If Enlargement Fails, So Will the Union

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09.09.2026 doi: 10.59704/b98633c09f9a2f29

Is the European Union really serious about enlargement? It is certainly not ready for it. Much attention is paid to the candidates' capacity to absorb the corpus of EU law and adapt to the EU's administrative practices. Too little attention is being paid to the EU's internal capacity to assimilate new members.

The Commission's Timid Proposals

As long ago as September 2023 Commission President Ursula von der Leyen promised the European Parliament she would publish a review of the EU's common policies, budget and institutions in preparation for enlargement. An interim report in March 2024 declared "[E]nlargement is in the Union's own strategic interest … The EU must deepen as it widens … and use enlargement as a catalyst for progress". Emphasising the importance of the values of the Union, new tools would be needed to "ensure the rule of law is truly and consistently upheld across the EU, beyond accession". The enlargement process could be adapted to allow for the gradual admission of accession states to the single market.

On how to govern an enlarged Union of 30+ member states, however, the Commission admitted that "[S]o far, no consensus has been found on how best to approach this issue." Efforts to exploit the potential of the Treaty of Lisbon were being blocked by national vetoes. The Commission observed that the *passerelle* facility (or bridging clause) in Article 48(7) TEU, intended to shift decision-making in the Council of Ministers from unanimity to qualified majority voting, could only be triggered by unanimity. It suggested that the *passerelle* should be modified to allow for disputes over a vital national interest to be escalated to the level of the European Council.

The Commission hoped for a more differentiated approach to legislation through greater use of the enhanced cooperation rules of Lisbon (Article 20 TEU). It mooted some (unspecified) relaxation of the accession process itself (Article 49 TEU). It questioned whether the European Council should continue to insist that each member state have its own member of the Commission (Article 17(5) TEU). And it made the point that enlargement itself would put an even heavier workload on EU institutions already under pressure.

Stalled Momentum

There has been no progress in taking forward even these timid ideas floated by the Commission. Despite chivvying by the European Parliament, the European Council has not dared to open up the dossier of institutional reform, and even refuses to set up a non-institutional group of experts to reflect on options for change.

After a serious delay, von der Leyen's pre-enlargement review is now scheduled to appear in time for the meeting of the European Council on 15-16 October. One may regret that Iceland did not have the benefit of hearing her views before its botched referendum on 29 August.

The Commission will repeat its customary exhortations for more differentiated integration and enhanced cooperation; it will plead for greater recourse to abstention, particularly in foreign policy decisions (Article 31(1) TEU). But that will not be enough to save the EU's institutions, already in bad repair, from seizing up entirely under the pressure of enlargement.

The Commission should insist on being reduced in size to two-thirds the number of member states after 2029. This reform, first proposed for implementation in 2014 but blocked by Ireland as its price for repeating its referendum on Lisbon, would streamline the executive, strengthen its supranational character and give the new President-elect more leeway to select the very

best team. The current Irish term presidency of the Council is in a good position to announce a change of tack. President of the European Council António Costa should insist that his colleagues now agree on a formula to reduce the size (and cost) of the college, ensuring the strictly equal rotation of Commissioners between member states over a 15-year period, reflecting demographic and regional range (Article 244 TFEU).

Another urgent item of unfinished business is to agree on a method for the apportionment of seats in the European Parliament that is fair, comprehensible and durable. In theory, the right to initiate the distribution of seats falls to the Parliament itself (Article 14(2) TEU). In practice, seats have been bartered between member states in an unseemly way, a practice which undermines the legitimacy of Parliament in the constitutional courts — especially the Bundesverfassungsgericht— and causes jealousies and resentment among member states (even those who do not care much for the Parliament itself).

Eminent mathematicians have been discussing this problem for years, and should now be invited to assist the institutions to define a final formula for seat allocation that meets the treaty requirements of degressive proportionality based on the total resident population of the states, as certified by Eurostat. The Commission needs to take seriously its responsibilities to help the Parliament and European Council reach an enlargement-proof agreement on this important constitutional issue. Left to their own devices, for fairly obvious reasons, MEPs have proven themselves unable to make a decisive objective proposal.

Implementing the passerelle

Above all, however, the EU must now give effect to Lisbon's famous *passerelle* designed to shift decision making in the Council from unanimity to qualified majority voting and to expand the Parliament's powers of codecision with the Council over all law making. This requires treaty change. Seeking her second mandate in 2024, von der Leyen said "I believe we need Treaty change where it can improve our Union". She now has the chance to prove it. Parliament will back her.

In place of unanimity, the amended *passerelle* should be triggered by four-fifths of member states, the same high threshold prescribed in Article 7 TEU in the case of a breach of Union values. Moreover, the unilateral right of one national parliament to block the *passerelle* should be replaced by the normal right of the member state parliaments to call in any draft legislation on the grounds of breach of subsidiarity (in accordance with the Protocol on the role of National Parliaments in the European Union). A draft of the amendment is as follows:

> *Article 48(7)7. Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by a qualified majority in that area or in that case. This subparagraph shall not apply to decisions with military implications or those in the area of defence.Where the Treaty on the Functioning of the European Union provides for legislative acts to be adopted by the Council in accordance with a special legislative procedure, the European Council may adopt a decision allowing for the adoption of such acts in accordance with the ordinary legislative procedure.Any initiative taken by the European Council on the basis of the first or the second subparagraph shall be notified to the national Parliaments. If a national Parliament makes known its opposition within six months of the date of such notification, the decision referred to in the first or the second subparagraph shall not be adopted. In the absence of opposition, the European Council may adopt the decision.For the adoption of the decisions referred to in the first and second subparagraphs, the European Council shall act by unanimity a qualified majority as defined in four fifths of its members representing at least two thirds of the total population of the Union, after obtaining the consent of the European*

> *Parliament, which shall be given by a majority of its component members.*

Further to the revision of the *passerelle* clause, the Commission must also propose the suppression in its entirety of Article 353 TFEU, a clause added to the Lisbon Treaty, largely to placate the UK, in order to prohibit the application of the *passerelle* to four cardinal provisions of the treaty. These are Article 311 TFEU concerning Council decisions on revenue to the EU budget ("own resources"); Article 312(2) TFEU concerning the Council decision on the MFF; Article 352 TFEU, the famous "flexibility clause", which allows the Union to supplement its powers in pursuit of treaty objectives; and Article 354 TFEU which sets out the decision-making procedure for the operation of the Article 7 TEU procedures in respect of breaches by a member state of the values of the Union.

These proposed amendments would liberate the Council from paralysis over the current MFF negotiations and allow the European Parliament to assume full democratic control over the whole of the budget, like any normal parliament. Removing the threat of the veto from the Council will change the diplomatic climate, making for quicker and better law-making in the future. The reform will lead to the deployment of new, more flexible instruments for efficient EU government. It will make more realisable the penalisation of an errant member state.

A Federal Path Forward

Other constitutional reforms are undoubtedly desirable in the medium term. But these two amendments are vital now and could be implemented expeditiously on the basis of a formal Commission initiative, supported by the Parliament, and endorsed by a simple majority of the European Council without the need for a full-blown Convention (Article 48(2) TEU). They would then be sent for ratification by national parliaments, avoiding feckless plebiscites.

In spite of Brexit Britain and the standoffishness of Iceland and Norway, enlargement is imperative for the Union if it is to remain true to its values and mission. For some candidate countries, notably Ukraine, EU membership is existential. The larger, more diverse EU will be unable to sustain the drive to unity if it persists with old-fashioned confederate methods. If enlargement matters, reform in a federal direction is essential. If enlargement fails, so will the Union.

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SUGGESTED CITATION

Duff, Andrew: If Enlargement Fails, So Will the Union, Verfassungsblog, 09.09.2026, doi: 10.59704/b98633c09f9a2f29.

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Langzeitarchiviert bei IntRechtDok unter: doi.org/10.17176/20260909-145339-0.