ON THE VERGE OF THE NEXT EU ENLARGEMENT. ACCESSION LEGAL FRAMEWORK: CONCEPTUAL OVERVIEW

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Abstract: Since the founding days of the European Coal and Steel Community, the European integration model has been designed as an open one. Therefore, the enlargement of the European Union from its six founding members to its current twenty-seven is considered not only a success story for the EU but for Europe as a whole. Enlargement, as a twofold process, requires adequate preparation by the acceding State and the EU's capacity to integrate the new member. Despite the transformative power of European integration (where even the prospect of membership can trigger significant reforms), the process is governed by the relatively concise Article 49 of the Treaty on European Union (TEU), which has evolved significantly in practice. The purpose of this paper is threefold. Firstly, it will elucidate the evolving character of the accession procedure. Secondly, it will analyse the balancing act between the increasing complexity of the process and the mechanisms of pre-accession assistance combined with flexibility measures. Thirdly, it will explore the role and significance of political will throughout the entire accession process.

Keywords: European Union, enlargement, Copenhagen criteria, Member State, acceding State.

1 Introduction

The enlargement of the European Union (EU) is considered not only a success story for the EU itself but also for Europe as a whole. It has been described as 'one of the most successful and impressive political transformations of the twentieth century',[1] significantly impacting both the EU and international relations within Europe.[2] According to the

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[1] Romano Prodi, 'A Wider Europe: A Proximity Policy as the Key to Stability' (Peace, Security and Stability International Dialogue and the Role of the EU, Sixth ECSA-World Conference, Brussels, 5–6 December 2002) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_02_619> accessed 19 January 2024.

[2] Frank Schimmelfennig and Ulrich Sedelmeier, 'The Politics of EU Enlargement. Theoretical and Comparative Perspectives' in Frank Schimmelfennig and Ulrich Sedelmeier (eds), *The Politics of European Union Enlargement. Theoretical approaches* (Routledge 2005) 3.

Council, the commitment to enlargement is a 'key policy of the European Union'.[3] In a similar vein, the European Commission has stated that 'a credible enlargement policy is a geostrategic investment in peace, stability, security and economic growth in the whole of Europe'.[4] Despite suggestions to create alternative forms of association, such as staged accession,[5] the European Political Community,[6] or to implement a fast-track procedure, the accession process enshrined in Article 49 TEU remains the sole pathway for a State aspiring to EU membership. Until the moment of accession, the aspiring State is considered a third country.[7]

After Croatia's accession on 1 July 2013, the enlargement process stalled.[8] Neither the 2018 Enlargement Strategy for the Western Balkans[9] nor the revised methodology[10] presented by the then newly appointed European Commission could reinvigorate it.[11] Despite the declaration that 'the future of the Balkans is within the European Union', the process for

[3] Council of the European Union, 'Council conclusions on enlargement and stabilisation and association process', 18 June 2019 <https://www.consilium.europa.eu/en/press/press-releases/2019/06/18/council-conclusions-on-enlargement-and-stabilisation-and-association-process/> accessed 19 February 2024.

[4] Commission, 'Communication on EU Enlargement Policy' (Communication) COM(2021) 644 final.

[5] Michael Emerson, Milena Lazarević, Steven Blockmans and Strahinja Subotić, 'A Template for Staged Accession to the EU' (2021) European Policy Centre, Centre for European Policy Studies <https://www.ceps.eu/ceps-publications/a-template-for-staged-accession-to-the-eu/> accessed 26 January 2024.

[6] The European Political Community is a cooperation platform created by the EU Member States to reaffirm support for Ukraine under attack and to structure relationship within the EU neighbourhood. This new form was not conceived according to any blueprint, and therefore Kyiv explicitly rejected the idea of the EPC as an alternative to European integration. Despite a lack of any institutional structure or even a released *communiqué*, the new formula can serve as a facilitation endeavour for candidate countries. See Sylwia K Mazur, 'Evolution of the European Political Community in Times of the EU's "Geopolitical Awakening"' (2023) 19 CYELP 79.

[7] The enlargement policy is a part of the EU's external relations.

[8] The prospect of EU membership for Western Balkan countries opened in June 2003 in Thessaloniki during the EU-Western Balkans Summit.

[9] Commission, 'A credible enlargement perspective for and enhanced EU engagement with the Western Balkans' (Communication) COM(2018) 65 final.

[10] The presentation of the revised methodology in February 2020 was followed by the adoption of the Zagreb Declaration in May 2020 which did not even mention the possibility of membership for four Western Balkan States that were in the process at that time. See Uroš Ćemalović, 'One Step Forward, Two Steps Back: The EU and the Western Balkans After the Adoption of the New Enlargement Methodology and the Conclusions of the Zagreb Summit' (2020) 16 CYELP 179.

[11] Despite the above, the 'geopolitical Commission' tried to create new enlargement momentum in reaction to influences from third countries. See European Parliamentary Research Service, 'Serbia: Pulled in Two Directions' (2019) At a Glance, <https://www.europarl.europa.eu/RegData/etudes/ATAG/2019/642247/EPRS_ATA(2019)642247_EN.pdf> accessed 18 January 2024.

countries in the region has been sluggish,[12] and the prospect of membership has weakened. Critiques frequently advanced arguments that the EU had already 'bitten off more than it can chew', that 'deepening' should happen before 'widening',[13] that enlargement had killed the federal Europe,[14] or that the EU has to 'settle down' to 'sort out the constitutional imbroglio'.[15] Scepticism regarding further accessions was expressed not only by Member States[16] but also by EU institutions. Additionally, the sense of 'enlargement fatigue' dominated EU public opinion.[17]

The situation changed dramatically when, a few days after Russia's unprovoked attack, the President of Ukraine, Volodymyr Zelenskyy, signed an application for Ukraine's membership in the European Union.[18] In June 2022, less than four months later, the European Council decided to grant candidate country status to both Ukraine[19] and the Republic of Moldova.[20] In December 2023, the European Council decided

[12] Accession negotiations were opened with Montenegro in 2012, and Serbia in 2014, but made limited progress. According to the enlargement strategy presented by the European Commission in 2018, Montenegro and Serbia should join the EU by 2025. A Commission communication issued in April 2018 recommended the opening of negotiations with Albania and North Macedonia, but the accession negotiation framework was adopted only on 18 July 2022.

[13] In an explicit manner, Jan Klabbers stated that expansion eastward cannot be explained by the need to create an 'ever closer union'. In fact, the opposite is true since every enlargement dilutes the European Union. See Jan Klabbers, 'Formal Intergovernmental Organizations' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (OUP 2016) 135.

[14] Michel Rocard, 'Elargissement: quel scénario? Terra Nova. Sortir l'Europe du blocage' (Liberation 2009) <https://www.liberation.fr/france/2009/06/02/elargissement-quel-scenario_561446/> accessed 26 January 2024.

[15] Michael Emerson, Senem Aydin, Julia De Clerck-Sachsse and Gergana Noutcheva, 'Just What Is This 'Absorption Capacity' of the European Union?' (2006) Policy Brief No 113, 1 <https://cdn.ceps.eu/wp-content/uploads/2013/02/1381.pdf> accessed 3 February 2024.

[16] The French government issued a 'non-paper' suggesting gradual association, stringent conditions and the reversibility of the process. See 'Non-Paper: Reforming the European Union Accession Process' (2019) <https://www.politico.eu/wp-content/uploads/2019/11/Enlargement-nonpaper.pdf> accessed 27 January 2024.

[17] Deniz Devrim and Evelina Schulz, 'Enlargement Fatigue in the European Union: From Enlargement to Many Unions' (2009) Real Instituto Elcano Working Paper 13/2009 <https://media.realinstitutoelcano.org/wp-content/uploads/2021/11/wp13-2009-devrim-schulz-enlargement-european-union.pdf> accessed 16 January 2024.

[18] President of Ukraine, 'Volodymyr Zelenskyy Signed an Application for Ukraine's Membership in the European Union' (28 February 2022) <https://www.president.gov.ua/en/news/volodimir-zelenskij-pidpisav-zayavku-na-chlenstvo-ukrayini-u-73249> accessed 2 February 2024.

[19] For more on Ukraine's application and its legal consequences, see Tetyana Komarova and Adam Łazowski, 'Switching Gear: Law Approximation in Ukraine After the Application for EU Membership' (2023) 19 CYELP 105.

[20] European Council, 'European Council meeting (23 and 24 June 2022) Conclusions' <https://www.consilium.europa.eu/media/57442/2022-06-2324-euco-conclusions-en.pdf> accessed 7 January 2024.

to open accession negotiations with both countries,[21] granted candidate country status to Georgia,[22] and reiterated that accession negotiations would open with Bosnia and Herzegovina, contingent upon it achieving the necessary degree of compliance with membership criteria. The European Council also reaffirmed its commitment to the EU membership perspective for the six Western Balkan partners. In short, as stated by the European Commission, Russia's war on Ukraine put EU enlargement 'to the fore of the European agenda',[23] making it a 'strategic necessity'.[24]

The purpose of this paper is to present a) the evolving character of the accession procedure, which adjusts to both internal and external factors, with special attention given to the stronger focus on fundamentals, particularly the rule of law. The centrality of the rule of law in accession negotiations is not only an extension of the political criteria set by the Copenhagen Summit in 1993 but also a compensatory measure for ineffective political conditionality in the post-accession period; b) the increasing complexity of the process, which is balanced by pre-accession assistance[25] and flexibility measures included in the accession treaties; and c) the role and significance of political will throughout the entire process. To contextualise the enlargement regulatory framework, the first part of this paper is dedicated to the notion of membership in international organisations in light of international law. This is followed by a discussion on the eligibility criteria, which has historically included only a geographical criterion. According to Article 237 of the Rome Treaty and Article O of the Maastricht Treaty, 'any European state' could apply to become a member of the Community/Union. The third part is dedicated to the accession procedure, which can vary in length. Historically, EU institutions have employed a two-step process consisting of a 'Community stage' and an 'inter-State stage'. The former involves the Commission's opinion, Parliament's assent, and the Council's decision, while the latter involves negotiating the text of the agreement and its ratification.[26] However, the author will divide the process into the following sections: (i) submitting an

[21] European Council, 'European Council meeting (14 and 15 December 2023) Conclusions' <https://www.consilium.europa.eu/media/68967/europeancouncilconclusions-14-15-12-2023-en.pdf> accessed 7 January 2024.

[22] The status was granted conditionally.

[23] Commission, '2022 Communication on EU Enlargement Policy' COM(2022) 528 final.

[24] Carl Bildt, 'The Return of EU Enlargement' (2023) Project Syndicate <https://www.project-syndicate.org/commentary/european-enlargement-returns-to-top-of-eu-agenda-by-carl-bildt-2023-07> accessed 17 January 2024.

[25] The pre-accession strategy is based on the 'comprehensive and active projection of EU norms, with a view to their effective adoption prior to admission to the Union. It is a 'post-Copenhagen product' endorsed by the 1997 Luxembourg European Council.

[26] European Parliament, 'Legal Questions of Enlargement' (Briefing No 23) <https://www.europarl.europa.eu/enlargement/briefings/23a2_en.htm> accessed 12 February 2024.

application; (ii) negotiations; and (iii) the Accession Treaty. Additionally, the paper will outline a few unwritten practices developed during the past rounds of enlargement, such as the selection of the next members from the neighbouring countries and the preference for group negotiations.[27]

2 EU membership in the light of international law

Although there is no universally accepted legal definition of an international organisation,[28] the European Union possesses features that set it apart from other subjects of international law. These include being an association of subjects of international law (exclusively States); being established by a treaty; pursuing common objectives (as outlined in Article 3 of the Treaty on European Union); and having organs capable of generating a distinct *volonté distincte*.[29] The Treaty of Lisbon conferred full legal personality on the EU,[30] thereby establishing it as an independent entity in its own right.

The EU is a legal community created by law, which employs law as a means of governance and is governed by the rule of law.[31] It is often classified as a supranational organisation.[32] Due to a degree of autonomous regulatory power, it is also considered a 'new legal order of international law'[33] and an autonomous 'constitutional' order.[34] Despite being also described as a *sui generis* international organisation, it does not yet constitute a distinct category of its own.[35]

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[27] Péter Balázs, 'Enlargement Conditionality of the European Union and Future Prospects' in Inge Govaere, Erwan Lannon, Peter van Elsuwege and Stanislas Adam (eds), *The European Union in the World: Essays in Honour of Professor Marc Maresceau* (Brill 2014) 532–533.

[28] The International Law Commission, in its Articles on the Responsibility of International Organisations, defines the term as an 'organization established by a treaty or other instrument governed by international law and possessing its own international legal personality. International organizations may include as members in addition to States, other entities'. Article 2(a) of Articles on the Responsibility of International Organisations (2011) *Yearbook of the International Law Commission*, 2011, vol II, Part Two.

[29] Jan Wouters, Cedric Ryngaert, Tom Ruys and Geert de Baere, *International Law: A European Perspective* (Hart 2020) 256.

[30] Article 47 of the Treaty on European Union.

[31] Anne Peters, 'International Organizations and International Law' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (OUP 2016) 33.

[32] The term has not acquired a distinct legal meaning and was even rejected by some scholars; therefore, it will not be mentioned further in the presented research.

[33] Case 26/62 *Van Gend & Loos v Netherlands Inland Revenue Administration* ECLI:EU:C:1963:1.

[34] Alec Stone Sweet, *Governing with Judges: Constitutional Politics in Europe* (OUP 2000).

[35] Fernando Lusa Bordin, 'Is the European Union a Sui Generis International Organization?' in Fernando Lusa Bordin, Andreas Th Müller and Francisco Pascual-Vives (eds), *The European Union and Customary International Law* (CUP 2022).

As an international organisation, the European Union is governed by the principle of specialty,[36] meaning it exercises powers conferred upon it by the Treaties. Under the fundamental principle of conferral outlined in Article 5 TEU, the EU acts within the limits of the competences assigned to it by its Member States to achieve the objectives set out in the Treaties. Compared to other international organisations, the EU can be classified as closed, regional,[37] and universal due to the gradual expansion of its scope of activities.[38]

The question of EU membership falls within the realm of international law[39] and is also considered to be 'inspired by the cannons of international institutional law'.[40] Membership is a common element among international organisations,[41] and yet the criteria for membership diverge considerably. On the one hand, certain organisations permit accession through the unilateral declaration of intent by a prospective member state; on the other hand, some prescribe a stringent and procedurally complex accession process grounded in technocratic assessments. The EU can be classified as an organisation adhering to the latter approach. Its objectives allow for the expansion of its membership.[42] The current legal basis for enlargement is enshrined in Article 49 TEU, which establishes the criteria for States seeking EU membership, and Article 2 TEU, which encapsulates the EU's founding values. The EU is a union of States, established by States, and only States can become its members.[43]

EU Member States play a double role in their relationship with the organisation: an internal and external role. Regarding the former, membership attributes include the right to participate in the activities of organs, the right to participate in decision-making processes, and, for Member States' representatives, the right to stand for elections, and the right to be elected to those organs.[44] Regarding the latter, States are the

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[36] Malcolm M Shaw, *International Law* (CUP 2017) 998.

[37] Some authors qualify regional organisations as types of closed organisations. See Henry G Schermers and Niels M Blokker, *International Institutional Law* (Brill/Nijhoff 2018) 57.

[38] Wouters and others (n 29) 258.

[39] James Crawford and Alan Boyle, 'Annex A. Opinion: Referendum on the Independence of Scotland – International Law Aspects' (2013) UK Government, 98.

[40] Christophe Hillion, 'Accession and Withdrawal in the European Union Law' in Damian Chalmers and Anthony Arnull (eds), *The Oxford Handbook of European Union Law* (OUP 2015) 129.

[41] Schermers and Blokker (n 37) 65.

[42] ibid 59.

[43] Nowadays, international organisations are also (establishing) members of other international organisations. See Wouters and others (n 29) 263; Schermers and Blokker (n 37) 65.

[44] Stephen Mathias and Stadler Trengove, 'Membership and Representation' in Jacob Katz Cogan, Ian Hurd and Ian Johnstone (eds), *The Oxford Handbook of International Organizations* (OUP 2016) 972–973.

counterparts of the organisation on the international stage. The law of international organisations also addresses 'duties of good membership' or 'duties of loyal cooperation'.[45] In the case of the European Union, the duty of sincere cooperation is enshrined in Article 4(3) TEU. This duty imposes a mutual legal obligation on the EU and its Member States to 'assist each other in carrying out the tasks arising from the Treaties'. This is considered a key constitutional principle of the European Union.

The EU does not provide for modalities of membership, such as associated membership, observer status, or consultative status,[46] nor does it differentiate between 'original' and 'additional' members or employ any other two-tiered membership system. From a legal standpoint, the rights and obligations of 'old' and 'new' Member States are the same.

Membership in the European Union can be terminated.[47] To date, only one Member State,[48] the United Kingdom, has decided to withdraw from the European Union.[49] The Treaties do not explicitly mention the possibility of suspending membership. However, under Article 7(3) TEU, the Council, acting by a qualified majority, may decide to suspend certain rights derived from the application of the Treaties, including crucial voting rights of the Member State in the Council. This option, often referred to as 'nuclear', has not yet been applied in practice.

3 Eligibility criteria

According to Article 49 TEU, an applicant country must be a European State,[50] thereby imposing a geographical limitation. This requirement reflects the EU's objective from the Preamble to create an 'ever closer union' among Europeans. Additionally, the applicant must respect and commit to the values outlined in Article 2 TEU. These values include

[45] Tleuzhan Zhunussova, 'What Does It Take to Be a Loyal Member? Revisiting the "Good Membership" Obligations in the Law of International Organizations' (2022) 14 Eur J Legal Stud 65.

[46] With the exception of 'acceding country' status, which will be described below.

[47] Under Article 50 TEU, 'any Member State may decide to withdraw from the Union in accordance with its own constitutional requirements'. For more on the withdrawal process, see Christophe Hillion, 'Withdrawal under Article 50 TEU: An Integration-friendly Process' (2018) Common Market Law Review 55 (Special issue) 29; Hannes Hofmeister, '"Should I Stay or Should I Go?" A Critical Analysis of the Right to Withdraw from the EU' (2010) 16 European Law Journal 589.

[48] In 1985, after securing home rule from Denmark, Greenland withdrew from the European Community.

[49] The withdrawal agreement entered into force on 31 January 2020 at midnight.

[50] In 1987, the Council rejected Morocco's application on the grounds that it was not a European State. In the case of Turkey, the Parliament, the Council, and the Commission confirmed Turkey's eligibility.

human dignity, freedom, democracy, equality, the rule of law, respect for human rights (including those of minorities), a pluralistic society, non-discrimination, tolerance, justice, solidarity, and equality between women and men. The requirement that the applicant be a 'European State' was originally stipulated in Article O of the Treaty of Maastricht. While this was the sole material condition specified, its interpretation has never been unequivocally defined. According to the European Parliament, this criterion could be understood in 'geographical, cultural or political terms'.[51] It is noteworthy that some authors explicitly mention statehood as a condition.[52]

The European Union assesses the readiness of applicant States based on three accession criteria known as the 'Copenhagen criteria', which were defined by the European Council in 1993 originally for aspiring Central and Eastern European States. Despite their general nature, these criteria have become central to accession debates.[53] The criteria are divided into three groups. The political criteria require the candidate country to achieve stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for the protection of minorities. Compliance with these criteria is a prerequisite for the opening of negotiations.[54] Interestingly, even before the introduction of the Copenhagen criteria, non-democratic Portugal and Spain were excluded from the integration process. Greece had been an Associate Member of the Community since 1961; however, its membership negotiations were suspended after the military coup in April 1967. Therefore, it seems 'reasonable' that political factors are assessed in the political organisation.[55]

The economic criteria demand a functioning market economy and the ability to withstand competition and market forces. Finally, membership in the European Union presupposes the candidate's capacity to fulfil the obligations of membership. In 1995, the European Council emphasised that for 'sound preparation', the enlargement strategy must be enhanced to create conditions for 'gradual, harmonious integration'. This includes developing a market economy, adjusting the applicant's administrative structure, and establishing a stable economic and monetary

[51] European Parliament (n 26).

[52] Eg Hillion (n 40) 126.

[53] Alan Mayhew, 'Enlargement of the European Union: An Analysis of the Negotiations with the Central and Eastern European Candidate Countries' (2000) Sussex European Institute Working Papers 39 <https://www.sussex.ac.uk/webteam/gateway/file.php?name=sei-working-paper-no-39.pdf&site=266> accessed 19 March 2024.

[54] Luxembourg European Council, 'Presidency Conclusions (12 and 13 December 1997)' <https://www.europarl.europa.eu/summits/lux1_en.htm> accessed 23 March 2024.

[55] Henry G Schermers and Niels M Blokker, *International Institutional Law* (Nijhoff 2011) 81.

environment.[56] Despite criticisms that the criteria are too vague to be operational and that they go beyond the *acquis communautaire*,[57] Article 49 TEU underscores that the eligibility conditions agreed upon by the European Council must be considered, thus allowing for these conditions to diverge. Strong interference with the domestic legal system of potential members does not allow the general terms made on the applicant to be pre-determined, and so the organisation should be able to set specific conditions in each specific case.[58]

Importantly, the Copenhagen Conclusions also emphasised that the EU's capacity to absorb new members must be taken into consideration[59] to ensure that the enlargement process is balanced with the momentum of integration. However, absorption capacity[60] has never been formally added as a criterion. Moreover, there are also voices advocating against using the notion in official EU texts, which aim for precise and unambiguous meaning.[61] Yet, in June 2022 the European Council confirmed that the progress of each applicant 'will depend on its own merit in meeting the Copenhagen criteria, taking onto consideration the EU's capacity to absorb new members'.[62] It is thus a clearly functional concept.[63]

4 Accession process

Accession to the European Union is highly asymmetrical in character. Since the Treaty establishing the European Coal and Steel Community stated that 'any European State may request to accede to the present Treaty', the initiative has been on the third State aspiring for

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[56] European Council, 'Madrid European Council, 15–16 June 1995. Presidency Conclusions' <https://www.europarl.europa.eu/summits/mad1_en.htm#enlarge> accessed 22 April 2024.

[57] Commission, 'Agenda 2000 – Volume I – Communication: For a stronger and wider Union' DOC/97/6 1997.

[58] Schmers and Blokker (n 55) 86.

[59] The Union's capacity to absorb new members, while maintaining the momentum of European integration. It is an important consideration in the general interest of both the Union and the candidate countries.

[60] From its 2006–2007 enlargement strategy, the Commission uses the term 'integration capacity'. See Commission, 'Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges 2006–2007 Including annexed special report on the EU's capacity to integrate new members' (2006) <http://ec.europa.eu/enlargement/pdf/key_documents/2006/Nov/com_649_strategy_paper_en.pdf> accessed 1 April 2024.

[61] Emerson and others (n 15).

[62] European Council (n 20).

[63] Tanja A Börzel, Antoaneta Dimitrova and Frank Schimmelfennig, 'European Union Enlargement and Integration Capacity: Concepts, Findings, and Policy Implications' (2017) 24 Journal of European Public Policy 160.

membership. This aspiring State typically has more interest in acceding than the EU has in enlarging[64] and must accept the existing set of rules before having the possibility to shape them.[65] Accession is not granted automatically, as it depends on the adequate preparation of the applicant State. The mechanism itself is intricate and formalistic, yet it also serves as a trust-building exercise between the acceding State and the EU.[66]

According to the European Commission, accession conditions must be 'objective, precise, detailed, strict and verifiable'.[67] Although negotiations, a crucial part of the process, are now perceived as a technical process, with the European Commission playing a dominant role, the procedure has become more demanding than in the past, with increased involvement and scrutiny from the Council and Member States. Not only have instances of unanimous decision-making throughout the process multiplied, but Member States are instrumentalising the membership possibility to leverage their domestic interests. Furthermore, it is predominantly a political process initiated by the aspiring State and concluded with the primarily political decision of the international organisation to admit the applicant State.[68] As early as 1977, the European Parliament described the reception of official applications from Greece and Portugal as favourable primarily for political reasons.[69]

4.1 Submitting an application

An aspiring State that wishes to join the European Union addresses its application to the rotating EU Council Presidency. Crucially, the right to lodge an application for accession does not equate to the right to accede to the European Union. The European Parliament and national parliaments are notified of this application as a new procedural element added by the Lisbon Treaty. The European Commission is then formally invited to assess the application based on established criteria and conditions. It is worth noting that the Council does not pass the application directly to

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[64] Wojciech Sadurski, 'EU Enlargement and Democracy in New Member States' in Wojciech Sadurski, Adam Czarnota and Martin Krygier (eds), *Spreading Democracy and the Rule of Law? The Impact of EU Enlargement on the Rule of Law, Democracy and Constitutionalism in Post-communist Legal Orders* (Springer 2006) 27.

[65] Kristi Raik, 'The EU as a Regional Power: Extended Governance and Historical Responsibility' in Hartmut Meyer and Henri Vogt (eds), *A Responsible Europe? Ethical Foundations of EU External Affairs* (Palgrave Macmillan 2006) 85.

[66] Jan Truszczyński, *Do czego zobowiązała się Polska, wstępując do Unii Europejskiej* (My Obywatele Unii Europejskiej 2020).

[67] Commission (n 4).

[68] Schermers and Blokker (n 37).

[69] European Parliament, 'EC-Accession of Four Mediterranean Countries and Regional Policy' (October 1977) <https://www.europarl.europa.eu/RegData/etudes/etudes/join/1977/049154/IPOL-REGI_ET(1977)049154_EN.pdf> accessed 21 March 2024.

the Commission; instead, it first assesses the admissibility of the application before the other two institutions can produce their assessments.[70]

In its *Avis*, the European Commission thoroughly analyses the applicant country's legal and constitutional framework and the implementation of its legislation against the entire *acquis*.[71] This analysis is prepared based on a detailed questionnaire.[72] The Commission then presents its recommendations for further steps. If the country does not sufficiently meet the membership criteria, the Commission outlines specific reforms (key priorities) that the applicant country needs to implement.[73] If the Commission's Opinion is favourable, the Council may decide to grant the country candidate status. Following a recommendation by the Commission, the Council also decides whether to open negotiations. Both decisions by the Council are taken unanimously. Given the Council's requirement for unanimous agreement among all EU Member States, it can safely be assumed that throughout the process, the Council operates as an agent of the Member States.[74]

Once a candidate country sufficiently fulfils the political criteria, the European Commission recommends opening the negotiations. The Council is neither bound by the recommendation from the European Commission nor by the agreement of the European Parliament. In fact, the Council can agree to open accession negotiations even in cases where the political criteria are only met 'sufficiently'.[75]

4.2 Negotiations

Following the issuance of a negotiating mandate to the European Commission by the Council, the first step involves the European Commission proposing a negotiation framework. This framework consists of

[70] Hillion (n 40) 132.

[71] The term is used to describe the collection of common rights and obligations that constitute the body of EU law. The EU *acquis* evolves over time and includes, among other things, the content, principles and political objectives of the EU Treaties; any legislation adopted to apply those treaties and the case law developed by the Court of Justice of the European Union; and declarations and resolutions that are adopted by the EU.

[72] The questionnaire consists of questions aimed at providing information in regard to political and economic criteria, compliance with EU legislation and information on the institutional and administrative capacity necessary for the acceptance and implementation of the EU's legislation in each of the policy areas of the EU *acquis*.

[73] For example, in the case of Ukraine's application, the Commission's Opinion outlined seven steps which needed to be addressed in order to progress on the path to the EU. See Commission, 'Commission Opinion on Ukraine's application for membership of the European Union' (Communication) Brussels COM(2022) 407 final 2022.

[74] Hillion (n 40) 126.

[75] For example, the Commission was hesitant to start negotiations with Greece. However, the Council decided to open negotiations anyway.

principles governing the accession negotiations, the substance of negotiations, and the negotiation procedure. The framework needs to be unanimously adopted by the Council. The Commission delivers a 'screening' report for each chapter, examining the candidate's ability to meet the requirements of the *acquis*. The negotiations then take place in an intergovernmental conference involving ministers and ambassadors of the Member States and the candidate country. This conference marks the formal start of the accession negotiations. At this stage, the accession negotiation framework is made public.

The *acquis communautaire* is divided into policy chapters to facilitate thematic negotiations. Based on the Commission's recommendation, the Council decides unanimously whether or not to open additional negotiating chapters or clusters. Whenever the candidate country makes satisfactory progress, the Commission may recommend provisionally closing a chapter or cluster. The European Commission has established criteria for the provisional closure of negotiating chapters. These criteria include full acceptance of the EU *acquis*, the absence of requests for transitional periods, satisfactory answers to EU questions, the global character of negotiations, and satisfactory progress in preparations for accession.[76] As the European Commission has pointed out, candidate countries 'attach increasing importance to the provisional closure of negotiations', driven by the political need to demonstrate progress.[77]

Under the revised methodology[78] from February 2020, the thirty-three negotiating chapters were divided into six clusters.[79] The European Commission decided to put rule-of-law issues at the centre of this methodology. The negotiating chapters on Judiciary and Fundamental Rights (Chapter 23) and on Justice, Freedom and Security (Chapter 24) are to be opened at an early stage and closed last. Additionally, interim benchmarks for both of these chapters were introduced. Under the revised methodology, no chapter can be closed if the interim benchmarks for the rule-of-law chapters have not been met.

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[76] Commission, 'Composite Paper. Reports on progress towards accession by each of the candidate countries' COM (99) 500 final.

[77] ibid.

[78] Originally, the revised methodology was to be formalised into negotiating frameworks for North Macedonia and Albania, but after acceptance by Montenegro and Serbia, the Council agreed on its application to the accession negotiations with those two countries. See Council of the European Union, 'Application of the revised enlargement methodology to the accession negotiations with Montenegro and Serbia', Brussels, 6 May 2021 <https://data.consilium.europa.eu/doc/document/ST-8536-2021-INIT/en/pdf> accessed 10 March 2024.

[79] Fundamentals; Internal market; Competitiveness and inclusive growth; Green agenda and sustainable connectivity; Resources, agriculture and cohesion; and External relations.

Analysing the evolution of the accession procedure, the growing importance of the rule of law has become one of its hallmarks. As early as 1997, at the European Council, EU leaders stated that compliance with the political criteria is a prerequisite for the opening of negotiations.[80] In 2009, the Council of the European Union underlined the significance of the rule of law in the negotiation process, presenting it as a 'major challenge' that must be addressed from the early stages of negotiations.[81] In 2014, the Council highlighted the 'central importance of the rule of law', also in the economic context.[82] Political conditionality characterising the accession process was long perceived as 'the only genuine example of external pressure leading to in-depth democratization',[83] whereas accession was seen as an indicator of completed consolidation.[84] However, democratic backsliding in the enlarged EU cast doubt over the post-accession sustainability of reforms. It affects the current process. Already four potential Member States, namely Albania, Montenegro, North Macedonia, and Serbia, are covered by the latest annual rule-of-law report.[85] Pursuant to the political guidelines for the 2024-2029 European Commission, the rule of law and fundamental values will continue to be cornerstones of the EU's enlargement policy.[86] Interestingly, in the current phase, the EU explicitly states that the embracement and promotion of EU values include alignment with the EU's common foreign and security policy,[87] which is understandable given the EU's aspirations on the global scene.[88]

Throughout the process, the European Commission is responsible for monitoring the progress of the candidate State's convergence. It

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[80] Council of the European Union (n 54).

[81] Council of the European Union, 'Council conclusions on enlargement/stabilisation and association process 2984th General Affairs Council meeting', Brussels, 7 and 8 December 2009.

[82] Council conclusions on Enlargement and Stabilisation and Association Process, General Affairs Council meeting Brussels, 16 December 2014.

[83] Jørgen Møller and Svend-Erik Skaaning, *Democracy and Democratization in Comparative Perspective: Conceptions, Conjunctures, Causes, and Consequences* (Routledge 2013) 154.

[84] Wolfgang Merkel, 'Plausible Theory, Unexpected Results: The Rapid Democratic Consolidation in Central and Eastern Europe' (2008) 2 Internationale Politik und Gesellschaft 11.

[85] Commission, '2024 Rule of Law Report' (Communication) COM(2024) 800 final.

[86] Ursula von der Leyen, 'Europe's Choice. Political Guidelines for the Next European Commission 2024-2029' (2024) <https://commission.europa.eu/document/download/e6cd4328-673c-4e7a-8683-f63ffb2cf648_en?filename=Political%20Guidelines%202024-2029_EN.pdf> accessed 12 March 2024.

[87] In the latest enlargement package, the Commission noted that Albania, Montenegro, North Macedonia and Bosnia and Herzegovina had reached or maintained full CFSP alignment, whereas Georgia, Serbia and Turkey kept a low alignment rate. See Commission (n 4).

[88] Already before the 2004 enlargement, the European Commission proposed the creation of a European Conference where the EU Member States and applicant States would consult on arising issues.

informs the Council and the European Parliament through progress reports[89] on the developments in the adoption and implementation of the *acquis*. The annual enlargement report, which covers the progress made by all countries in the process, is usually published in October.[90] This report is created based on the Commission's monitoring of the situation in each country, input from the EU delegation, and other sources.[91] The European Parliament, which has significant influence regarding the financial aspects of accession,[92] issues resolutions in response to the Commission's country reports. It also maintains bilateral relations with the parliaments of countries in the process to discuss issues relevant to integration.[93]

Accession negotiations can be suspended in cases of 'serious and persistent breaches of the principles of liberty, democracy, respect for human rights, fundamental freedoms, and the rule of law'.[94] In its revised methodology, the European Commission envisages situations of 'prolonged stagnation' or even backsliding in reform implementation in the acceding State. In such situations, the Commission takes decisive measures, such as halting or reversing the process which must be proportionate. The reversibility approach[95] also allows for the reopening or resetting of closed negotiating chapters.

4.3 Accession Treaty

When negotiations on all chapters or clusters of chapters are completed, a drafting committee creates an Accession Treaty, which comprises three elements: the treaty itself, the Act of Accession, and a Final Act. This treaty represents 'the only gate to EU membership' for the acceding

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[89] In June 2023, the European Commission extraordinarily gave an oral update on Ukraine's progress. See Olivér Várhelyi, Press remarks by Neighbourhood and Enlargement Commissioner, following the informal General Affairs Council <https://ec.europa.eu/commission/presscorner/detail/en/statement_23_3460> accessed 18 February 2024.

[90] In 2023, the report was published in November.

[91] Other sources include contributions from the EU Member States and from the governments of the countries, European Parliament reports, and various international and non-governmental organisations.

[92] Its budgetary powers give it direct influence over the amounts allocated to the Instrument for Pre-accession Assistance.

[93] Parliament also appoints standing rapporteurs for all candidate and potential candidate countries.

[94] Commission, 'Enlargement Strategy and Main Challenges 2006–2007 including annexed special report on the EU's capacity to integrate new members' (Communication) COM(2006) 649 final.

[95] The reversibility approach was also mentioned in the French non-paper where the steps taken by the European Union would vary from a suspension of the benefits granted to a step backward or even general suspension. See Non-Paper (n 16) 2–3.

country.[96] It incorporates terms and conditions, including possible safeguard clauses and transitional arrangements, and serves as a primary source of EU law.[97] The Accession Treaty between the Member States and the acceding country may be interpreted and enforced by the European Court of Justice but cannot be declared invalid.

Only after the European Parliament gives its consent can the Council unanimously approve the treaty draft. The European Commission provides a position on the draft; however, this position is not binding on the Council. Importantly, an Accession Treaty sets the conditions for all acceding countries, meaning that it is a general framework rather than a mechanism for deciding on an individual application. If ratification of a treaty fails in the Member State, the entire enlargement process is vetoed. Apart from terms and conditions, safeguard clauses, transitional arrangements, and deadlines, the Accession Treaty includes details of financial arrangements. In its legal character, it can be considered hybrid,[98] meaning that it is an international agreement between Member State(s) and acceding State(s), which has the status of primary law, but also includes provisions concerning the aforementioned transitional arrangements and adjustments to secondary legislation.

In the end, the Accession Treaty is signed by representatives of all Member States and the candidate country or countries. The last step involves submission by all contracting States for ratification in accordance with their respective constitutional requirements (eg, a referendum[99] or ratification by parliament). If an acceding country fails to ratify the Treaty of Accession, the Council can unanimously decide on adjustments or declare that provisions explicitly referring to a State that has not deposited its instruments of ratification have lapsed. This allows the Treaty of Accession to enter into force for States that have deposited their instruments.[100] International organisations may not interfere with the national acceptance process,[101] so establishing membership is a genuinely bilateral act. The Accession Treaty enters into force when it has been ratified by all EU Member States and the acceding country, which then becomes a full member of the EU on the date provided in the treaty.

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[96] Truszczyński (n 66).

[97] Primary law is the supreme source of law in the EU.

[98] ibid.

[99] Before the 2004 enlargement, ratification of the Accession Treaty in the nine acceding countries (with the exception of Cyprus) was linked to the outcome of a referendum.

[100] This is the so-called 'Norwegian clause'. See Peter van Elsuwege, *From Soviet Republics to EU Member States (2 vols): A Legal and Political Assessment of the Baltic States' Accession to the EU* (Brill 2008) 355.

[101] Schermers and Blokker (n 37) 95.

From the date of accession, the provisions of the original Treaties and the secondary legislation are binding on the new Member State and apply under the conditions laid down in the Treaties and the Act of Accession.[102] Pursuant to the principle of an integrated package, the applicant State must accede to all the Treaties. The rationale behind this requirement is perfectly clear: it upholds the integrity of the European Union.[103]

Due to ongoing discussions on the need to reform the European Union before the next enlargement and in light of geopolitical challenges,[104] it is crucial to emphasise that an Accession Treaty should only involve necessary adjustments. In *Koening*, the European Court of Justice ruled that 'no provision in the Treaty of Accession or in the accompanying Act can be interpreted as validating measures, regardless of their form, that are incompatible with the Treaties establishing the Communities'.[105]

Although, as previously mentioned, the EU does not differentiate its member status, it does recognise the status of an 'acceding State', which can be likened to the status of an 'active observer' in various international organisations. An acceding State is one that has completed the accession procedure and signed the Treaty of Accession. Before becoming a full Member State on the date specified in the Treaty, the acceding country is kept informed of EU legislation and has the opportunity to comment on proposals, communications, recommendations, and initiatives. Additionally, in relevant bodies, it has the right to speak but not the right to vote.[106] This dichotomy, where the State has all the obligations under new EU laws but none of the rights, can be a source of frustration.[107]

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[102] The Accession Treaty is followed by an Act of Accession which defines the *acquis* to be accepted and the level of representation in different EU institutions.

[103] European Parliament (n 26).

[104] Christian Calliess, 'Reform the European Union for Enlargement!' (*Verfassungsblog* 2023) <https://verfassungsblog.de/reform-the-european-union-for-enlargement/> accessed 23 May 2024; European Parliamentary Research Service, Enlargement policy: Reforms and challenges ahead, Briefing 2023 <https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/757575/EPRS_BRI(2023)757575_EN.pdf> accessed 28 May 2024; Franco-German Working Group on EU Institutional Reform, 'Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century' (Paris-Berlin 2023) <https://www.politico.eu/wp-content/uploads/2023/09/19/Paper-EU-reform.pdf> accessed 21 May 2024.

[105] Case C-185/73 *Hauptzollamt Bielefeld v König* ECLI:EU:C:1974:61.

[106] Commission, 'Acceding countries' (European Neighbourhood Policy and Enlargement Negotiations), <https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/acceding-countries_en> accessed 14 April 2023.

[107] For example, the Treaty on Accession of Croatia provided that the Commission would closely monitor Croatia's commitments in the accession negotiations, including those which had to be achieved before or by the date of accession. See Frank Emmert and Sinisa Petrović, 'The Past, Present and Future of EU Enlargement' (2014) 37 Fordham International Law Journal 1402.

5 Flexibility measures in the enlargement process

In the event of difficulties arising from the adoption of the EU *acquis*, Member States have preferred to use flexibility measures instead of renegotiating the *acquis*, unless renegotiation would forward further integration[108]. The EU has demonstrated its flexibility regarding the enlargement process by expanding the range of applied instruments, including general safeguard clauses, a 'super' safeguard clause, post-accession monitoring mechanisms, and country-tailored conditions.

5.1 General safeguard clauses

The purpose of general safeguard clauses is to address difficulties arising in any sector of the economy for up to three years from the date of accession. Authorised measures under these clauses can lead to derogations from the rules of the TEU, TFEU, and the Accession Act. The general safeguard clause used in the 2004, 2007, and 2013 Accession Acts allowed a new Member State to apply for authorisation to take protective measures in the case of serious and persistent difficulties in any sector of the economy or in the event of a situation that could cause serious deterioration in the economic conditions of a particular area. Additionally, any Member State could apply for authorisation to take protective measures. It is the Commission's responsibility to determine the protective measures, the conditions for their implementation, and their modalities. These measures should be the least disruptive to the functioning of the common market.

5.2 Special safeguard clauses

Special safeguard clauses were first introduced in the 2004 Accession Treaty, covering two key areas: infringements of the internal market and the area of freedom, security, and justice. At that time, the internal market clause was considered a last-resort tool. Both measures were limited to a three-year period following accession, although they could extend beyond this period if relevant commitments were not fulfilled. These measures were employed in subsequent enlargements as well. The European Commission invoked the internal market safeguard clause for the first time before the 2007 enlargement, specifically in response to shortcomings in the Bulgarian aviation sector. This marked a significant moment in the application of safeguard clauses, demonstrating the EU's

[108] Christophe Hillion, 'EU Enlargement' in Paul Craig and Gráinne de Búrca (eds), *The Evolution of EU Law* (OUP 2011) 192.

commitment to maintaining high standards and addressing issues proactively in the accession process.

While announcing Bulgaria and Romania's membership, the European Commission gave a reminder that safeguard clauses from the Accession Treaty can be used by the Commission and stated that both countries have to report bi-annually on progress in addressing specific benchmarks until they were met.[109] Due to the lower preparedness of Bulgaria and Romania, the special safeguard clauses were strengthened to ensure closer scrutiny and compliance with EU standards. Among the safeguard clauses was an unprecedented measure that allowed the Council of the EU to impose a 12-months delay of membership for either or both countries.[110] The measure could be used by the Council (by unanimity) if there was 'clear evidence that the state of preparations or adoptions and implementation of the *acquis* in Bulgaria or Romania [was] such that there [was] a serious risk of either of those States being manifestly unprepared to meet the requirements of membership by the date of accession of 1 January 2007 in a number of important areas'.

5.3 Transitional arrangements

Transitional arrangements are flexibility measures allowing for a delay in the implementation of the *acquis* after accession. They serve as an extension of the EU's pre-accession conditionality.[111] These specific arrangements, limited in time and scope, are designed to enable smooth integration. The majority of them are to the candidate's advantage, since applicants cannot be expected to apply the entire *acquis* on accession day. They can also serve to soothe public sentiment in candidate States caused by the fear of accession. The second type is to the candidate's disadvantage, such as, for example, those related to the freedom of movement of workers. Nevertheless, they should be kept to a minimum[112] and should be accompanied by a timetable for progressive achievement.[113]

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[109] Olli Rehn, 'Bulgaria and Romania to Become Member States in the EU' (Presentation in the EP Strasbourg, 26 September 2006) <https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_06_533> accessed 19 April 2009.

[110] According to Adam Łazowski, the postponement safeguard clause played a crucial political role serving as 'a stick to discipline the forthcoming members in their last minute pre-accession efforts'. See Adam Łazowski, 'And Then They Were Twenty Seven... A Legal Appraisal of the Sixth Accession Treaty' (2007) 44 Common Market Law Review 416.

[111] Kirstyn Inglis, 'The Union's Fifth Accession Treaty: New Means to Make Enlargement Possible' (2004) 41 Common Market Law Review 937.

[112] Truszczyński (n 66).

[113] Alan Mayhew 'Enlargement of the European Union: An Analysis of the Negotiations with the Central and Eastern European Candidate Countries' (2000) SEI Working Papers (39) 12–13.

5.4 Cooperation and Verification Mechanism

For Bulgaria and Romania, the process of accession was delayed by nearly three years due to concerns about corruption, the fight against organised crime, and criminal justice systems. When they finally accessed the European Union, it happened without these two countries fully meeting the accession criteria. In 2016 the European Court of Auditors admitted that both countries joined despite the auditors' negative opinion.[114] Since both countries had to continue changes in the areas of judicial reform, corruption and organised crime (the case of Bulgaria), the European Commission underlined the need for 'further tangible results' and in 2006 established a Cooperation and Verification Mechanism (CVM) which allowed for the continuity of assessment of Bulgaria and Romania. The Commission's assessments were based on analysis and on monitoring and dialogue with the two new Member States. Other EU Member States, NGOs, independent experts and international organisations were also involved. Apart from the assessment, reports included recommendations. In 2019 the last report for Bulgaria was issued. As of Romania, it met the CVM commitments in 2022.[115]

6 Plural accession

According to research, the EU prefers to negotiate with groups of States that have already established relations with one another.[116] The accession process can be advanced not only by good relations between Member States and a candidate country or a group of candidate countries,[117] but also by fostered links between aspiring States.[118] As early as 1994, the European Council emphasised the importance of 'cooperation between the associated countries for the promotion of economic development and good neighbourly relations' to ensure they can assume their responsibilities as future Member States.[119]

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[114] Georgi Gotev, 'Romania and Bulgaria Were Not Ready for Accession, EU Auditors Confess' (*Euractiv* 2016) <https://www.euractiv.com/section/enlargement/news/auditors-romania-and-bulgaria-were-not-ready-for-accession/> accessed 12 March 2024.

[115] Commission, 'The reports on progress in Bulgaria and Romania' <https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/upholding-rule-law/rule-law/assistance-bulgaria-and-romania-under-cvm/reports-progress-bulgaria-and-romania_en> accessed 19 April 2024.

[116] Andreas Staab, *The European Union Explained: Institutions, Actors, Global Impact* (Indiana University Press 2013) 36.

[117] Eli Gateva, *European Union Enlargement Conditionality* (Palgrave Macmillan 2015).

[118] Staab (n 116).

[119] European Council, European Council Meeting on 9 and 10 December 1994 in Essen <https://www.europarl.europa.eu/summits/ess1_en.htm#ext> accessed 27 February 2024.

With numerous candidate countries, it is challenging to ensure even progress. In Agenda 2000, the European Commission emphasised that each country would be evaluated based on its own progress. Pursuant to the so-called regatta approach, negotiations at that time were started only with five countries.[120] Before the 2004 enlargement, it was pointed out that countries advanced in their reform efforts cannot be obliged to wait for those that are slower in their progress.[121] Similarly, in the current phase, the Council stressed that the progress of each country would depend on its own merit in meeting the Copenhagen criteria and the EU's absorption capabilities.[122] The European Union will, however, need to apply conditionality consistently and credibly. As noted by the European Council in 1997, all States in the process are 'destined to join the European Union on the basis of the same criteria' and participate in the process on an 'equal footing'.[123]

With the current number of States in the accession process, the possibility of a second 'big bang enlargement' to the East is increasingly plausible considering that currently ten States are in the process, including six in the Western Balkans,[124] three from the Association Trio,[125] and Turkey.[126] In this regard especially interesting is the situation in the Western Balkans where neighbourly relations and regional cooperation are pillars of the Stabilisation and Association Process (SAP) and enlargement process. According to the European Commission, the list of outstanding bilateral issues includes border issues, justice to war victims, identifying remaining missing persons, and establishing records of past atrocities.[127] Interestingly, the conviction among policy makers and experts that crisis

[120] Czech Republic, Hungary, Poland, Slovakia and Estonia.

[121] Agence Europe, 'EU/Enlargement. Applicant Countries that Have Made Further Progress Do Not Have to Wait for Others, Say Mr Kinkel and Mr Schussels' 23 July 1997.

[122] European Council meeting (23 and 24 June 2022) – Conclusions. Brussels, 24 June 2022, EUCO 24/22 <https://www.consilium.europa.eu/media/57442/2022-06-2324-euco-conclusions-en.pdf> accessed 19 April 2024; Presidency Conclusions, European Council Meeting in Laeken, 14 and 15 December 2001 <https://www.consilium.europa.eu/media/20950/68827.pdf> accessed 17 April 2024.

[123] Luxembourg European Council, 'Presidency Conclusions (12 and 13 December 1997)' <https://www.europarl.europa.eu/summits/lux1_en.htm> accessed 23 March 2024.

[124] Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia and Kosovo which is a potential candidate.

[125] Ukraine, Georgia and Moldova. However, due to action taken by the Georgian government, the process has been suspended. In its latest 'Enlargement package', the Commission noted insignificant progress on the implementation of the nine steps that had been set by the European Commission.

[126] Negotiations with Türkiye have been at a standstill due to the deterioration of democratic standards.

[127] Commission, 'Communication on EU Enlargement Policy' (Communication) COM(2021) 644 final.

mitigation measures lie in their economies[128] was one of the pillars of the SAP launched in 2000. Established separately from the EU accession negotiations, its aims were to help prepare Western Balkan States for eventual EU membership. SAP introduced the second – after the Copenhagen criteria, set of conditions for membership, therefore introducing double conditionality. According to the European Commission, this enhancement of rigour should help the countries tackle the advanced challenges they face throughout their reforms.[129] Although it sets out common goals, each country's progress is evaluated on its own merits.

Interestingly, the future case of plural accession would mark a departure from the enlargement strategy set in 2005, which stated that there would be 'no further enlargement with a large group of countries at the same time'.[130]

7 Conclusions

Membership in the European Union creates rights and obligations not only for the State but also for its citizens, business entities, and other organisations. From the date of accession, the provisions of the original Treaties and the secondary law become binding on the new Member State and apply under the conditions laid down in the Treaties and the Act. Over time, the accession process has evolved and adjusted to both internal and external factors. Each enlargement adds a layer of complexity for subsequent candidates. Moreover, the volume of the *acquis*, which candidate countries must accept before they can join the EU is constantly evolving and continues to grow until and beyond the country's accession. Therefore, the EU prefers candidate countries to adopt and implement as much of the *acquis* as possible prior to membership. Unsurprisingly, the implementation of the *acquis* is a crucial part of the negotiations.

Although negotiations are perceived as a technical process, with the European Commission playing a dominant role, they have clearly become more demanding than in the past, involving more scrutiny from the Council and the Member States.[131] Furthermore, it is a predominantly political process initiated by the aspiring State and concludes with a

[128] Bartlomiej Kaminski and Manuel de la Rocha, 'Stabilization and Association Process in the Balkans: Integration Options and their Assessment' (2003) World Bank Policy Research Working Paper 3108 <https://documents1.worldbank.org/curated/ru/873921468771103431/105505322_20041117165013/additional/multi0page.pdf> accessed 27 March 2024.

[129] Commission, *Revised Enlargement Methodology: Questions and Answers* <https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_182> accessed 12 November 2023.

[130] Commission, '2005 Enlargement Strategy Paper' (Communication), COM (2005) 561 final.

[131] Albeit no preparations for this have been made so far.

primarily political decision by the international organisation to admit the applicant State.[132] This organisation – the European Union – sets the conditions for assistance and ultimately for accession.[133] The nature of the conditionality gives the European Union stronger influence over various policies and processes than those typically falling under Union competence in the existing EU. Therefore, EU institutions must preserve credibility throughout the process to sustain reform momentum and public support in the aspiring State. The risk of refusal by the organisation may slow the process and diminish public support for accession.

Additionally, they need to develop new instruments of flexibility and enhance pre-accession support. This involves creating mechanisms that can address the specific challenges faced by candidate countries while ensuring that the enlargement process remains rigorous and credible. The EU has demonstrated flexibility in the past by expanding its range of instruments, such as safeguard clauses, 'super' safeguard clauses, post-accession monitoring mechanisms, and country-tailored conditions, and must continue to innovate to effectively manage future enlargements.

Suggested citation: SK Mazur, 'On the Verge of the Next EU Enlargement. Accession Legal Framework: Conceptual Overview' (2024) 20 CYELP 105.

[132] Schermers and Blokker (n 37) 94.

[133] Ulrich Sedelmeier and Helen Wallace, 'Eastern Enlargement: Strategy or Second Thoughts?' in Helen Wallace and William Wallace (eds), *Policy-Making in the European Union: The New European Union Series* (OUP 2000) 427.