of the EU Treaties should thus be challenged before the CJEU for infringement of the law of the EU.

The Commission has taken this route recently. It submitted to the EUCJ the measures taken in

Poland to lower the retirement age of the judges of the Polish Supreme Court. The Court of Justice had already stated, in a judgment of February 2018 (Case C-64/16), that the principle of the independence of judges and the principle of effective judicial protection are general principles of EU law. In the Polish case, an interim Order, pending judgment on the merits, was taken in October 2018 (Case C-619/18 R), requesting Poland to suspend the application of the provisions it had adopted. According to the Order, these measures violated Article 19 § 1, second indent of the TEU ("Member States establish the necessary remedies to ensure effective judicial protection in the areas covered by Union law") and Article 47 of the Charter ("independent and impartial tribunal"), thus calling into question the requirement of the independence of judges. The Order emphasizes that the lowering of the retirement age from 70 to 65 years resulted in an immediate and profound re-composition of the Supreme Court. The judgment on the merits has not yet been taken, but it seems that Poland made the wise decision to reconsider its position.

The Commission has thus opened an effective way to ensure that the Member States respect the fundamental values of the EU. In December 2018, it was learned that even more serious decisions for the independence of judges were adopted in Hungary, and then that other similar measures were planned for in Rumania. The Commission should examine them as soon as possible. But it could also go further.

Thus, it could examine the possibility of adapting the applicable texts to condition the benefit of the EU's budgetary resources to compliance with the provisions of Article 2 TEU. Article 51 of the Charter of Fundamental Rights stresses that its provisions are addressed to Member States "when they implement Union law". A link must therefore exist with application of EU law. This would be the case if a Member State, while making use of the budgetary resources made available to it by the EU, would not respect Article 2 of the TEU and the Charter. Article 2 refers to equality between persons, the Rule of Law, the rights of persons belonging to minorities, justice, solidarity. The Charter

refers to equality, non-discrimination, the right to good administration, etc. The Commission could propose to the EU legislator to recall these obligations in acts taken in budgetary matters and to provide for measures in case of violation of these obligations when a Member State is implementing the EU budget.

It is to be noted that the European Parliament, in its 2017 Resolution, "believes that the Union must promote the level of protection of human rights and fundamental freedoms, as well as the permanent respect (emphasized by the author) of "Copenhagen criteria", and to ensure that all Member States respect the common values enshrined in Article 2 of the EU Treaty".

In 2014, the Commission established, by a communication ["a new EU framework to strengthen the rule of law"](#). It involves the establishment of a non-judicial mechanism aimed at establishing a dialogue on the respect of fundamental rights by and in the Member States. This could lead to an opinion from the Commission "on the Rule of Law" in a Member State, possibly to recommendations, and finally to a possible recourse to the procedure of Article 7 TEU. The Commission started to use this framework for Poland, but ultimately preferred to resort directly to the Article 7 procedure and to the infringement procedure mentioned above. For the setting up of this framework, the Commission could call on the EU Fundamental Rights Agency for detailed reporting.

In addition, the Court of Justice has been asked for preliminary rulings by Member States' Courts on the respect of fundamental rights in cases of European arrest warrants sent to another Member State. This is another way for the Court of Justice to indirectly verify and possibly sanction violations of the EU's fundamental values in a Member State.

Reforming the euro area and improving its management

The enlarged Euro-area Summit of December 2018 approved a set of measures that pave the way for a

strengthening of the economic and monetary union.

First, the Summit approved the establishment of a common safety net for the Single Resolution Fund. This safety net will be provided by the European Stability Mechanism (ESM). This is a fundamental reform towards the completion of the Banking Union.

Second, the Summit agreed on the reform of the ESM, which should be provided with new instruments for assistance (including the possibility for euro members to access a preventive assistance mechanism before a solvency crisis occurs), as well as new economic supervisory powers over the euro area (powers that will remain secondary to those of the Commission and the Council in terms of economic policy). It must be emphasized, however, that the reform of the ESM thus envisaged is still very far from changing its nature and turning it into a "European Monetary Fund" with effective supervisory powers, effective decision-making, as desired by some, such as Wolfgang Schäuble.

Thirdly, the Summit instructed the Eurogroup to work on the design, implementation modalities and a timetable for a "euro area convergence and competitiveness instrument", which should be part of the EU budget, and therefore foreseen in the future multiannual financial framework. This is to give an embryonic form to the idea of a budget of the euro area. On this point, it must be recognized that many questions remain open: which kind of projects might be financed by this instrument? Will it be provided with ambitious or by modest means? How will the euro area States finance this mechanism? Is it possible to establish a financing mechanism outside of the Treaties but whose revenues will be earmarked for EU policies? If this instrument is established by an EU act, what will its legal basis be, and which Council formation (representatives of the 19 or of all Member States?) will decide on expenses and projects?

Furthermore, one should remember that the Commission proposed in May 2018 two financing instruments, a Stabilization Fund for euro area States which are specially affected by "asymmetric shocks"

and a Structural Reform Fund for the whole EU. Both proposals are based on the legal basis for cohesion. It is therefore likely that these proposals will be modified to incorporate the elements of the convergence and competitiveness instrument of the euro area approved in principle by the Summit.

The December 2018 euro area Summit agreement was undoubtedly a step in the right direction, but which remained much too modest. The biggest dysfunctions of the euro area remain. Will we have to wait for the next economic crisis to find the political will to solve it? A true Banking Union must absolutely include a single system of deposit insurance, failing which, the integration of supervision and control over the activities of financial entities would remain insufficient.

There are cases where measures of closer coordination of economic, social and fiscal policies cannot be adopted by the Council or by the 19 members of the euro area, for lack of sufficient majority. In these cases, when these measures do not fall under the exclusive competence of the EU, at least nine of them could adopt them. Moreover, in point 35 of its 2017 resolution, the European Parliament:

"Stresses the importance of taking full advantage of the enhanced cooperation procedure laid down in Article 20 of the EU Treaty, especially between euro area members, so that Member States wishing to establish enhanced cooperation between themselves in the area of non-exclusive powers of the Union may, through this mechanism, promote the achievement of the objectives of the Union, strengthen their integration process, within the limits and in the manner provided for in Articles 326 to 334 TFEU ". The European Parliament also suggested in 2013 an optional "Code of Convergence" for the coordination of economic policies. For its part, the Commission has proposed an instrument of convergence and stability based on Article 136 TFEU.

Fifthly, Article 136 allows the Council, acting by a qualified majority of representatives of the States having the euro for currency, to adopt measures applicable to

those States alone to strengthen the coordination and supervision of their budgetary discipline.

The existing legal instruments in the current Treaties would therefore make it possible to act to strengthen the euro area. The timid measures envisaged in December 2018, however, show how far the path will be long and difficult. The explanation is simple: the means to guarantee the democratic legitimacy of the decisions to be taken in case of bolder reforms have not yet been found.

For example, could the Council or should it become the final decision-maker of the national budgets of the euro area States? We are far from being there. The democratic legitimacy of the EU institutions is not sufficient to oppose those of the Member States in such a crucial area. National voters are also national taxpayers. Thus, one of the most delicate problems concerns the violations by a State of its commitments vis-à-vis the EU and in particular the other Member States with the euro as their currency. On this subject, two remarks can be made. On the one hand, the EU Council is not obliged to apply the options that may be suggested to it by the Commission on the basis of the Treaty. On the other hand, what would the effects of a systematic application of the Stability and Growth Pact (SGP) be? It would (paradoxically) lead to the imposition of financial sanctions on a State, and therefore an increase of its debt, because it is accused of being too indebted ... It is therefore up to the Council to assess each particular case, in the light of the foreseeable impact of non-compliance with the rules of the SGP and the effect of the decisions it must make.

Thus, according to a [study by the Peterson Institute of International Economy](#), Italy's non-compliance with the rules of the SGP today is not such that dramatic consequences for the euro area are to be feared. Italy's debt is very high, but it has a maturity of nearly seven years and is largely owned nationally. In addition, Italy has had a primary budget surplus (excluding debt repayment) since a number of years.

However, in a team where everyone depends on the behaviour of others, it is irrational to go it alone and not to respect the rules all have adopted together. The Italian Government seems finally to have agreed to this.

Continuing and developing urgently and with determination the EU policy on migration and asylum

This is, once again, an area close to the heart of national sovereignty, but in which the added value of the Union is potentially decisive. The EU must reject xenophobia, but it cannot ignore issues which are emotional for its citizens. It cannot either ignore the difficulties of an ill-prepared integration of the immigrants in some Member States, especially when it exceeds reasonable thresholds in certain cities or regions.

Article 67 TFEU provides that the EU "Develops a common policy on asylum, immigration and external border control based on solidarity between the Member States". Our external borders are now better protected by Frontex, the European Border and Coast Guard Agency, created in October 2016 and based in Warsaw, whose budgetary and human resources have been strengthened. Illegal arrivals via the Mediterranean Sea have been greatly reduced.

Article 80 TFEU specifies that the above-mentioned policies are "governed by the principle of solidarity and equitable sharing of responsibilities between the Member States, including in financial terms". The EU is far from having used all the potentialities of the Treaties in this area, because of the important divergences between Member States. Yet this is a key area for the future, at least because of the emotionality of the perceptions it gives rise to.

Why not sharing financial costs between Member States? Solidarity should be applied to all. The EU needs to be creative in order to be able to act. The path of mandatory country quotas, tried in the past, was not the right one. It must be discarded and replaced by something else.

The procedure for enhanced cooperation and the fact that the Treaty provides for solidarity between Member States to be expressed "including in financial terms" should now be put at the forefront of Union's action. Member States that are not subject to migratory pressure or refuse to host refugees must participate in the expenditure.

Immigration policies will, of course, continue to be largely the responsibility of the Member States. But the EU must be more united and more coherent than it has been so far.

Let's take a striking example, which is not only symbolic. States may decide to give their nationality to as many third-country nationals as they wish. These new EU citizens will be able to travel and settle freely anywhere in the Schengen area if the Member State in question is part of that area. Such asymmetry is not sustainable. In addition, it is well known that several Member States literally sell their passports to wealthy third-country nationals. They sometimes even advertise on social networks. The Commission must react to this scandal. It must bring this abuse of law, which has negative consequences for the other Member States and for the EU itself, to the EU Court of Justice.

However, the problem of illegal immigration is a long-term and far-reaching problem that requires a common EU policy. The EU can and must help its Member States by using all means at its disposal. Thus, it can establish conditions for its financial assistance and trade policy with the African countries concerned. The High Representative for Foreign Affairs and Security Policy and the European External Action Service have been created by the Treaty of Lisbon precisely with the duty to coordinate the different external policies of the EU (see Articles 21 and 22 TEU). They do not do it, or in any case not enough.

In addition, the Dublin and Schengen mechanisms need to be reviewed. In the absence of a common will, some Member States could bring their national policies closer together bilaterally, multilaterally, or through enhanced cooperation. However, solidarity from all

member States is needed, at least in a financial form.

Strengthening the democratic legitimacy of the Union policies

The European Parliament correctly exercises the functions conferred upon it in the Treaties. Over the course of the successive revisions of the EU Treaties, its powers have been greatly increased. This being said, it must be acknowledged that this is not enough to convince EU citizens that all decisions taken in Brussels or Strasbourg have a strong democratic legitimacy. Participation in European elections has decreased in every election, from the first in 1979 (62% of registered voters) to the one in 2014 (43%). This year's elections are a notable exception (50.97%). Nevertheless, for reasons of culture, language and proximity, the role of national parliaments is felt and perceived by citizens of certain countries as being more important.

All governments of the Member States should therefore accept and encourage, like some of them already do, a closer control of their national parliament on the decisions they take or are about to make in the future in the different formations of the Council of the EU. They took that obligation in Article 12 TEU and Protocols 1 and 2 of the Lisbon Treaty, which define the powers of national parliaments. Pro-European sentiments in Member States where national parliaments are heavily involved in European politics are no less strong than elsewhere.

Better preparing and potential enlargement

Article 49 TEU on the accession of any new Member State requires Candidate countries to comply with Article 2 (quoted above). It also refers to the criteria adopted by the Copenhagen European Council of 1993 and reinforced in Madrid in 1995 ("The eligibility criteria approved by the European Council are taken into account"). These criteria include "the presence of stable institutions guaranteeing democracy, the rule of law, human rights, respect for minorities and their protection". On the EU side, these criteria provide for "the ability of the Union to assimilate new Member States while maintaining the momentum of

European integration". In the light of past experience, it has become imperative to better apply these criteria in the future. The franchise leads to say that any enlargement will be difficult in the medium term. On the one hand, the candidate countries are currently far from meeting these criteria. On the other hand, EU decision-making procedures have never been adapted to the growing number of Member States. As a result, they tend to become less effective and less democratic, given the important number of decisions to be reached by common agreement or unanimity. Some of these procedures could be modified without changing the EU Treaties.

Foreign Policy and fight against terrorism; cooperating closely with the UK

Moreover, after leaving the EU, the UK will remain an important European country. It is imperative that its links with the EU in the fields of foreign and security policy are preserved as much as possible. The broad outlines of British foreign policy are the same as those of the EU and of its Member States, as well as the fundamental values that underpin them. In a world where big players are the United States, China and Russia, the UK will remain close to the EU. The EU should organize appropriate procedures for exchanging views and information, without compromising the decision-making autonomy of each party. It should do the same in the field of the fight against terrorism, as well as for the respect of an international order shaken by the United States. It should also be remembered that the [Schuman Foundation proposed](#) as early as 2016 the idea of a draft defence treaty.

Better targeting the aims of the UE budget

The negotiation of the multiannual financial framework (MFF) for the period 2021-2027 has started. This framework will be mandatory for the seven annual budgets starting from 2021. Negotiations must be conducted by unanimity, in accordance with the rules in force, which could be changed by the European Council acting by unanimity (Article 312 TFEU). As it has already be stressed, the relative importance of the EU budget is often exaggerated. Besides, with

the departure of the UK, schedule for October 31, the EU budget will have to be reduced. In 2016, the net contribution of the UK was less than € 6 billion.

MFF negotiations between the 27 will be difficult. They should aim at promoting and concentrating EU expenses which will have the maximum value added. Thus, the launching of applied researches and industrial projects common to several or all Member States in the most scientifically advanced fields, civil or military, should be promoted: digital, automation, robotics, computer spying, drones, cyber-security, fight against social media manipulation and "disinformation" in general ...

Encouraging enhanced cooperation

Under the Treaties, the enhanced cooperation procedure can only be used as a last resort and by at least nine-Member States. It can only be used within the framework of the non-exclusive competences of the EU. It is rarely used (divorce law in 2010, patent law in 2011). However, it could be used in many areas: economic and monetary union (Article 136 TFEU), energy, taxation, social policy, European Public Prosecutor's Office (Article 86 TFEU), etc.

In the field of defence, Articles 42 (paragraph 6) and 46 of the TEU and Protocol 10 provide for "permanent structured cooperation". These provisions, which date from the 2009 Lisbon Treaty, finally began to be implemented in December 2017. The 25 participating States approved in 2018 a list of 17 collaborative projects. The Commission has proposed a European Defence Fund to co-invest in military industrial projects. It may also be stressed that Article 44 of the TEU provides for the possibility of entrusting a group of Member States with the implementation of a civilian and military crisis management mission. It will be important to actively cooperate with the UK in these areas.

Concluding intergovernmental treaties on specific issues

In 2017, Giorgio Maganza [suggested](#) to negotiate a

"mini-intergovernmental treaty" allowing integration between certain Member States. These States would continue to be members of the EU. The mini-treaty would only add specific objectives to those of the EU Treaties. This formula is compatible with these treaties. It has been used repeatedly on specific topics: the Schengen Agreement in 1985, initially linking only five-Member States, later incorporated into the EU Treaties, in 2005 the Prüm Treaty, first binding seven States in 2005, then expanded. The financial crisis led to the creation in 2010 of the European Financial Stability Facility, in 2012 of the European Stability Mechanism and the signing of the Treaty on Stability, Coordination and Economic Governance, and in 2014 the Single Resolution Fund for the banking union.

Ideally, a multi-disciplinary intergovernmental mini-treaty should bring together the same group of Member States cooperating in several fields. To do this, it would be necessary to draw up a list of areas of common interest and joint opinions that are acceptable to a significant number of Member States. It would be shown that it is possible to avoid the proliferation of clubs or avant-gardes whose composition would be different according to the area in question, which would blur the image of a united Europe.

Otherwise, such treaties could be used whenever enhanced cooperation would not be possible in the normal course of treaty procedures. Note that the European Parliament, in its 2017 resolution, did not reject this option, but requested it to be "used only as a last resort and subject to strict conditions" (point 7). The development of such agreements, of an intergovernmental nature but using the EU institutions (which is legally possible according to the EU Court of Justice: Pringle judgment, 2012), was useful and fruitful. Admittedly, they have temporarily increased the complexity of the architecture of the EU. However, they allowed progress to be made by strengthening the economic and monetary union.

Could Germany and France take initiatives to launch such mini-treaties?

By leaving the EU, the UK opted for an apparent and misleading increase in its formal sovereignty. It will actually lose in capacity to influence and in real powers in Europe and in the world. Despite suffering the negative consequences of this withdrawal, the EU will continue to carry the torch of the European fundamental values. In a more unstable and dangerous world, we need, more than ever, a more united and stronger Europe to bolster its Member States.

The Commission chaired by Jean-Claude Juncker had proposed as discussion topics five possible scenarios: "1. Continuing the same agenda. 2.Nothing but the single market. 3. Those who want to do more, do more. 4. Doing less more effectively. 5. Doing much more together. ".

To give an answer to these questions, one may hope that the European Union may adopt the following orientations for the medium term:

- the essential precondition is to ensure full respect of the fundamental values of Europe by all the Member States, without which nothing is possible;
- it is imperative to continue the current agenda in order to completing the internal market, which is the heart of the EU, while avoiding unnecessarily and excessively detailed legislations;
- the Union must unite more, strengthen its internal solidarities, help the Member States to do what they cannot accomplish on their own; this is valid both for strengthening the euro area and for confronting other challenges that also require the added value of the Union, such as the management of illegal immigration, the protection of the environment and action against climate change, the launch of advanced industrial projects, the fight against terrorism and international crime;
- finally, when the action proves impossible at 27, the European Union should encourage those of its Member States who want and can do more to do it in small groups, without their actions harming others.

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Despite being sexagenarian, the EU is still young and fragile in the hearts of its citizens. All remain naturally attached to their Nation State, older and closer to them. However, the temptations of inward looking and nationalism come back quickly in the event of a crisis. Europe and the Europeans have suffered the consequences of nationalism for centuries.

The European Union must not deviate from its path. With more unity and more solidarity, it will be able to better protect its States and its citizens. They need the EU to help them to overcome the great challenges they must face in today's world.

Jean-Claude Piris

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and of the Council of the European Union
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ANNEX

18 CONCRETE PROPOSALS

MAKING EU'S FUNDAMENTAL VALUES RESPECTED

-1) The Commission should seize the CJEU for infringement of a Treaty obligation of any legal act of a Member State taken in an area falling within the scope of the Treaties violating Article 2 TEU and the Charter of Fundamental Rights.

-2) The Commission could propose to modify the relevant texts in order to provide for the suspension of the benefit of EU budgetary resources when a Member State uses such resources without complying with Article 2 TEU and Article 51 of the Charter.

-3) The Commission could request the Fundamental Rights Agency to draw up reports in the framework of the mechanism it adopted "to strengthen the rule of law".

REFORMING THE EURO AREA

-4) Finalize the banking union with a unique deposit insurance system.

-5) Transform the European Stability Mechanism into a European Monetary Fund with greater resources.

-6) Create a significant budgetary capacity for the euro area.

-7) The Council, acting by a qualified majority of the Member States of the euro area, could adopt measures applicable to those States to strengthen the coordination and supervision of budgetary discipline (Article 136 TFEU).

DEVELOPING EU IMMIGRATION AND ASYLUM POLICY

-8) Imposing financial solidarity on Member States not subject to migratory pressure or refusing to admit refugees (Article 80 TFEU).

-9) The Commission must refer to the CJEU the abuse of rights of the Member States which sell their passports to wealthy third-country nationals.

-10) The High Representative for Foreign Affairs and Security Policy and the European External Action Service, established to coordinate the different external policies of the EU (Articles 21 and 22 TEU), must do so, in particular by establishing conditions for financial aid and EU trade policy.

STRENGTHENING EU DEMOCRATIC LEGITIMACY

-11) The governments of all Member States ought to encourage a control by their national Parliament on the decisions to be taken in the Council of the EU (Article 12 TEU and Protocols 1 and 2).

PREPARING ANY POSSIBLE ENLARGEMENT

-12) Adapting the EU institutions and procedures before any possible further enlargement (respecting Copenhagen and Madrid criteria).

-13) The Commission must verify the stability of full compliance by the applicant States with the conditions laid down in Articles 2 and 49 TEU.

FOREIGN POLICY AND FIGHT AGAINST TERRORISM: COOPERATING WITH THE UNITED KINGDOM

-14) The EU should organise appropriate procedures for exchanging views and information on foreign and defence policy with the UK, without compromising the decision-making autonomy of each party.

15) The EU should do the same in the field of the fight against terrorism, as well as for the respect of the international order.

TARGETING EU BUDGET EFFORTS

-16) Promoting European funding which have the maximum value added: launch of applied research and industrial projects common to several or all Member States in the most advanced scientific fields.

INTERGOVERNMENTAL TREATIES BY SUBJECT

-18) France and Germany could take the initiative to propose to willing and able Member States to conclude treaties on specific subjects, using the EU institutions.

ENCOURAGING ENHANCED COOPERATION

-17) The European Parliament and the Commission could suggest priorities among possible areas: Economic and Monetary Union (Article 136 TFEU), Energy, Taxation, Social Policy, European Public Prosecutor's Office (Article 86 TFEU), etc.

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