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Rethinking European Integration Beyond Accession

**How to build new momentum for integration in a new geopolitical
context**

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I. Abstract

The European Union's enlargement policy operates within a complex and evolving geopolitical landscape, offering both opportunities and challenges. This shifting environment significantly influences the EU's approach to and management of its enlargement policy. Currently, the geopolitical backdrop in Europe and its neighbouring regions is marked by dynamic power shifts and intricate security complexities. The EU's enlargement strategy now operates in a sphere where Russia's assertiveness, conflicts in Ukraine and the South Caucasus, and regional disputes, particularly in the Western Balkans, introduce uncertainties and complexities. These developments have profound implications for the stability and security of candidate and potential candidate countries.

The EU has traditionally relied on a conditionality-based approach in its enlargement policy, requiring candidate countries to meet specific criteria related to democracy, the rule of law, human rights, and economic reforms. In the current geopolitical context, maintaining a robust and consistent application of these conditions is vital to ensure that aspirant members genuinely embrace EU values and norms.

However, while the desire of numerous Eastern partners in Europe to align with European values acts as a motivating factor for their internal democratic improvements, the EU's involvement in the region can sometimes worsen geopolitical instability, casting doubt on the prospects for democratic change and eventual European integration.

Recent events, including Russia's aggression against Ukraine and the EU's decision to grant candidate status to Ukraine and Moldova in 2022, have sparked discussions about accelerating the EU integration process for Western Balkan candidate and potential candidate countries. Nonetheless, the experiences of the Western Balkans accession process highlight the difficulty of reconciling rapid accession with the rigorous process of aligning with EU rules and standards.

In light of these challenges, there is a need to reconsider European integration beyond mere membership, encompassing a comprehensive, long-term strategy that accounts for the geopolitical dimension and addresses the legitimate European aspirations of the Balkans and Eastern Partnership states. This could involve expanding the multilateral track of enlargement policy and the European Neighbourhood Policy by introducing a new political and security pillar for discussion on these matters.

II. List of abbreviations

AA	Association Agreement
AP	Accession Partnership
CEE	Central and Eastern Europe
CEPS	Centre for European Policy Studies
CESEC	Central and South Eastern Europe Energy Connectivity
CFSP	Common Foreign and Security Policy
COP	Conference of the Parties
CSDP	Common Security and Defence Policy
DCFTA	Deep and Comprehensive Free Trade Area
EaP	Eastern Partnership
EBRD	European Bank for Reconstruction and Development
EC	European Communities
ECJ	European Court of Justice
ECSC	European Coal and Steel Community
EDC	European Defence Community
EEA	European Economic Area
EEAS	European External Action Service
EEC	European Economic Community
EIB	European Investment Bank
ENP	European Neighbourhood Policy
EPC	European Political Community
HR	High Representative of the Union for Foreign Affairs and Security Policy
IFI	International Financial Institution
IGC	Inter-Governmental Conference
IPA	Instrument for Pre-accession Assistance
MFF	Multiannual Financial Framework
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
PESCO	Permanent Structured Cooperation
SAA	Stabilisation and Association Agreement
SAC	Stabilisation and Association Council
SAP	Stabilisation and Association Process
SGUA	Support Group for Ukraine
TEU	Treaty on European Union
WBIF	Western Balkans Investment Framework

III. Introduction

The European Union's enlargement policy is operating in a novel and intricate geopolitical setting, presenting both opportunities and challenges. This evolving landscape significantly impacts how the EU approaches and administers its enlargement policy. Presently, the geopolitical environment in Europe and its neighbouring regions is marked by shifting power dynamics and security complexities. The EU's enlargement strategy now functions in a space where Russia's assertiveness, conflicts in Ukraine and the South Caucasus, and regional disputes, especially in the Western Balkans, introduce uncertainties and intricacies. These developments hold significant ramifications for the stability and security of candidate and potential candidate countries.

The EU has traditionally relied on a conditionality-based method in its enlargement policy, necessitating candidate countries to fulfil specific criteria concerning democracy, the rule of law, human rights, and economic reforms. In the current geopolitical context, upholding a robust and consistent application of these conditions is vital to ensure that aspirant members genuinely embrace EU values and norms.

However, although the desire of numerous Eastern partners for European integration motivates their domestic democratic changes, the EU's involvement in the region has the potential to worsen geopolitical instability, casting doubt on the prospects for democratic transformation and eventual European integration.

Within this context, the Western Balkans remains a region of particular significance for EU enlargement. Despite some progress, persistent issues such as unresolved conflicts, corruption, and ethnic tensions continue to present challenges. Nevertheless, EU engagement in the Western Balkans, with its potential for stability and reconciliation, remains a priority.

Concurrently, the EU must navigate its relations with neighbouring countries and major regional powers, including Russia and Turkey. Balancing cooperation with these powers and supporting the aspirations of Eastern Partnership countries can be a delicate undertaking.

Over the past decades, the EU has invested significantly in two separate processes: enlargement and neighbourhood policy. Nonetheless, the practical realities have diverged considerably from the prescribed doctrines, rendering the latter somewhat implausible.

The enlargement process has largely adhered to formal procedures, moving from recognizing membership prospects to candidate status and initiating accession negotiations. However, the process of opening and closing negotiation chapters has become considerably dysfunctional, as evidenced by the requirement for unanimity among the 27 Member States for both opening and closing each of the 35 chapters. This has rendered realistic prospects for enlargement remote, influenced by various factors, including immigration concerns, budgetary implications, fears of strained relations with Russia, and apprehensions regarding the EU's political and legal order.

The European Neighbourhood Policy, particularly the Eastern Partnership, exhibits inconsistencies in practice. Some Eastern Partnership states, such as Ukraine, Georgia, and Moldova, have advanced relationships with the EU, including Deep and Comprehensive Free Trade Agreements (DCFTAs). However, their proposals to enhance their relationship with the EU have mostly been overlooked, resulting in limited progress and discouragement for these states.

Recent events, including Russia's aggression against Ukraine and the EU's decision to grant candidate status to Ukraine and Moldova in 2022, have sparked discussions about accelerating the EU integration process for Western Balkan candidate and potential candidate countries. Nonetheless, the experiences of the Western Balkans accession process highlight the difficulty of reconciling rapid accession with the rigorous process of aligning with EU rules and standards.

The EU's enlargement process should emphasize more than just accession; it should prioritize enhancing the resilience of aspiring members. This entails bolstering institutions, promoting good governance, and fostering economic stability, with a focus on societal transformation.

Additionally, it is essential to move beyond the notion that enlargement policy or the Eastern Partnership are solely bilateral issues between the EU and partner states. This perspective impedes the effectiveness of these policies and contradicts the EU's primary objective of promoting political stability and democracy in its Eastern neighbourhood.

Given these factors, there is a need to reconsider European integration beyond mere membership, encompassing a comprehensive, long-term strategy that accounts for the geopolitical dimension and addresses the legitimate European aspirations of the Balkans and Eastern Partnership states. This could involve

expanding the multilateral track of enlargement policy and the European Neighbourhood Policy by introducing a new political and security pillar for discussion on these matters.

In this context, this study aims to answer the following question: How has the EU enlargement process evolved through the different waves of enlargement and how can new impetus be created for further EU integration in a new geopolitical context?

To address this query, a comparative examination of the historical and legal developments associated with various stages of EU enlargement will be conducted. This analysis is intended to provide insights into the current situation while allowing for the anticipation of future progress.

The proposed research builds upon existing literature concerning EU enlargement and endeavours to synthesize qualitative insights gleaned from academic works, policy documents, and case studies linked to previous enlargement waves, aiming to establish a comprehensive grasp of the subject. A comparative analysis of selected cases will be carried out to identify common trends, variations, and lessons learned.

The analysis commences with the preparations for the fifth enlargement wave toward Central and Eastern Europe during the latter part of the 1990s. This marked the introduction of the principle of conditionality, succinctly outlined in the Copenhagen criteria, for the first time.

The thesis structure will be organized as follows: in the initial chapter, the advancements made in EU enlargement legislation subsequent to the Union's fifth enlargement will be outlined. This entails examining the evolution of elements governing enlargement from the Treaties' text to the practical execution of enlargements. The central role of Article 49 TEU in regulating the enlargement process, acknowledging its inherent constraints, will be explored. Furthermore, the principles of enlargement law, with particular emphasis on the criteria that candidate countries must satisfy to attain Union membership, will be elaborated upon. Finally, the practical application and outcomes of the enlargement law as demonstrated in the EU's expansion into Central and Eastern Europe will be evaluated.

The second chapter will centre on the European Commission's endeavours to enhance the EU enlargement process in preparation for expansion into the Western Balkans. This entails focusing on the determination of conditions for EU membership, bolstering the credibility of EU membership prospects, and supporting the national capacity to fulfil EU membership requirements. The vital role of the Stabilisation and Association Process (SAP) in governing contractual relations with the Western Balkans via bilateral Stabilisation and

Association Agreements (SAAs) will be scrutinized. Additionally, innovations in the enlargement process introduced by the Commission's February 2020 Communication titled “Enhancing the accession process - A credible EU perspective for the Western Balkans”, outlining a “revised methodology for enlargement”¹ in the Western Balkans, will be examined. Lastly, the current application and outcomes of the enlargement law as it pertains to the ongoing enlargement of the Union into the Western Balkans will be assessed.

Ultimately, in the third chapter, a comparison will be made initially between the development of the six Western Balkan states that have signed Stabilisation and Association Agreements (SAAs) with the three Eastern European states that have Association Agreements (AAs) and Deep and Comprehensive Free Trade Areas (DCFTAs) with the EU. Subsequently, reflection will be made on concerns related to a potential future wave of EU enlargement, focusing on the preservation of EU norms and standards and the functionality of its legal and political procedures. Finally, potential long-term strategic perspectives will be presented in which the European integration aspirations of the Western Balkan and Eastern European countries may converge while addressing the geopolitical interests of the EU itself.

In summary, this research proposal endeavours to address crucial questions concerning the evolution of the EU enlargement process and the strategies required to invigorate integration efforts within the context of a dynamically shifting geopolitical landscape. By scrutinizing past experiences and contemporary challenges, valuable insights for shaping the future of EU enlargement and integration initiatives will be offered.

¹ European Commission, ‘Enhancing the accession process – A credible EU perspective for the Western Balkans’, COM(2020) 57 final.

1. EU enlargement law and practice

The regulation of the European Union (EU) enlargement reflects the intricate nature of the integration process within a supranational and intergovernmental organization like the EU. Each new EU widening brings about the establishment of new rules and principles for enlargement, as well as the further development of existing ones. However, the text of the Treaties does not adequately capture the dynamic nature of this subject, as EU enlargement law² is heavily influenced by practical implementation. While Article 49 of the Treaty on European Union (TEU) governs the legal aspects of enlargement, the actual enlargement process is much more articulated than what is expressed in that article. Therefore, it is crucial to examine the historical and legal developments surrounding the Union's enlargements in order to comprehend the current situation and anticipate future progress.

This chapter focuses on the progress made in the law concerning EU enlargement following the fifth enlargement of the Union³. It analyses the evolution of the elements governing enlargement from the text of the Treaties to the practical execution of enlargements. After discussing the pivotal role of Article 49 TEU in regulating the enlargement process and its inherent limitations, the chapter delves into the principles of enlargement law. It particularly examines the criteria that candidate states must fulfil to join the Union. Lastly, it assesses the practical application and outcomes of the developed enlargement regulation in the actual expansion of the EU towards Central and Eastern Europe.

1.1 Enlargement law at treaty level

At present, Article 49 TEU governs the process of admitting new Member States into the European Union.

This article outlines the legal conditions for accession:

² Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008; see also Dimitry Kochenov, 'EU Enlargement Law: History and Recent Developments: Treaty-Custom Concubinage?' *European Integration online Papers (EIoP)* 9(6), 2005, 1-23.

³ The process of the fifth enlargement was set in motion during the December 1997 European Council meeting and culminated in the EU's expansion in May 2004. This significant step involved the accession of ten countries: Cyprus, Czechia, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. The fifth enlargement reached its conclusion in January 2007, marked by the successful accession of Bulgaria and Romania to the EU.

“Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails, shall be the subject of an agreement between the Member States and the applicant State. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements.”

Hence, any European country that upholds the fundamental values of the European Union, such as respecting human dignity, freedom, democracy, equality, the rule of law, and human rights (including minority rights), has the right to formally apply for EU membership⁴.

However, when faced with the practical reality of enlargements, the reach of Article 49 comes into question. Many scholars who write about this subject commonly share the view that this provision is regarded as a “vague and open”⁵ framework for enlargement. This reveals a significant asymmetry between the regulation of enlargements in practice and what is explicitly stated in the Treaty⁶.

While the EU Treaty outlines the criteria for candidate countries to fulfil before submitting a membership application, it overlooks several crucial aspects of enlargement law. These omissions include the fundamental principles of the enlargement process, the specific criteria that candidate states must meet to successfully join the Union, and the sequential steps involved in the enlargement process⁷.

Additionally, the notion of promoting democracy, the rule of law, and preparing candidate countries for accession, which played a prominent role during the integration of former communist states in Central and

⁴ *Cf.* Art. 2 TEU.

⁵ Christophe Hillion, ‘Enlargement of the European Union: A Legal Analysis’, in Arnall, Anthony and Wincott, Daniel (eds), *Accountability and Legitimacy in the European Union*, Oxford: OUP, 2002, 402.

⁶ *Cf.* Dimitry Kochenov, ‘EU Enlargement Law: History and Recent Developments: Treaty – Custom Concubinage?’, 9 *EIoP* 6, 2005.

⁷ Dimitry Kochenov, ‘EU Enlargement and the Failure of Conditionality’, *Kluwer Law International*, 2008, 14.

Eastern Europe, emerged as a result of this regulatory gap⁸. Although not directly addressed in the Treaty, it nonetheless played a significant role in the preparations for the fifth enlargement⁹. Hence, it is clear that the negotiating framework in this domain has evolved, in particular as a result of the implementation of the Copenhagen criteria set out by the European Council in 1993. These criteria were subsequently applied to candidate countries from the fifth enlargement onwards. Specifically, the fifth enlargement process was initiated by the December 1997 European Council meeting on the basis of a single negotiating framework.

Although Article 49 TEU has a limited role in the day-to-day regulation of enlargement, it holds crucial significance for governing the enlargement process. First and foremost, it establishes the opportunity for interested countries that meet specific formal requirements to become part of the Union, which serves as the starting point for any enlargement process. Without a Treaty provision allowing for accession by external entities, enlargements would be impossible¹⁰.

Secondly, the usage of the phrase "may apply" in the article clearly indicates that joining the EU is not an automatic right, and the decision to admit a new member state lies within the discretion of the Union and its Member States, somewhat falling outside the legal sphere¹¹.

Thirdly, due to the predominantly political nature of the enlargement regulation and the absence of a right to accession, European applicant countries are unable to challenge decisions made by EU institutions or Member States regarding their membership applications before the European Court of Justice (ECJ)¹². Furthermore, the ECJ cannot provide rulings on the conditions of accession until the relevant Accession Treaty is signed.

The Court made its stance clear on this matter. By referring to Article 237(2) EEC (a predecessor to Article 49(2) TEU), it stated that "the legal conditions of [...] accession remain to be defined in the context of that [237(2) EEC] procedure without its being possible to determine the content judicially"¹³. Essentially, the Court

⁸ *Ibid.*

⁹ While Article 2 of the Treaty on European Union emphasizes the significance of democracy and the Rule of Law, the Treaties do not include any clauses concerning the assessment of democracy and adherence to the Rule of Law in candidate countries prior to their accession.

¹⁰ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 14.

¹¹ Panayotis Soldatos and Georges Vandersanden, 'L'admission dans la CEE – Essai d'interprétation juridique', *CDE*, 1968, 691; Frank Hoffmeister, 'Changing Requirements for Membership', in Ott, Andrea and Inglis, Kirstyn (eds), *Handbook on European Enlargement: A Commentary on the Enlargement Process*, The Hague: T.M.C. Asser Press, 2002, 101.

¹² Ulrich Becker, 'EU-Enlargements and Limits to Amendments of the E.C. Treaty', *JM WP* 15/01, 2001, 13 *et seq.*

¹³ Case 93/78 *Lothar Matthäus v. Doego Fruchtimport und Tiefkuhlkost eG* [1978] ECR 2203, § 7.

respects the position of Member States (as well as candidate countries) and is unwilling to supplant the fundamental procedure outlined in the enlargement article with its own decisions. This perspective can be considered as the foundation of the “political question doctrine” in this domain of the EU law, that is, the concept of issues not subject to legal adjudication, where a court opts not to rule on a matter and instead defers it to other entities for resolution¹⁴.

Furthermore, the Court emphasized that the entire body of accession documents accompanying the Accession Treaties, including the Act of Accession and its Annexes, is an integral component of the Accession Treaty. As such, they form part of the primary law of the Union, and their legitimacy cannot be called into question¹⁵.

Consequently, the enlargement law finds itself in a limited intermediary zone between legal and political realms. The EU enlargement law could not have evolved without these three crucial elements established by the enlargement article, as interpreted by the ECJ. However, merely granting the possibility for certain states to join, clarifying that the EU is not obligated to accept new members, and recognizing the treaty status of the accession documents agreed upon by candidate countries and Member States is clearly insufficient for effectively regulating the accession process¹⁶.

1.2 Enlargement practice: the Eastern enlargement

The fifth enlargement of the European Union towards Central and Eastern Europe, being only partially regulated by Article 49 of the TEU, followed the established pattern of the previous four enlargements¹⁷. However, it significantly accentuated the asymmetry between the practical process of enlargement and the regulatory framework established in EU primary law, to an unprecedented extent. This asymmetry primarily

¹⁴ See Sionaidh Douglas-Scott, *Constitutional Law of the European Union*, Harlow: Pearson Longman, 2002, 238, 239 (with further references, *esp. fn. 89*, putting *Mattheus* into perspective of the US political question doctrine). As stated by the Supreme Court in *Baker v. Carr* 369 U.S.186 (1982) ‘In determining whether a question falls within [the political question] category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations’. The judiciary leaves it to other branches of power to resolve such issues.

¹⁵ According to the ECJ, the legality of the Act of Accession ‘in any event is not subject of review by the Court’: Case C-259/95 *Parliament v. Council* [1997] ECR I-5303, § 27.

¹⁶ Dimitry Kochenov, ‘EU Enlargement and the Failure of Conditionality’, *Kluwer Law International*, 2008, 14.

¹⁷ *Ibid.*

arises from the complexity and scale of the fifth enlargement, as well as the nature of most candidate states. These states not only had to adapt to the requirements of EU membership but also had to reconstruct their entire legal and economic systems after the collapse of their communist regimes¹⁸.

Regarding the principles of enlargement, they originated during the preparations for the first enlargement and have remained largely unchanged since then. The additional elements introduced in subsequent rounds of EU expansion can be seen as aimed at ensuring that the candidate countries adhere more closely to the core principles established during the initial enlargement process¹⁹.

The principles of enlargement comprise a set of positions that every candidate country must wholeheartedly accept before joining the EU²⁰. Unlike the application criteria, no enlargement principle is explicitly mentioned in Article 49 of the TEU. Furthermore, the experience gained from previous enlargement rounds clearly demonstrates the dynamic nature of these principles, as they increase in number and become more detailed with each subsequent enlargement round²¹.

The fundamental principles of enlargement were articulated by the Council President in office, Mr. Harmel, during the preparation of the first enlargement²². He emphasized that candidate countries must comply with a set of principles outlined in point 13 of The Hague European Council communiqué of 1 and 2 December 1969 in order to progress in the accession process²³.

First of all, enlargement does not involve renegotiation of the Treaties. Therefore, the acceding states must fully accept the Treaties and the entirety of the *acquis communautaire*. Secondly, any transitional periods and derogations to the *acquis* resulting from the enlargement negotiations should not introduce substantial changes to the *acquis* and should only be of a temporary nature.

The third essential principle of enlargement, developed during the pre-accession process leading to the fifth enlargement, is known as the principle of conditionality. This principle aims to reinforce the candidate countries' adherence to the first two principles. Specifically, the principle of conditionality establishes that

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ Dimitry Kochenov, 'EU Enlargement Law: History and Recent Developments: Treaty-Custom Concubinage?', *European Integration online Papers (EIoP)* 9(6), 2005, 9.

²¹ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 14.

²² Speech of the Council President in office Mr. Harmel, opening the negotiations between the Communities and the UK, Ireland, Denmark and Norway in June 1970, *Bull. EC* 8-1970, 24.

²³ The wording used in the communiqué is largely derived from the Commission's opinion dated 1 October 1969, concerning the applications of the UK, Ireland, Denmark, and Norway, *Bull. EC* supp. 9, 10-1969.

accession to the EU is dependent on the candidate countries' performance in various areas. Its purpose is to ensure the full and consistent implementation of the *acquis communautaire* and to guarantee that the candidate countries genuinely embrace the principles and objectives of the EU, effectively implementing them²⁴.

In contrast to the principles outlined in the Hague communiqué, which relied solely on the goodwill of the acceding countries, conditionality necessitates the close monitoring of the candidate countries' performance prior to their accession. Starting from the fifth enlargement onwards, a comprehensive monitoring system has been established to closely assess the candidate countries' progress in meeting the conditions required for EU membership²⁵.

1.2.1 First principle of enlargement: acceptance of the *acquis communautaire*

The fundamental premise underlying the first principle of enlargement is that new Member States must be placed on an equal footing with existing Member States. They are required to accept all the legal rules that apply to current Union members at the time of their accession²⁶. This acceptance is necessary, even if it necessitates changes to the constitutions of the acceding countries. National legal systems cannot serve as obstacles to the acceptance of the *acquis communautaire*²⁷. While this principle is derived directly from the spirit of Community law and is undoubtedly a necessary condition for accession, it is not explicitly stated in the text of the Treaties.

Regarding the enlargement process, the term *acquis communautaire* refers to the entirety of EU law that exists at the time of accession²⁸. According to academic doctrine²⁹ and the legal instruments utilized during Union enlargements, particularly the Treaty instruments like the Acts of Accession, the concept of *acquis* in the context of enlargement law covers the collective set of shared rights and responsibilities constituting the corpus of Union legislation. This body of law is continually progressing and comprises the following

²⁴ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 14.

²⁵ *Ibid.*

²⁶ Case C-259/95 *Parliament v. Council* [1997] ECR I-5313, § 17.

²⁷ For a legal analysis of this particular aspect of transformation within the context of the enlargement towards Central and Eastern Europe see Anneli Albi, 'EU enlargement and the constitutions of Central and Eastern Europe', *Cambridge University Press*, 2005.

²⁸ See Christophe Hillion, 'Enlargement of the European Union: A Legal Analysis', *Accountability and legitimacy in the European Union*, 2002, 405.

²⁹ See Frank Hoffmeister, 'Changing requirements for membership', 2002, 97; Christine Delcourt, 'The *acquis communautaire*: has the concept had its day', *Common Market Law Review* 38(4), 2001.

components: the substance, fundamental principles, and policy goals of the Union Treaties; any regulations enacted to actualize these Treaties and the legal precedents established by the European Court of Justice; declarations and resolutions ratified by the Union; measures pertaining to the Common Foreign and Security Policy as well as matters concerning justice and home affairs; and, lastly, international pacts endorsed by the Union and accords reached among the Member States themselves concerning the Union's undertakings.

The most ambiguous aspect of the *acquis communautaire* is likely the requirement to embrace the *finalité politique* of the Union. This particular element holds significant importance for the EU because if a state appears unwilling to continue on the path of integration after becoming an EU member, it could hinder the progress of the Union³⁰. Specifically, candidate countries are not required to accept detailed integration plans; rather, they are expected to demonstrate their readiness to advance in alignment with the objectives and principles outlined in the Treaties. It is assumed that all Member States, both existing and new, share the goals of integration, as there would be no purpose in new members joining the Union otherwise³¹.

The process of integrating the *acquis*, which consists of extensive legal texts spanning thousands of pages, is a highly challenging undertaking. To facilitate and organize the adoption of the *acquis* by candidate countries and establish clear boundaries, a specific procedure is employed. At the outset of accession negotiations, a comprehensive document is created using the CELEX database³². This document encompasses the entirety of the current *acquis* and divides it into several chapters³³. The negotiations with candidate countries commence with a screening phase during which the European Commission conducts an in-depth assessment of each chapter to evaluate the extent to which a candidate nation's legal framework diverges from the EU's *acquis* and necessitates adjustments. Subsequently, the Commission communicates the outcomes of this screening process to the European Council and, when conditions are met, may propose the initiation of negotiations

³⁰ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 43.

³¹ The validity of this assumption depends on one's acceptance of the liberal intergovernmentalist perspective that portrays a State as a rational actor. However, if one does not adhere to this perspective, the presumption can be easily challenged, thereby highlighting the significance of the formal legal obligation imposed on candidate countries to accept the future of integration. See Andrew Moravcsik, 'Preferences and Power in the European Community: A Liberal Intergovernmentalist Approach', 31 *JCMS*, 1993.

³² Prior to the commencement of negotiations, the EU displayed a willingness to guide the process of aligning laws in the future Member States. This proactive approach was observed during previous enlargements, such as through the utilization of Europe Agreements, which entailed a certain level of legislative harmonization. The Commission's White Paper on the 'Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union' of 3 May 1995 COM(95) 163 final along with a subsequent Annex: COM(95) 163 final/2 of 10 May 1995, provided further assistance in this regard.

³³ In the enlargement towards Central and Eastern Europe, the *acquis* was categorized into 31 chapters, which is a slight increase compared to the 29 chapters used in the accession of Austria, Finland, and Sweden. In the case of negotiations with Croatia and Turkey, the number of chapters expanded to 35.

related to a specific chapter. However, the actual commencement of negotiations for any chapter hinges on a consensus decision reached by the European Council. Then, during the monitoring phase, the European Commission monitors the candidate country's progress in aligning with EU standards until its accession. The Commission regularly informs the European Council and the European Parliament through progress reports and strategic documents, providing updates on the adaptation and implementation of the EU *acquis*.

Finally, when all EU Member States are content with the candidate country's advancement in harmonizing with EU regulations and benchmarks within a specific policy domain, the negotiation chapter can be provisionally closed.

Despite the vast extent of the *acquis*, the candidate countries are required to accept it in its entirety and cannot cite administrative challenges as a justification for failing to fulfil their obligations³⁴.

According to the general rule, an applicant state must accept the entire *acquis* during the accession negotiations before the accession date. The *acquis* should become applicable when the Accession Treaty comes into force to ensure continuity in the application of the Community legal order to the new Member State³⁵. The general principle dictates that "the provisions of Community law apply *ab initio* and *in toto* to new Member States, derogations being allowed only in so far as they are expressly laid down by transitional provisions."³⁶

Furthermore, the capacity of candidate countries to effectively adopt and implement the *acquis communautaire* was included in the Copenhagen criteria³⁷. These criteria emphasize that candidate countries must demonstrate the ability to fulfil the obligations of membership, including adherence to the objectives of political, economic, and monetary Union.

Additionally, the significance of this criterion was underscored by the Madrid European Council in December 1995, which placed special emphasis on the need for candidate countries to adapt their administrative capacity to adopt the *acquis*³⁸. The fifth enlargement marked a pivotal moment in this regard, as it was the first expansion of the Union that required the nearly complete transposition of the entire *acquis*

³⁴ See Case 58/83 *Commission v. Greece* [1984] ECR 2027, § 11.

³⁵ See Art. 54 of 2003 Act of Accession, OJ L 236, 2003.

³⁶ Case 258/81 *Metallurgiki Halyps A.E. v. Commission* [1982] ECR 4261, § 8; Case C-233/97 *Kappahl Oy* [1998] ECR I-8069, § 15.

³⁷ The Copenhagen European Council affirmed that 'the ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary Union', *Bull. EC* suppl. 5-1997, 44 *et seq.*

³⁸ Madrid European Council, 16 December 1995, Presidency Conclusions, section III. A.

into national law *prior* to the signing of the Accession Treaty³⁹. While the previous four enlargements had primarily focused on the principle of accepting the *acquis communautaire*, the fifth enlargement went beyond mere acceptance and mandated the comprehensive transposition of the entire *acquis*.

This move towards full pre-accession transposition of the entire body of the *acquis* should be viewed in the context of the principle of conditionality. The purpose of *acquis* transposition is to demonstrate to the Union that a country possesses mature administrative structures to become a full Member State⁴⁰. Considering the nature of the candidate states involved in the fifth enlargement, it is reasonable to understand that the EU intended to ensure that the post-communist democracies in transition were not only capable of accepting the *acquis* but also willing to transpose it and ensure its effective implementation⁴¹.

However, the transformation of the Member States alone does not suffice to explain this significant policy change at the EU level; it is also essential to consider the evolution of the *acquis* itself. As the integration process advanced and the *acquis* grew increasingly complex, it was only natural to anticipate the implementation of more stringent measures to guarantee adherence to the more intricate *acquis*⁴².

1.2.2 Second principle of enlargement: transitional derogations from the *acquis*

Regarding the second principle of enlargement, which pertains to transitional periods and derogations from the *acquis* resulting from enlargement negotiations, the EU Treaty only states that "the conditions of admission and adjustments to the Treaties [...] shall be subject to an agreement between the Member States and the applicant State"⁴³. In fact, Article 49 of the Treaty on European Union (TEU) does not provide detailed rules on the limitations of treaty adjustments or the legitimacy of exceptions and derogations. However, over the course of successive enlargement rounds, the principle articulated by Council President Harmel during the Accession Conference on 30 June 1970, which led to the first successful enlargement, was practically

³⁹ Christophe Hillion, 'The Copenhagen Criteria and their Progeny' in Hillion (ed.), *EU Enlargement: a Legal Approach*, 2004, 15.

⁴⁰ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 45.

⁴¹ *Ibid.*

⁴² *Ibid.*

⁴³ Art. 49(2) TEU.

consolidated. This principle states that "the solution of any problems of adjustment [...] must be sought in [...] transitional measures and not in changes of the existing rules."⁴⁴

It is evident that no enlargement can be successful without modifications to the treaties. Once the Union has expanded, there is no distinction between old and new Member States, as the new Member States are represented in the institutions from the date of accession and participate in all Union activities as full members. Therefore, at the very least, provisions concerning the institutions must be adjusted to accommodate the new number of Member States⁴⁵.

Although it may be portrayed as a purely technical matter, the allocation of votes and the participation of new Member States in European institutions is highly sensitive. Enlargement goes beyond a mere mechanical adjustment of the number of seats and votes assigned to Member States in these institutions. It has far-reaching consequences in terms of reshaping the system⁴⁶. The changes brought about by enlargement impact the role and benefits of each Member State within the EU institutional framework. Additionally, they pose a threat to established coalitions within the Council, thereby complicating the system of coalition-building⁴⁷.

While the need for Treaty adjustments is recognized and widely accepted, the main rule emerging from the practice of enlargements can be summarized in two aspects. First, accession cannot lead to permanent exemptions from the *acquis communautaire*. Second, accession should not initiate policy innovations. Transitional measures are typically included in the Annexes of the Acts of Accession and are considered an integral part of the European Union's primary law. As a result, their legal validity cannot be disputed in court⁴⁸. Essentially, the principle that transitional measures should not result in permanent exemptions from the *acquis* and should have strict time limits has been established through the practice of successive enlargement rounds as well as being implied by the very obligation to adopt the *acquis* in its entirety.

⁴⁴ European Commission, 'Fourth General Report on the Activities of the Community 1970', Luxembourg: Office of Official Publications of the European Communities, 1971, 336.

⁴⁵ See Pieter van Nuffel, 'The Constitutional Issues on the IGC 2000 Agenda', in Kellermann, Alfred E., de Zwaan, Jaap W. and Czuczai, Jenő (eds), *EU Enlargement: The Constitutional Impact at EU and National Level*, The Hague: T.M.C. Asser Press, 2001.

⁴⁶ Lykke Friis, "'The End of the Beginning" of Eastern Enlargement – Luxembourg Summit and Agenda Setting', 7 *EIoP* 2, 1998, 3.

⁴⁷ Bruno de Witte, 'Anticipating the Institutional Consequences of Expanded Membership of the European Union', 23 *IPSRev.* 3, 2002, 236.

⁴⁸ Joined cases 31 & 35/86 *Levantina Agricola* [1988] ECR 2285. The Court's authority is limited to interpreting the content of the Treaties of Accession, Acts of Accession, and the accompanying Annexes.

1.2.3 Third principle of enlargement: conditionality

The final principle of enlargement is conditionality, which brought about a significant transformation in EU enlargement policy during the preparations for the fifth enlargement towards Central and Eastern Europe. Similar to the other two enlargement principles, conditionality is not explicitly mentioned in the treaty texts.

The implementation of this concept, which had its beginnings in different domains of EU law like its external action beyond enlargement and cohesion policy, to the EU enlargement strategy can be mainly attributed to the distinctive conditions of the fifth wave of enlargement. This round was distinct from prior enlargements due to the considerable count of applicants and the character of these applicants, with a majority being countries formerly under communist regimes. While the Union had strategies in place to address the challenges posed by the weak economies of Eastern European countries through transition periods, it had limited experience in dealing with issues related to democracy and human rights⁴⁹. Furthermore, the Union itself had become more complex since the first wave of enlargement, which influenced the regulatory approach towards subsequent enlargements.

Recognizing the potential risk of diluting or even disrupting the integration process due to enlargement, the EU aimed to ensure the success of democratization and economic reforms in Central and Eastern European countries before their accession as Member States. The most effective way to guarantee the progress of these reforms was through monitoring, which led to the introduction of the pre-accession strategy⁵⁰. In line with the concept of monitoring, the EU established a connection between the benefits applicants could receive from the Union and their attainment of specific standards in economic development, public administration, and the protection of human rights. These benefits included various forms of assistance and aid⁵¹, ultimately leading to the desired outcome for the Central and Eastern European countries: eventual EU membership.

⁴⁹ Edwige Tucny, 'L'élargissement de l'Union européenne aux pays d'Europe centrale et orientale: la conditionnalité politique', 2000, 23; Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 51.

⁵⁰ Christophe Hillion, 'Enlargement of the European Union: A Legal Analysis', *Accountability and legitimacy in the European Union*, 2002, 401-414.

⁵¹ PHARE programme (applying to Poland, Hungary (Council Regulation 3906/89, *OJ L* 375/11, 1989), GDR, Czechoslovakia, Bulgaria, Romania, Yugoslavia (Amending Council Regulation 2698/89, *OJ L* 257/1, 1990), Albania, Estonia, Lithuania, Latvia (Council Regulation 3800/91, *OJ L* 357/10, 1991), Slovenia (Council Regulation 2334/92, *OJ L* 227/1, 1992), Croatia (Council Regulation 1366/95, *OJ L* 133/1, 1995, suspended in 1995) and FYROM (Council Regulation 463/96, *OJ L* 65/3, 1996)); SAPARD programme, providing assistance in the agricultural sector (Council Regulation 1268/1999, *OJ L* 161/87, 1999) and ISPA programme, providing assistance in the fields of transport and environment (Council Regulation 1267/1999, *OJ L* 161/73, 1999). PHARE, SAPARD and ISPA are united in a single legal framework, (Council Regulation 1266/1999, *OJ L* 161/68, 1999).

Conditionality necessitates that the applicant countries agree to Union oversight in all aspects of their legal, political, and economic reforms, and adhere to the demands of the Union. As pre-accession monitoring by European institutions is not restricted by the Union's limited sphere of competence, the applicant countries essentially grant the EU a free hand to intervene in their internal affairs⁵².

The implementation of the conditionality principle focuses less on determining whether a candidate country meets the minimum requirements for accession and more on monitoring the reform progress in these countries while continually adjusting the assessment criteria. This approach addresses specific problems that arise during the transition process of candidate countries, ultimately leading to their "assimilation", as described by Blokker⁵³. The success of the conditionality principle stems from its dynamic nature, which aligns with the ongoing pre-accession transition in candidate countries.

Reflecting this dynamism, conditionality applies throughout the entire pre-accession process, with the Union developing different sets of conditions to evaluate candidates' readiness for advancing towards accession. The moment when the EU acknowledges that a particular candidate country has met a set of outlined criteria holds psychological significance rather than legal importance. It should be noted that meeting the criteria once does not guarantee meeting them in subsequent years, as the criteria continually adjust to correspond with the challenges faced during the candidate country's pre-accession journey⁵⁴.

By varying the criteria that candidate countries must fulfil, the EU possesses a powerful instrument for promoting reforms, which can shape legal and political developments in these countries. This instrument can be particularly effective due to the asymmetry of negotiating strength between the EU and the candidate countries. As the EU's demands are not balanced by the right of the candidate countries to accede, there exists an imbalance during the pre-accession process. Consequently, this principle weakens the candidate countries' position in relation to the Union and Member States, leaving them with little room for manoeuvre and tightening the regulation of enlargements. This allows the EU to apply sufficient pressure to ensure compliance with its demands⁵⁵.

⁵² Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 52.

⁵³ Paul Blokker, 'The Post-enlargement European Order: Europe "United in Diversity"?', *EDAP* 1, 2006, 17.

⁵⁴ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 52.

⁵⁵ *Ibid.*

The principle of conditionality served as a means for the Union to impartially assess the progress of candidate countries towards accession. The progress assessment, conducted by the European Commission on behalf of the Union, theoretically focuses solely on the performance of the candidate country, free from political considerations. Consequently, the depoliticization of the enlargement process theoretically grants only the best-prepared candidate countries the right to join the EU⁵⁶.

The principle of conditionality was expected to have a dual positive effect: aiding the internal democratic transformation of candidate countries and safeguarding the EU by preventing the accession of unprepared countries that could negatively impact the European integration process⁵⁷.

Despite the potential benefits associated with conditionality, it may appear peculiar that the principle was only solidified during the preparation for the fifth enlargement. However, the concept of conditionality is highly controversial, as it conflicts with the ideal of unification of all European countries championed by the European integration project. Since its introduction in the preparation for the fifth enlargement, conditionality has faced criticism both in principle and as it has been applied⁵⁸. It has fundamentally altered the nature of the legal approach to enlargements, moving away from the idealistic vision of unity that guided the Community's earlier rounds of enlargement. Some even argue that the assertion of conditionality has resulted in the "erosion of solidarity"⁵⁹.

The principle of conditionality was first tested during the preparation of the Europe Agreements. Central and Eastern European countries' access to EU financial support and the prospect of signing Association Agreements were linked to their progress in areas such as establishing the rule of law, respecting human rights, introducing multi-party democracy, holding free and competitive elections, and developing market-oriented economies⁶⁰.

⁵⁶ *Ibid.*

⁵⁷ *Ibid.*

⁵⁸ Christophe Hillion, 'Enlargement of the European Union: A Legal Analysis', *Accountability and legitimacy in the European Union*, 2002, 402; Dimitry Kochenov, 'Behind the Copenhagen façade. The meaning and structure of the Copenhagen political criterion of democracy and the rule of law' *European Integration Online Papers* 8(10), 2004, 1-24; Dimitry Kochenov, 'EU Enlargement: Flexible Compliance with the Commission's Pre-Accession Demands and Schnittke's Ideas on Music' *BGU-CSEPS Working Paper 2*, 2006.

⁵⁹ Jacques Rupnik, 'Trois dilemmes de l'Union e élargie: sécurité, souveraineté, solidarité', in Chavance, Bernard (ed.), *Les incertitudes du grand élargissement: L'Europe centrale et balte dans l'intégration européenne*, Paris/Budapest/Torino: L'Harmattan, 2004.

⁶⁰ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 54.

The Central and Eastern European countries expressed their strong desire to join the EU, leading the Union to acknowledge this aspiration through the concept of the "accession preparation strategy". Although the Europe Agreements did not guarantee Union accession to the associated countries of Central and Eastern Europe, they did recognize their aspiration to become full members. As the decision to expand eastwards was eventually made, the Union needed a legal procedure that would ensure the readiness of candidate countries for membership and justify its initial reservations about enlargement. To address this perceived legal gap, the Europe Agreements became one of the primary instruments for implementing conditionality⁶¹.

In parallel with the Europe Agreements, the Union applied the Copenhagen criteria established by the Copenhagen European Council in 1993. Going beyond the scope of the Europe Agreements, these criteria became the foundation for the application of the conditionality principle.

1.2.4 The Copenhagen criteria

The conditions for accession, also known as the Copenhagen criteria, are the fundamental requirements that all candidate countries must meet in order to become a member state of the EU⁶². These criteria consist of the following:

1. Political criteria: The candidate country must have stable institutions that uphold democracy, the rule of law and human rights, and ensure the protection of minorities.
2. Economic criteria: The country should have a functioning market economy and the capability to handle competition and market forces effectively.
3. Administrative and institutional capacity: The candidate country should possess the necessary administrative and institutional capacity to implement the EU *acquis* and be capable of assuming the obligations that come with EU membership.

⁶¹ *Ibid.*

⁶² Copenhagen European Council, 21-22 June 1993, Presidency Conclusions.

Originally considered as equally important instruments designed to "complement the Treaties"⁶³ during the preparations for the fifth enlargement, the Copenhagen criteria gradually evolved into a hierarchical system. Consequently, the different blocks of criteria played distinct roles in regulating pre-accession conditionality. Notably, the first "political" block of the Copenhagen criteria became the most significant among them⁶⁴.

The hierarchical structure of the Copenhagen criteria was formally established during the Luxembourg European Council in 1997. The Presidency Conclusions explicitly stated that compliance with the political criteria outlined in Copenhagen was a prerequisite for initiating any accession negotiations⁶⁵.

Therefore, while candidate countries were required to fulfil all the Copenhagen criteria to join the Union, meeting the criteria of the political block alone was sufficient to commence accession negotiations, a crucial step towards eventual membership⁶⁶.

Based on this hierarchy, the Commission proposed, in an attempt to strike a balance between the pace and quality of enlargement, to initiate negotiations with any candidate country that fulfilled only the Copenhagen political criteria⁶⁷. Following this recommendation, negotiations were opened with all candidate countries, raising concerns among some scholars that conditionality was not being rigorously applied⁶⁸.

While these concerns were not without merit, ultimately, the operational hierarchy of the Copenhagen criteria facilitated the accessibility of the pre-accession phase for certain candidate countries to initiate negotiations with the Union and progress through the stages of the accession process, starting from the acceptance of the application to the opening of negotiations, and finally, to accession⁶⁹.

Essentially, different sets of criteria are applied at different stages of the accession process. Initially, to apply for EU membership, the candidate must meet the application criteria that fulfil the minimum conditions outlined in the Commission's comments in *Mattheus v. Doego*⁷⁰. Subsequently, the Copenhagen political criteria must be met for the opening of negotiations, and finally, all remaining criteria related to economic development and adoption of the *acquis* must be fulfilled for accession.

⁶³ Edwige Tuczny, 'L'élargissement de l'Union européenne aux pays d'Europe centrale et orientale: la conditionnalité politique', 2000, 78.

⁶⁴ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 55.

⁶⁵ Luxembourg European Council (12, 13 December 1997), Presidency Conclusions, § 25.

⁶⁶ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 56.

⁶⁷ European Commission, Composite Paper, COM(1999) 500 final., Brussels, 13 October 1999, 4.

⁶⁸ Except for Turkey, which did not meet the Copenhagen political criteria at that time, all other cases complied with the criteria.

⁶⁹ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 56.

⁷⁰ Case 93/78 *Mattheus v. Doego* [1978] ECR 2203.

To effectively assess the progress of candidate countries and ensure compliance with the Copenhagen criteria, a comprehensive framework of instruments was necessary. This framework, developed gradually during the pre-accession process leading to the fifth enlargement of the EU, consisted of eight different types of legal and political instruments. Its purpose was to apply the Copenhagen criteria on a daily basis, evaluate the preparedness of candidate countries for accession, analyse relevant developments, and promote necessary reforms identified by the Commission. The system aimed to provide reliable information to the Council, enabling important decisions related to enlargement. The drafting of these documents by the Commission during the preparation of candidate countries for accession aimed to achieve a harmonious enlargement of the EU and the effective implementation of the conditionality principle⁷¹.

Given that all the instruments used in the day-to-day application of the conditionality principle were based on the Copenhagen criteria, the entirety of the documents relevant to the pre-accession assessment, including those promoting democracy, the rule of law, and other key elements of the Copenhagen criteria, are referred to as the "Copenhagen-related documents"⁷². All the primary activities that take place before accession, despite falling under the scope of Article 49 of the EU treaty and being guided by the Copenhagen criteria, are actually carried out exclusively through the use of the Copenhagen-related documents. This places these instruments at the forefront of pre-accession processes⁷³.

In summary, the Copenhagen-related documents comprise a system of eight distinct types of legal and political instruments designed to effectively implement the Copenhagen criteria and operationalize the conditionality principle⁷⁴. These documents include the following:

1. Commission's Opinions: Individual assessments of each Central and Eastern European country's application for accession, with separate opinions for each country.
2. Commission's Regular Reports: Annual reports assessing the progress of candidate countries towards accession, with separate reports for each country.

⁷¹ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 66.

⁷² *Ibid.*

⁷³ *Ibid.*

⁷⁴ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 76-77.

3. Commission's Composite Papers: Summaries of the findings from the individual country reports, released annually alongside the reports.

4. Comprehensive Country Monitoring Reports: Detailed reports assessing the reform progress of each acceding country individually, published between the signing of the Treaty of Accession and the country's actual accession to the EU.

5. Comprehensive Monitoring Reports: Summaries of the findings from all the Comprehensive Country Monitoring Reports.

6. Accession Partnerships (APs): Decisions issued by the Council based on the Commission's proposals, outlining specific priority areas that each candidate country must address to progress towards accession.

7. White Papers: Documents addressing specific issues faced by particular candidate countries, particularly Bulgaria and Romania.

8. Monitoring Reports on the State of Preparedness: Reports assessing the readiness of Romania and Bulgaria for accession, released to inform the decision-making process regarding their accession dates.

The complex system of various instruments utilized by the Commission to oversee the process of EU enlargement did not emerge suddenly, but rather exemplifies the progressive development of the conditionality principle in EU enlargement law. Significant advancements were made in establishing a robust legal framework for the application of the principle, starting from the initial *de facto* formulation by the European Council in Copenhagen in 1993 through the reorientation of the Europe Agreements and the adoption of Accession Partnerships (APs) introduced at the Luxembourg European Council in 1997⁷⁵.

The 1997 Luxembourg European Council introduced a significant innovation in the form of an enhanced pre-accession strategy, which consisted of two key elements: an increase in pre-accession aid and the introduction of Accession Partnerships (APs)⁷⁶. These APs served as the foundation for a comprehensive system of conditionality, incorporating both incentives and negative consequences to drive progress. The APs were designed to address the immediate needs of each candidate country by outlining the principles, priorities and intermediate objectives necessary to meet the Copenhagen criteria. The Council emphasized that the APs

⁷⁵ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 71.

⁷⁶ Luxembourg European Council, 12-13 December 1997, Presidency Conclusions.

aimed to consolidate the priority areas identified in the Commission's Regular Reports, allocate financial resources for implementing these priorities, and establish conditions for the assistance provided. Those who adhered to the requirements specified in the Copenhagen-related documents were eligible for pre-accession funding, while those who did not comply would face the repercussions of their actions. Although the concept of financial assistance was not novel in 1997, the second element had significant and potentially groundbreaking implications for the legal framework governing the enlargement process⁷⁷.

Regulation 622/98⁷⁸ leading to the adoption of APs further reinforced the legal enforceability of the Copenhagen criteria and related documents, making them essential instruments in the pre-accession process. Consequently, the Commission gained the legal authority, rather than solely relying on political considerations, to halt the accession progress of a country that failed to meet the requirements outlined in these documents, especially concerning the financing of pre-accession projects.

Despite their primary objective of ensuring the candidate countries' adherence to the Copenhagen criteria, the Accession Partnerships (APs) were designed with a certain level of flexibility for both the Commission and the candidate countries. This flexibility was achieved by categorizing the main issues outlined in the APs into different groups: the first addressing urgent matters and the second focusing on mid-term priorities. By allowing for the movement of issues between these sections, the European institutions could effectively address the evolving challenges of the pre-accession process and adapt to its dynamic nature⁷⁹.

The establishment of an extensive framework of Copenhagen-related documents by the EU, based on the Copenhagen criteria, brought about a significant change in the regulation of EU accessions. This shift, initiated by the European Council, the Council, and the Commission, moved the process from the realm of pure politics to the legal sphere. Through the application of pre-accession conditionality, the EU ensured that candidate countries underwent the necessary transformations before joining the Union. In addition to its profound legal implications, the development of this comprehensive system of Copenhagen-related documents also clarified

⁷⁷ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 74.

⁷⁸ Council Regulation (EC) No. 622/98 of 16 March 1998, pertaining to provide assistance to the applicant states as part of the pre-accession strategy. The regulation specifically focuses on the creation and implementation of Accession Partnerships, *OJ L 85/1*, 1998.

⁷⁹ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 75.

the interpretation of the Copenhagen criteria and provided an opportunity to conduct enlargements in a transparent and predictable manner, benefiting both the candidate countries and the EU as a whole⁸⁰.

The introduction of conditionality marked a significant milestone in the evolution of the legal framework for EU enlargement, as it established a clear set of criteria, namely the Copenhagen criteria, an impartial institution, namely the Commission, to assess compliance and the prospect of accession for candidate countries that meet these criteria. However, a detailed analysis of the legal developments regarding the conditions employed by the Commission and their impact on reforms in candidate countries would be necessary to draw conclusions about the principle of conditionality and its application in the pre-accession phase⁸¹.

1.3 General assessment of the EU's enlargement process towards Central and Eastern Europe

Since the 16th century, Central and Eastern Europe has been a part of the "semi-periphery of the modern world system"⁸² centered in North-West Europe, demonstrating socioeconomic and political backwardness⁸³. The specific forms of democratization that have emerged since 1989, following the decline of state socialism, have been partially imposed externally⁸⁴.

Furthermore, Central and Eastern Europe's democratic transitions have been characterized by a unique feature known as the "dilemma of simultaneity" compared to previous transitions. This means that post-communist countries underwent three simultaneous fundamental shifts: a transition from a communist to a liberal political system, a shift from a planned to a free-market economy, and the redefinition of statehood and nationhood⁸⁵. Moreover, there was a lack of firmly established democratic support capable of coping with the

⁸⁰ Dimitry Kochenov, 'EU Enlargement and the Failure of Conditionality', *Kluwer Law International*, 2008, 78.

⁸¹ *Ibid.*

⁸² Attilagh Agh, 'The politics of central Europe', *The Politics of Central Europe*, 1998, 1-256.

⁸³ Ivan T. Berend, and Bojan Bugarcic, 'Unfinished Europe: transition from communism to democracy in Central and Eastern Europe', *Journal of Contemporary History* 50(4), 2015, 768-785.

⁸⁴ Attilagh Agh, 'The politics of central Europe', *The Politics of Central Europe*, 1998, 1-256.

⁸⁵ Jon Elster, Claus Offe and Ulrich K. Preuss, *Institutional design in post-communist societies: Rebuilding the ship at sea*, Cambridge University Press, 1998.

pressure arising from these interconnected challenges that needed simultaneous resolution⁸⁶. Consequently, these issues may have directly affected the legitimacy of the newly emerged democratic regimes after 1989⁸⁷.

Notably, historical evidence demonstrates that newly established constitutional democracies do not always endure, and each wave of democratization is often followed by a "reverse wave"⁸⁸. In fact, it seems that both the political elites and the general population in Central and Eastern Europe have not reached a broad consensus in favour of the liberal-constitutional project in terms of democratic legitimacy. This has led to an increase in nationalist-conservative populism within many Central and Eastern European cultures, which opposes the ideals of liberal-constitutional democracy and promotes a non-liberal and conservative vision of society⁸⁹. All of these factors contribute to exacerbating the challenges of stability and consolidation in these recently established democracies, despite each post-communist society exhibiting its distinct vulnerability within the emerging liberal-constitutional regimes⁹⁰.

However, in the mid-1990s, a "virtuous circle between socio-economic and political consolidation, with the emergence of a new professional elite in the Central and Eastern European countries having a firm commitment to Europeanization" was observed⁹¹. Subsequently, in May 2004, after approximately 15 years since the fall of the communist regimes in 1989, this process reached its culmination with the admission of eight post-communist countries to the European Union⁹².

In the context of expanding to the post-communist countries of Central and Eastern Europe, the European Union established and implemented various political integration instruments aimed at shaping state-building, democracy, and the rule of law⁹³. Particularly, since the conclusion of the Cold War, the EU has been engaged in assisting these countries in aligning their political and domestic institutions with EU standards and ideals.

⁸⁶ Richard Rose, William Mishler and Christian Haerpfer, *Democracy and its alternatives: Understanding post-communist societies*, JHU Press, 1998.

⁸⁷ Dieter Fuchs and Edeltraud Roller, 'Learned democracy? Support of democracy in Central and Eastern Europe', *International journal of sociology* 36(3), 2006, 70-96.

⁸⁸ Samuel P. Huntington, *The third wave: Democratization in the late twentieth century*, Vol. 4, University of Oklahoma press, 1993.

⁸⁹ Paul Blokker, 'Building democracy by legal means? The contestation of human rights and constitutionalism in East-Central Europe', *Journal of Modern European History* 18(3), 2020, 335-351.

⁹⁰ *Ibid.*

⁹¹ Attilagh Agh, 'The politics of central Europe', *The Politics of Central Europe*, 1998, 1-256.

⁹² Geoffrey Pridham, 'European Union Accession Dynamics and Democratization in Central and Eastern Europe: Past and Future Perspectives', *Government and Opposition*, 41(3), 2006, 373-400.

⁹³ Tanja A. Börzel, 'Building member states: how the EU promotes political change in its new members, accession candidates, and eastern neighbors' *Geopolitics, History, and International Relations* 8(1), 2016, 76-112.

The objective has been to support and promote the consolidation of democracy and the development of good governance capabilities⁹⁴.

To achieve this objective, the EU had to adapt its strategy for fostering political integration to the specific context of Central and Eastern Europe. In this context, the primary focus of the EU was to encourage the consolidation of democracy rather than inducing political liberalization or regime change. This approach made extensive use of positive conditionality and capacity-building instruments⁹⁵.

Additionally, these instruments were linked to the possibility of rewarding adherence to the EU's Copenhagen political criteria, which include respect for human rights, democracy, and the rule of law, by commencing accession negotiations and eventually granting membership⁹⁶.

Although the use of negative conditionality has been relatively infrequent⁹⁷, the EU's expansion strategy supplemented accession conditionality with significant financial and technical support to enhance the capacity of state institutions to undertake reforms and meet the Copenhagen criteria⁹⁸. Furthermore, socialization and social learning, including political dialogue, played a supporting role in the development of democracy, albeit to a lesser extent⁹⁹.

Consequently, despite the substantial expenses associated with implementing and adjusting to the *acquis communautaire*, liberal reform coalitions in Central and Eastern Europe were able to counter opposition due to a strong internal consensus in favour of EU membership, which was perceived as a "return to Europe"¹⁰⁰.

The EU's application of democratic conditionality, however, faced several limitations¹⁰¹. Firstly, the process of democratization in post-communist countries had already commenced long before political conditionality

⁹⁴ Anne Wetzel, 'Promoting embedded democracy? Researching the substance of EU democracy promotion' *European Foreign Affairs Review* 16(5), 2011.

⁹⁵ Frank Schimmelfennig, Stefan Engert and Heiko Knobel, *International socialization in Europe: European organizations, political conditionality and democratic change*, Springer, 2006.

⁹⁶ Dimitry Kochenov, 'Behind the Copenhagen façade. The meaning and structure of the Copenhagen political criterion of democracy and the rule of law' *European Integration Online Papers* 8(10), 2004, 1-24.

⁹⁷ Tim Haughton, 'When does the EU make a difference? Conditionality and the accession process in Central and Eastern Europe' *Political studies review* 5(2), 2007, 233-246.

⁹⁸ David Bailey and Lisa De Propriis, 'A Bridge Too Phare? EU Pre-Accession Aid and Capacity-Building in the Candidate Countries' *JCMS: Journal of Common Market Studies* 42(1), 2004, 77-98.

⁹⁹ Frank Schimmelfennig and Ulrich Sedelmeier, eds. *The Europeanization of central and eastern Europe*, Cornell university press, 2005.

¹⁰⁰ Karen Henderson, 'Slovakia and the Democratic Criteria for EU Accession' in Karen Henderson (ed.) *Back to Europe: Central and Eastern Europe and the European Union* London, 1999; Tanja A. Börzel, 'Building member states: how the EU promotes political change in its new members, accession candidates, and eastern neighbors' *Geopolitics, History, and International Relations*, 8(1), 2016, 76-112.

¹⁰¹ Geoffrey Pridham, 'European Union Accession Dynamics and Democratization in Central and Eastern Europe: Past and Future Perspectives', *Government and Opposition*, 41(3), 2006, 373-400.

was systematically and annually implemented from 1997 onwards. As a result, EU conditionality could not address broader macro-institutional options or different forms of liberal democratic regimes, considering the multifaceted aspects of democratic transition. Instead, it primarily focused on certain aspects related to democratic consolidation¹⁰². The aim of EU conditionality was to ensure the genuine accountability and durability of democratic institutions, the establishment of the rule of law, and the proper respect for political plurality and minority perspectives¹⁰³.

Secondly, the European Commission's approach to democratic conditionality, in its role as the overseer of entry dynamics into the EU, was primarily bureaucratic rather than political, presenting an additional obstacle. This was evident in the adoption of a standardized "list system" to monitor political developments and the Commission's avoidance of embracing any democratic paradigm¹⁰⁴.

Moreover, the Commission's conditionality agenda paid little attention to democratic actors, as political parties were completely excluded, while civil society and the growth of NGOs were narrowly defined, indicating a more intergovernmental and often restrictive approach to accession dynamics¹⁰⁵.

In the case of Central and Eastern Europe, it is evident that the entire process of accession to the EU occurred concurrently with the post-communist countries' efforts towards democratic consolidation¹⁰⁶. Specifically, the European Commission, which has closely monitored and supervised the fulfilment of the Copenhagen requirements since the mid-1990s, believed that EU membership marked the culmination of democratic consolidation in Central and Eastern Europe¹⁰⁷. However, despite the Commission's frequent use of the term "democratic consolidation" in its annual reports assessing candidate countries, it has not achieved conceptual clarity regarding the definition of a newly consolidated democracy¹⁰⁸.

According to the majority of definitions, democratic consolidation essentially entails the gradual elimination of remaining uncertainties from the transition period, facilitating the institutionalization of a new

¹⁰² *Ibid.*

¹⁰³ *Ibid.*

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.*

¹⁰⁶ *Ibid.*

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

democracy, internalizing its rules and procedures among intermediary actors, and disseminating democratic values through a reshaping of the political culture¹⁰⁹.

Contrary to the European Commission's stance, the notion of European supranational integration seems to undermine rather than support or enhance the liberal-constitutional systems of Member States, particularly in the still vulnerable democracies of Central and Eastern Europe¹¹⁰.

Although the EU has consolidated some key elements of a liberal constitutional system since the enactment of the Lisbon Treaty, through the entry into force of the Charter of Fundamental Rights and the strengthening of the powers of the European Parliament, there are aspects of the EU's functioning that could potentially undermine national democracies¹¹¹.

Some scholars refer to the prevailing trend of "executive dominance"¹¹² within the EU, enabling national governments to collaborate at the European level and achieve their objectives while bypassing national democratic mechanisms. Moreover, this phenomenon has been exacerbated by the technocratic and administrative mechanisms of the EU's supranational institutions¹¹³. It is evident that the accession to the EU has favoured national executive institutions over legislative ones, and administrative principles have often taken precedence over democratic and participatory principles, as reflected in the EU governance institutions' limited responsiveness to citizens¹¹⁴.

Although the process of EU accession aimed to strengthen and advance democratic consolidation in the post-communist countries of Central and Eastern Europe, certain aspects of this process may have hindered or impeded such achievements, although to varying degrees at the national level¹¹⁵. Specifically, supranational European integration appears to pose a threat to the functioning of liberal constitutional democracies at the national level. While some of these contentious aspects are inherent to the integration project within a continent-wide liberal constitutional system and are designed to overcome particularistic features of national constitutionalism, other issues require more attention and substantial reforms¹¹⁶.

¹⁰⁹ *Ibid.*

¹¹⁰ Grainne De Burca, 'Is EU supranational governance a challenge to liberal constitutionalism' *U. Chi. L. Rev.* 85, 2018, 337.

¹¹¹ *Ibid.*

¹¹² Deirdre Curtin, 'Challenging Executive Dominance in European Democracy', *The Modern Law Review* 77(1), 2014, 1-32.

¹¹³ *Ibid.*

¹¹⁴ Geoffrey Pridham, 'European Union Accession Dynamics and Democratization in Central and Eastern Europe: Past and Future Perspectives', *Government and Opposition*, 41(3), 2006, 373-400.

¹¹⁵ *Ibid.*

¹¹⁶ Grainne De Burca, 'Is EU supranational governance a challenge to liberal constitutionalism' *U. Chi. L. Rev.* 85, 2018, 337.

Notably, critical components contributing to the EU's "democratic deficit" that could potentially facilitate the rise of illiberal and authoritarian political forces in EU Member States include inadequate democratic responsiveness within the institutions and member state governments' preference for executive rule at the supranational level¹¹⁷.

Ultimately, the EU remains the best solution to Professor Dani Rodrik's trilemma of globalization, which suggests that economic integration, democratic politics, and national sovereignty cannot coexist fully and that a trade-off is inevitable¹¹⁸. In an ideal scenario, the EU serves as a model for developing a system of deep economic integration and supranational governance where threats to national constitutional democracies are countered by a liberal constitutionalist system that is democratically accountable at the European level¹¹⁹.

However, considering the unprecedented threat posed by the recent emergence of conservative-populist governments in Central and Eastern Europe and their illiberal initiatives for constitutional, legal, and political reforms, it is imperative for the European Union to seriously address the need for updating and strengthening the continent-wide European project of liberal constitutionalism¹²⁰.

¹¹⁷ *Ibid.*

¹¹⁸ Dani Rodrik, *The globalization paradox: Democracy and the future of the world economy*, WW Norton & Company, 2011.

¹¹⁹ Grainne De Burca, 'Is EU supranational governance a challenge to liberal constitutionalism?' *U. Chi. L. Rev.* 85, 2018, 337.

¹²⁰ *Ibid.*

2. Enhancing the EU enlargement process towards the Western Balkans

During the Thessaloniki summit in 2003, the European Council made a declaration stating that “the future of the Balkans is within the European Union”¹²¹. This political commitment from the heads of state and prime ministers of EU countries was intended to serve as a strong motivating factor and a guarantee of a stable and prosperous future for the region within the EU. However, despite Croatia's accession to the EU in 2013, a decade after the Thessaloniki Summit, Albania, Bosnia and Herzegovina, Kosovo, North Macedonia, Montenegro, and Serbia are still a considerable distance away from obtaining full EU membership, despite being granted candidate status.

In the meantime, the contractual relationship between the EU and the Western Balkans has been established by implementing Stabilisation and Association Agreements (SAAs) for all six countries since 1999. Nonetheless, only Montenegro and Serbia are currently engaged in accession negotiations. While Albania and North Macedonia started their accession negotiations in July 2022, the EU applications of Bosnia and Herzegovina and Kosovo face challenges due to internal political deadlocks, weak governance, and issues with certain EU member countries, particularly in the case of Kosovo. However, in December 2022, Bosnia and Herzegovina achieved candidate country status, while Kosovo applied for EU membership. Moreover, in June 2022, Ukraine and Moldova were granted candidate country status by the EU.

This chapter focuses on the efforts made by the European Commission during the preparation of the EU enlargement towards the Western Balkans to improve this process in terms of the determinacy of the conditions for EU membership, the credibility of the EU membership perspective, and support for the national capacity to meet EU membership requirements. After discussing the central role of the Stabilisation and Association Process (SAP) in regulating contractual relations with the Western Balkans on the basis of bilateral SAAs, the chapter elaborates on the innovations to the enlargement process introduced by the Commission communication of February 2020, titled “Enhancing the accession process - A credible EU perspective for the Western Balkans”, which outlines a “revised methodology for enlargement” to the Western Balkans. Finally,

¹²¹ European Council, ‘Thessalonica European Council: Presidency Conclusions’, Thessalonica, 19–20 June 2003.

it assesses the practical application and ongoing results of the enlargement law developed so far in the actual enlargement of the EU to the Western Balkans that is still ongoing.

2.1 From the Regional Approach to the Stabilisation and Association Process

After the Kosovo crisis of 1998-1999, which marked the fourth war on the territory of the former Yugoslavia in less than a decade, the European Union underwent a significant shift in its approach towards the Western Balkans countries. The impact of the “Kosovo case” made it evident that the EU's initial strategy, known as the Regional Approach, was inadequate in achieving the Union's main objectives in the region, namely, restoring peace, stability, and fostering good neighbourly relations among the affected countries. As a result, the Regional Approach, which was originally established after the Dayton Peace Agreement of 1995 to serve as a political framework for bilateral relations between the EU and some South Eastern European countries, underwent transformation in mid-1999 and gave rise to a new concept known as the Stabilisation and Association Process (SAP)¹²².

The SAP retained some elements from its predecessor but presented a much more ambitious vision for bringing the region closer to the EU. One notable change was the replacement of traditional cooperation agreements with the prospect of comprehensive Stabilisation and Association Agreements (SAAs). Moreover, within just twelve months of implementing the SAP, the European Council, departing from its previous stance, officially recognized the respective countries as “potential candidates” for EU membership¹²³.

Despite these developments, it cannot be asserted that any of the countries involved would imminently become full members of the EU. Nevertheless, these changes introduced a completely new strategic objective to the EU's approach towards the Western Balkans: the enlargement of the EU towards the southeast. Simultaneously, this strategic realignment, along with the shift of the Western Balkans' status from cooperation partners to potential candidates for EU membership, also led the EU to significantly strengthen a guiding principle that has characterized its relations with the region since the initial steps towards a coherent

¹²² Christian Pippan, ‘The rocky road to Europe: The EU’s stabilisation and association process for the Western Balkans and the principle of conditionality’, *European Foreign Affairs Review* 9(2), 2004.

¹²³ Santa Maria da Feira European Council, Presidency Conclusions, 20 June 2000, Bull. EU 6-2000, point I.49.

regional strategy, initiated by the Commission in 1995. This guiding principle is known as conditionality¹²⁴. In the present context, more than ever before, the application of this principle becomes paramount in the EU's policy towards the Western Balkans. It links the gradual improvement of the EU's relations with the region to the fulfilment of a specific set of political and economic conditions by the Western Balkans. This conditionality stands as the crucial cornerstone of EU policy in the Western Balkans¹²⁵.

Considering the Copenhagen criteria, which demand that candidate countries demonstrate their capacity to fulfil the responsibilities of EU membership, including alignment with the goals of political, economic, and monetary union, it becomes evident that achieving full integration of the Western Balkans into EU structures requires a committed effort from both sides over the long term¹²⁶. To tackle this challenge, the EU has responded by transforming its regional approach into a more sophisticated political framework known as the Stabilisation and Association Process (SAP). Launched by the Commission in May 1999¹²⁷, the SAP's primary objective is to assist each Western Balkan country in meeting the relevant EU criteria and eventually becoming official candidates for EU membership.

The SAP entails a range of new and modified offerings to the Western Balkans, such as increased trade liberalisation, improved financial and economic aid, regular political dialogue, cooperation in justice and home affairs, and, notably, a customized category of contractual relations named the Stabilisation and Association Agreements (SAAs). These instruments are accessible to all countries in the region on equal terms, but their actual availability hinges on each country's compliance with the general and country-specific conditions established by the EU¹²⁸. The EU views conditionality as the crucial foundation of the Stabilisation and Association Process, often referred to as "the cement" holding the process together, as it ensures progress and compliance towards EU integration¹²⁹.

¹²⁴ See paragraph c, first chapter, p. 10.

¹²⁵ Christian Pippan, 'The rocky road to Europe: The EU's stabilisation and association process for the Western Balkans and the principle of conditionality', *European Foreign Affairs Review* 9(2), 2004.

¹²⁶ *Ibid.*

¹²⁷ See COM(99) 235 final, 26 May 1999.

¹²⁸ Christian Pippan, 'The rocky road to Europe: The EU's stabilisation and association process for the Western Balkans and the principle of conditionality', *European Foreign Affairs Review* 9(2), 2004.

¹²⁹ General Affairs Council, Luxemburg, 11–12 June 2001, Annex: Council Report – Review of the Stabilisation and Association Process, section III.

Since the Stabilisation and Association Process builds upon the existing regional approach, it preserves both a bilateral and regional aspect, but with a clear focus on the bilateral dimension¹³⁰. The SAP establishes close connections between each participating country and the EU, especially through the Stabilisation and Association Agreements, while also encouraging robust regional cooperation among the Western Balkan countries themselves and with neighbouring countries in the region¹³¹.

The program maintains a flexible and gradual approach, where each country's progress is assessed based on its own merits. Initially, some countries, like Croatia and Macedonia, were concerned that a package approach would hinder their integration into EU structures. However, the “own merits” or “catch-up” approach allows each SAP country to advance towards the prospect of EU accession at its own pace, contingent upon its capacity and willingness to implement necessary political, legal, and economic reforms¹³².

During the first high-level meeting of the heads of state and government of the Southeast European countries and EU Member States in Zagreb in November 2001, the Western Balkan countries officially endorsed the SAP and its conditionality requirements¹³³. While the take-it-or-leave-it approach, along with the political and economic constraints faced by their cooperation partners, left the Western Balkans with limited options to reject the new program, the EU had already incorporated the principle of conditionality into nearly all major SAP instruments by the time of the Zagreb Summit¹³⁴.

The SAAs, the newly introduced form of contractual relationship announced by the Council in May 1999, stand out as the most crucial tool within the SAP framework. Although they heavily draw upon the structure and content of the Europe Agreements established with Central and Eastern European candidate countries, SAAs are unique EU agreements in their own right. Their primary aim is to establish a formal association with

¹³⁰ Christian Pippan, ‘The rocky road to Europe: The EU’s stabilisation and association process for the Western Balkans and the principle of conditionality’, *European Foreign Affairs Review* 9(2), 2004.

¹³¹ Each Stabilisation and Association Agreement (SAA) includes a compulsory obligation for the involved country to actively participate in regional cooperation and treat other SAP countries that have also signed an SAA in a manner similar to how EU Member States engage with one another. To promote these goals, the creation of a network of bilateral 'conventions on regional cooperation' is planned, which includes the establishment of a free trade area among the regional signatories of SAAs; *see* General Affairs Council, Luxemburg, 11–12 June 2001, Annex: Council Report – Review of the Stabilisation and Association Process, section III(d).

¹³² Christian Pippan, ‘The rocky road to Europe: The EU’s stabilisation and association process for the Western Balkans and the principle of conditionality’, *European Foreign Affairs Review* 9(2), 2004.

¹³³ *See* Council Joint Action (CFSP) on the Zagreb Summit, OJ L 290, 17 November 2000, 54.

¹³⁴ Christian Pippan, ‘The rocky road to Europe: The EU’s stabilisation and association process for the Western Balkans and the principle of conditionality’, *European Foreign Affairs Review* 9(2), 2004.

the EU during a transitional period, wherein the concerned country gradually aligns its laws with the fundamental norms and regulations of the Single Market¹³⁵.

To facilitate this process, SAAs encompass several key elements, including the creation of an institutional framework for political dialogue, the progressive establishment of a free trade area, the liberalization of road transit traffic, the development of a regulatory framework for worker mobility, freedom of establishment, provision of services, and the movement of capital. Additionally, SAAs formalize the EU's financial and technical assistance agreements with the associated state. Notably, each SAA requires a binding commitment from the associated country to align its legislation progressively with that of the EU¹³⁶.

This renewed demonstration of the EU's legal dominance in the broader European and Mediterranean region has significantly accelerated and shaped internal political and legal reforms in the Western Balkans, similarly to the impact witnessed in the Central and Eastern European countries during the implementation of the Europe Agreements¹³⁷. The institutional framework of the SAAs offers the EU added leverage to prioritize these reforms and actively push for their effective implementation, particularly through the Stabilisation and Association Council (SAC), the primary treaty body and institutional format for political dialogue¹³⁸.

Regarding more specifically the actual content of the individual SAAs, they share a common structure characterised by ten headings. The first section enumerates the general principles on which the relationship between the EU and the associated countries is based. Among the main principles to be followed by the adhering Western Balkan countries are respect for democratic principles, human rights, international law and the market economy; cooperation in the fight against terrorism and the proliferation of weapons of mass destruction; and, finally, the promotion of regional cooperation for the maintenance of peace and stability achieved through collaboration in the development of projects of common interest and reciprocal concessions in terms of the movement of people, goods, capital and services¹³⁹.

¹³⁵ *Ibid.*

¹³⁶ *Ibid.*

¹³⁷ *Ibid.*

¹³⁸ The Stabilisation and Association Council usually comprises representatives from the EU Council, the European Commission, and the government of the respective treaty partner. This council has the authority to oversee the implementation of the SAA and make binding decisions as stipulated in the agreement. In principle, all decisions are made through consensus.

¹³⁹ See Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Albania, of the other part, OJ L 107, 2009 as an example.

These demands on the part of the Union are accompanied by a continuous maintenance and development of the political dialogue between the parties, which is referred to in the second section of the agreement. The aim of this dialogue is to promote the gradual harmonisation of the Western Balkan countries with the European community with a view to their full integration and, at the same time, to develop a common vision of security and stability in Europe for the purposes of regional cooperation and in the areas covered by the EU's common foreign and security policy¹⁴⁰.

In particular, the third section of the agreement is devoted to regional cooperation, in which the Western Balkan signatory states are urged to conclude bilateral agreements on international cooperation with the other SAA signatory states with the EU and/or with any EU candidate country not involved in the Stabilisation and Association Process. Furthermore, the Union is committed to support through technical assistance programmes any project with a regional or cross-border dimension¹⁴¹.

The fourth and fifth sections are devoted to the gradual development of a bilateral free trade area between the EU and the country concerned lasting up to 10 years, in which the free movement of goods and services, workers and capital is guaranteed. The sixth section is dedicated to the harmonisation of national law with the European *acquis* with a special focus on competition rules that must be based on EU law to ensure the proper functioning of the market economy¹⁴².

The seventh section emphasises the importance of respect for the rule of law and the strengthening of national institutions at all levels and in particular the independence and effectiveness of the judiciary. In addition, special attention is given to the issue of migration and border control and to action against organised crime, corruption and terrorism. Sections eight and nine provide an appropriate framework for cooperation in a wide range of policy areas to support the development and growth of the associated countries. In addition, it is required to the EU to provide financial assistance in the form of grants and loans in order to ensure the achievement of the objectives set out in the agreement¹⁴³.

Finally, the last section establishes the mechanism for overseeing the application and implementation of the agreement. The main body set up for this purpose is the Stabilisation and Association Council (SAC),

¹⁴⁰ *Ibid.*

¹⁴¹ *Ibid.*

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

composed of representatives of the Council of the European Union and the European Commission, on the one hand, and representatives of the government of the country signatory to the agreement, on the other. The SAC shall meet at regular intervals and when circumstances require it to consider any important matter relating to the agreement or to resolve any dispute concerning the application or interpretation of the agreement. To this end, the SAC has the power to make decisions within the scope of the agreement and in the cases covered by the agreement. These decisions are binding on the parties, which must take the necessary measures to implement them. In addition, the SAC may also make appropriate recommendations. Decisions and recommendations are adopted by mutual agreement between the parties¹⁴⁴.

In exercising its functions, the SAC is assisted by a Stabilisation and Association Committee. Like the SAC, it is composed of representatives of the Council of the European Union and representatives of the European Commission, on the one hand, and representatives of the government of the country signatory to the agreement, on the other. The Rules of Procedure of the Stabilisation and Association Council determine the composition, duties and operating procedures of the Stabilisation and Association Committee. In turn, the Stabilisation and Association Committee may create Sub-Committees¹⁴⁵.

Since the launch of the Stabilisation and Association Process in June 1999, the EU has progressively concluded bilateral Stabilisation and Association Agreements with each of the Western Balkan partners. The front-runner was North Macedonia, which became a SAA signatory in 2004, followed by Albania in 2009, Montenegro in 2010, Serbia in 2013, Bosnia and Herzegovina in 2015 and finally Kosovo in 2016.

From the drafting of the SAA with Montenegro onward, the general principles of the first section of the agreement included the obligation of full cooperation with the International Criminal Tribunal for the former Yugoslavia and its residual mechanism. It was a United Nations court established to address war crimes that occurred amid the Balkan conflicts of the 1990s. Over its operational period from 1993 to 2017, it played a pivotal role in reshaping international humanitarian law. This was achieved by allowing victims the chance to witness those accused of playing a major role in the heinous acts during armed conflicts face trial¹⁴⁶.

¹⁴⁴ *Ibid.*

¹⁴⁵ *Ibid.*

¹⁴⁶ See Stabilisation and Association Agreement between the European Communities and their Member States, of the one part, and the Republic of Montenegro, of the other part, OJ L 108, 2010.

In addition, another important specificity that distinguishes the SAA signed by Kosovo with the EU from its predecessors is the introduction of an additional overarching principle regarding Kosovo's continued commitment to a concrete and sustainable improvement of relations with Serbia and effective cooperation with the EU's common security and defense policy mission while it is in force. In addition, this agreement provides an appropriate framework for a political dialogue to promote the process of normalization of relations between Kosovo and Serbia¹⁴⁷.

Contrary to initial expectations that closer ties with the EU would lead to the gradual adoption of liberal democratic governance and adherence to the rule of law in the Western Balkan countries, there has been a noticeable regression in terms of democracy and the rule of law throughout the region in the past decade¹⁴⁸. The process of EU integration is often hindered by the presence of influential internal gatekeeper elites, both formal and informal, who continue to wield control over the state to protect their private economic interests and maintain their political dominance¹⁴⁹.

Additionally, the Western Balkans face a development gap. Despite experiencing rapid growth in the early 2000s, effective economic reform has been hindered as regional economies struggle to compete with the EU's common market pressures. As a result, many economies in the region have remained underdeveloped, relying on aid, loans, remittances, and significant state intervention. At the current average growth rates, it will take these countries several decades at least to reach the average GDP per capita of the EU¹⁵⁰.

Moreover, alongside the democratic and socioeconomic challenges, there are numerous unresolved bilateral disputes and an incomplete reconciliation process following the violent conflicts of the 1990s, which pose a threat to the fragile regional stability¹⁵¹.

The Western Balkans present a distinctive setting where various interconnected political processes have unfolded simultaneously. Over the past thirty years, the region has witnessed multiple state disintegrations, both violent and non-violent conflicts among countries and within them, and a prolonged transition towards

¹⁴⁷ See Stabilisation and Association Agreement between the European Union and the European Atomic Energy Community, of the one part, and Kosovo, of the other part, OJ L 71, 2016.

¹⁴⁸ Freedom House, 'Democracy in Crisis—Freedom in the World', 2018.

¹⁴⁹ Jelena Džankić, Soeren Keil and Marko Kmezić, 'The Europeanisation of the Western Balkans', *Cham: Springer International Publishing*, 2019.

¹⁵⁰ Peter Sanfey and Jakov Milatovic, *The Western Balkans in transition: diagnosing the constraints on the path to a sustainable market economy*, London: European Bank for Reconstruction and Development, 2018.

¹⁵¹ Marika Djolai and Zoran Nechev, 'Bilateral disputes conundrum: Accepting the past and finding solutions for the Western Balkans', *BiEPAG*, 2018.

democracy and a market economy. All these experiences have been influenced by the parallel, overlapping, and often conflicting dynamics of nation- and state-building, as well as aspirations to join the European Union¹⁵². Understanding the intricate interplay between these two processes is essential in grasping why the prospect of EU membership, which significantly transformed the political and economic prospects of Central and Eastern European states two decades ago, had diverse and varied impacts in the Western Balkans¹⁵³.

The EU accession process in the Western Balkans involves aligning with EU requirements, which not only entails sharing sovereignty but also integrating broader nation-building efforts within the overall accession dynamics. In the case of the Balkan states, the interplay between these two processes holds significantly greater significance compared to countries that joined the EU in previous enlargement waves. There are two primary reasons for the special emphasis on their interaction¹⁵⁴.

Firstly, due to the historical conflicts in the region, the connection between state-building and national identities is deeply rooted in the social and political structures of these states. This embedded relationship gives them much more political influence than other post-communist countries, to the extent that they can adversely affect the country's aspirations to join the EU. Serbia's unwillingness to acknowledge Kosovo's independence is a notable example in this regard¹⁵⁵.

Secondly, the Western Balkan states face considerably longer transformation periods with more uncertain outcomes and unclear timelines for EU accession. Apart from Slovenia, which joined the EU in the 2004 enlargement wave, other countries will have undergone around 25 years of transformation from the fall of communism to their potential accession to the EU. For example, Croatia declared independence in 1991 and became an EU member in 2013, a span of 22 years. For the remaining countries in the accession queue, this period will be significantly longer, particularly due to the increasing demands of the accession process driven by the expansion of EU legislation and general enlargement fatigue¹⁵⁶.

¹⁵² Soeren Keil, 'Europeanization, state-building and democratization in the Western Balkans', *Nationalities Papers* 41.3, 2013, 343-353.

¹⁵³ Jelena Džankić, Soeren Keil and Marko Kmezić, 'The Europeanisation of the Western Balkans', *Cham: Springer International Publishing*, 2019.

¹⁵⁴ *Ibid.*

¹⁵⁵ *Ibid.*

¹⁵⁶ *Ibid.*

2.2 A revised methodology for enlargement towards the Western Balkans

Traditionally, the study of Europeanisation has primarily concentrated on examining how European integration and governance impact EU Member States¹⁵⁷. However, over the last decade, a distinct sub-field of research on Europeanisation has emerged, which includes the analysis of candidate countries in the process. This expansion of research on Europeanisation was largely driven by the observation that the enlargement process was accompanied by significant political and legal transformations in the candidate countries, brought about by EU conditionality. During this process, the candidates not only adopted the EU *acquis communautaire* (the body of EU laws) but also principles and regulations in areas such as democracy and the rule of law, where the EU had no jurisdiction in the original Member States¹⁵⁸.

Studies in this particular research area have focused on analyzing the circumstances under which EU membership conditionality has effectively influenced the adoption of rules across various policy domains in the candidate countries during the Eastern enlargement process¹⁵⁹.

Initially, the research primarily concentrated on Central and Eastern European candidates, which eventually became EU Member States in 2004 and 2007. However, it is now essential to assess the extent to which the conditions that were relevant for Central and Eastern European countries can be applied to the candidate countries in the Western Balkans. In essence, the question arises whether the existing legal and political regulations, which govern the influence of EU conditionality on candidate states, adequately explain the level of compliance of the Western Balkan countries. Alternatively, it is worth considering whether these regulatory approaches should be adjusted to account for the specific circumstances of enlargement in the Western Balkans¹⁶⁰.

¹⁵⁷ See Klaus H. Goetz and Jan-Hinrik Meyer-Sahling, 'The Europeanisation of National Political Systems: Parliaments and Executives', *Living Reviews in European Governance* 3.2, 2008, 1–30; Robert Ladrech, 'Europeanisation and Political Parties', *Living Reviews in European Governance* 4.1, 2009, 5–23; Oliver Treib, 'Implementing and Complying with EU Governance Outputs', *Living Reviews in European Governance*, 3.5, 2008, 1–30.

¹⁵⁸ Ulrich Sedelmeier, 'Europeanisation in New Member and Candidate States' *Living Reviews in European Governance* 6.1, 2011, 1–30.

¹⁵⁹ See Heather Grabbe, 'European Union Conditionality and the *Acquis communautaire*', *International Political Science Review* 23.3, 2002, 249–268; Frank Schimmelfennig and Ulrich Sedelmeier, eds. *The Europeanisation of Central and Eastern Europe*, Cornell University Press, 2005; Milada Anna Vachudova, 'Corruption and Compliance in the EU's Post-communist Members and Candidates', *JCMS* 47, 2009, 43–62.

¹⁶⁰ Jelena Džankić, Soeren Keil and Marko Kmezić, 'The Europeanisation of the Western Balkans', *Cham: Springer International Publishing*, 2019.

There are indications that the path to accession for the Western Balkan candidate group is more challenging compared to the Central and Eastern European countries. Firstly, the EU has imposed stricter accession criteria on the Western Balkan countries, drawing from the experiences of the fifth enlargement. Among the main innovations introduced by the European Commission are the strengthening of the political orientation of the procedure through high-level Inter-Governmental Conferences (IGCs), the introduction of new mechanisms for responding to a decline or regression in a candidate country's reform pathway, that is, so-called reversibility of the process, the creation of incentives for robust reforms such as accelerated integration in specific sectors, and the organization of the negotiating material into coherent clusters that group chapters with related content.

Secondly, these countries encounter widespread “enlargement fatigue” among the societies of existing EU Member States. Thirdly, the Western Balkans had a more difficult starting point on their path to accession than the Central and Eastern European countries, as they had less experience with democratization and often had lower levels of governance capacity. Finally, unlike the Central and Eastern European countries, the Western Balkan candidates grapple with issues of contested statehood and unresolved ethnic conflicts, which stem from recent legacies of civil war¹⁶¹.

2.2.1 Determinacy of EU accession conditions

The current EU enlargement strategy has implemented a much more robust and consistent compliance monitoring system for rule of law conditionality compared to what was applied to the Central and Eastern European (CEE) candidate countries. This approach reflects a learning curve, demonstrating an intention to address significant rule of law, political, and bilateral issues before the accession of candidate countries, rather than tackling them after accession¹⁶². The 2012 EU Enlargement Strategy Paper underscores the central importance of strengthening the rule of law and democratic governance in the enlargement process. It also

¹⁶¹ *Ibid.*

¹⁶² Meltem Müftüleri-Baç and Aylin Ece Çiçek, ‘A Comparative Analysis of the European Union’s Accession Negotiations for Bulgaria and Turkey: Who Gets in, When and How?’ *Maximizing the Integration Capacity of the European Union: Lessons of and Prospects for Enlargement and Beyond (MAXCAP) No 7*, 2015.

highlights the lessons learned from previous enlargements, emphasizing the need for a heightened focus on these areas and enhancing the overall quality of the process¹⁶³.

The subsequent introduction of the “new approach” to accession negotiations illustrates the increased role of the Commission in monitoring the progress made by candidate countries in rule of law policies¹⁶⁴. Following the Commission’s decision to open negotiations with Albania and North Macedonia in March 2020, it presented the draft negotiating frameworks for the two candidate countries to the Member States in June 2020. These negotiating frameworks were the first to consider the "revised methodology for enlargement" to the Western Balkans envisioned by the European Commission communication of February 2020¹⁶⁵.

Viewed from a different standpoint, the “new approach” underscores the role of EU Member States in shaping and supporting the enlargement process, drawing lessons from previous enlargement waves. In comparison to the CEE enlargement, the EU has significantly increased the level of conditionality in terms of content, scope, and implementation of reforms. Unlike previous rounds of enlargement, the Western Balkan candidate countries are now required not only to adopt EU regulations and meet conditions outlined in the negotiating chapters but also to effectively and sustainably implement the most challenging *acquis* before their accession¹⁶⁶.

The “new approach” has arguably made conditionality more stringent by introducing the early opening of chapters 23 (Judiciary and fundamental rights) and 24 (Justice, freedom and security) in the negotiations and maintaining them throughout the entire process. This approach aims to ensure consistent compliance during the accession process while providing the candidate country with ample time to establish all necessary legislation, institutions, and a strong track record of implementation¹⁶⁷.

An additional advancement in the negotiation process is the modification of the suspension clause. If the Commission identifies insufficient progress in the rule of law chapters compared to the overall negotiations,

¹⁶³ European Commission, *Enlargement Strategy and Main Challenges, 2012–2013*.

¹⁶⁴ Christophe Hillion, ‘Enlarging the European Union and deepening its fundamental rights protection’, *European Policy Analysis* 11, 2013.

¹⁶⁵ European Commission, ‘Enhancing the accession process – A credible EU perspective for the Western Balkans’, COM(2020) 57 final.

¹⁶⁶ Antoaneta L. Dimitrova, ‘The EU’s Evolving Enlargement Strategies: Does Tougher Conditionality Open the Door for Further Enlargement?’, *Maximizing the integration capacity of the European Union: Lessons of and prospects for enlargement and beyond*, 2016.

¹⁶⁷ Jelena Džankić, Soeren Keil and Marko Kmezić, ‘The Europeanisation of the Western Balkans’, *Cham: Springer International Publishing*, 2019.

it may, either on its own initiative or upon request by one third of the Member States, propose suspending its recommendation to open and/or close other chapters and adjust related preparatory work until the imbalance is adequately addressed. This reshaped approach has prompted progress in the implementation of the benchmarking system. Specifically, to monitor the implementation and long-term nature of reforms related to the rule of law, the Commission introduced provisional benchmarks for chapters 23 and 24. These benchmarks focus on the adoption of legislation, the establishment and reinforcement of administrative structures, and the interim track record¹⁶⁸.

Overall, the conditionality applied to candidate countries through the new approach is designed to allow the Union to exert political influence and guide policy reforms on sensitive political matters. The introduction of sophisticated monitoring mechanisms is expected to increase the visibility of compliance issues in candidate countries at an early stage and enhance the clarity of specific requirements during the accession process¹⁶⁹.

Although higher levels of determination of EU accession conditions are anticipated to have a favourable impact on compliance in the Western Balkans in comparison to the CEE candidates, there are also disparities in the determination of EU conditions among the current candidate states. For instance, in the case of Croatia, certain new instruments introduced by the Enlargement Strategy were implemented only at a later stage of the accession process, whereas in the case of other candidates, they were introduced right from the beginning of the accession negotiations¹⁷⁰.

Additionally, the EU accession criteria for the Western Balkan countries still exhibit variations in their level of precision and binding nature, which could explain why some conditions are fulfilled by the candidate countries while others are not¹⁷¹.

Consequently, Member States and Western Balkan countries are urging for a more predictable process that offers greater clarity on the Union's expectations at different stages of enlargement. They also seek to understand the positive and negative consequences linked to progress or lack thereof. The Commission intends to address these concerns through its “revised methodology for enlargement” to the Western Balkans outlined

¹⁶⁸ *Ibid.*

¹⁶⁹ Z. Nechev et al., ‘Embedding Rule of Law in the Enlargement Process: A Case for the EU Political Conditionality in the Accession of the Western Balkan Countries’, *Association for Development Initiatives—Zenith*, 2013.

¹⁷⁰ Jelena Džankić, Soeren Keil and Marko Kmezić, ‘The Europeanisation of the Western Balkans’, *Cham: Springer International Publishing*, 2019.

¹⁷¹ Laurent Pech, ‘The EU as a global rule of law promoter: the consistency and effectiveness challenges’, *Asia Europe Journal* 14, 2016, 7-24.

in its communication of February 2020, titled “Enhancing the accession process - A credible EU perspective for the Western Balkans”. Indeed, it will diligently oversee how candidate countries adhere to the *acquis* and offer more precise direction regarding particular reform priorities and alignment criteria. Furthermore, it will outline anticipated developments for the upcoming phases of the process. By offering stronger political guidance and refocusing on Inter-Governmental Conferences (IGCs), the process will become more predictable, and planning for the year ahead will be clearer. Political actors within the countries will have a more distinct understanding of the necessary steps to advance. This will involve indications of potentially open or closed clusters or chapters and the conditions that need to be fulfilled for such actions to occur, if applicable¹⁷².

The core principle of the merit-based accession process lies in its conditionality. Financial assistance provided by the EU to candidate countries is also subject to the principle of conditionality. In particular, the means through which the EU has supported reforms in the enlargement region by providing technical and financial assistance since 2007 is the Instrument for Pre-accession Assistance (IPA). The EU pre-accession funds support the beneficiary countries in adopting and implementing the political, social, economic, institutional and administrative reforms necessary to comply with the requirements of EU membership, while contributing to the consolidation of their stability, security and prosperity. Specifically, EU financial assistance is conditional on progress in meeting the Copenhagen criteria and this assessment is conducted on the basis of each candidate country's own merits.

However, for them to be effective, the requirements for accession need to be clearly defined right from the start. It is essential for candidate countries to understand the specific criteria by which their progress will be evaluated, and Member States should have a precise grasp of the exact expectations for candidates. The Commission's goal is to improve the clarity of these conditions for candidate countries' advancement, primarily through its annual reports. These conditions must be unbiased, well-defined, thorough, stringent, and verifiable. Additionally, when suitable, the Commission may incorporate third-party indicators to provide Member States with the most comprehensive basis for their decisions. By offering transparent and tangible benefits that directly engage citizens, the EU can encourage genuine political commitment and acknowledge

¹⁷² European Commission, ‘Enhancing the accession process – A credible EU perspective for the Western Balkans’, COM(2020) 57 final.

the advancements made in demanding reforms and the process of political, economic, and social transformation. If countries effectively address the reform priorities agreed upon during negotiations, several outcomes should ensue¹⁷³:

1. Closer integration of the country with the EU, involving the gradual alignment and implementation of individual EU policies, access to the EU market, and participation in EU programs while ensuring fair competition.
2. Increased funding and investment, facilitated by a results-based and reform-oriented Instrument for Pre-accession Support.
3. Enhanced cooperation with International Financial Institutions (IFIs) to leverage additional support.

In summary, these incentives aim to motivate candidate countries and demonstrate the tangible benefits of pursuing necessary reforms, thereby accelerating their integration into the EU and facilitating positive changes for their citizens. These measures are aimed at using EU funds to establish a robust European preference that aligns with WTO standards and strengthens the local economy. While there is a need to offer more tangible incentives and rewards for progress in reforms, there is also a call for stronger measures that appropriately penalize any significant or prolonged lack of progress or regression in implementing reforms and adhering to the accession process requirements¹⁷⁴.

Decisions to temporarily halt or even reverse the progression will be determined by the Commission's annual assessment within its enlargement package. This evaluation will take into account the overall status of the accession negotiations and the extent to which crucial reforms, particularly those related to the rule of law, have been implemented. Member States will continue to play a role in this process by informing the Commission of any stagnation or significant setbacks in the reform process. In serious instances, the Commission may propose actions at any point, either on its own initiative or in response to a well-justified request from a Member State, to ensure a prompt response to the situation. In such cases, streamlined procedures, including the possibility of reversed qualified majority voting, may be employed as necessary.

¹⁷³ *Ibid.*

¹⁷⁴ *Ibid.*

The EU has various methods to tackle potential issues: Member States may choose to pause negotiations in specific domains or, in severe instances, halt them entirely; chapters that were previously closed might be revisited or reset if problems require reassessment; and there is also the possibility of decreasing the scope and intensity of EU funding, except for support to civil society. Moreover, benefits associated with further integration, such as access to EU programs or unilateral market access concessions, could be temporarily suspended or withdrawn¹⁷⁵.

Enhanced transparency will contribute to bolstering predictability and conditionality. To ensure the lasting impact of reforms and to monitor their implementation effectively, major reforms within countries must be carried out transparently and inclusively, involving all stakeholders. Simultaneously, the EU aims to increase transparency by making key documents more widely accessible. Moreover, the Commission will continue its efforts in communication and information campaigns, which also extend to EU Member States. While it remains the primary duty of Member States to inform their citizens and provide accurate details regarding the strategic prospects and difficulties of the process, the Commission will actively assist and back these initiatives¹⁷⁶.

2.2.2 Credibility of EU accession perspective

While the Western Balkan candidate group faces greater determination in EU accession conditions, these countries encountered reduced credibility of EU membership compared to previous enlargement rounds. The enlargement process in the Western Balkans faced increased scrutiny and scepticism from the public in the EU. According to Eurobarometer surveys, there has been a consistent decline in public enthusiasm within the EU regarding the acceptance of new members in the future. For instance, in the Autumn 2015 Eurobarometer surveys, 51% of respondents expressed opposition to further enlargement. Among the Member States, 15 countries were predominantly opposed to enlargement, with Austria (75%), Germany (73%), Luxembourg (69%), and France (67%) leading the opposition¹⁷⁷.

¹⁷⁵ *Ibid.*

¹⁷⁶ *Ibid.*

¹⁷⁷ Standard Eurobarometer 84, Annex Public Opinion in the European Union, Autumn 2015.

Furthermore, the new candidate countries also faced a less favourable set of intergovernmental preferences concerning future EU enlargement rounds. For example, the French constitutional revisions of 2005 and 2008 introduced an obligation for France to hold a referendum on any further EU enlargement after Croatia's accession. An exception to this rule would only apply if the French Congress approved the ratification of an accession treaty by a three-fifths majority¹⁷⁸.

Until a few years ago, the lack of public support for enlargement in EU Member States added pressure on policymakers and influenced their preferences concerning enlargement policy. As governments have become more responsive to public opinion on EU matters, and some Member States have indicated their intention to subject further accession treaties to referendums, this negative public sentiment has diminished the credibility of the EU's promise of membership¹⁷⁹.

Intergovernmental conflicts within the EU have also become more prominent. In numerous instances, the possibility of accession was severely hindered by the presence of Member State veto players who could impose the resolution of bilateral disputes with candidate countries as decisive conditions for progress in the EU accession process. Such actions led to significant disruptions in the overall dynamics of the enlargement process in the Western Balkans, resulting in increased uncertainty regarding the prospects of accession¹⁸⁰.

In essence, while the EU's primary objective in previous rounds of enlargement was to prepare Central and Eastern European countries for accession, the desire to grant membership to the Western Balkan countries appeared to be less pronounced. Indeed, the Commission's level of activity towards future membership expansion has been notably lower compared to previous enlargement waves¹⁸¹.

The EU's diminished focus on future enlargements can be attributed, in part, to widespread “enlargement fatigue” among Western societies. Additionally, the EU faced various internal and external challenges that diverted attention away from future membership expansions. Internally, issues such as the euro crisis, Brexit negotiations, and the refugee crisis captured the focus of EU Member States, leaving less attention for future enlargement matters. Externally, the Russian military intervention in Ukraine and the resulting unrest in the

¹⁷⁸ N. Wunsch, ‘EU Member States and Enlargement Towards the Balkans’ in R. Balfour and C. Stratulat (eds), *EPC Issue Paper* 79, 2015, 43–53.

¹⁷⁹ Jelena Džankić, Soeren Keil and Marko Kmezić, ‘The Europeanisation of the Western Balkans’, *Cham: Springer International Publishing*, 2019.

¹⁸⁰ *Ibid.*

¹⁸¹ David Phinnemore, ‘The Stabilization and association Process: a Framework for european Union enlargement?’, *European Integration and Transformation in the western Balkans*, Routledge, 2013, 22-35.

country occupied the minds of EU Member States and the Commission, overshadowing the accession negotiations with the new candidate countries in the Western Balkans¹⁸². Although, at the same time, it opened the path to further enlargements toward Ukraine and Moldova.

Lastly, the reduced credibility of the enlargement promise also influenced how national actors perceived the potential rewards. Specifically, the enlargement process advanced much more slowly compared to previous rounds. While most Central and Eastern European countries gained the prospect of accession in just over a decade, from 1993 to 2004, the progress for the Western Balkans was notably slower. Only Croatia's accession made similar headway within a comparable timeframe. As a result, the ultimate reward of EU membership seemed distant, far beyond the political horizon of the governments at the time. This long-term perspective made it less likely for the current governments to be direct beneficiaries of their reform efforts and thus unwilling to undertake costly and unpopular reforms¹⁸³.

Given the overall low credibility of new EU enlargements, it remains uncertain to what extent it significantly impacts the variations in compliance among the Western Balkan countries. However, it is plausible that certain aspects of credibility, such as public opinion in EU Member States, may differ across candidate states and influence the perceptions of national leaders in the Western Balkans regarding their prospects of EU membership¹⁸⁴.

Nevertheless, based on Eurobarometer surveys, there has been a consistent rise in public support for future new members joining the EU since the autumn of 2018. In the Spring 2023 Eurobarometer polls, 53% of the respondents expressed their favour for further EU enlargement. Notably, Austria (60%), France (55%), and Germany (49%) were the only Member States with significant opposition to enlargement¹⁸⁵.

Indeed, in 2020, the EU took significant steps to revitalize the accession process and restore its credibility in the Western Balkans. This initiative was sparked by the Commission communication of February 2020, titled “Enhancing the accession process - A credible EU perspective for the Western Balkans”. The aim was

¹⁸² Jelena Džankić, Soeren Keil and Marko Kmezić, ‘The Europeanisation of the Western Balkans’, *Cham: Springer International Publishing*, 2019.

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ Standard Eurobarometer 99, Annex Public Opinion in the European Union, Spring 2023.

to strengthen mutual trust and establish clear commitments on both sides to move the accession process forward with renewed vigour¹⁸⁶.

This assumes that the leaders of the Western Balkans will genuinely uphold their commitment to implementing essential and fundamental reforms. These reforms encompass various aspects such as the rule of law, anti-corruption measures, economic improvements, ensuring the effective functioning of democratic institutions and public administration, as well as alignment of foreign policies. It is crucial for the leaders to demonstrate a credible political will, addressing legitimate concerns of both Member States and EU citizens. This reassurance can be achieved through concrete and tangible reforms that exhibit their unwavering dedication to progress. Furthermore, the leaders of the Western Balkans must go beyond and display additional efforts in fostering regional cooperation and establishing good relations with neighbouring countries. By doing so, they can instil confidence in the EU's collaborative efforts towards fostering stability and prosperity within the region¹⁸⁷.

Conversely, this also assumes that the European Union maintains a strong dedication to a process based on merit. Advancement to the next stage of the process is determined by the partner countries meeting the set objective criteria and conditions, and this decision is made by the Member States. It is crucial for all parties involved to avoid exploiting unresolved matters in the EU accession process. Additionally, Member States and institutions must present a unified stance in the region, offering unequivocal signals of support and encouragement when needed, while also addressing shortcomings openly and honestly when they arise¹⁸⁸.

In the end, credibility must be bolstered by placing even greater emphasis on crucial reforms that are indispensable for a successful EU accession process. These fundamental reforms will take on a more pivotal role in the accession negotiations. They will be the first to be initiated and the last to be concluded, and the overall pace of the negotiations will be contingent on the progress made in these key areas. The negotiations concerning essential aspects will be guided by specific measures: an initial benchmark for the rule of law chapters, comparable to previous action plans, will serve as the starting point and throughout the process, intermediate benchmarks will be established to monitor progress. No other chapters will be provisionally

¹⁸⁶ European Commission, 'Enhancing the accession process – A credible EU perspective for the Western Balkans', COM(2020) 57 final.

¹⁸⁷ *Ibid.*

¹⁸⁸ *Ibid.*

concluded until these benchmarks are satisfactorily met. Additionally, there will be a roadmap focusing on the functioning of democratic institutions and public administration reform. Furthermore, a more robust connection will be established between the economic reform agenda and the countries' efforts to meet the economic criteria¹⁸⁹.

Moreover, the Commission will enhance its efforts in reinforcing measures concerning the rule of law and the development of institutions. The successful implementation of these reforms will be a prerequisite for advancing further sectoral integration and overall progress. Additionally, anti-corruption initiatives will be closely integrated, with a strong emphasis on the relevant chapters. The commitment to supporting regional cooperation will persist without interruption. Furthermore, every endeavour will be undertaken to resolve bilateral disputes, with special attention directed towards the EU-facilitated dialogue between Serbia and Kosovo. This dialogue should culminate in a comprehensive and legally binding normalization agreement¹⁹⁰.

2.2.3 Support for domestic capacity

Regarding domestic capacity, candidate countries require financial and administrative resources to meet the requirements for EU membership. In a comparative context, apart from Croatia, the Western Balkan states are generally among the poorest and least developed in Europe. Their economic performance in recent years has been modest, with some experiencing low levels of economic growth while others face ongoing recession. High unemployment rates, weak management of public finances, informal economies, trade deficits, and slow market liberalization are characteristic features of their economies¹⁹¹.

Despite continuous efforts to reform the public sector, the transformation of their robust bureaucracies has yielded mixed results. The politicization of state apparatuses and limited meritocratic recruitment remain significant obstacles to professionalizing the bureaucracy. Moreover, disparities in the implementation of

¹⁸⁹ *Ibid.*

¹⁹⁰ *Ibid.*

¹⁹¹ Jelena Džankić, Soeren Keil and Marko Kmezić, 'The Europeanisation of the Western Balkans', *Cham: Springer International Publishing*, 2019.

institutional reforms, political tensions, legacies from the communist era, ineffective law enforcement, and elevated levels of corruption severely hamper effective governance and the overall state-building process¹⁹².

Even before joining the EU, Croatia was recognized as having the highest capacity among the countries in the region, with Serbia and North Macedonia following closely¹⁹³. On the other hand, Kosovo exhibited the weakest administrative capacity among the Western Balkan countries. Albania and Bosnia and Herzegovina fall into the intermediate group. Over time and across different issue areas, variations are likely to occur, with certain countries receiving more resources from the Commission to implement specific reforms, possibly at the expense of progress in other areas¹⁹⁴.

To enhance the negotiation process and promote collaboration across different chapters, the “revised methodology for enlargement” provides for negotiating chapters to be grouped thematically. These clusters will cover broad subjects like good governance, the internal market, economic competitiveness, and connectivity. By organizing chapters into clusters, there will be a more concentrated effort on essential policy discussions and a stronger basis for engaging in higher-level political interactions. This approach will facilitate the identification of crucial and time-sensitive reforms within specific sectors. As a result, it will accelerate overall reform efforts, providing greater impetus for sectoral reforms that benefit citizens and businesses alike. Negotiations for each cluster will be conducted as a unified entity, once the specified opening requirements have been met, rather than addressing each chapter separately. After undergoing a screening process, which will be conducted for each cluster, the EU and the candidate country will mutually agree on the priority areas for accelerated integration and significant reforms. Upon successfully addressing these priority areas, the entire cluster (comprising all associated chapters) will be opened without any further conditions, and specific benchmarks for closing individual chapters will be established. If significant reforms have already been implemented prior to cluster opening, the timeframe between the cluster's opening and the closure of individual chapters should be limited, preferably within one year, contingent on the progress of reforms. This approach

¹⁹² *Ibid.*

¹⁹³ Tanja A. Börzel, ‘When Europeanization hits limited statehood: The Western Balkans as a test case for the transformative power of Europe’, *European integration and transformation in the Western Balkans*, Routledge, 2013, 173-185.

¹⁹⁴ Tanja A. Börzel, ‘When Europeanization Hits Limited Statehood: The Western Balkans as a Test Case for the Transformative Power of Europe’, KFG Working Paper Series No. 30, 2011, 5-18.

will primarily focus on finalizing any remaining measures required to ensure complete alignment with the EU standards¹⁹⁵.

Clusters will be synchronized with the Stabilisation and Association Sub-Committees to enable continuous monitoring of progress within the clusters. Specific measures for expediting alignment will be adopted within the SAA structures, allowing for focused dialogues and the identification of opportunities for accelerated integration in all EU policy domains. This approach will yield evident advantages for both the EU and the candidate countries. To infuse more energy into negotiations with Serbia and Montenegro, chapters can also be grouped together, while adhering to the existing negotiating frameworks and with the mutual consent of these countries. This approach will enable greater political emphasis on key areas and create political momentum in the countries concerning crucial alignment issues. The option of undertaking an exercise to identify sectors where accelerated alignment and integration are viable will be made available, with the development of common roadmaps agreed upon and followed within the SAA structures¹⁹⁶.

The process of joining the European Union necessitates and encourages essential reforms, along with political and economic transformations in aspiring countries. It also requires them to demonstrate their capability to take on shared responsibilities as EU Member States. Consequently, this process assumes a deliberate and active societal decision from the candidate countries to strive for and uphold the highest European standards and values. Moreover, the commitment of the Member States to embrace a collective future with the Western Balkans as full-fledged Union members is not merely a technical obligation but a significant political commitment. It reflects the shared vision of forging a common path and building strong ties between the EU and the Western Balkans. Considering the significance of the matter, it is imperative to prioritize the political aspect of the process and emphasize the need for stronger leadership and unwavering commitment from the Member States. This involves establishing fresh avenues for high-level political and strategic discussions with the countries, accomplished through regular EU-Western Balkans summits and intensified ministerial interactions. Particularly in areas where alignment is making notable progress and

¹⁹⁵ European Commission, 'Enhancing the accession process – A credible EU perspective for the Western Balkans', COM(2020) 57 final.

¹⁹⁶ *Ibid.*

essential criteria are being fulfilled, such heightened engagement could open the door for these countries to participate as observers in crucial EU meetings that address matters of importance to them¹⁹⁷.

It is crucial to prioritize policy matters and fundamental reforms within all bodies operating under the Stabilisation and Association Agreement and foster genuine political dialogue. The Inter-Governmental Conferences (IGCs) should play a more assertive role in leading the accession negotiation process. To enhance the accession process, Member States will be encouraged to actively participate by deploying their own experts for on-site monitoring, contributing directly to the annual reports, and providing sector-specific expertise. Additionally, Member States will have the opportunity to conduct more frequent reviews and monitoring of the overall progress. The Commission will continue to evaluate the overall progress of the negotiations. In its annual enlargement package, it will present detailed plans for the following year's reforms, seeking approval from Member States, and suggesting corrective measures if necessary. Country-specific IGCs will occur after the Commission publishes its annual report on each country. These IGCs will serve as a platform for political discussions on reforms, assessing the entire accession process, and planning for the subsequent year. This includes decisions on the opening and closing of chapters or groups of chapters, as well as any required corrective actions. All parties involved must ensure representation at the appropriate level to foster productive political dialogue¹⁹⁸.

The Stabilisation and Association Councils will also play a vital role as a complementary forum for policy dialogue on reforms. Additionally, working alongside the Stabilisation and Association Committees and Sub-Committees, they will facilitate thorough monitoring of progress and address aspects of accelerated integration in their respective clusters. Ultimately, there will be a more comprehensive political evaluation of actions at critical stages of each partner's accession process. This includes when intermediate benchmarks on key reforms are achieved, when the Council assesses the conditions for opening a cluster, and when the overall negotiations are technically ready for conclusion¹⁹⁹.

¹⁹⁷ *Ibid.*

¹⁹⁸ *Ibid.*

¹⁹⁹ *Ibid.*

2.3 General assessment of the EU's enlargement process towards the Western Balkans

High credibility of accession, combined with low to moderate domestic costs of adopting EU rules, has proven to be crucial in driving the Europeanisation process in the Central and Eastern European candidate countries. In contrast, the Western Balkans face slower Europeanisation due to stricter accession criteria, lower credibility in the prospects of EU membership, weaker administrative capacity, and higher domestic political costs²⁰⁰.

Despite these challenges, EU conditionality has had varying impacts on the adoption of rules among the new candidate countries, with some managing to meet the criteria for EU membership despite their lower credibility in attaining membership. The availability of intermediate rewards not directly tied to the promise of membership, along with EU capacity-building initiatives, might explain the ongoing progress in compliance in the Western Balkans²⁰¹.

In summary, existing research consistently highlights certain trends in Europeanisation during the Eastern enlargement. These findings underscore the importance of credible membership conditionality, particularly in favourable domestic conditions within the candidate countries. However, there is a widespread agreement that most of the conditions for an effective application of conditionality are generally weaker in the Western Balkans²⁰².

Despite efforts to improve the determination of EU conditionality, compliance with these conditions is likely to be hindered by several factors, including the lower credibility of the accession perspective, limited state and governance capacities, and higher political and financial costs. Nonetheless, over the past decade, the accession process has been progressing slowly but steadily²⁰³.

Furthermore, the progress reports from the Commission indicate that, despite reduced chances of membership, certain Western Balkan countries have managed to maintain or even enhance their level of compliance with the EU *acquis*²⁰⁴.

²⁰⁰ Jelena Džankić, Soeren Keil and Marko Kmezić, 'The Europeanisation of the Western Balkans', *Cham: Springer International Publishing*, 2019.

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ Gergana Noutcheva and Senem Aydin-Düzgit, 'Lost in Europeanisation: The Western Balkans and Turkey', *West European Politics* 35.1, 2012, 59-78.

These developments indicate the presence of alternative factors contributing to compliance with EU conditions. The literature has proposed and discussed two alternative mechanisms that promote adherence to EU rules: capacity-building and transnational coalition-building. Capacity-building is a strategy aimed at bridging the capacity gap that undermines the effectiveness of EU conditionality²⁰⁵.

Through financial aid, administrative expertise, and other forms of capacity-building, the EU can partially offset structural deficiencies in candidate countries. Additionally, through transnational coalition-building initiatives, the EU can address resistance from veto players or persuade them to change their preferences by involving them in transnational coalitions. By granting differential authorization to such coalitions, the EU can overcome internal veto points, offering incentives for collaboration and providing financial and organizational resources²⁰⁶.

Indeed, the European Union places a significant focus on enhancing the involvement of social stakeholders in domestic policymaking by endorsing cross-border professional ties among relevant non-governmental organizations (NGOs). Across various domains, the EU offers robust backing for mobilizing pertinent non-governmental entities to function as decentralized channels of information and as creators of alliances that foster the propagation and consistency of new standards. This multiplex strategy enables the EU to organize assistance and monitoring during the process of EU accession, spanning various tiers of society and government within the candidate countries. Furthermore, this approach has facilitated a shift in the EU's feedback during the accession process, making it progressively problem-solving oriented²⁰⁷.

While monitoring itself merely evaluates whether a country fulfils the institutional prerequisites within a specific chapter or policy field, the assessments derived from comprehensive annual reports on advancement prior to accession and regular on-site inspections delve deeper. These evaluations not only identify the adjustments required to align with European standards but also emphasize the idea of rectifying the situation rather than continually penalizing the candidate nation for prior inadequacies. By gauging a country's progress concerning both its historical trajectory and that of its neighbours, the objective is to revise and refine both the

²⁰⁵ Tanja A. Börzel, 'When Europeanization Hits Limited Statehood: The Western Balkans as a Test Case for the Transformative Power of Europe', KFG Working Paper Series No. 30, 2011, 5-18.

²⁰⁶ Jelena Džankić, Soeren Keil and Marko Kmezić, 'The Europeanisation of the Western Balkans', *Cham: Springer International Publishing*, 2019.

²⁰⁷ Laszlo Bruszt and Gerald A. McDermott, 'Integrating rule takers: Transnational integration regimes shaping institutional change in emerging market democracies', *Review of International Political Economy* 19.5, 2012, 742-778.

detailed criteria and the mechanisms of their implementation, ensuring the establishment of a solid foundation of institutional capacity²⁰⁸.

On the other side, it is precisely the external incentives arising from economic and political liberalization that play a role in grounding domestic public and private stakeholders in reform initiatives and adherence to new EU norms and standards. Nevertheless, the manner in which the EU mediates these incentives holds significant importance. Within this context, the process of EU accession emphasizes the construction of institutional and administrative capacity as a fundamental objective, and it actively advances assistance and monitoring based on the principles of multifaceted and problem-solving approaches²⁰⁹.

Transnational coalitions enable the EU to enhance its understanding of local contexts, identify appropriate development goals for candidate countries, and devise effective strategies to achieve them. In this manner, transnational coalitions complement the EU's incentives and capacity-building efforts. They expand the pool of beneficiaries aligned with EU standards and have the potential to bolster the EU's legitimacy and the acceptance of its policies throughout the enlargement process²¹⁰.

While not originally part of the accession conditionality model, capacity-building and coalition-building can be easily integrated as they also revolve around manipulating cost-benefit considerations in target countries. Capacity-building aims to lower the adoption costs, resulting in a more favourable balance between costs and benefits. However, its effectiveness lies more in addressing technical or administrative expertise deficits rather than offsetting political and power-related expenses. On the other hand, building transnational coalitions alters the societal dynamics surrounding veto players. Conversely, empowering and mobilizing societal actors against political and governmental resistance is generally challenging for the EU²¹¹.

Additionally, the original model of accession conditionality focused on using accession and association as incentives for the candidate states as a whole. However, the EU can also promote compliance with the EU

²⁰⁸ *Ibid.*

²⁰⁹ *Ibid.*

²¹⁰ László Bruszt and Julia Langbein, 'Strategies of Regulatory Integration via Development', *Leveling the playing field: Transnational regulatory integration and development*, Oxford University Press, 2014, 58.

²¹¹ Jelena Džankić, Soeren Keil and Marko Kmezić, 'The Europeanisation of the Western Balkans', *Cham: Springer International Publishing*, 2019.

acquis through the implementation of policy conditionalities, which helps address the lack of a credible membership perspective in the Western Balkan countries²¹².

For instance, according to Trauner, the Europeanisation mechanisms identified for Central and Eastern European countries are relevant, but they may not fully explain the EU's external influence on the Western Balkans. Policy conditionality can foster Europeanisation by offering intermediate rewards in exchange for the candidate states' adherence to specific EU policies. This approach allows the EU to compensate for the limitations of accession conditionality and establish an additional avenue of external influence²¹³.

In conclusion, numerous studies indicate that the accession conditionality model serves as a valuable foundation for understanding the Europeanisation process in the Western Balkans. Nevertheless, the limited credibility of accession in all Western Balkan countries underscores the significance of considering additional factors that could elucidate and facilitate the ongoing process of rule adoption in these new candidate states²¹⁴.

²¹² Florian Trauner, 'From membership conditionality to policy conditionality: EU external governance in South Eastern Europe', *Journal of European Public Policy* 16.5, 2009, 774-790.

²¹³ *Ibid.*

²¹⁴ Jelena Džankić, Soeren Keil and Marko Kmezić, 'The Europeanisation of the Western Balkans', *Cham: Springer International Publishing*, 2019.

3. Rethinking European integration beyond accession: the European Political

Community

Russia's war of aggression against Ukraine that started in February 2022 and the European Council's decision in June 2022 to grant candidate status to Ukraine and Moldova triggered a new debate on the acceleration of the EU's integration process towards the Western Balkans and the three Eastern European states that have Association Agreements (AAs) and Deep and Comprehensive Free Trade Areas (DCFTAs) with the EU, namely, Georgia, Moldova and Ukraine.

In 2009, the European Union established the Eastern Partnership (EaP) as part of its European Neighbourhood Policy (ENP). This initiative was designed to provide economic growth and investment opportunities to six partner states: Georgia, Moldova, Ukraine, Belarus, Armenia, and Azerbaijan. By 2014, Georgia, Moldova, and Ukraine had signed Association Agreements, which subsequently facilitated their progress in implementing governance reforms. Despite facing ongoing threats of conflicts, both covert and overt, with Russia, during the first five years of their association with the EU, this Trio of countries in the EaP has managed to make significant strides in catching up with the Western Balkan countries in terms of development, even though initially they had not been granted the prospect of EU membership.

Now, this new geopolitical situation has revitalised the EU accession process for the Western Balkans, which has faced significant challenges during the past decade, and, at the same time, has raised new concerns about the EaP region, whose ongoing geopolitical changes have culminated in democratic setbacks in some partner states, along with protracted reform processes and aggressive geopolitical interventions by Russia.

The experience of the still ongoing Western Balkans accession process shows how difficult it is to reconcile the geopolitical interest in rapid access with the length of a demanding process of adopting EU rules and standards. The challenge for the EU is, therefore, to adopt an ambitious geopolitical strategy by offering new models of closer association and integration with the EU, alternative to membership, that can work not only for the Western Balkan region but also for the Trio of EU-associated countries, two groups of countries converging in their reform efforts and sharing the same strategic goal of EU membership. However, this perspective will have to take into account the importance of maintaining a rigorous EU enlargement process

in which the integrity of EU rules and standards and the functionality of the EU legal and political order are guaranteed.

Therefore, it is essential to devise a new long-term strategy for the Trio of EU-associated countries that is compatible with the EU's policy objectives applied to the Western Balkan countries. This new strategic vision will aim to strengthen stability and security in the enlargement region, facilitate the process of governance reforms and, eventually, pave the way for European integration.

To this end, this chapter will first compare the development of the six Western Balkan states that are signatories to Stabilisation and Association Agreements (SAAs) with that of the three Eastern European states that have Association Agreements (AAs) and Deep and Comprehensive Free Trade Areas (DCFTAs) with the EU. Subsequently, a reflection will be conducted on the concerns of a possible further wave of EU enlargement in terms of preserving the norms and standards of the Union and the functionality of its legal and political order. Finally, possible future long-term strategy perspectives will be put forward in which the European integration aspirations of the Western Balkan and Eastern European countries concerned can converge, while at the same time responding to the geopolitical interests of the EU itself.

3.1 A comparison between the SAA process of the Western Balkans and the AA process of the Eastern European states

The European Neighbourhood Policy (ENP) introduced the Eastern Partnership (EaP) in 2009, specifically targeting the Eastern neighbouring countries, including Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine²¹⁵. These initiatives aim to accelerate political association, promote economic integration, and support socioeconomic and democratic reforms in the partner states, with the goal of establishing prosperous, stable, and democratic countries along the EU's borders²¹⁶. The enlargement policy, European Neighbourhood Policy, and Eastern Partnership are structural policies of the EU, focusing on long-term structural reforms to prepare countries for membership (in the case of enlargement policy) or privileged relations (in the case of

²¹⁵ Johann Wolfschwenger, '10 Years Eastern Partnership—The EU and its Strategic Dilemma', *Österreichische Gesellschaft für Europapolitik*, 2019.

²¹⁶ *Ibid.*

ENP/EaP)²¹⁷. The EU primarily acts as a regulatory actor in this context, with a strong emphasis on transferring rules and fostering institutional reflection in its neighbouring country policies²¹⁸. The ENP/EaP aim to harmonize the legal, administrative, and political systems of the neighbouring countries with those of the EU, extending a portion of the EU's legal and economic framework beyond its boundaries²¹⁹. The EaP follows bilateral and multilateral trajectories, with each country selecting a different level of political connection with the EU at the bilateral level. Moldova, Ukraine, and Georgia are frontrunners, having signed Association Agreements with the EU in 2014, encompassing comprehensive governance packages that allow these partner countries to adopt a significant portion of the EU *acquis communautaire*²²⁰. The Association Agreements (AAs) offered the opportunity for an ambitious and extensive political dialogue and collaboration with the EU. This encompassed Deep and Comprehensive Free Trade Agreements (DCFTAs), representing the EU's most sophisticated tools for integration up to now. These substantial integration mechanisms have played a role in strengthening the bond between the EU and its eastern neighbours, facilitating their advancements in governance reforms and political dialogue²²¹.

In spite of concealed and overt conflicts with Russia and the persistent negative influences through various means, such as illicit financial activities and corrupt practices stemming from the Soviet era and Putin's regime, the more advanced Eastern Partnership countries have embarked on a challenging and arduous journey of implementing political reforms in sensitive areas like the justice system, budgets, land management, pensions, state-owned enterprises, education, and social policies²²². The outstanding progress achieved by the Trio of EU-associated countries, composed of Georgia, Ukraine, and Moldova, has brought increased stability and prosperity to the region. Additionally, within the first five years of their association, these three countries managed to catch up with the Western Balkan countries, despite the latter having the prospect of EU membership ahead of them²²³.

²¹⁷ Tom Casier, 'The unintended consequences of a European neighbourhood policy without Russia', *Unintended Consequences of EU External Action*, Routledge, 2020, 76-88.

²¹⁸ *Ibid.*

²¹⁹ *Ibid.*

²²⁰ Johann Wolfschwenger, '10 Years Eastern Partnership–The EU and its Strategic Dilemma', *Österreichische Gesellschaft für Europapolitik*, 2019.

²²¹ Michael Emerson et al., 'Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states', CEPS Policy Contribution, 2021.

²²² *Ibid.*

²²³ *Ibid.*

In this context, it is suitable to offer a comparative view of the advancements made by the Western Balkans and the Eastern Partnership countries associated with the EU. It is notable that there are evident and increasingly alike patterns of progress in the South-Eastern and Eastern regions adjacent to the EU.

First and foremost, it is essential to outline the basis upon which it becomes politically and academically significant to compare the progress of the six Western Balkan countries, namely Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia, with the three Eastern European countries, namely Georgia, Moldova, and Ukraine. It is noteworthy that both sets of countries share the ambition of joining the EU. Consequently, both groups are engaged in processes aimed at fully adopting or aligning with EU laws and upholding European values. Moreover, there exist significant resemblances in the structure and content between the SAAs of the Balkan countries, in conjunction with the chapters of the pre-accession process, and the AAs and DCFTAs of the three Eastern European states²²⁴. Although, as already mentioned, the latter are the most sophisticated instruments ever adopted to pave the way for accession.

Overall, the actual processes of gradual integration for both the Balkans and the countries with Association Agreements with the EU are moving in increasingly similar directions. This alignment is driven by a combination of technical and political factors. From a technical standpoint, the subject matter is so expansive and intricate that the political and administrative procedures within EU institutions must be consistent and avoid unnecessary complexities that could lead to costly inefficiencies and confusion. Additionally, from a political perspective, the EU aims to extend its regulatory framework and mechanisms for economic integration to all states in the neighbouring regions of Eastern and South-Eastern Europe that express a desire to do so. This is done to bolster the political stability of these partner states in accordance with European values²²⁵.

When we initially compare the SAAs between the Balkans and the AAs (including DCFTAs) with the three Eastern Partnership (EaP) states, we notice that the AAs lack chapters focused on the pre-accession process and the associated procedures for opening and closing these chapters, unlike those in the Balkans. Additionally, the European Commission's annual reports on AA implementation do not include formal ratings, which are present for the Balkans. From a legal viewpoint, the variations in the content and arrangement of AAs and

²²⁴ *Ibid.*

²²⁵ *Ibid.*

SAAAs can be clarified as follows: Association Agreements are typically regulated by the legal framework of the European Union's Common Foreign and Security Policy (CFSP) and the European Neighbourhood Policy (ENP). These agreements are crafted to establish a broad framework for collaboration between the EU and a third country, whether or not that country aspires to join the EU. The scope of Association Agreements encompasses aspects like trade, political dialogue, economic cooperation, and sectoral collaboration, depending on the specific agreement in question. Notably, these agreements do not inherently incorporate sections dedicated to the pre-accession process, as their primary aim does not involve immediate EU membership. Consequently, there may be no established formal procedures for initiating or concluding such chapters. These agreements aim to promote collaboration and harmonization with EU policies, although they may not undergo the same rigorous examination as accession negotiations. Consequently, the European Commission's yearly assessments of Association Agreement implementation might not incorporate official ratings because the process is more flexible and less closely linked to a well-defined path toward EU membership.

In contrast, Stabilisation and Association Agreements typically draw from the framework designed for countries with a well-defined ambition to become EU members. These agreements often include sections closely mirroring the EU's *acquis communautaire*, delineating the specific areas in which candidate countries are required to align with EU laws and regulations. These chapters in these agreements serve as guidelines for the pre-accession journey and specify the criteria and conditions for commencing and concluding each chapter. As for candidate countries in the Balkans, the European Commission's annual progress reports typically feature formal ratings or assessments, providing a systematic and transparent evaluation of their advancement toward fulfilling EU membership criteria. This approach aids both the candidate countries and the EU in overseeing and evaluating compliance with EU standards.

Fundamentally, the disparities in legal content and structure arise from the distinct objectives of these agreements. Association Agreements concentrate on cooperation and alignment with EU policies in a broader sense, while agreements related to EU accession in the Balkans are customarily tailored to shepherd countries on the path to EU membership. This specialized approach involves the inclusion of chapters and formal evaluations, and these differences are deeply embedded in the legal and policy frameworks governing each type of agreement within the European Union.

However, in practice, AAs are considerably more comprehensive, detailed, and legally precise compared to SAAs. Consequently, signing AAs can essentially be viewed as the simultaneous initiation of all pre-accession process chapters, albeit without the formal procedures for their closure. In summary, while both SAAs and AAs are legally binding agreements, SAAs are generally characterized by their relative simplicity and may have fewer legally binding content and obligations when compared to AAs²²⁶.

Association Agreements are significantly more advanced and rigorous compared to Stabilisation and Association Agreements. The conditions for concluding chapters within the pre-accession process closely resemble those of AAs, as specific EU legal measures establish compliance criteria, thereby defining the parameters for closure. However, the process of initiating and finalizing these chapters has been notably sluggish and restricted thus far²²⁷. Only Serbia and Montenegro have initiated chapters, with Montenegro having opened 33 chapters and Serbia having opened 22. Moreover, very few chapters have been provisionally closed, with Montenegro having closed 3 and Serbia having closed 2. These closed chapters mainly pertain to subjects like science and education in both cases, and external relations for Montenegro, with all of them having relatively light legal commitments²²⁸.

In March 2020, the EU made the decision to initiate enlargement negotiations with Albania and North Macedonia, which paved the way for the opening of chapters in July 2022, following a recently updated procedure. Regarding Bosnia and Herzegovina, the EU set out an extensive list of prerequisites that must be met before negotiations can commence. Lastly, in December 2022, Kosovo submitted its application for EU membership, and following a resolute parliamentary vote in April 2023, it is expected to gain visa-free access to the Schengen area no later than January 2024²²⁹.

The EU has recently introduced a new approach for the order in which chapters are addressed in response to concerns about the state of pre-accession processes. They have categorized the 35 chapters into five clusters. The central idea is to prioritize the “Fundamentals” cluster by opening it first and closing it last. Meanwhile, the remaining clusters group chapters together, opening them as entire clusters rather than dealing with

²²⁶ *Ibid.*

²²⁷ *Ibid.*

²²⁸ European Parliament, ‘The Enlargement of the Union: Fact Sheets on the European Union’, www.europarl.europa.eu/factsheets/en/sheet/167/the-enlargement-of-the-union, accessed 7 September 2023.

²²⁹ *Ibid.*

individual chapters separately. This innovation aims to create a more methodical, prioritized, and structured process with clearer conditions and increased dynamism²³⁰.

However, there is some uncertainty about whether this revamped cluster approach might actually slow down the process. This could happen if it establishes more stringent conditions for progressing from one cluster to the next, reducing the pressure to address the chapters in subsequent clusters. Chapters 23 (Judiciary and Human Rights) and 24 (Justice, Freedom, and Security) receive special attention, being the first to open and the last to close. They are also subject to as many as 40-50 interim benchmarks for Montenegro and Serbia, along with safeguard clauses. The content of these two chapters extends beyond the commitments outlined in the Association Agreements, even though the general objectives for these chapters in the AAs are similar²³¹.

In general, when we compare the process of initiating and completing chapters between the Balkan states and the countries with Association Agreements, we observe that the AA states progressed more swiftly and extensively than the Balkan states. Specifically, the AA states simultaneously opened all chapters in 2014, and they committed to measures that surpassed the initial benchmarks set for the pre-accession process. In contrast, in the Balkans, the process of initiating chapters has only commenced for Montenegro and Serbia so far, and securing unanimous agreement within the EU Council for opening various chapters is an ongoing and exceptionally laborious process²³². However, it is important to point out that the performance scores for these AA states refer to the year 2021, hence to the pre-war period.

The variation in the timeline for initiating chapters between AA states and Balkan countries is influenced by multiple factors, primarily stemming from the intricate and challenging nature of the EU accession process. In fact, the EU's internal decision-making process necessitates unanimous agreement among Member States for the commencement of chapters. This process can be time-consuming, particularly when there are divergent viewpoints and interests among Member States regarding the speed of enlargement and specific accession conditions. Furthermore, the pace of chapter openings often hinges on the progress made by candidate countries in aligning with EU laws and regulations and implementing necessary reforms. This process of alignment can be gradual. Notably, certain Balkan countries may grapple with unresolved bilateral issues or

²³⁰ European Commission, '2020 Communication on EU enlargement policy', COM(2020) 660 final.

²³¹ Michael Emerson et al., 'Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states', CEPS Policy Contribution, 2021.

²³² *Ibid.*

disputes with neighbouring countries, which can hinder the initiation of chapters. These matters must be addressed or managed before specific chapters can be opened.

Additionally, when we compare the closing benchmarks of the pre-accession process to the fulfilment of approximation commitments within the AAs, it seems that there is an approximate equivalence, with implementation delays mostly spanning between three to five years. It is also worth noting that not all closing benchmarks in the pre-accession process necessitate full compliance with the *acquis*, unlike the European Economic Area where full compliance is the standard. Instead, they allow for a more flexible form of compliance that emphasizes qualitative aspects²³³.

Table 1. Points of divergence and convergence between SAA and AA states

	Points of divergence	Points of convergence
EU integration/membership aspirations	AA states typically do not have immediate aspirations for full EU membership, whereas SAA states, particularly those in the Western Balkans, are on a clear path toward eventual EU membership.	Both AA and SAA states share a common goal of enhancing their integration with the European Union and developing closer ties with the EU institutions.
Accession criteria	SAA states have specific accession criteria and benchmarks that must be met for EU membership, while AA states do not necessarily have predefined accession criteria as part of their agreements.	
Policy alignment depth	SAA states are required to align comprehensively with EU policies and standards, covering a wide range of areas, whereas AA states may align with EU policies to varying degrees, depending on the terms of their agreements.	Both types of agreements emphasize the importance of aligning with EU values, such as democracy, rule of law, human rights, and market-oriented economic principles.
Legal obligations	The legal obligations for SAA states are typically more extensive,	Both AA and SAA states have legal obligations outlined in their

²³³ *Ibid.*

	covering a broader range of policy areas, compared to the obligations of AA states.	respective agreements, which they are expected to fulfil. These obligations may include specific reforms and policy adjustments.
Integration process	The process of opening chapters for alignment with EU laws and regulations is more structured and phased for SAA states, while AA states may not follow a formal chapter-opening process.	Both AA and SAA states engage in an integration process that involves aligning their legal and regulatory frameworks with EU standards and gradually integrating into EU structures and policies.
EU decision-making process	The EU's internal decision-making process for chapter opening and accession matters can be more complex and time-consuming for SAA states, often requiring unanimous agreement among EU Member States.	
Commitment to regional stability	AA states may have diverse regional dynamics and challenges, depending on their geographic location, which can differ from the regional dynamics among SAA states in the Western Balkans.	Both AA and SAA states recognize the importance of regional stability and cooperation, and their agreements often emphasize the need for good neighbourly relations and conflict resolution.
EU assistance and support	AA states may have access to various EU funding programs and mechanisms based on the terms of their agreements, which may differ from the funding eligibility of SAA states.	Both types of states receive EU assistance and support to varying degrees. This assistance may include financial aid, technical expertise, and capacity-building programs to help them implement necessary reforms.

Source: own elaboration from SAA and AA document analysis.

Regarding the advancements made by these two sets of countries in their journey towards EU integration, a comparative analysis undertaken by CEPS in March 2021, using information from EU-related sources, illustrates that even though, at that time, there was still a formal distinction in the membership prospects between the Balkans and the countries with Association Agreements, both groups attained roughly equivalent average scores when we combined the political and economic criteria. Examining the average performance of

the groups in terms of both political and economic performances is important because, up to this point, the EU has treated these two groups as distinct regional entities, each having its own separate set of policies²³⁴.

Specifically, in terms of the criteria used, the Balkan states exhibit slightly stronger performance on political aspects, whereas the countries with Association Agreements outperform in economic criteria²³⁵. However, it is essential to note that these averages obscure disparities within both groups. In the case of the Balkans, there is a noticeable gap between the top three performers, namely Montenegro, North Macedonia, and Serbia, followed by Albania, with Bosnia and Kosovo lagging behind by a more significant margin. Recent developments have seen Serbia and Montenegro experiencing a decline in performance, while the poor performance of Bosnia and Kosovo has pulled down the overall Balkans' average score. Conversely, North Macedonia and Albania are making improvements, reflected in the EU's decision to initiate negotiations with them. In contrast, the AA states are more closely aligned in terms of performance, with Georgia leading Ukraine and Moldova, mainly due to its stronger performance in economic policy criteria²³⁶.

There exists a notable contrast in the comparative rankings of the two groups across the three subcategories of economic criteria. Concerning basic macroeconomic performance, like GDP per capita, the Balkans exhibit a clear lead on average compared to the AA states. However, for the other two policy areas, specifically trade policies and other economic cooperation chapters, a reverse trend emerges. Here, AAs/DCFTAs seem to have infused greater political momentum into these chapters compared to SAAs and the enlargement process in the Balkans. In the Balkans, SAAs are characterized by their subtlety and less binding content compared to AAs/DCFTAs. Furthermore, the more ambitious process of opening and closing the 35 chapters has been markedly sluggish, even in the most advanced cases of Serbia and Montenegro. In the other four countries, progress in this regard has yet to materialize²³⁷.

The comprehensive political and legal evaluation considers five criteria, which are organized within the initial sections of the agreements: electoral democracy, human rights, rule of law, anti-corruption efforts, and issues related to visa policies and the movement of individuals, subject to political conditions. In general, Montenegro, North Macedonia, and Serbia are placed together with relatively strong scores across these five

²³⁴ Michael Emerson et al., 'Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states', CEPS Policy Contribution, 2021.

²³⁵ *Ibid.*

²³⁶ *Ibid.*

²³⁷ *Ibid.*

categories. This holds true even though there has been a decline in the assessment of democracy in Serbia. While, for the three AA states, it is imperative to delve into the individual components of these criteria for a more detailed analysis. Indeed, when we delve into more specific sectors, we find instances where one or more AA states outperform all others in the Balkans. For example, Georgia excels in combating corruption, Ukraine and Georgia demonstrate strength in public procurement and services, and all three AA states exhibit strong performance in the realm of civil society²³⁸.

While there are variances in the structure and content of the chapters within the pre-accession process and the Association Agreements, there is also a growing trend of policy initiatives that are bringing these two groups closer together²³⁹.

One notable example is the expansion of the Energy Community to encompass the three AA states. Initially signed in 2005 for the Balkans, the Energy Community Treaty²⁴⁰ led to the establishment of a permanent secretariat in Vienna. Subsequently, the AA states, Moldova and Ukraine, joined in 2010, with Georgia following suit in 2017. Under this framework, both the Balkans and the AA states share identical legal responsibilities and status in relation to common institutions, such as the Council of Ministers and the Secretariat, along with their operational procedures²⁴¹.

Another significant joint endeavour is the Central and South Eastern Europe Energy Connectivity (CESEC) initiative. This initiative, launched in 2015 by nine EU Member States from these regions, is designed to expedite the integration of cross-border gas and electricity networks and markets in Central, Eastern, and South-Eastern Europe. In 2017, this initiative was expanded to include all Energy Community states, thereby encompassing both the Balkans and the AA states²⁴².

A new collaborative effort, spearheaded by both the World Bank and the Commission, is centred on the transformation of coal regions in Central and South-Eastern Europe as well as Ukraine. This initiative is part

²³⁸ *Ibid.*

²³⁹ *Ibid.*

²⁴⁰ See Council Decision 2006/500/EC of 29 May 2006 on the conclusion by the European Community of the Energy Community Treaty, OJ L 198.

²⁴¹ See Energy Community Homepage, www.energy-community.org/, accessed 7 September 2023.

²⁴² See European Commission, 'Central and South Eastern Europe Energy Connectivity', energy.ec.europa.eu/topics/infrastructure/high-level-groups/central-and-south-eastern-europe-energy-connectivity_en, accessed 7 September 2023.

of a broader platform established in September 2019, known as the “Coal Regions in the Western Balkans and Ukraine”²⁴³.

Back in 2017, the EU established a Transport Community, specifically with the six Balkan states. This initiative encompasses various modes of transportation, including road, rail, inland waterway, and maritime transport, along with the development of transportation networks. Initially limited to the Balkans, this community could potentially follow the model of the Energy Community and expand to include the AA states at a later stage. Notably, the Transport Community Treaty delineates lists of EU transport regulations in appendices that largely mirror those found in the Association Agreements²⁴⁴.

In a broader context, the EU applies comparable regulations for both the Balkans and the AA states to enable them to attain full membership or associate status in various EU agencies and programs. The general guideline stipulates that full participation is contingent upon adherence to the relevant EU rules and regulations²⁴⁵.

In October 2020, the Commission unveiled “An Economic and Investment Plan for the Western Balkans”, which relies on the same policy and financing tools, including the European Investment Bank (EIB) and the European Bank for Reconstruction and Development (EBRD), as those employed in the AA states²⁴⁶. Additionally, there is the Western Balkans Investment Framework (WBIF), which serves as a coordinating mechanism for funding and technical support from the EU, EIB, EBRD, as well as 20 national bilateral donors, mainly comprising EU Member States, and also including Norway and Canada²⁴⁷. Furthermore, the Western Balkans engages in an Annual Economic Policy Dialogue with the Commission, involving EU Member States, the European Commission, and the European Central Bank²⁴⁸.

These initiatives could potentially be extended to encompass the AA states or replicated for them. In line with this, the Commission should, similar to the Balkans, offer assistance in overseeing the implementation of

²⁴³ See European Commission, ‘Initiative for Coal Regions in Transition in the Western Balkans and Ukraine’, energy.ec.europa.eu/topics/oil-gas-and-coal/coal-regions-western-balkans-and-ukraine/initiative-coal-regions-transition-western-balkans-and-ukraine_en, accessed 7 September 2023.

²⁴⁴ See European Commission, ‘Transport Community’, transport.ec.europa.eu/transport-themes/international-relations/enlargement/western-balkans/transport-community_en, accessed 7 September 2023.

²⁴⁵ Michael Emerson et al., ‘Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states’, CEPS Policy Contribution, 2021.

²⁴⁶ European Commission, ‘An Economic and Investment Plan for the Western Balkans’, 2020.

²⁴⁷ See European Union and the Western Balkans Homepage, www.wbif.eu/, accessed 7 September 2023.

²⁴⁸ See European Council, ‘Western Balkans and Turkey: Joint Conclusions of the Economic and Financial Dialogue of 24 May 2022’, www.consilium.europa.eu/en/press/press-releases/2022/05/25/western-balkans-and-turkey-joint-conclusions-of-the-economic-and-financial-dialogue-of-24-may-2022/, accessed 7 September 2023.

significant infrastructure projects, in collaboration with the EIB and the EBRD. Similarly, the Commission's Support Group for Ukraine (SGUA) has proven to be a valuable initiative in driving reform processes and could be expanded to encompass other states in SAA or AA regions. An intriguing development is Ukraine's expressed interest in becoming part of the Green Deal and the Digital Single Market. Additionally, Georgia and Moldova appear to be moving in a similar direction²⁴⁹.

In both scenarios, there are compelling motivations to establish consistency in policy frameworks for the Balkans and countries associated with the Association Agreements. Up until this point, the development of these diverse initiatives has appeared to be somewhat haphazard, but there is now an opportunity to make it more systematic. Substantially, the ad hoc similarities in the application of policy tools could evolve into a unified European integration strategy for both regions. This approach would be both desirable and sustainable as it would encourage inter-regional integration between Eastern and South-Eastern Europe. It would also bring about economies of scale in administrative efficiencies and enhance simplicity and transparency in handling intricate policy issues for EU institutions. Furthermore, it would serve as a political incentive for AA states and help the EU consolidate and bolster the spread of its policies and values in both Eastern and South-Eastern Europe²⁵⁰.

The eventual evolution of the Energy and Transport Communities bears similarities to the early stages of European integration when entities like the European Coal and Steel Community (ECSC), Euratom, and the European Economic Community (EEC) initially operated separately but finally merged in 1967 to form the European Communities (EC). This suggests the possibility of a more intentional institutionalization of the collaborative efforts between the Balkans and AA states groups. The key idea here is that comprehensive initiatives can often be achieved gradually, allowing the benefits of their integration to be realized at a later stage²⁵¹.

²⁴⁹ Michael Emerson et al., 'Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states', CEPS Policy Contribution, 2021.

²⁵⁰ *Ibid.*

²⁵¹ *Ibid.*

3.2 Widening the European Union without jeopardizing the Union's standards

In recent decades, the European Union has made substantial investments in both its enlargement and its neighbourhood policy. However, the actual circumstances on the ground have diverged significantly from the principles outlined in these policies to the extent that the latter are now appearing somewhat unfeasible.

The process of enlargement has followed established procedures, starting with the formal recognition of accession prospects, progressing to candidate status, and then moving on to the initiation and completion of individual chapters. However, the mechanism for opening and closing these chapters has become ineffective. This is exemplified by the requirement that both the commencement and conclusion of each of the 35 chapters must receive unanimous approval from the 27 EU Member States²⁵².

The prospects for realistic enlargement now appear quite distant, and this is due to several factors. These reasons are not solely related to the readiness of candidate countries in terms of politics and economics. Internal EU dynamics and the perceptions of Member States also play significant roles in this complex scenario. To begin with, Member States are deeply worried about the possibility of experiencing another significant influx of immigrants. This concern arises from the fact that the 2004 enlargement resulted in considerably higher levels of immigration than initially anticipated, particularly from the Balkan countries and Poland, especially in the initial years following their accession, even though the situation eventually stabilized²⁵³.

Another concern pertains to the potential financial strain that could arise due to the inclusion of countries with relatively lower incomes. When considering the six Balkan states along with Georgia and Moldova, their collective population is slightly larger than that of Romania, implying corresponding budgetary costs. However, Ukraine, on its own, has double the population of these countries. As a rough estimation of the fiscal implications of possible future expansions, using the budget revenues of Romania and Bulgaria under the Multiannual Financial Framework (MFF) 2021-2027 as a reference point of 100, the Balkan states, under the MFF, should receive around 30% on a per capita basis through pre-accession funding, while the AA states

²⁵² Michael Emerson et al., 'Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states', CEPS Policy Contribution, 2021.

²⁵³ *Ibid.*

should receive approximately 8% through the Neighbourhood, Development, and International Cooperation Instrument²⁵⁴.

Certain Member States might also harbour reservations regarding the notion that expanding eastward could potentially worsen relations with Russia. However, the primary apprehension revolves around how the EU's legal and political framework would operate in the future if membership were extended to numerous additional small and vulnerable states. One aspect of concern would be the presence of too many differing positions within the Council. Despite the application of qualified majority voting to a significant portion of EU legislation, in practice, the Council still largely functions on the principle of consensus. Furthermore, foreign policy decisions formally necessitate unanimous agreement²⁵⁵.

Above all, concern now also derives from the failure of democratic transitions in most Central and Eastern European countries almost two decades after their accession. Indeed, the fifth enlargement wave, with regard to Central and Eastern Europe, was notably problematic. It demonstrated that accession did not irrevocably bind all joining states to the Europeanization model. This was evident in the significant tensions that arose between the EU and two of its Member States, specifically Hungary and Poland, concerning issues such as the rule of law and the independence of the judiciary. Given the substantial challenges that have emerged with the countries that joined in Central and Eastern Europe, it would be unwise to hold higher expectations for the Balkan countries, which have even more fragile democracies²⁵⁶.

Within the EU, strategies have been devised to accommodate varying levels of adherence to EU rules. This includes phased and conditional access for Member States to systems like the eurozone and the Schengen area, the development of emerging and differentiated defence arrangements like PESCO²⁵⁷, and the potential utilization of Enhanced Cooperation provisions outlined in Article 20 of the Lisbon Treaty. Nevertheless, it is important to acknowledge that these provisions do not diminish the fact that EU membership entails full rights and obligations within the legal and decision-making core of the EU.

²⁵⁴ See European Commission, 'EU budget: Commission proposes to reinforce long-term EU budget to face most urgent challenges', ec.europa.eu/commission/presscorner/detail/en/ip_23_3345, accessed 7 September 2023.

²⁵⁵ Michael Emerson et al., 'Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states', CEPS Policy Contribution, 2021.

²⁵⁶ *Ibid.*

²⁵⁷ Steven Blockmans and Dylan Macchiarini Crosson, '*Differentiated integration within PESCO: clusters and convergence in EU defence*', CEPS Research Report No. 2019/04, 2019.

For these particular reasons, it is probable that, given the existing circumstances, any new acts of accession submitted for ratification would face rejection in multiple countries. Notably, France's stance in this regard is articulated most clearly in President Macron's statements, where he asserts that any further enlargement would be deemed unacceptable unless there is prior systemic development within the EU²⁵⁸.

Given these circumstances, the European Union needs to rethink its approach to enlargement, which involves gradually and sequentially integrating countries even while they are in the process of joining. This intention received support from the European Council Conclusions in June 2022, which stated that “building on the revised methodology, the European Council invites the Commission, the High Representative and the Council to further advance the gradual integration between the European Union and the region already during the enlargement process itself in a reversible and merit-based manner”²⁵⁹.

Consequently, a reconsideration of the accession process to make it more expeditious, along with the implementation of gradual and phased integration for candidate countries, is proposed. In practical terms, this would entail offering concrete benefits to candidate countries during the accession period, rather than withholding rewards until they become full EU members²⁶⁰. This proposal for a phased approach to EU membership aligns with the suggestions put forth by experts like Pierre Mirel²⁶¹, former European Commission Director for Enlargement and Neighbourhood Policy, and Milena Lazarević²⁶².

As emphasized by Mirel, this stepwise approach would build upon the enlargement policy reform initiated in February 2020. The initial stage would involve implementing association agreements and some symbolic reforms, such as electoral law changes in Bosnia and Herzegovina. During this phase, the candidate country would receive a portion of structural funds, exceeding what it would have received through the Instrument for Pre-Accession Assistance (IPA). Subsequently, the second stage would encompass the integration of the candidate into the internal market. Upon meeting membership criteria confirmed by the Commission, a final stage would grant the candidate nearly all the rights of membership, with exceptions like the right of veto and

²⁵⁸ Michael Emerson et al., ‘Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states’, CEPS Policy Contribution, 2021.

²⁵⁹ European Council conclusions, 23-24 June 2022.

²⁶⁰ European Parliament, ‘“Beyond enlargement”: European Political Community and enlargement policy reform’, European Parliamentary Research Service, 2022.

²⁶¹ See Pierre Mirel, ‘In support of a new approach with the Western Balkans: Staged accession with a consolidation phase’, *European issues* 633, 2022.

²⁶² See Milena Lazarević, ‘Away with the enlargement bogeyman’, European Policy Center, 2018.

the absence of a Commissioner²⁶³. A similar position on phased membership was also articulated by Michael Emerson and CEPS in 2021²⁶⁴.

Mirel and other experts, including Dušan Reljić²⁶⁵ from the German Institute for International and Security Affairs, argue that increased access to EU funds aligns with the EU's goal of achieving strategic autonomy. Additionally, access to the European single market would foster mutually beneficial trade relationships between the EU-27 and the candidate countries. As EU Enlargement Commissioner Oliver Várhelyi stated, bridging the significant economic development gap between the Balkan states and EU members is key to long-term peace and stability, and EU funds could serve as supplementary tools for achieving this objective. However, as evident from the Commission's annual reports, none of the six states in the region currently possesses a robust market economy that meets the bloc's standards. The phased approach aims to address this weakness and holds potential benefits for both the neighbouring region and the EU²⁶⁶.

As regards the European Neighbourhood Policy, ten years after the launch of the EaP, some partner states have faced democratic setbacks, lengthy reform processes, and Russia's aggressive geopolitical interventions²⁶⁷. Numerous studies suggest that the EU's prioritization of security interests in the region over the promotion of values has hindered its influence on democratization trends in Europe's neighbourhood²⁶⁸. Despite democratic rhetoric being a pillar of EU policy towards its neighbours since the introduction of the ENP, practice has demonstrated a stronger EU interest in stability and security rather than democracy²⁶⁹.

Furthermore, the EU's failure to achieve transformative effects on its neighbours can be attributed to a policy toolkit designed for different domestic conditions and overly optimistic expectations regarding the democratizing effects of the ENP, based on the EU's success in facilitating democratic transition in Central

²⁶³ Pierre Mirel, 'In support of a new approach with the Western Balkans: Staged accession with a consolidation phase', *European issues* 633, 2022.

²⁶⁴ Michael Emerson et al., 'Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states', CEPS Policy Contribution, 2021.

²⁶⁵ Dušan Reljić, 'The EU's quest for strategic autonomy in the Western Balkans: Why it flopped', 2021.

²⁶⁶ European Parliament, "'Beyond enlargement'": European Political Community and enlargement policy reform', European Parliamentary Research Service, 2022.

²⁶⁷ Johann Wolfschwenger, '10 Years Eastern Partnership—The EU and its Strategic Dilemma', *Österreichische Gesellschaft für Europapolitik*, 2019.

²⁶⁸ Assem Dandashly and Gergana Noutcheva, 'Unintended consequences of EU democracy support in the European neighbourhood', *Unintended Consequences of EU External Action*, Taylor & Francis, 2019.

²⁶⁹ *Ibid.*

and Eastern Europe²⁷⁰. This diminished the likelihood of a modest yet significant impact on democratization in the nearby region²⁷¹.

In the end, the EU's bureaucratic inertia resulted in the application of a policy toolkit developed for different domestic conditions to a new environment that required a substantially different strategy with minimal adaptations²⁷². The Eastern Partnership exemplifies a technocratic solution to a geopolitical scenario that demanded a political strategy²⁷³. During the early years of the ENP, there was optimism about the potential transformative effects of EU policy, and Russia was not seen as a competing regional power opposing EU initiatives in the region²⁷⁴. It was only later that the EU began to acknowledge the geopolitical risks in the Eastern neighbourhood through the 2015 EaP Review and the 2016 EU Global Strategy, with a focus on neighbourhood stability as a primary objective and democratization as a subordinate one²⁷⁵. Overall, the technical emphasis on creating DCFTA processes and facilitating visa liberalization has overlooked the broader geopolitical implications of EU policy in the Eastern neighbourhood, leading to unintended consequences for the EU as a whole²⁷⁶.

Over the past decade, the EaP states have experienced a slowdown in democratic and socioeconomic reform initiatives. Most Western Balkan countries are classified as hybrid regimes or flawed democracies, with none recognized as established democracies²⁷⁷. Despite their attempts to approach the EU and engage in accession negotiations, these actions have not resulted in the anticipated progress towards democracy²⁷⁸. The EU's tools for institution-building, focused on capacity building and transferring the *acquis*, have failed to address oligarchic political practices in the partner states and facilitate democratic transition²⁷⁹. Consequently, a regional "stabilitocracy" has emerged, characterized by weak democracies led by autocratic-minded leaders

²⁷⁰ *Ibid.*

²⁷¹ *Ibid.*

²⁷² *Ibid.*

²⁷³ *Ibid.*

²⁷⁴ *Ibid.*

²⁷⁵ *Ibid.*

²⁷⁶ *Ibid.*

²⁷⁷ Florian Bieber and Marko Kmezić, 'The crisis of democracy in the Western Balkans: Authoritarianism and EU stabilitocracy', *Balkans in Europe Policy Advisory Group*, 2017.

²⁷⁸ *Ibid.*

²⁷⁹ Johann Wolfschwenger, '10 Years Eastern Partnership–The EU and its Strategic Dilemma', *Österreichische Gesellschaft für Europapolitik*, 2019.

who maintain control through unofficial patronage networks and prioritize pro-Western stability in the region²⁸⁰.

Moreover, the EU initially lagged in adapting its policy frameworks to the rapidly changing political landscape in the Eastern neighbourhood, but eventually responded to the new developments²⁸¹. Russia's hostile integration strategy has posed a threat to the EU's integration agenda in the past decade²⁸². As a result, the EU had to confront the challenges of swift and potentially risky changes, leading to the EaP policy review (2015 EaP Review and 2016 EU Global Strategy)²⁸³. However, despite the publication of multiple EU initiatives and policy reviews, the tools employed have largely remained the same²⁸⁴. The EU has primarily prioritized stability as a key goal in the Eastern neighbourhood, shifting focus away from promoting democracy²⁸⁵. With the Global Strategy, the EU no longer exaggerated its ability to have a revolutionary impact on promoting democracy, instead emphasizing security, economic development, and resilience in the neighbouring Eastern countries²⁸⁶.

The Eastern Partnership, however, exemplifies a technical response to a geopolitical scenario that calls for a political strategy²⁸⁷. In fact, the institutional structure of the Eastern Partnership was borrowed from the EU enlargement process, without considering the geopolitical dimension. Therefore, it is ill-prepared to operate in a geopolitical environment²⁸⁸. Ultimately, treating the EaP as solely a bilateral matter between the EU and partner states, relying on the cost-benefit logic of conditionality, has become a significant obstacle to the effectiveness of the EaP. Instead, it is important to examine the partner states' foreign policy decisions, such as signing the AA and DCFTA, to assess if they are driven by geopolitical calculations²⁸⁹. Neglecting the

²⁸⁰ Florian Bieber and Marko Kmezić, 'The crisis of democracy in the Western Balkans: Authoritarianism and EU stabilocracy', *Balkans in Europe Policy Advisory Group*, 2017.

²⁸¹ Assem Dandashly and Gergana Noutcheva, 'Unintended consequences of EU democracy support in the European neighbourhood', *Unintended Consequences of EU External Action*, Taylor & Francis, 2019.

²⁸² Johann Wolfschwenger, '10 Years Eastern Partnership–The EU and its Strategic Dilemma', *Österreichische Gesellschaft für Europapolitik*, 2019.

²⁸³ Assem Dandashly and Gergana Noutcheva, 'Unintended consequences of EU democracy support in the European neighbourhood', *Unintended Consequences of EU External Action*, Taylor & Francis, 2019.

²⁸⁴ *Ibid.*

²⁸⁵ *Ibid.*

²⁸⁶ *Ibid.*

²⁸⁷ *Ibid.*

²⁸⁸ Johann Wolfschwenger, '10 Years Eastern Partnership–The EU and its Strategic Dilemma', *Österreichische Gesellschaft für Europapolitik*, 2019.

²⁸⁹ *Ibid.*

geopolitical dimension would contradict the EU's primary goal of fostering political stability and democracy in its Eastern neighbours²⁹⁰.

The modest achievements in democratic and socioeconomic transition stand in stark contrast to the growing geopolitical dimension of the EaP over the past decade²⁹¹. This poses a strategic dilemma for the EU: while the European aspirations of its Eastern partners drive internal democratic reforms, the European process creates a climate of geopolitical instability that hampers the likelihood of democratic transformation and subsequent European integration²⁹². Therefore, it is crucial to develop a new strategic vision for the Eastern neighbourhood to enhance regional stability and security. However, there is a risk that the new geopolitical context may diminish the importance of European values, which should remain fundamental to EU integration and the functioning of the Single Market²⁹³.

To achieve these goals, a broader concept of Europe, such as the European Political Community, should be considered. It should not compete with NATO or replace EU enlargement but rather serve as a framework for strategic discussions that enable willing countries to find common solutions, particularly in security matters, without waiting for the completion of enlargement or relying solely on a NATO approach²⁹⁴. This approach would reconcile the geopolitical interest in the swift EU accession of Western Balkan countries with the demanding process of adopting EU rules and standards. It would preserve and protect the rule of law and European values through the enlargement process while providing a broader forum for strategic discussions to foster convergence among Eastern neighbourhood countries on geopolitical issues.

Furthermore, the conflict in Ukraine and democratic backsliding in the Western Balkan countries demonstrate the inefficiency of the current enlargement strategy. The EU's requirements, focused on regulatory approximation, may not align with the development needs of partner countries²⁹⁵. The inflexible application of the *acquis*, designed by EU Member States for economies at different stages of development, raises

²⁹⁰ *Ibid.*

²⁹¹ *Ibid.*

²⁹² *Ibid.*

²⁹³ Matteo Bonomi, Luisa Chiodi and Irene Rusconi, 'New Visions for the Western Balkans: EU Accession and Regional Security', 2023.

²⁹⁴ President of the French Republic Emmanuel Macron, 'Closing speech by the President of the President of the Republic' Bratislava, 31 May 2023.

²⁹⁵ Laure Delcour and Hrant Kostanyan, 'Towards a Fragmented Neighbourhood: Policies of the EU and Russia and their consequences for the area that lies in between', *CEPS Essays* 17, 2014.

questions about its effectiveness as a foreign policy instrument beyond the context of enlargement²⁹⁶. Additionally, providing technical and financial support alone may not be sufficient to compensate for short-term losses, as the reforms may lead to socio-economic challenges and vulnerability to Russian pressure²⁹⁷. Therefore, the EU should exercise flexibility in policy implementation, tailoring its approach to the specific needs of each country and diversifying its relations rather than imposing a one-size-fits-all conditionality²⁹⁸. Consideration of the unique context in which policies are implemented will enhance their effectiveness.

Moreover, the European Neighbourhood Policy and Eastern Partnership offer a long-term development model, but the EU must be able to adapt to its environment and address short-term challenges promptly to have a lasting impact²⁹⁹. The recent developments in the Eastern neighbourhood, driven by national factors and Russia's policies, require immediate responses. However, the EU often adheres to its long-term strategy without timely adjustments to address local realities³⁰⁰.

Stronger integration between the EU's long-term neighbourhood policy, short-term crisis management, and Common Security and Defence Policy (CSDP) is necessary. The EU has increased communication with Eastern partner governments and developed new formats of collaboration and dialogue, particularly within the ENP and EaP, involving non-governmental actors in partner countries³⁰¹. This positions the EU to closely monitor developments in the region. However, it is essential for the EU to adopt a policy approach that effectively incorporates monitoring findings and promptly responds to developments in its neighbourhood³⁰². Taking into account such developments in EU policies toward Eastern neighbours is a crucial requirement for more thoughtful, receptive, and effective EU policies³⁰³.

²⁹⁶ *Ibid.*

²⁹⁷ *Ibid.*

²⁹⁸ *Ibid.*

²⁹⁹ *Ibid.*

³⁰⁰ *Ibid.*

³⁰¹ *Ibid.*

³⁰² *Ibid.*

³⁰³ *Ibid.*

3.3 The European Political Community and its relationship with the EU enlargement

In principle, the EU has the capacity to reform its institutional framework to better accommodate both the Balkans and the AA states. This adaptation could lead towards a more effectively structured multi-level EU or an EU characterized by “differentiated integration”. This concept implies a Union that can adapt to Member States having varying degrees of participation in different policies and institutional arrangements, or progressing toward them at different paces. This broader subject has been under discussion for several years, notably gaining attention since the Schaeuble-Lamers paper in 1994³⁰⁴, with a more recent comprehensive academic synthesis presented by Schimmelfennig in 2019³⁰⁵. However, thus far, this debate has primarily centred on differentiation among the existing EU Member States. This focus was understandable during a period when the EU's expansion was expected to follow established norms and before new aspirations for EU membership emerged in Eastern Europe.

The current question revolves around whether the concept of “differentiated integration” can be tailored to include states that aspire to integrate into the EU, are prepared to adopt or align with a significant portion of EU law, but presently face remote prospects of achieving full membership. All states that express a commitment to European values and ambitions warrant an encouraging and politically viable response. This approach also aligns with the EU's geostrategic interests, especially in regions where Russia, China, and Turkey are actively pursuing deeper integration, potentially at the expense of the EU³⁰⁶.

A European Union characterized by differentiated integration would operate on the premise of a dynamic integration framework. This framework would encompass a spectrum, ranging from a relatively relaxed form of membership with restricted or partial involvement in institutions to complete and full membership³⁰⁷. The primary objective would be to pursue comprehensive functional integration alongside gradual involvement in EU institutions. This approach aligns with the Joint Letter from Georgia, Moldova, and Ukraine addressed to

³⁰⁴ Wolfgang Schäuble and Karl Lamers, ‘*Reflections on European policy*’, CDU/CSU Group at the Bundestag, 1994.

³⁰⁵ Frank Schimmelfennig, ‘*Is differentiation the future of European integration?*’, in Bjorn Fagesten & Goran von Sydow, eds., ‘*Perspectives on the Future of the EU*’, SIEPS, 2019.

³⁰⁶ Michael Emerson et al., ‘*Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states*’, CEPS Policy Contribution, 2021.

³⁰⁷ See Barbara Lippert, ‘*The EU after Brexit: Renewed debate about enlargement and deepening*’, SWP Comment, No. 12, 2021; Pierre Mirel, ‘*Western Balkans-European Union: Between internal cohesion and external stability*’, La Fondation Robert Schuman, European Issues, n°480, 2018; Pierre Mirel, ‘*European Union-Western Balkans: for a revised membership negotiation framework*’, La Fondation Robert Schuman, European Issues n° 529, 2019.

the EU and its Member States, which advocates for "expanding the agenda of dialogue between the European Commission and the three Associated Partners to new thematic areas for an enhanced cooperation, such as transport, energy, digital transformation, green economy, justice and home affairs, strategic communications, healthcare" and emphasizes the need for a "new, strategic, long-term vision" for their European integration³⁰⁸.

The primary objective is to initiate a discussion aimed at finding a more effective approach for realizing the European integration aspirations of both the Balkans and the associated countries in Eastern Europe. In terms of EU functional policies, there is already a growing push to extend their application to both sets of states. This encompasses aspects related to the internal market, various significant sectoral policies, trade associations, and endeavours in foreign and security policy, justice, and home affairs. This approach seeks to conditionally extend the practical advantages of nearly all EU policies to these states³⁰⁹.

However, what has been lacking thus far are constructive proposals for their gradual inclusion in EU institutions. This inclusion should be realistically scaled based on the challenges and complexities it may involve. Given the current circumstances, there are good possibilities to be explored. These possibilities, without causing harm to the functionality of the EU decision-making system, would represent a highly positive political gesture to the countries in question. Such a move would aid in providing political legitimacy to their adherence to EU laws³¹⁰.

EU structures possess significant potential for gradual implementation in countries with aspirations for full membership. The journey toward full membership may be lengthy, partly due to reasons that both the EU and the aspiring states share responsibility for. Nevertheless, the components are available to create a framework that provides aspiring states with the strategic incentives and a sense of vision that are currently lacking³¹¹.

Formal proposals and practical methods for developing these concepts were discussed during the Conference on the Future of Europe. The Conference on the Future of Europe was a unique initiative held between April 2021 and May 2022, featuring citizen-driven discussions. It marked a significant pan-European democratic endeavour, enabling people from across Europe to express their ideas using an innovative

³⁰⁸ 'Joint letter' to the EU institutions and Member States by the ministers for foreign affairs of Georgia, Moldova and Ukraine, 1 February 2021.

³⁰⁹ Michael Emerson et al., 'Balkan and Eastern European Comparisons: Building a New Momentum for the European integration of the Balkan and Eastern European associated states', CEPS Policy Contribution, 2021.

³¹⁰ *Ibid.*

³¹¹ *Ibid.*

multilingual digital platform. With over 700,000 participants, the Conference was successful in creating a public platform for open, inclusive, and transparent debates on various key priorities and challenges. The official conclusion of the Conference took place on 9 May 2022, known as Europe Day, in Strasbourg. On this day, the Co-Chairs of the Conference Executive Board presented a final report containing 49 proposals on various important topics to the Presidents of the European Parliament, the Council, and the Commission³¹².

Notably, on the same day, French President Macron introduced the concept of a European Political Community (EPC), during France's presidency of the EU Council³¹³. The EPC is seen as a novel form of political cooperation in Europe, particularly in times of crisis³¹⁴. It aims to bring together EU and non-EU countries that share common interests. On 18 May 2022, the President of the European Council, Charles Michel, echoed a similar vision in a speech to the European Economic and Social Committee. Among the objectives President Michel mentioned was the idea of a “European geopolitical community” beyond enlargement to “forge convergence”³¹⁵.

Subsequently, the proposal was deliberated at the European Council meeting held on 23 and 24 June 2022. The European Council referred to it as a “platform for political coordination for European countries across the continent” within the context of a “wider Europe”. Importantly, this framework is designed to “fully respect the European Union’s decision-making autonomy”³¹⁶. Finally, European Commission President Ursula von der Leyen endorsed the EPC in her recent State of the Union address³¹⁷.

One of the external goals set by the European Union, as outlined in the Treaties, is to maintain and champion its foundational values alongside its own interests when engaging with the rest of the world³¹⁸. The general provisions governing the EU's actions on the global stage emphasize a commitment to principles, with a particular focus on upholding international law as a fundamental aspect of the Union's engagement in international affairs. Furthermore, the Union actively contributes to ensuring strict compliance with and the

³¹² European Commission, ‘Conference on the Future of Europe’, commission.europa.eu/strategy-and-policy/priorities-2019-2024/new-push-european-democracy/conference-future-europe_en, accessed 7 September 2023.

³¹³ See Speech by Emmanuel Macron at the closing ceremony of the Conference on the Future of Europe, 9 May 2022.

³¹⁴ See Roman Petrov, ‘How the European Political Community Could Support the Accession of Ukraine to the EU’, *VerfBlog* 12, 2022.

³¹⁵ European Council, Speech by President Charles Michel at the Plenary Session of the European Economic and Social Committee, www.consilium.europa.eu/en/press/press-releases/2022/05/18/discours-du-president-charles-michel-lors-de-la-session-pleniere-du-comite-economique-et-social-europeen/, accessed 7 September 2023.

³¹⁶ European Council conclusions, 23-24 June 2022.

³¹⁷ European Policy Centre, ‘Von Der Leyen Makes Big Promises, but Will They Be Enough?’, www.epc.eu/en/Publications/Von-der-Leyen-makes-big-promises-but-will-they-be-enough~4ac888, accessed 7 September 2023.

³¹⁸ Article 3(5) TEU.

continued development of international law. In the words of Cannizzaro, international law is seen as “the indispensable tool for realizing the external dimension of the European integration”³¹⁹. As a result, the Union is compelled to adopt a proactive approach in this regard and establish partnerships with third countries that are founded on the same principles that underpin the EU's constitutional order. Most importantly, these values and principles mentioned above must be consistently promoted by the Union in a cohesive manner through all its external actions³²⁰.

In this context, the new EPC policy seems to align with the EU's external goals, including: establishing partnerships with third countries based on EU values and principles as outlined in Article 21(1) TEU; advocating for multilateral solutions to common issues under the same article; and cultivating a special relationship with neighbouring countries according to Article 8 TEU³²¹. However, upon closer examination, this new diplomatic effort bears similarities to the European Confederation project initiated in June 1991 at the request of former French President François Mitterrand. Unfortunately, the “European confederation [...] which [was supposed to] associate all states of our continent in a common and permanent organisation for exchanges, peace and security” ultimately failed³²².

Additionally, there was a previous attempt to establish a “European Political Community”, but it ultimately ended in failure. This project originated after the signing of the Paris Agreements regarding the European Defence Community (EDC) in 1952. It was initiated by France and Italy, with leaders like Robert Schuman and Alcide de Gasperi playing key roles.

At that time, the only existing European assembly was the European Coal and Steel Community (ECSC). It was tasked with creating a preliminary treaty for the formation of a “European Political Community” within the next year. The aim was to enhance the existing European communities and, simultaneously, to coordinate the foreign policies of its members. It was also envisioned as a step toward establishing a common market.

³¹⁹ E. Cannizzaro, ‘The value of the EU international values’, in W.Th. Douma et al. (eds.), *The Evolving Nature of EU External Relations Law*, TMC Asser Press, 2021.

³²⁰ Anna Pau, ‘An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy’, *Eurojus* 2, 2023.

³²¹ Anna Pau, ‘An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy’, *Eurojus* 2, 2023.

³²² François Mitterrand, New Year address, 31 December 1989, *Politique étrangère de la France*, November-December 1989, 227–8.

However, due to its strong connection to the EDC concept, when the French National Assembly declined to ratify the EDC Treaty in 1954, the plan for a European Political Community, which was closely linked to it, was subsequently abandoned. These historical precedents may lead to scepticism regarding the EPC and prompt consideration of the fact that the EU's multilateral endeavours tend to rely on a form of soft power.

The proposal was introduced by the European Union within the larger context of responding to Russia's conflict in Ukraine. Indeed, the references to security and energy suggest that the creation of the EPC is a response to the consequences of this conflict for Europe. Additionally, the proposal is a reaction to recent applications for EU membership from Ukraine, Georgia, and Moldova³²³.

In this context, the EPC initiative is noteworthy because it envisions the establishment of a European political framework outside the EU. This framework can serve as an initial step towards EU membership or, depending on a country's preferences, an alternative to it³²⁴.

The current debate centres on whether this instrument can effectively serve as a platform for promoting EU values, principles, and interests in Europe. It also involves discussions on how EU diplomacy will interact with other EU policies, particularly the European Neighbourhood Policy and Enlargement Policy³²⁵.

The extraordinary situation brought about by the war demands a more immediate and politically driven response. It necessitates the development of a new model for EU integration that offers a workable alternative to the traditional approach. In the conventional accession process, the focus has mainly been on legal and economic aspects, requiring the candidate country to align its national legislation with the *acquis communautaire* and strengthen its economy to compete effectively in the single market. This process involves the opening and closing of various thematic chapters during accession negotiations, culminating in the ratification of the accession treaty. While political criteria, such as being a liberal democracy that upholds the rule of law, have always been part of the process, they have not historically represented a significant milestone in joining the European family. This has led to impatience and frustration in candidate countries and weariness and disillusionment among their public opinion. Furthermore, in previous enlargement efforts, integrating the

³²³ Anna Pau, 'An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy', *Eurojus* 2, 2023.

³²⁴ Thierry Chopin, Lukáš Macek and Sébastien Maillard, 'The European Political Community: A new anchoring to the European Union' *Notre Europe Policy Brief*, 2022.

³²⁵ Pau, Anna, 'An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy', *Eurojus* 2, 2023.

foreign policy of the candidate country into European policy was not a top priority. However, in today's context, Europe's relationship with the rest of the world has become essential for the continuity of the European project³²⁶.

In summary, using the terminology based on the Maastricht Treaty, past enlargement candidates could swiftly prepare for accession to the second pillar, which is the Common Foreign and Security Policy (CFSP), and the third pillar, encompassing Justice and Home Affairs. However, they had to wait until they were fully ready to join the first pillar of the EU. This first pillar includes the single market and related policies, and it involves absorbing a substantial amount of the *acquis communautaire* and achieving economic convergence. The accession process did not allow for separating these two phases. In contrast, for states closely associated with the EU within the European Economic Area (EEA), there is a practical separation. They engage extensively in the economic aspect of the EU, that is, the single market, but do not partake in political and symbolic integration or participate in European institutions, as seen in the case of Norway. As a result, the EU currently has a well-defined and credible offer for states interested in economic integration. These states can engage in economic integration without committing to the political dimension of the European project. However, the EU lacks a mechanism to address the reverse situation, where states express a desire to join the political project but do not possess the short to medium-term capacity to become part of the single market. This situation must be managed without risking domestic economic stability or destabilizing the single market³²⁷.

The applications for EU membership submitted by Ukraine, Moldova, and Georgia call for a specific approach that differs from the one followed by the European Economic Area (EEA). This approach involves a fast-track integration into the political and institutional aspects of the EU while progressing gradually in the economic sphere, depending on the countries' ability to meet EU standards and the time required for this process. This is the central focus of the discussion surrounding the European Political Community (EPC)³²⁸. For this vision to become a reality and for the EU to effectively address current challenges, it is crucial to learn from the failure of François Mitterrand's initiative, as mentioned by President Macron when presenting the

³²⁶ Thierry Chopin, Lukáš Macek and Sébastien Maillard, 'The European Political Community: A new anchoring to the European Union' *Notre Europe Policy Brief*, 2022.

³²⁷ *Ibid.*

³²⁸ *Ibid.*

EPC. Aside from the issue of including the USSR at the time, the concept of a “European Confederation” did not resonate well in Central Europe because it was seen, rightly or wrongly, as a less appealing alternative to their true aspiration, which was EU membership³²⁹. This is why the new project must be unequivocally defined as either an alternative to EU membership or as the initial step toward it. The decision regarding the project's meaning should be made by the candidate countries, not the Member States.

Consequently, integration would no longer be a one-size-fits-all process where states must commit to all EU dimensions and obligations, except for certain transitional periods. Instead, it would be a gradual process where states integrate by completing successive components or packages. This component-based approach would also make it easier for leaders in aspirant countries and their public opinion to support the EU, leading to better integration of these countries³³⁰.

Fundamentally, the European Political Community (EPC) aims to foster a sense of belonging to the same democratic area and the sharing of common values on both sides. This is expressed in the term “Community”, intentionally chosen by President Macron on the anniversary of Robert Schuman's Declaration, aligning the new Community with the principles of European construction and the EU, leveraging the EU's instruments³³¹.

The European Political Community (EPC) has chosen to determine its participant countries based on geographical and political criteria. Specifically, it is open to European countries and those that share “a common set of democratic values”³³². The inaugural meeting of the EPC was held in Prague on 6 October 2022, with the attendance of 44 European countries³³³. Notably, Andorra, Monaco, and San Marino did not participate. This event, known as the first “EU+ summit”³³⁴, was organized and led by the Czech Republic, which held the EU Council Presidency.

³²⁹ François Mitterrand, New Year address, 31 December 1989, *Politique étrangère de la France*, November–December 1989, 227–8.

³³⁰ Thierry Chopin, Lukáš Macek and Sébastien Maillard, ‘The European Political Community: A new anchoring to the European Union’ *Notre Europe Policy Brief*, 2022.

³³¹ *Ibid.*

³³² French Presidency, *Non-paper on European Political Community*, 17 June 2022.

³³³ European Council, Meeting of the European Political Community, 6 October 2022.

³³⁴ European Parliament, “Beyond enlargement”: European Political Community and enlargement policy reform’, European Parliamentary Research Service, 2022.

The second summit occurred in Chişinău, Moldova, on 1 June 2023, with the presence of 45 countries³³⁵. Turkey was a notable absence. Notably, Belarus, Russia, and Kazakhstan were excluded from participation. On the other hand, the invited states included:

- The 27 EU Member States
- Western Balkan states (Albania, North Macedonia, Kosovo, Serbia, Bosnia and Herzegovina, Montenegro)
- The countries of the Associated Trio (Georgia, Moldova, Ukraine)
- Armenia and Azerbaijan
- Turkey, which attended the first summit but not the second
- Andorra and Monaco, which attended the second summit but not the first
- San Marino, which did not attend either summit
- The United Kingdom
- The four countries of the European Free Trade Association (Norway, Switzerland, Iceland, and Liechtenstein)

Additionally, the President of the EU Commission and the President of the European Council participated in both summits. The President of the European Parliament and the High Representative of the Union for Foreign Affairs and Security Policy, Josep Borrell, were invited to the second summit.

The structure of the European Political Community (EPC) aligns with what appears to be the favoured approach outlined in Article 3(5) TEU, which emphasizes multilateral solutions. The EPC complements various regional frameworks, including the European Union³³⁶. Interestingly, many of the participating countries in the EPC are not members of either the EU or NATO. Consequently, the EPC represents an additional option alongside these two organizations. However, the European Council has emphasized that this platform for political coordination "does not replace any existing organisation, structure or process, nor does

³³⁵ European Council, Meeting of the European Political Community, 1 June 2023.

³³⁶ European Political Community: Speech on behalf of High Representative/Vice-President Josep Borrell at the EP debate on the outcome of the first meeting.

it aim to create a new one at this stage"³³⁷. Furthermore, the EPC complements other EU policies and “will not replace existing EU policies and instruments, notably enlargement”³³⁸.

Almost all European continent countries participate in the EPC, regardless of their relationship with the EU, be it members, non-members, former members, or aspiring members. This includes both countries actively seeking EU membership and those with a European perspective. Overall, the launch of the EPC signifies the EU's commitment to treating its neighbouring countries equally, with the acceleration of Ukraine's accession being a notable example despite other stalled processes. While the implications of the EPC for Ukraine's EU accession are not yet fully understood, it could serve as “a valuable tool to stimulate “parallel” integration of Ukraine into selected pan-European projects while being engaged in the meticulous EU accession process”³³⁹.

The European Union has a history of establishing various levels of cooperation with neighbouring countries, which may or may not lead to or replace future EU membership. Examples include the European Economic Area, which counts Norway, Liechtenstein, and Iceland as members; a set of bilateral agreements with Switzerland, which is part of the Schengen Area; the customs union arrangement with Turkey, whose membership application is currently on hold; a series of association agreements; and the intricate relationship with the United Kingdom following Brexit. These bilateral and multilateral initiatives are part of the EU's external relations policy. The extent and scope of cooperation with different partners are influenced not only by the EU's external agenda but also by the willingness of third countries to engage in these arrangements³⁴⁰.

As a result, the EU “currently has a structured and credible offer for States who wish to take part in economic integration, and are able to, without wanting to subscribe to the European project’s political dimension. However, it does not have a tool to satisfy the opposite need”³⁴¹. The European Political Community could, therefore, fill this gap by serving as a platform for meaningful political integration.

The EPC platform could also offer valuable tools for addressing both internal and external challenges. On the internal front, there may be a need for enhanced coordination between EU institutions and Member States

³³⁷ European Council, Meeting of the European Political Community, 6 October 2022.

³³⁸ European Council conclusions, 23-24 June 2022.

³³⁹ Roman Petrov, *Applying for EU Membership in Time of War: “Accession through War” of Ukraine*, IAI Paper 23, 2023.

³⁴⁰ Anna Pau, ‘An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy’, *Eurojus* 2, 2023.

³⁴¹ Thierry Chopin, Lukáš Macek and Sébastien Maillard, ‘The European Political Community: A new anchoring to the European Union’ *Notre Europe Policy Brief*, 2022.

to ensure effective participation in EPC summits together. Externally, the EPC can serve as a means to align various stakeholders in the pursuit of shared objectives and to demonstrate the collective efforts of the international community in response to common challenges. Specifically, in the short term, the EPC could prove beneficial in preparing coordinated responses to significant breaches of international law, such as the Russian aggression against Ukraine³⁴².

The European Political Community was described by the High Representative (HR) as “a community of shared principles through an alignment on principles”, with the primary goal of fostering peace and stability in Europe. This platform also serves as a means for the EU to “uphold and promote its values” globally³⁴³.

EU values are integral to the Union's identity, as outlined in Article 2 TEU, and are fundamental to achieving specific objectives, particularly ensuring security and stability in Europe and its neighbouring regions³⁴⁴. The EU has faced criticism for imposing its values unilaterally on third-party partners, for instance, through trade conditionality. However, the EPC initiative appears to differ in this regard. The EU does not position itself as superior, nor does it selectively choose countries that share identical values. The Czech presidency of the EU Council emphasized that the inaugural EPC meeting aimed to bring European leaders together “on an equal footing and in a spirit of unity”³⁴⁵. Essentially, the Union's primary focus does not seem to be exporting its values, but rather recognizing that these values are, or could be, shared. This is noteworthy, considering that the EU has not previously claimed to share democratic values with so many European states. This shift in approach may be a direct response to the ongoing war scenario in Europe. Therefore, the EPC appears to function more as a tool for building and consolidating European values through diplomacy, rather than as a tool for promoting EU values through conditionality³⁴⁶.

In essence, unlike the neighbourhood policy model, which could be summarized as “everything except the institutions”, the proposed model here embraces the “institutions first” principle. It aims to swiftly integrate aspiring countries into the European project and make their participation substantial and tangible for their

³⁴² Anna Pau, ‘An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy’, *Eurojus* 2, 2023.

³⁴³ European External Action Service, European Political Community: Speech on behalf of High Representative/Vice-President Josep Borrell at the EP debate on the outcome of the first meeting, 19 October 2022.

³⁴⁴ Marise Cremona, *Values in EU Foreign Policy*, in M. Evans and P. Koutrakos (eds.), *Beyond the Established Orders: Policy interconnections between the EU and the rest of the world*, Oxford Hart Publishing, 2011, 275-315.

³⁴⁵ Czech Presidency of the Council of the European Union, Meeting of the European Political Community, 6 October 2022.

³⁴⁶ Anna Pau, ‘An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy’, *Eurojus* 2, 2023.

citizens. This approach is likely to cultivate a sense of belonging founded on shared values and encourage convergence in political practices and strategic outlooks³⁴⁷.

Following the step-by-step approach, the initial entry into the political sphere should be followed by cooperative initiatives in specific areas of mutual interest, such as energy, infrastructure, health, and security. These initiatives would be defined and conducted at the ministerial level, involving EU Member States that choose to participate, in addition to the existing European policies in these domains. Active engagement in these cooperative endeavours should be promoted and utilized as a criterion for potential accession in the future. To ensure the coherence and clarity of EU policies, the development of these cooperative initiatives and the integration of various components of a Member State's rights and responsibilities should be subject to clear and stringent conditions. Additionally, mechanisms for reversibility should be in place, which can be activated if there is a significant regression or a failure to fulfil commitments. For instance, joining the Common Foreign and Security Policy (CFSP) might require a prerequisite of wholeheartedly embracing the common strategic vision and objectives outlined in the EU Strategic Compass³⁴⁸.

In parallel to these exchange and cooperation initiatives, the process of applying for EU membership should continue, especially in areas that were previously part of the first pillar of the EU, where either a gradual or accelerated accession may not be feasible. With the potential granting of EU candidate status, formal accession negotiations could be initiated and conducted with the European Commission, following the process recently adopted and currently underway with the Western Balkan countries³⁴⁹.

However, the EPC is already encountering strong criticism. Initially, countries with aspirations of becoming part of the European Union will not accept anything less than full EU membership. Advocates argue that the EPC could offer a more gradual and equitable accession process, departing from the current take-it-or-leave-it approach. Nevertheless, the likelihood of this model coming to fruition appears low, as the stated goals of the EPC have shifted away from this idea, focusing more on geopolitical and security objectives. Furthermore, the EU candidate countries, who are supposed to benefit from this model, are not enthusiastic about it either³⁵⁰.

³⁴⁷ Thierry Chopin, Lukáš Macek and Sébastien Maillard, 'The European Political Community: A new anchoring to the European Union' *Notre Europe Policy Brief*, 2022.

³⁴⁸ *Ibid.*

³⁴⁹ *Ibid.*

³⁵⁰ Thu Nguyen, 'European Political Community: From family photo to "strategic intimacy"', 2022.

In fact, there is a potential risk that it might undermine the principle of equality. Even with the best intentions, it is possible that in a model centred around the EU, varying levels of membership could emerge, mirroring the existing differentiated integration formats within the EU. On one hand, non-EU countries would struggle to resist the preferences of the EU-27 bloc. On the other hand, countries aspiring to join the EU would face greater pressure to implement reforms or align with decisions made by the EU majority within the EPC compared to countries uninterested in EU membership. In such a framework, countries like the UK, Norway, or Turkey might more easily oppose suggested joint projects than Ukraine or Moldova, potentially undermining the core concept of a collaborative community founded on equal partnership³⁵¹.

Secondly, there is a question about what makes the EPC distinctive. The European Union and European countries have numerous overlapping strategies for engaging with the world, and the EPC appears to be just another initiative added to the already extensive array of interconnected programs. Some argue that the EU lacks a unified foreign and security policy. While EU Member States managed to reach a consensus on sanctions against Russia and adopt a pro-Ukraine stance, the EU had to make certain exceptions for some members. Furthermore, disagreements persist among Member States regarding European values, immigration policies, and how to handle Russia. Additionally, some experts believe that the EPC will merely highlight the disparities among member states and fail to establish a unified stance.

Others also criticize the EPC as President Macron's new ambitious vision, serving as a front for France's pursuit of strategic autonomy. However, considering the imperative for cooperation and the EU's own aspiration to be a significant actor on the global stage, the EPC presents an opportunity for the EU to reassess its relationships with key players outside the EU's borders, particularly non-EU NATO partners.

However, this approach will encounter certain challenges. Firstly, there is the question of whether the EPC might dilute the authority and initiatives of the EU in areas where their activities overlap, something the EU institutions may not readily accept. On the other hand, the diversity within the EPC's membership and the presence of other more pertinent platforms like NATO, the G7/G20, or the global-level Conference of the Parties (COP) could pose obstacles to the EPC's long-term success and endurance. This risk would be amplified if, for example, France's commitment to the project wanes³⁵².

³⁵¹ *Ibid.*

³⁵² *Ibid.*

IV. Conclusion

Hence, the European Political Community offers an alternative approach to dealing with neighbouring countries, distinct from both the European Neighbourhood Policy and the EU enlargement policy. It serves as a platform for promoting political integration in a structured manner, often referred to as a "more structured form of non-membership"³⁵³ by Cremona and Shuibhne. The key question revolves around “whether it will result in an effective upgrade of foreign policy alignment by the EU’s neighbours”³⁵⁴. It is important to note that as of now, no resolutions, decisions, or conclusions have been officially adopted in this regard. The European Political Community is, therefore, characterized as “a light legal structure, with decision-making capacity, while respecting the decision-making autonomy of the European Union and of each of the States that make up this Community”³⁵⁵.

However, it is worth mentioning that decision-making does not appear to be the primary objective of this new initiative³⁵⁶. Instead, it is seen as an opportunity for fostering collaboration, cooperation, and networking. Two main challenges emerge: firstly, reaching a consensus on significant foreign policy matters may prove challenging due to differing viewpoints among EPC member states. Secondly, the EPC could be perceived as a signal of diplomatic isolation in relation to Russia and Belarus³⁵⁷.

Another important factor to consider is the role that the European Union plays within the European Political Community. This role has been described as “flexible EU-centricness”³⁵⁸. It is important to note that the Union's role, while somewhat measured, is undeniably pivotal, not only in the inception of the EPC but also in its execution. Member States actively contributed to the establishment of the European Council, and high-ranking representatives of the Union³⁵⁹ became part of the EPC leadership.

³⁵³ Niamh Nic Shuibhne and Marise Cremona, ‘Integration, membership, and the EU Neighbourhood’, *Common Market Law Review* 59 SI: 155–180, 2022, 156.

³⁵⁴ Michael Emerson, ‘Will The European Political Community Actually Be Useful?’, *CEPS Explainer*, 2022.

³⁵⁵ French Presidency, ‘Non-paper on European Political Community’, 17 June 2022.

³⁵⁶ Corina Stratulat, ‘The Beginning of the European Political Community’, *Brussels: European Policy Centre*, 2022.

³⁵⁷ Anna Pau, ‘An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy’, *Eurojus* 2, 2023.

³⁵⁸ Ilke Toygür, ‘Flexible ‘EU-centricness’ is the key ingredient to ensure the European Political Community’s success’, *CEPS*, 2022.

³⁵⁹ President of the European Council, President of the Commission, President of the European Parliament and HR.

On one hand, the involvement of EU institutions ensures that the Union's interests and priorities are appropriately considered when forming and carrying out potential agreements within the EPC framework. On the other hand, given that the primary purpose of the EPC appears to be aligning foreign and security policies, it is possible for the European External Action Service (EEAS) to coordinate meeting agendas³⁶⁰. Within this context, it is somewhat surprising that the High Representative did not attend the initial EPC summit.

Furthermore, President Macron initially mentioned the possibility of holding summits once or twice a year, whereas President Michel envisioned a more structured approach beyond the heads of state or government level. This approach would involve an extension of the existing practice where foreign ministers from non-EU countries occasionally participate in EU Foreign Affairs Council meetings. Similar arrangements could be considered for other Council formations³⁶¹. Additionally, there was a proposal to allow delegations from European Political Community countries to observe plenary sessions of the European Parliament³⁶². This development would enhance collaborative efforts in areas of shared interest, notably in energy and security, representing an innovative approach within the European Union's framework.

It could serve as a valuable starting point to examine how Member States and EU institutions will cooperate to convey their stances within the European Political Community. For instance, there is a question of whether they will convene prior EU Foreign Affairs Council or European Council meetings to establish shared positions on contentious issues, or if they will merely reaffirm established EU positions. As an example, during the inaugural EPC meeting, the leaders of EU Member States informally gathered in a European Council session the following day, where they concentrated on topics like Russia and the energy situation³⁶³. It is highly probable that the outcomes of this meeting were influenced, to some extent, by the progress made during the preceding EPC plenary meeting. Therefore, these two forums are likely to exert influence on each other.

These issues, along with others concerning the EU's role in the EPC, hold significant importance today. Specifically, questions arise about how the relationship between Member States and the EU will evolve within

³⁶⁰ Michael Emerson, 'Will The European Political Community Actually Be Useful?', *CEPS Explainer*, 2022.

³⁶¹ *Ibid.*

³⁶² Thierry Chopin, Lukáš Macek and Sébastien Maillard, 'The European Political Community: A new anchoring to the European Union' *Notre Europe Policy Brief*, 2022.

³⁶³ European Council, Informal meeting of heads of state or government, Prague, 7 October 2022, <https://www.consilium.europa.eu/en/meetings/european-council/2022/10/07/>, accessed 7 September 2023. *See also* European Council, Remarks by President Charles Michel following the informal meeting of the EU heads of state or government in Prague, <https://www.consilium.europa.eu/en/press/press-releases/2022/10/07/remarks-by-president-charles-/>, accessed 7 September 2023.

the EPC, particularly regarding the potential conclusion of international agreements or the expression of political positions. Indeed, there is a need to clarify whether any international agreements reached within this forum will be under the jurisdiction of the Member States or the Union, either individually or as mixed agreements. Similarly, there is uncertainty about whether a position articulated within the EPC should be attributed to the Union or the Member States³⁶⁴.

In this context, it is desirable for Member States, in line with the principle of sincere cooperation and in the interest of maintaining unity in external representation, to uphold the common positions agreed upon at the EU level when conveying positions within the framework of the EPC. Failing to do so would risk undermining the unity and coherence of the EU's external actions³⁶⁵.

The notable characteristics of this initiative appear to be a flexible and light approach, which could serve as crucial elements in achieving tangible outcomes within an increasingly intricate and ever-changing geopolitical landscape. A prime illustration of this is the quadrilateral meeting involving President Aliyev, Prime Minister Pashinyan, President Macron, and President Michel, which occurred alongside the inaugural EPC event³⁶⁶.

In this context, Armenia and Azerbaijan reaffirmed their dedication to the principles outlined in the UN Charter and the 1991 Alma-Ata Declaration. Through these agreements, both parties acknowledged each other's territorial integrity and sovereignty. Additionally, Armenia expressed its readiness to support the EU's civilian mission along the border with Azerbaijan, and reciprocally, Azerbaijan agreed to collaborate with the same mission³⁶⁷. This EU-led diplomatic effort becomes even more significant in light of Russia's involvement in mediating the conflict.

The European Political Community (EPC) has also proven to be a successful endeavour in improving the relationship between Europe and Kosovo. The European Union has adopted a policy of unified recognition

³⁶⁴ Anna Pau, 'An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy', Eurojus 2, 2023.

³⁶⁵ *Ibid.*

³⁶⁶ European Council, Statement following quadrilateral meeting between President Aliyev, Prime Minister Pashinyan, President Macron and President Michel, 6 October 2022, <https://www.consilium.europa.eu/en/press/press-releases/2022/10/07/statement-following-quadrilateral-meeting-between-president-aliyev-prime-minister-pashinyan-president-macron-and-president-michel-6-october-2022/>, accessed 7 September 2023.

³⁶⁷ The European Union initiated its civilian mission in Armenia, known as the EU Mission in Armenia (EUMA), within the framework of its Common Security and Defence Policy (CSDP) on the 20th of February, 2023. *See* European Council, Armenia: EU launches a civilian mission to contribute to stability in border areas, 20 February 2023, <https://www.consilium.europa.eu/en/press/press-releases/2023/02/20/armenia-eu-launches-a-civilian-mission-to-contribute-to-stability-in-border-areas/>, accessed 7 September 2023.

for Kosovo, even though five of its Member States³⁶⁸ do not formally acknowledge Kosovo's state status. Nevertheless, this has not hindered the EU from considering Kosovo as a potential candidate for EU membership. Simultaneously, the EU has actively supported the process of normalising Kosovo's international relations with its neighbouring countries. Notably, by extending an invitation to Kosovo to join the EPC, the EU has facilitated stronger ties between other non-member states, including Serbia, and Kosovo³⁶⁹.

In this way, the EU is demonstrating an innovative and effective contribution to securing international recognition for Kosovo as a sovereign state and promoting the normalization of relations between Kosovo and Serbia. The fact that both Serbia and Kosovo participated in the EPC, despite ongoing tensions in northern Kosovo, serves as a significant diplomatic signal reaffirming the success of these efforts³⁷⁰.

As previously mentioned, in order to address the strategic challenges in the eastern neighbourhood effectively, the European Union needs to formulate a new, long-term vision that promotes stability and security in the region, ultimately leading to transformation and potential European integration down the line. Amidst the rushed, misleading, and ultimately counterproductive accession process on one hand and a never-ending procedure with adverse consequences on the other, the concept of a European Political Community offers the advantage of swiftly engaging aspiring countries in a bidirectional process of political adaptation³⁷¹.

This initiative primarily targets Ukraine and other countries that have encountered frustration in their pursuit of EU membership despite their efforts to align with EU laws and standards. It is crucial to emphasize that this initiative does not serve as an alternative to EU membership; rather, it offers political support for the inevitably lengthy EU accession process. In fact, EU membership would enable the participating countries and EU Member States to engage with each other on various levels and as equals, leading to a gradual convergence of their positions and interests³⁷².

The European Political Community holds the potential to emerge as a highly effective endeavour in EU diplomacy, especially when applied within the realm of EU external policy. It can complement both the

³⁶⁸ The countries in question include Cyprus, Greece, Romania, Spain, and Slovakia. Spain has consistently challenged the recognition of Kosovo as a state, which may be influenced by its own domestic issues related to Cataluña. Similarly, Cyprus has reservations due to the ongoing occupation of the northern part of the island.

³⁶⁹ Anna Pau, 'An analysis of the rationales behind the launch of the European Political Community and its added value for EU diplomacy', Eurojus 2, 2023.

³⁷⁰ *Ibid.*

³⁷¹ Thierry Chopin, Lukáš Macek and Sébastien Maillard, 'The European Political Community: A new anchoring to the European Union' *Notre Europe Policy Brief*, 2022.

³⁷² *Ibid.*

European Neighbourhood Policy and the enlargement policy, thus aiding in their further advancement. Importantly, this new perspective considers the geopolitical dimension of stability and security in the EU's neighbouring region, setting it apart from the approaches of the other two European policies. Consequently, it is better suited to function in a purely geopolitical context.

The belief that EU membership or the Eastern Partnership solely concerns bilateral interactions between the EU and partner states has posed a significant obstacle to the effectiveness of these European policies. This perspective contradicts the EU's primary objective of promoting political stability and democracy in its Eastern neighbourhood. To address this issue, it is proposed to expand the architecture of the multilateral dimension of EU enlargement and the Eastern Partnership to include a political and security component. This would serve as a platform for dialogue on these critical matters.

In this context, the EPC, as a successful endeavour in EU diplomacy, could provide a response to the EU's strategic dilemma in its Eastern neighbourhood. On one hand, the aspirations of many Eastern partners towards Europe drive their internal democratic reform processes. On the other hand, the European path itself generates geopolitical instability, making it challenging to achieve democratic transformation and subsequent European integration.

The European Union requires additional tools alongside the Enlargement Policy and the European Neighbourhood Policy to establish stability in its neighbouring regions and extend its influence. The European Political Community serves as an appropriate arena for deploying EU diplomacy, as evidenced in the cases of Armenia and Azerbaijan. It could also potentially prove just as effective in mediating between Kosovo and Serbia in the future.

However, the EPC assembles a diverse group of states, and it is challenging to envision it as a forum for reaching substantial agreements, though this possibility is not ruled out. It can certainly serve as a breeding ground for more specific and tangible collaborative projects. Furthermore, this new initiative sends a clear signal of diplomatic isolation to excluded states, particularly Russia and Belarus.

In essence, the EU's external response to the Russian conflict in Ukraine aligns with international law, and the EPC initiative contributes to maintaining this consistency. Within this forum, European countries can seek multilateral and coordinated solutions to crisis situations and present a unified and coherent response to

Russian aggression. It is also plausible that the EPC could continue to exist for these purposes in the short term while fulfilling its long-term function.

Ultimately, through this platform, the Union fulfils its mandate to establish partnerships with third countries based on the same principles underpinning the EU's constitutional framework. In a highly dynamic and tense geopolitical context, the formation of this political community signifies a united European bloc founded on shared values and a common destiny. Nonetheless, it remains to be seen whether these plenary meetings will lead to more effective convergence on shared values and a common purpose or whether the notion of shared values will remain symbolic, with the diplomatic efforts not resulting in a cohesive strategy.

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