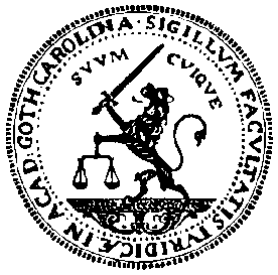

FACULTY OF LAW
Lund University

Iris Öhnström

Enlargement of the European Union

An examination of the criteria for accession in light of the Union's objectives

JURM02 Graduate Thesis

Graduate Thesis, Master of Laws program
30 higher education credits

Supervisor: Eduardo Gill-Pedro

Semester of graduation: Period 1, Spring semester 2021

Contents

Summary

Enlargement, the process whereby countries join the European Union (EU), has had a key role in the Union's development. Since its founding, the EU has grown from six to twenty-seven Member States, in a total of seven enlargement rounds. Currently, five countries are candidates for membership: Montenegro, Serbia, Albania, North Macedonia and Turkey. Kosovo and Bosnia and Herzegovina are recognised as potential candidates.

To be eligible for membership, the country must meet the conditions laid down in Article 49 of the Treaty on European Union. It provides that any European state which respects the EU's values and is committed to promoting them can apply to become a member. In addition, the candidate state must meet a set of political, economic and legal conditions commonly known as the Copenhagen criteria before it can accede.

The purpose of this thesis is to examine the criteria for accession, in order to determine whether the EU's approach to enlargement is effective in light of the Union's aims and objectives. The focus lies on the political accession criteria, which require the state to have stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities. Using a combination of legal dogmatic and EU legal method, the thesis studies the development and application of the criteria during past and ongoing enlargement processes.

It is concluded that the EU's approach to enlargement is lacking in several regards. It has been unable to ensure adherence to the Union's values, which has become an issue post-accession in several EU Member States. Due to the close legal ties within the Union, this threatens the functioning of mutual trust mechanisms, which are an essential to achieving key EU objectives such as the internal market and the Area of Freedom and Justice.

The problems with enlargement can partly be credited to the inconsistent and incoherent application of the accession criteria, caused by the complex enlargement procedure and the inherent vagueness of the criteria themselves. Many of the issues have remained in the ongoing enlargement process, and there has been an inability to ensure the reforms necessary for the current candidate states to accede. This has resulted in a lack of credibility of the EU's approach to enlargement, which may further destabilize an already troubled region. That could in turn affect the achievement of fundamental EU objectives of peace and security. It is therefore concluded that the EU's approach to enlargement is not effective in light of the Union's aims.

Sammanfattning

Den process där nya länder går med Europeiska unionen (EU) kallas utvidgning. Det har haft en central roll i unionens utveckling. Sedan grundandet har EU vuxit från sex till tjugosju medlemsländer, under totalt sju utvidgningsomgångar. För närvarande är fem länder kandidater för medlemskap: Montenegro, Serbien, Albanien, Nordmakedonien och Turkiet. Kosovo och Bosnien och Hercegovina är potentiella kandidatländer.

För att ansöka om medlemskap måste ett land uppfylla de villkor som anges i Artikel 49 i Fördraget om Europeiska unionen. Bestämmelsen anger att varje europeisk stat som respekterar EU:s värden och som förbinder sig att främja dem får ansöka om att bli medlem. Utöver detta måste kandidatlandet uppfylla en uppsättning politiska, ekonomiska och administrativa anslutningskriterier, de så kallade Köpenhamnskriterierna.

Syftet med den här uppsatsen är att utreda om anslutningskriterierna och EU:s förhållningssätt till utvidgning är effektiva i förhållande till Unionens övergripande mål. Fokus ligger på det politiska anslutningskriteriet, vilket innefattar krav på stabila institutioner som garanterar demokrati, rättsstatsprincipen, mänskliga rättigheter samt respekt för och skydd av minoriteter. Genom en kombination av rättsdogmatisk och EU-rättslig metod, studeras utvecklingen och tillämpningen av kriterierna under tidigare och pågående utvidgningsprocesser.

Den slutsats som dras är att EU:s förhållningssätt till utvidgning brister i flera avseenden. Det har inte lyckats säkerställas att Unionens värden efterlevs, vilket har blivit ett problem i flera medlemsländer. På grund av de nära juridiska banden inom EU hotar detta principen om ömsesidigt förtroende, som är väsentlig för uppfyllandet EU:s centrala mål om att etablera en inre marknad och ett område med frihet, säkerhet och rättvisa.

Problemen med tillgångagångssättet vid utvidgning kan delvis hänföras till inkonsekvent och osammanhängande tillämpning av anslutningskriterierna, vilket bland annat orsakats av anslutningsprocessens komplexitet och kriteriernas inneboende vaghet. Många av problemen har följt med i den nu pågående utvidgningsprocessen, och det har funnits en oförmåga att säkerställa de nödvändiga reformerna som krävs för att kandidatländerna ska kunna bli medlemmar. Detta har resulterat i en brist på trovärdighet för EU:s förhållningssätt till utvidgning, vilken kan riskera att ytterligare destabilisera en redan problemtyngd region. Det skulle i sin tur kunna påverka uppfyllandet av EU:s mål om fred och säkerhet. Därför dras slutsatsen att EU:s tillvägagångssätt vid utvidgning inte är effektivt med hänsyn till Unionens mål.

Preface

Sex års studietid i Lund har nu kommit till sitt slut. Många tentor och inlämningar har passerat, och otaliga timmar har spenderats på Jurren. Det har inte alltid varit lätt, långt ifrån. Men samtidigt har Lund bjudit på de roligaste åren i mitt liv. Jag kommer för alltid vara glad att jag valde att plugga just här.

Stort tack till de vänner och familj som har möjliggjort skrivandet av den här uppsatsen. Ert pepp och stöd har varit ovärderlig, såväl under den här våren som under hela juristprogrammet. Tack också till min handledare Eduardo Gill-Pedro för värdefulla synpunkter under arbetets gång.

Det är med vemod jag säger hejdå till den här tiden i Lund, men med stor spänning jag ser fram emot vad nästa kapitel i livet har att erbjuda.

Iris Öhnström
Lund, 26 maj 2021

Abbreviations

AFSJ	Area of Freedom, Security and Justice
CJEU	Court of Justice of the European Union
ECSC	European Coal and Steel Community
EEC	European Economic Community
EU	European Union
ICTY	International Criminal Tribunal for the former Yugoslavia
SAA	Stabilisation and Association Agreements
SAP	Stabilisation and Association Process
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

1 Introduction

1.1 Background

The first step toward the European Union (EU) was taken seventy years ago with the founding of the European Coal and Steel Community (ECSC) in 1951. The end of the Second World War had inspired a widespread sentiment that international affairs should be organised to prevent such a conflict from reoccurring.[1] This led to an idea of preserving peace through economic cooperation and integration, based on the notion that economic interdependence make countries inclined to avoid conflict.[2] The founders hoped that this would be both a foundation of economic development, as well as the starting point of a more united Europe.[3] The ECSC became the first in a line of supranational European institutions that would eventually develop into the EU of today. A leap toward a further integration was taken in 1957 with the establishment of the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).[4] The integration of the Communities' Member States continued in the decades that followed, eventually resulting in the establishment of the EU in 1993.[5]

The idea of an integrated Europe has always connoted a dual concept of both 'deepening' and 'widening'. The former refers to deeper integration by extending the competences and strengthening the institutions of the Union, which happened to a considerable extent during those initial years.[6] But there was always an expectation of eventually widening the membership, especially

[1] Craig and de Búrca (2020) p. 2.
[2] European Commission (2020), 'The European Union: What it is and what it does' pp. 7 & 31; European Union, 'The Schuman Declaration – 9 May 1950'.
[3] European Union, 'The Schuman Declaration – 9 May 1950'.
[4] The ECSC, the EEC and Euratom are hereinafter referred to as the 'Communities'. Cf. Craig and de Búrca (2020) pp. 1 & 4–5.
[5] The EU was established through the Treaty on European Union [1992] OJ 191/1 (the Maastricht Treaty). See Craig and de Búrca (2020) p. 6–11.
[6] Tatham (2009) p. 3.

if the cooperation turned out to be successful.[7] Enlargement has in this regard been part of the EU's 'historic mission' from the beginning.[8]

The EU has since grown from the original six members to twenty-seven Member States today.[9] During this enlargement process, there has been a continuous search for balance between widening and deepening integration. Efforts have been made to minimise the risk of 'dilution' of the Union's achievements by combining enlargement with deepening projects,[10] which has resulted in both institutional change and substantive Treaty amendments.[11] Over the years, the struggle to keep the balance has also resulted in increasing reassurances being demanded from potential members.[12]

With each successive enlargement, the EU has modified its approach somewhat. While there have always been conditions for membership that applicants have had to meet, early enlargements were based on more flexible negotiations. There has since been a gradual formalisation of the enlargement process and the criteria for accession. As a result, it has evolved into one based on conditionality, where the prospective members must satisfy a strict set of criteria before they are allowed to join the Union. This is a way of ensuring that they are able to take on the responsibilities of membership.[13] The legal basis for this is Article 49 of the Treaty on European Union (TEU),[14] which provides that the country applying for membership must (1) be a European state, and (2) respect and commit to promoting the Unions

[7] Preston (1997) p. 6-7.
[8] Preston (1997) p. 3.
[9] The six original members of the Communities were Germany, France, Italy, the Netherlands, Belgium and Luxembourg. They have been joined by Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. The United Kingdom was a member from 1973 to 2020.
[10] Preston (1997) p. 8; European Commission (1992) 'Europe and the challenge of enlargement', para 7.
[11] Craig and de Búrca (2020) p. 1-2; Everling (2009) p. 706.
[12] Preston (1997) p. 8.
[13] European Commission, 'Conditions for membership'.
[14] Consolidated version of the Treaty on European Union [2016] OJ C202/1.

foundational values, set out in Article 2 TEU. In order to become a member, the country must also satisfy the 'Copenhagen criteria', by having:

- stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities (**political criterion**);
- a functioning market economy and the capacity to cope with competition and market forces in the EU (**economic criterion**);
- the ability to take on and implement effectively the obligations of membership, including the aims of political, economic and monetary union (**acquis criterion**).[15]

The criteria also include requirements of being able to apply EU law and ensure that the EU law transposed into national legislation is implemented effectively through appropriate administrative and judicial structures. Moreover, all enlargement is conditioned on the EU itself having the capacity to integrate new members.[16]

Currently, the focus of the EU enlargement policy is the accession of the Western Balkans.[17] So far, Croatia has been the only Western Balkan country to accede to the EU. The countries currently holding candidate status are Montenegro, Serbia, Albania, North Macedonia and Turkey. Kosovo[18] and Bosnia and Herzegovina are considered potential candidates, meaning they have yet to be granted candidate status.[19] As their accession process has stretched on for more than 20 years, criticism toward the EU's enlargement method has increased. The critique is rooted both in what some consider to be shortcomings of past enlargements, and a perceived lack of results in the

[15] EUR-Lex, 'Treaty on European Union – Joining the EU'.
[16] EUR-Lex, 'Treaty on European Union – Joining the EU'.
[17] 'Western Balkans' is a politically coined term, referring to a group of countries on the Balkan Peninsula that are currently subject to the EU's enlargement policy. It includes Albania, Montenegro, Serbia, North Macedonia, Kosovo and Croatia.
[18] The EU institutions normally refer to Kosovo with the remark: '*This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Opinion on the Kosovo Declaration of Independence'.
[19] European Union, 'Countries'.

ongoing process. In light of the objectives of the EU, this leads to the question of whether the approach to enlargement is indeed fit for purpose.

1.2 Purpose and research questions

In this thesis, the enlargement process of the EU is studied from a legal perspective. By examining the criteria for accession, the purpose is to determine whether the approach to enlargement is effective in light of the Union's aims and objectives. The main focus is on the development of political accession criteria and its application during past and ongoing enlargement processes.

To fulfil the purpose of the thesis, these research questions will be answered:

- What criteria has the EU developed for accession of new member states?
- Are those criteria, and the approach that the EU takes in respect of enlargement, effective in light of the EU's aims and objectives?

In order to answer the main questions, the following sub-questions will be addressed:

- What are the aims and objectives of the EU in relation to enlargement?
- How have the accession criteria developed during past enlargements?
- How have the accession criteria been developed and applied in the ongoing enlargement process of the Western Balkans?

1.3 Delimitations

A number of delimitations have been made to the scope of this thesis. Firstly, since the main focus of the thesis is the political criteria (the requirement of stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities), the other criteria for accession will only be dealt with in brief. The economic demands imposed on prospective Members are entirely left out, as are the technicalities of the accession

negotiations related to adopting the accumulated body of EU law (the *acquis communautaire)*.

Secondly, the EU has many objectives in different policy areas. The ones described in this thesis will be the overarching aims of the European project and the objectives that are relevant to enlargement, the political criteria in particular. Other objectives related to the Union's policies in other areas have been left out.

Thirdly, when examining the application of the accession criteria in the ongoing enlargement process, the focus is on the Western Balkan countries. The reason for this is that they are the current focus of the EU's enlargement policy. While Turkey is still a candidate state, it has not been considered viable for membership for some time. According to the European Commission (the Commission), 'Turkey has been moving further away from the EU's core values and principles and therefore its accession negotiations have effectively come to a standstill'.[20] Likewise, Iceland is also left out of this thesis since it has requested to no longer be regarded as a candidate state.[21]

Lastly, while the focus of the thesis is on the political accession criteria, the perspective is a legal one when evaluating its effectiveness. The focus is not on political factors or issues as such. While different events and political considerations have undoubtedly had a strong impact on enlargement policy, writing a fair depiction of all the events and 'politics' that have impacted the EU's approach to enlargement would draw too much focus from the legal questions at hand. There are, however, plenty of works within the field of political science that can provide other interesting perspectives on enlargement.

---

[20] European Commission (2020), 'The European Union: What it is and what it does' p. 31.
[21] Iceland applied to join the EU in 2009, and accession negotiations were opened in 2010. After putting the negotiations on hold in 2013, the Icelandic government requested in March 2015 that 'Iceland should not be regarded as a candidate country for EU membership'. See European Commission, 'Iceland'.

1.4 Methodology and materials

A combination of legal dogmatic[22] and EU legal method is used in this thesis. While EU law has its roots in international law, the Court of Justice of the European Union (CJEU) has determined that it constitutes a 'new legal order'.[23] This thesis is thus written from an EU internal perspective. Considering the scope of the EU legal system, it may be argued that there can be no single EU legal method that applies universally to all studies of EU law. According to Reichel, what is often called the 'EU legal method' is mainly a way to treat EU sources of law, which can be combined with other methodologies, such as the legal dogmatic one.[24]

The legal dogmatic method centres around the sources of law. The purpose of using it is in essence to solve a legal problem by applying a rule of law to it.[25] This is done by analysing the sources of law, so that the end result can be presumed to mirror the applicable law, and how that rule of law should be perceived in a certain context. It is the connection between the specific situation and the often-abstract rule of law that gives the legal dogmatic method its specific character.[26] Traditionally when using legal dogmatic method, there is a distinction between *de lege lata* and *de lege ferenda*.[27] The former is the conduction of a cognitive inquiry into the law with the aim of describing it as it is, while the latter aims to suggest solutions to a problem, making justified recommendations for the lawgiver.[28] This thesis uses *de lege lata* research when analysing and interpreting the conditions for accession to the EU. However, there is no clear-cut distinction between the approaches. Statements *de lege lata* can be viewed as descriptive and normative at once,

[22] Legal dogmatics is sometimes called 'legal doctrine'. Peczenik uses the latter to describe both the activity of scholars as well as the contents of the research they produce. Cf. Peczenik (2005) p. 2.
[23] Case 26/62 *van Gend & Loos*, EU:C:1963:1; Reichel (2018) p. 109.
[24] Reichel (2018) p. 109.
[25] Kleineman (2018) pp. 21 & 26; Jareborg (2004) p. 4.
[26] Kleineman (2018) p. 26.
[27] Kleineman (2018) p. 36.
[28] Peczenik (2005) p. 4; Kleineman (2018) p. 36.

because as legal doctrine aspires to attain understanding of the law, it also participates in defining the norms of society.[29]

In terms of materials, the basis for the legal dogmatic reconstruction of the law are the generally accepted sources of law, such as legislation, case law, preparatory works and legal scholarship.[30] The sources of EU law differ slightly from those of the national legal system, particularly regarding the hierarchy of norms. The sources of law within the EU legal order are primary law[31], general principles of law, secondary law, international agreements and case law from the CJEU.[32] A particular feature of EU law is the importance of legal precedents established by the CJEU, as it has extensive powers in interpreting the Treaties.[33] There are also non-binding guiding sources, such as preparatory works, non-binding secondary law (soft law) and legal scholarship.[34] The difference between binding law and soft law is essentially that the latter cannot normally be challenged before the CJEU, as they are not intended to produce binding legal effects.[35] However, CJEU has found that national courts and authorities may be obliged to take soft law into consideration where it is capable of casting light on the interpretation of other provisions of EU law.[36]

When conducting legal dogmatic research in field of enlargement, it must be noted that it differs from other areas of EU law in key aspects. Firstly, there is relatively little legislation in terms of both primary law and binding secondary law. Secondly, the CJEU has declared that it will not adjudicate over the accession conditions and is therefore not involved in the accession process.[37] Due to the lack of sources of law from the higher tiers in the

[29] Peczenik (2005) pp. 5–6.
[30] Kleineman (2018) p. 21; Jareborg (2004) p. 8.
[31] The TEU, TFEU and the Charter. The Accession Treaties may also be considered to have status of primary law, as they contain the changes to EU law enabling for the new country to become a Member State. Cf. Hettne and Otken Eriksson (2011) p. 4.
[32] EUR-Lex, 'Sources of European Union law'.
[33] Hettne and Otken Eriksson (2011) pp. 40–42 & 49.
[34] Hettne and Otken Eriksson (2011) p. 40.
[35] Case T-258/06 *Germany v Commission*, EU:T:2010:214, para 24.
[36] Case C-322/88 *Grimaldi*, EU:C:1989:646, para 19.
[37] Case 93/78 *Mattheus v Doego*, EU:C:1978:206, para 8.

hierarchy of norms, the sources of law in the lower tier, such as soft law and legal scholarship, have an unusually high significance. Soft law plays a vital role in enlargement regulation as the instrument through which the accession criteria are given their specific content and meaning. Much of it is in the form of communications, guidelines, and frameworks about how Union law is to be applied.[38] Consequently, soft law features prominently in this thesis as a source of guidance in the interpretation of the binding sources of law.

Another important source for interpretation of law is legal scholarship. According to Peczenik, it is a relatively subordinate source of law, but may still be taken into account as an authority reason.[39] He argues that it can influence the creation of law by influencing the lawmakers.[40] While the CJEU does not explicitly refer to legal scholarship as a source of law in their judgments, it likely has practical impact on the outcome of the cases.[41] Since the accession conditions have not been reviewed by the CJEU, legal scholarship has also perhaps had more of an impact on the decision-makers of the enlargement process than it would normally have, had there been case law available. The purpose of using the scholarly sources in this thesis is to aid in the interpretation of the legal instruments and present the opinions among scholars on accession regulation.

Finally, the legal dogmatic method can be also be used to criticize the law.[42] This thesis uses it in this regard to answer the research question of whether the approach to enlargement is effective in light of the Union's aims and objectives. The interpretation of a provision in light of its aim is called teleological construction.[43] While the aim of a provision is sometimes clear from the provision itself, its aim may also be found elsewhere. The

[38] These materials are not explicitly mentioned in the Treaties. Article 288 TFEU stipulates that recommendations and opinions have no binding force but mentions no other non-binding instruments.
[39] Peczenik (2005) p. 17.
[40] Peczenik (2005) p. 7.
[41] Hettne and Otken Eriksson (2011) pp. 120-121.
[42] Kleineman (2018) p. 40.
[43] Peczenik (2005) p. 24.

teleological interpretation common to EU law follows the aims found in the Treaty combined with 'common knowledge of the EU's integrationist dynamics'.[44] This approach is visible in the CJEU's judgements. The Court has developed a method of teleological interpretation that aims at interpreting the rule in the light of a broader understanding of the EU legal order, as a means to further the fundamental aims of the Union. While this method has faced criticism as being judicial activism, it does fill an important function in the development and efficacy of EU law.[45] Since it is not always clear exactly how the objectives in the Treaties are to be achieved, the CJEU often has the role of specifying how EU law should evolve.[46] It is especially so in the absence of secondary law clarifying a Treaty provision. In such instances, the Courts have traditionally used the teleological method to further the aims of that legal rule.[47] The objective of creating an inner market is one such goal which has been central to the CJEU's interpretation of EU law, and something they have tried to further in their rulings.[48] However, since enlargement is a field of EU law that lacks CJEU case law, there has been no judicial review of whether the legal instruments employed are fit to achieve the aims of the Union. Therefore, an ambition with this thesis is to contribute with a traditional teleological perspective to the enlargement field of research.

1.5 Previous research

Much of the research on EU enlargement has been conducted within the fields of politics and economics. There is relatively little written about enlargement from a legal perspective. A leader in the legal field is Dimitry Kochenov, who has written fairly much about enlargement, particularly on the political criteria and the use of political conditionality in the enlargement process. A number of other legal scholars have also made important contributions, such

[44] Peczenik (2005) p. 24.
[45] Hettne and Otken Eriksson (2011) pp. 158–159; Reichel (2018) p. 122; Case 294/83 *Les Verts*, EU:C:1986:166, para 25.
[46] Reichel (2018) p. 122.
[47] Hettne and Otken Eriksson (2011) pp. 168–169; Case 294/83 *Les Verts*, EU:C:1986:166, para 25.
[48] Reichel (2018) p. 123; Case 283/81 *CILFIT*, EU:C:1982:335.

as Christophe Hillion. However, a majority have had focus on previous enlargements, rather than the ongoing process. There is however more recent research particularly in the area of constitutional law, linking enlargement policy to contemporary issues faced by the EU. However, in light of the challenges faced, I still consider that enlargement would benefit from more research from a legal perspective, especially on the role of the accession criteria in the EU legal order. A purpose of this thesis is to contribute to the enlargement field of research, which is likely to remain highly relevant in coming years.

1.6 Outline

Following this first introductory chapter, the second chapter lays down a framework of aims and objectives related to enlargement. Chapters three through five are geared toward answering the first, descriptive research question of what criteria the EU has developed for the accession of new member states. The third chapter provides a history of the previous enlargements and how the use of conditions developed. This is followed by a closer examination of the current accession criteria and the enlargement procedure in chapter four. In the fifth chapter, the application of the criteria in the ongoing accession process of the Western Balkans is studied. These chapters also lay the groundwork for chapter six, which addresses the second, evaluative research question of the effectiveness of the enlargement approach in light of the Union's aims and objectives. Lastly, chapter seven concludes the thesis.

2 The aims and objectives of the European Union

2.1 Introduction

To answer the research question of whether the EU has succeeded in developing an approach to enlargement that is effective in light of the Union's aims, the relationship between the EU's aims, objectives and values must first be explained. Once this connection is clarified, it can be used to draw conclusions on the efficacy of the EU's enlargement method and accession criteria in the final chapter.

The fundamental aims of the EU have in their essence remained the same since the Union was founded.[49] The original pursuit of peace and economic competitiveness through integration has had a continuing impact on its development.[50] Along the way, specific objectives have been enshrined in the Treaties, setting out how the aims are to be achieved. These include such goals as developing an internal market and enabling free movement across the Union. The pursuit of these objectives has resulted in the emergence of a complex legal system. For this system to work, all Member States must live up certain shared pre-requisites. It is based on them being committed to fundamental democratic principles such as the rule of law and protection of fundamental rights. Therefore, the EU has shaped its approach to enlargement to ensure that states unwilling or unable to live up to this standard are not accepted as members. Otherwise, they may undermine the achievement of EU's aims and objectives by upsetting the precarious balance of European integration.

In this chapter, that connection is explored. The aims and objectives outlined in the Treaties related to enlargement are examined, along with why the

[49] Everling (2009) pp. 704–705.
[50] Reichel (2018) pp. 110-111.

commitment of all Member States the Union's fundamental values is vital to their fulfilment, as well as the potential consequences for the EU when some Member States fail to do so.

2.2 The objectives set out in the Treaties

The general aims of the EU are laid down in Title I of the Treaty on European Union (TEU). Article 1 TEU provides that the EU is engaged 'in the process of creating an ever closer union among the peoples of Europe'.[51] The Union's key objectives are set out in Article 3 TEU:

> 1. The Union's aim is to promote peace, its values and the well-being of its peoples.
> 2. The Union shall offer its citizens an area of freedom, security and justice without internal frontiers, in which the free movement of persons is ensured […]
> 3. The Union shall establish an internal market […]
> 5. In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall contribute to peace, security, […] solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights…[52]

These objectives are the basis for many of the EU's policies. Further provisions regarding their application can be found in both the TEU and the Treaty on the Functioning of the European Union (TFEU).[53] The CJEU has asserted that the provisions to which the pursuit of the objectives are entrusted are essential to the Union's basic integrational aim: they 'are part of the framework of a system that is specific to the EU, [contributing] to the

[51] Article 1 TEU.
[52] Excerpt from Article 3 TEU.
[53] Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/1.

implementation of the process of integration that is the raison d'être of the EU itself'.[54]

2.2.1 Promotion of the Union's values

Both Article 3(1) and 3(5) TEU include an aim of promoting the Union's values. The values in question are found in Article 2 TEU:

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.[55]

A distinction must be made between the founding values and objectives. The values are to be understood both as founding principles and legal norms, due in part to the legal consequences they produce through other Treaty provisions.[56] While the EU is founded on the principles in Article 2, which limits the actions of EU institutions and member states, the objectives 'stipulate the intended effects in social reality'.[57] Former CJEU judge Ulrich Everling writes that Article 2 establishes, for both the EU institutions and the Member States, 'the obligation to organise their constitutional and legal orders according to these principles and to make them the foundation of their policies'.[58] Respect for the rule of law is of particular importance, as it enables the protection of the other foundational values.[59] According to the Council of Europe: '[t]he proper functioning of democratic institutions can only be effectively secured in a democracy which fully respects the rule of law'.[60] It

[54] Opinion 2/13 of the Court, 18 December 2014, EU:C:2014:2454, para 172.
[55] Article 2 TEU.
[56] von Bogdandy (2009) p. 22; Articles 3(1), 7 and 49 TEU.
[57] von Bogdandy (2009) p. 23.
[58] Everling (2009) p. 730.
[59] COM(2014) 0158 final; Secretary General of the Council of Europe (2018) 'State of Democracy, Human Rights and the Rule of Law' p. 11.
[60] Secretary General of the Council of Europe (2018) 'State of Democracy, Human Rights and the Rule of Law' p. 71.

is a prerequisite for democracy and protection of fundamental rights, and vice versa.[61] The capacity for upholding rule of law is the basis for upholding individual's rights.[62]

The Treaties themselves leave no doubt that both the EU institutions and the Member States should respect and promote the values.[63] That is clear both from the objectives in Article 3 TEU, and not in the least from Article 49 TEU, which stipulates adherence to the values as precondition for membership. Making accession conditional on respect for the values is a testament to the efforts made to cement them as foundational for the Union. This has been confirmed in the case law of the CJEU.[64] In the recent case *Commission v Poland*, the Court stated:

> As is apparent from Article 49 TEU, […] the European Union is composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU, which respect those values and which undertake to promote them, EU law being based on the fundamental premiss that each Member State shares with all the other Member States, and recognises that those Member States share with it, those same values.[65]

It is clear from the Court's repeated statements as well as the TEU that commitment to the values is a core requirement of EU membership. Ensuring this is a key aim of the enlargement process, and if it is not achieved, the state in question is not to be allowed to join. Other than Article 49 TEU, specific objectives of the enlargement policy are not laid down in the Treaties. But when looking at the general objectives of foreign policy in Article 3(5) TEU, it is clear that promoting the values

[61] COM(2014) 0158 final.
[62] Secretary General of the Council of Europe (2018) 'State of Democracy, Human Rights and the Rule of Law' p. 11.
[63] Cf. Articles 3(1), 4(3), 7 and 13 TEU. Kochenov and Pech (2015) p. 519.
[64] Cf. Case C-64/16 *Associação Sindical dos Juízes Portugueses*, EU:C:2018:117, para 30; C-284/16 *Achmea*, EU:C:2018:158, para 34; C-621/18 *Wightman and Others*, EU:C:2018:999, para 63.
[65] Case C-619/18 *Commission v Poland*, EU:C:2019:531, para 42.

is an important point in the Union's relations with third countries. However, promotion of the Union's values inside and outside the EU is not just an objective in itself. It is also a means to an end, enabling the achievement of the other objectives laid down in Article 3 TEU.

2.2.2 The single market and the Area of Freedom, Security and Justice

The Area of Freedom, Security and Justice (AFSJ), provided for in Article 3(2), has quite recently gained a position of constitutional importance within the EU's legal framework.[66] The Treaty of Amsterdam elevated it from a 'common interest' to a fundamental objective.[67] It encompasses numerous policy areas, including migration, internal borders and judicial cooperation.[68] The maintenance and development of the AFSJ provides a general binding orientation for action by the EU institutions.[69] The objective of establishing an internal market, laid down in Article 3(3), is likewise of paramount importance to the Union. The internal market is the core of economic integration and has always stood at the centre of EU policy. The pursuit of it has resulted in a considerable harmonisation of the Member States' legislation in a multitude of fields.[70]

These aims and objectives, and the EU legal system which has developed on the road to achieving them, has according to the CJEU 'given rise to a structured network of principles, rules and mutually interdependent legal relations' linking the EU and the Member States together.[71] There is extensive political, economic and legal interdependence between the Union's members.[72] An important element in enabling this, is the commitment of all Member States to the EU's fundamental values and principles.

---

[66] Monar (2009) p. 552.
[67] Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C340/1.
[68] More specific provisions on the AFSJ can be found in Articles 67-89 TFEU.
[69] Monar (2009) p. 554.
[70] U. Everling (2010) pp. 705–706.
[71] Opinion 2/13 of the Court, 18 December 2014, EU:C:2014:2454, para 167.
[72] Kochenov and Pech (2015) p. 530.

2.2.3 The relation between the values and the objectives

The role of Article 2 in the EU's legal structure was reaffirmed by the CJEU in *Opinion 2/13* on the accession of the EU to the European Convention of Human Rights:

> [The EU] legal structure is based on the fundamental premiss that each Member State shares […] a set of common values on which the EU is founded, as stated in Article 2 TEU. That premiss implies and justifies the existence of mutual trust between the Member States that those values will be recognised and, therefore, that the law of the EU that implements them will be respected.[73]

In essence, the CJEU justifies a premiss of mutual trust between the Member States based on the commitment of all to the values in Article 2 TEU. This trust 'is of fundamental importance in EU law, given that it allows an area without internal borders to be created and maintained'.[74] It involves a presumption of law-abidance, which enables the transnational cooperation necessary for creating the common legal space of the AFSJ.[75] The premiss of mutual trust particularly applies between courts, which must trust that the values, including the rule of law, are recognized and that the EU law that implements those values will be respected.[76] One key example of this is the system of mutual recognition, which was instigated to facilitate the AFSJ.[77] It contains an obligation to automatically recognise and enforce judgments in civil and commercial matters from a court in another Member state.[78] According to the European Council, this is a 'cornerstone of judicial cooperation in both civil and criminal matters'.[79]

---

[73] Opinion 2/13 of the Court, 18 December 2014, EU:C:2014:2454, para 168.
[74] Opinion 2/13 of the Court, 18 December 2014, EU:C:2014:2454, para 191.
[75] Schwarz (2018) pp. 128–129.
[76] Case C-619/18 *Commission v Poland*, EU:C:2019:531, para 43.
[77] Case C-168/13 PPU *Jeremy F.*, EU:C:2013:358, paras 35–36.
[78] COM(2014) 0158 final. See also Article 67 and 82 TFEU.
[79] European Council, OJ [2010] C 115/1; Tampere European Council, 15–16 October 1999.

The Court has used the principle of mutual trust to reinforce mutual recognition regimes in the AFSJ, such as the European Arrest Warrant (EAW).[80] The EAW mechanism imposes an obligation on Member States to enforce arrest warrants issued against an alleged criminal by another Member State.[81] This has raised debate in the past when there have been suspected violations of an individual's fundamental rights by the country issuing the EAW.[82] However, the CJEU has clarified that 'the principle of mutual trust requires, particularly with regard to the area of freedom, security and justice, each of those States, save in exceptional circumstances, to consider all the other Member States to be complying with EU law and particularly with the fundamental rights recognised by EU law'.[83] The CJEU's definition of trust can be summarized as the expectation that the trustee is complying with EU law.[84] From this also follows an obligation on the trustor not to demand a higher level of fundamental rights protection than provided for in EU law. The Member States may not even, save in exceptional cases, 'check whether that other Member State has actually, in a specific case, observed the fundamental rights guaranteed by the EU'.[85] Hence, the principle of mutual trust can be said to ground and facilitate legal practices of mutual recognition.[86] The European Council has described '[m]utual trust between authorities and services in different Member States is the basis for efficient cooperation' in the AFSJ.[87] It has been called the 'normative glue' of transnational cooperation between Member States.[88]

[80] Schwarz (2018) p. 125.
[81] Case C-168/13 PPU *Jeremy F*., EU:C:2013:358, para 35-36.
[82] Case C-399/11, *Melloni*, EU:C:2013:107. For a wider discussion, see Schwarz (2018) pp. 126-128.
[83] Joined Cases C-404/15 and C-659/15 PPU *Aranyosi & Căldăraru*, EU:C:2016:198, para 78; Opinion 2/13 of the Court, 18 December 2014, EU:C:2014:2454, para 191. See also Joined cases C-411/10 and C-493/10 *N.S.and Others*, EU:C:2011:86, paras 78-80; C-399/11 *Melloni*, EU:C:2013:107, paras 37 and 63.
[84] Schwarz (2018) p. 129.
[85] Opinion 2/13 of the Court, 18 December 2014, EU:C:2014:2454, para 192. See also C-491/10 PPU *Aguirre Zarraga*, EU: C:2010:828, para 70.
[86] Schwarz (2018) p. 124 & 135; European Council, OJ [2010] C 115/1.
[87] European Council, OJ [2010] C 115/1.
[88] Schwarz (2018) p. 125.

In effect, the adherence of all Member States to the values in Article 2, which justifies the presumption the mutual trust, is central to the fulfilment of the objectives in Article 3 TEU.[89] Not just the for the promotion of the values in themselves, but for the achievement of the internal market and the AFSJ as well. Which, as CJEU stated, are of fundamental importance as they contribute to integration that is the raison d'être of the EU itself. The need to ensure mutual trust between the different legal systems of the Member States has been identified as one of the EU's main challenges for the future.[90]

2.3 Breaches of values undermining the Union's aims

As previously stated, the system of mutual trust which enables the objectives is built on a shared commitment to the Union's values.[91] This has become problematic in recent years, as developments in certain Member States have caused the foundation of trust to shake. The EU has faced a crisis of values due to the rise of illiberal democracies and a rule of law 'backsliding' in several Member States, particularly Poland and Hungary. A main issue has been the challenges to the independence of the judiciary, which is vital to upholding the rule of law.[92]

It has become apparent that the EU lacks effective methods for dealing with Member States' lack of adherence to the values in Article 2 TEU.[93] The Commission, as 'guardian of the Treaties', is responsible for ensuring the respect of the values and protecting the general interest of the Union.[94] But for the Commission to initiate an infringement proceeding against a Member State, there must be a breach of a specific, justiciable provision of EU law. Despite the importance of Article 2 in establishing the common values of the

[89] Schwarz (2018) p. 129.
[90] European Council, OJ [2010] C 115/1.
[91] Kochenov and Pech (2015) p. 521.
[92] Craig and de Búrca (2020) pp. 44–47. More than twenty requests for preliminary rulings have originated from the Polish courts connected to what has been called its 'rule of law breakdown', see Pech (2020) p. 5.
[93] Craig and de Búrca (2020) pp. 48–56.
[94] COM(2014) 0158 final; Article 17(1) TEU.

Union, it is widely considered non-justiciable.[95] This means that no enforcement action can be brought against a Member State on the sole basis of a violation of Article 2. The only Treaty mechanism for directly dealing a breach of Article 2 is through Article 7 TEU, which enables sanctions against a Member State found to be in serious and persistent breach of the values referred to in Article 2. That is however a proceeding of a more political nature, not governed by the CJEU but by the Council of the European Union (the Council).[96] The mechanism has yet to provide a satisfying result.[97] The Commission has tried to deal with the rule of law crisis in other ways, such as launching infringements proceedings based on other Treaty provisions.[98] Nonetheless, the EU has struggled to find a permanently effective way of dealing with the democratic backsliding.[99]

The deviations from the shared values are not to be taken lightly. The nature of the EU legal order means that the Member States are closely intertwined, obliged by the Treaties to trust one another in order to facilitate achievements of such objectives as the internal market and the AFSJ. This system rests on the presumption of all Member States being democratic and governed by the rule of law, protecting the fundamental rights guaranteed by EU law. When a Member State stops adhering to the values, particularly the rule of law, the EU legal order risks being undermined.[100] Without rule of law, there is no assurance that fundamental rights will be protected.[101] Consequently, the EU system of mutual trust and mutual recognition underlying the AFSJ is threatened.[102] Recent case law from the CJEU shows that 'systemic or generalised' deficiencies in another Member States may be a cause for setting

[95] Kochenov and Pech (2015) pp. 519–520.
[96] Kochenov and Pech (2015) p. 516.
[97] Craig and de Búrca (2020) p. 55.
[98] Cf. C-441/17 *Commission v Poland* EU:C:2018:255; C-619/18 *Commission v Poland*, EU:C:2019:531.
[99] Lane Scheppele, Kochenov and Grabowska-Moroz (2020) p. 3.
[100] Pech (2020) p. 5.
[101] Secretary General of the Council of Europe (2018) 'State of Democracy, Human Rights and the Rule of Law' p. 11.
[102] Kochenov and Pech (2015) p. 521.

aside the presumption of trustworthiness.[103] If a 'real risk' to an individual's fundamental rights is revealed, the national court may even refuse execution of an EAW.[104] It is not inconceivable that national courts could begin to disapply mutual trust mechanisms against certain states in order to protect fundamental rights as safeguarded by their own constitutional orders.[105] Hence, a systemic threat to the rule of law is a threat to the functioning of the EU, by preventing the Union from achieving its objectives.[106] This could in turn undermine its most fundamental aims of peace and integration, going to the core of the European project and the goal of a peaceful, prosperous and democratic Union.[107]

2.4 Concluding remarks

The risks caused by breaches of the Union's values have caused eyes to turn toward the EU's enlargement policy. It follows that the EU has a strong objective to ensure that the accession criteria of respect for and commitment to the values are met, before a new country is allowed to join. Looking at official EU documents on enlargement, the very same aims as those when the Union was founded are visible, stating the goal to 'promote peace, stability and economic development' by opening up the prospect of integration into the EU,[108] and to 'deepen the solidarity between the people of Europe and increase their prosperity and opportunities'.[109] The prospect of membership is presented as an incentive for democratic and economic reforms in the countries striving to become members.[110] While this also follows the objectives expressed in Article 3(5) TEU on foreign policy, the actual design of the enlargement policy today is just as much about protecting the Union's other objectives. This has been a key element in the development of the EU's

[103] Joined Cases C-354/20 PPU and C-412/20 PPU *L and P*, EU:C:2020:1033, para 60; Schwarz (2018) p. 130.
[104] Joined Cases C-354/20 PPU and C-412/20 PPU *L and P*, EU:C:2020:1033, para 69.
[105] Pech (2020) p. 19.
[106] COM(2014) 0158 final.
[107] Lane Scheppele, Kochenov and Grabowska-Moroz (2020) pp. 4–5.
[108] European Parliament (2020) 'The Western Balkans'.
[109] European Commission (2020) 'The European Union: What it is and what it does' p. 31.
[110] European Commission, 'EU Enlargement'.

approach to enlargement and the accession criteria. The next chapter looks closer at that process.

3 Development of the conditions for membership

3.1 Introduction

To gain an understanding of the EU's current approach to enlargement, a historical overview is necessary. There were six original members of the Communities: Germany, France, Italy, the Netherlands, Belgium and Luxembourg. Twenty-two countries have joined since, in a total of seven enlargement rounds.[111]

1973	Denmark, Ireland and the United Kingdom
1981	Greece
1986	Spain and Portugal
1995	Austria, Sweden and Finland
2004	Estonia, Latvia, Lithuania, Hungary, Cyprus, Malta, the Czech Republic, Poland, Slovakia and Slovenia
2007	Bulgaria and Romania
2013	Croatia

In each of these enlargement rounds, the EU's approach to accession has been modified. It is particularly so regarding the political criteria for accession. Three main stages can be identified in its development.[112] In the first stage, the criteria had not yet been formalised. While requirements of democracy and rule of law implicitly existed, there was no closer monitoring of the candidate's compliance with them. In the second stage, the Copenhagen criteria were created. The accession process was transformed to centre around conditionality, and the EU took a more active role in guiding reforms in the candidate states toward compliance with the criteria. In the third stage, Treaty

[111] European Commission, 'From 6 to 27 members'. The fifth and sixth enlargements are sometimes referred to jointly as the fifth enlargement, making Croatia's accession the sixth enlargement.
[112] Kochenov (2008) pp. 34-35.

amendments followed which expanded the principles outlined in the Copenhagen criteria from just criteria for accession, to continuing criteria for membership. This marked a shift for existing member states as well, as the founding values became not just a condition for accession, but something existing Member States also had to comply with.

The different stages in the development of the political accession criteria do not directly align with the seven enlargement rounds. They were parallel processes, rather than synchronised.[113] However, the changes to the criteria were undoubtedly heavily influenced by the increasing demands of the enlargements. The first stage of the criteria's development roughly coincides with the first to fourth enlargement rounds. They are in this thesis referred to as the 'early enlargements'. After that, the Copenhagen criteria were developed in time for the fifth and sixth enlargements that took place in 2004 and 2007 respectively. They are referred to jointly as the 'Eastern enlargement', as they were part of the same greater accession process. The Treaty amendments characterising the third stage in the development of the criteria also took place in the years surrounding this. Note that the most recent enlargement, where Croatia acceded, is for structural reasons treated together with the ongoing accession processes of the other Western Balkans countries in Chapter 5. This ongoing enlargement can perhaps be viewed as a fourth stage in the development of the criteria, as the approach to enlargement has once more undergone significant changes.

3.2 Early enlargements

The first enlargement took place in 1973, when Denmark, Ireland and the United Kingdom joined the EU.[114] The negotiations had been ongoing for more than a decade, their accession being delayed several times by a French veto. It was only after President de Gaulle's death that it went through.[115] At

[113] Kochenov (2008) pp. 16-17 & 34-35.
[114] Norway also applied for membership, but their Accession Treaty was rejected in a referendum in 1972. The same thing reoccurred in a 1994 referendum. See Narud and Strøm (2000) p. 125.
[115] Preston (1997) p. 7.

the time, the provision regulating the entry of new members into the EEC was Article 237 of the Treaty of Rome.[116] It stipulated that any European state may apply to become a member of the Community, and that the conditions of admission were to be the subject of an agreement between the Member States and the applicant state.[117] At this point, there were no other formal criteria for membership.

During this first enlargement process, a framework was in practice set out for future accessions. It set a precedent for how the enlargement procedure would work, both in terms of the negotiations and the extent of domestic adjustments that were required of the applicants.[118] This included establishing the key requirement that acceding states must accept the *acquis communautaire* in full.[119] This was later developed into the formal *acquis* criterion.

Despite the absence of formal accession criteria as there is today, several scholars consider that an implicit one existed even during the early enlargements. They claim that democracy and rule of law were part of the criteria for membership ever since the ECSC was created.[120] Marktler argues that the importance of member states having democratic institutions and protecting human rights had always been emphasised, despite not being explicitly mentioned in the Treaty provisions on accession to the Communities.[121] This is visible in the initial hesitance regarding the second and third enlargements, which consisted of Greece in 1981, and Spain and Portugal in 1986. All three countries had recently transitioned to democracy, following a collapse of dictatorship.[122] It was widely considered unthinkable

[116] Treaty establishing the European Economic Community [1957] 298 UNTS 11.
[117] Article 237 of the Treaty of Rome. Despite having slightly different wordings, the same approach was taken to all three Community Treaties during negotiations. Cf. Article 98 of the Treaty Establishing the European Coal and Steel Community [1951] 261 UNTS 140 (ECSCT) and Article 205 of the Treaty Establishing the European Atomic Energy Community [1957] 298 UNTS 167. See Puissochet (1975) pp. 13-14.
[118] Preston (1997) pp. 23 & 45.
[119] Preston (1997) p. 18.
[120] Kochenov (2004) p. 3.
[121] Marktler (2006) p. 345. Cf. Article 98 ECSCT; Article 237 of the Treaty of Rome; Article 205 of the Treaty establishing the Euratom.
[122] Preston (1997) p. 8.

for the three countries to gain membership before they had democratised.[123] This is evident from the Commission's interpretation of the conditions for their accession in *Mattheus v Doego*. The Commission claimed in a submission that '[Article 237] permits the accession of the state only if that state is a European State; and if its constitution guarantees [...] the existence and continuance of a pluralistic democracy and [...] effective protection of human rights'.[124] This view was supported by the European Council, which in their 1978 Declaration on Democracy identified respect for democracy and human rights as 'essential elements of membership'.[125] Based on this, Kochenov argues that requirements of democracy and rule of law could in fact be derived from the term 'European' in the Treaty provisions on accession to the Communities.[126] Hillion even classifies this as an early form of conditionality.[127] However, the key element of these requirements seemed to be the existence of constitutional guarantees of democracy, not ensuring their practical implementation in the candidate states.[128] There were not yet any mechanism for assessing whether the countries actually complied with this.

Notably, in *Mattheus v Doego* the CJEU determined that it did not have jurisdiction over the conditions of accession.[129] It was explicitly asked by the referring national court whether Article 237 should be interpreted as containing substantial legal limits on accession over and beyond the formal conditions laid down in the provision itself. To this, the CJEU responded:

> [t]he conditions of accession are to be drawn up by the authorities indicated in the article itself. Thus the legal conditions for such accession remain to be defined in the context of that procedure without its being possible to determine the content judicially in advance.

[123] Hillion (2004) p. 4; Marktler (2006) p. 345; Kochenov (2004) p. 4.
[124] The Commission's submission in Case 93/78 *Mattheus v Doego*, EU:C:1978:206. Cited in Marktler (2006) p. 345.
[125] Conclusions of the Presidency, European Council in Copenhagen, 7–8 April 1978.
[126] Kochenov (2004) p. 3.
[127] Hillion (2004) pp. 4-5.
[128] Kochenov (2004) p 4.
[129] Case 93/78 *Mattheus v Doego*, EU:C:1978:206.

> Therefore, the Court of Justice cannot […] give a ruling on the form or subject-matter of the conditions which might be adopted.[130]

The Court has stuck to this line ever since, not willing to pass judgement on the accession conditions. It is clear that even from the beginning, other actors' interpretation of the conditions has therefore carried much weight in the proceedings, particularly that of the Commission and the European Council.

Apart from the presence of implicit requirements of being a democratic state, a number of other unspoken principles can be identified from the early enlargement rounds. It has been described as the 'classical method of enlargement'.[131] None of these principles have ever been directly mentioned in The Treaties, instead they have gradually developed in practice during the successive enlargement rounds.[132] While scholars differ slightly on the exact definitions of them, Kochenov identifies three principles using a legalistic approach. All of them were in practice non-negotiable, the candidate states had to accept them to be granted membership.[133] The first principle is that the acceding state has to adopt the Treaties and the whole body of *acquis communautaire* in full. The second principle is that derogations from Union law resulting from negotiations cannot introduce substantive alterations to the *acquis*.[134] Both these principles indicate the subordinate position of the acceding states in the accession negotiations in relation to the Union. The third principle is the principle of conditionality. This principle may have been applied in a rudimentary form during the early enlargements. But it was during the pre-accession process leading up to the Eastern enlargement that it was really developed, becoming a defining element of the enlargement process.[135]

---

[130] Case 93/78 *Mattheus v Doego*, EU:C:1978:206.
[131] Preston (1997) p. 9.
[132] Kochenov (2008) p. 38.
[133] Kochenov (2008) p. 40.
[134] Kochenov (2008) p. 39. This is principle is also identified in Preston (1997) p. 18.
[135] Kochenov (2008) p. 39.

3.3 Eastern enlargement

3.3.1 Background

The Union's largest enlargement to date took place just over fifteen years ago. It consisted of ten countries, mainly from the former Soviet bloc. The enlargement marked the end of the East-West divide of Europe, and had a significant effect on both the EU and the new Member States.[136] It was comprised of the Czech Republic, Hungary, Poland, Estonia, Slovenia, Cyprus, Slovakia, Latvia, Lithuania and Malta, which officially became Member States in May 2004.[137] Bulgaria and Romania had been part of this enlargement process as well, but their accession was postponed until 2007 as they had yet to comply with all of the EU's demands.[138] The two enlargement rounds together make up the 'Eastern enlargement', giving the Union twelve new Member States and bringing the total number up to twenty-seven.

A fierce effort had been made to prepare the EU for this enlargement. After the fall of the Berlin Wall in 1989, the situation in Europe was not entirely unlike that at the end of the Second World War. Both involved a complete reconstruction of Europe. Once more, membership in the EU was seen as a means of political and economic integration in Europe. Membership offered the former Soviet states a way to transition from a communist planned economy to democratic states with a free market economy. This was an attractive opportunity, but not without its challenges.[139] At first the EU did not know how to deal with the candidate countries' poor track records in democracy and human rights.[140] The main goal was the democratization and Europeanization of the applicants. This would reduce the perils of political and economic instability in the new members that could negatively impact the Member States. As previously noted, the Treaties did not stipulate any

[136] Sadurski (2017) p. 417.
[137] Notably, East Germany was not included in this enlargement as they had automatically gained membership when Germany was reunited.
[138] Craig and de Búrca (2020) p. 78.
[139] Marktler (2006) pp. 343–344.
[140] Kochenov (2008) p. 10.

particular criteria for admission at this time. Neither did they set out any fundamental principles or values for its Member States to abide by. Although requirements of democracy and rule of law for prospective members existed in practice, there was a need for a framework through which the level of compliance could be assessed.[141] The EU wanted to ensure that the *acquis communautaire* was properly implemented, and that the new members fully subscribed to the EU's values and objectives, having the capacity to implement them effectively before they acceded.[142] The solution became the establishment of a uniform set of criteria for accession, laid down by the European Council in 1993. This became the beginning of a new approach to enlargement, based on conditionality.

3.3.2 The introduction of conditionality

The following statement is from the June 1993 Copenhagen European Council:

> The European Council today agreed that the associated countries in Central and Eastern Europe that so desire shall become members of the European Union. Accession will take place as soon as an associated country is able to assume the obligations of membership by satisfying the economic and political conditions required.
>
> Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union. Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.

[141] Kochenov (2008) p. 34.
[142] Kochenov (2008) p. 39.

> The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries.[143]

This statement is the origin of what became known as the 'Copenhagen criteria', which has been the framework for the enlargement process since. The criteria were strengthened at the Madrid European Council in 1995, which added that the candidate country must be able to apply EU law and be able to ensure that it is implemented effectively through appropriate administrative and judicial structures.[144]

How much the creation of the Copenhagen criteria changed the status quo of the Union's approach to enlargement is a point of discussion. In terms of the substantive content, they were largely a codification of pre-existing practice, reaffirming the principles of the classical method of enlargement.[145] It still placed 'the onus of responsibility for adjustment firmly on the applicants'.[146] However, the Copenhagen criteria also brought huge changes. In terms of legal regulation, the change was 'enormous'.[147] It has been described as 'a watershed, dividing 'old' and 'new' approaches to enlargement'.[148] The statement that the countries 'shall' become members and that accession 'will' take place represented a major policy shift, reflecting a higher priority of enlargement. It meant that the Union undertook to drive a more active and structured enlargement procedure than before.[149] Most importantly, the Copenhagen criteria brought the principle of conditionality into the accession process.[150] This meant that for the first time, the enlargement process was to be based on merit. The candidate state's preparedness was to be the determining factor for membership rather than political negotiations, with the

[143] Conclusions of the Presidency, European Council in Copenhagen, 21–22 June 1993.
[144] EUR-Lex, 'Treaty on European Union – Joining the EU'; Conclusions of the Presidency, European Council in Madrid, 15–16 December 1995.
[145] Hillion (2004) p. 3; Kochenov (2004), Marktler (2006) p. 23; Preston (1997) p. 201.
[146] Preston (1997) p. 203.
[147] Kochenov (2004) p. 23.
[148] Kochenov (2008) p. 34.
[149] Preston (1997) pp. 201–202.
[150] Kochenov (2008) pp. 50–55.

Commission acting as the impartial judge.[151] In this regard, the Copenhagen criteria was meant to simplify, improve and de-politicise the enlargement process,[152] enabling all applicants to 'join the European Union on the basis of the same criteria'.[153]

It was determined that only once all the Copenhagen criteria had been met, were the states to be allowed to become members. Thus, the criteria became a legal set of guiding principles which the EU institutions could use to steer reforms in the candidate states toward a satisfying level of compliance. This was done through a strict control of the candidate countries level of compliance with the Union's demands during the pre-accession period. The purpose of this was to ensure that the reforms were really implemented in practice. This approach was a step away from the previous requirements that the Commission had established in *Mattheus v Doego*. The presence of constitutional guarantees ('promises') was no longer to suffice.[154] Instead, they aim was to get real, transformative change in the candidate countries to ensure that they were truly ready for membership. This was meant to protect the EU from gaining members which could negatively affect it.[155]

Conditionality is based on a 'stick and carrot'-mentality. For it to work, the reward has to be greater than the cost for fulfilling the conditions.[156] This was done by linking rewards such as financial aid and signing of Association Agreements to progress being made by the candidates. The ultimate reward was of course membership. The candidate states had to agree to fulfil the demands and accept a very high degree of involvement in their internal affairs, which goes far beyond the competences that the EU has over its existing Member States.[157] It was especially so due to the asymmetrical

[151] Kochenov (2004) p. 23.
[152] Kochenov (2004) p. 2.
[153] Conclusions of the Presidency, European Council in Luxembourg, 12–13 December 1997.
[154] Kochenov (2008), p. 39.
[155] Kochenov (2008) p. 53.
[156] Tomić (2013) p. 77.
[157] Kochenov (2008) p. 52.

nature of the relations. The EU makes the conditions and decides when they are met. Technically, the candidates have no right to accede even if they have satisfied the criteria. It is entirely up to the Union. In this regard, the introduction of conditionality into the process weakened the position of the applicants compared to earlier enlargements.[158]

3.4 Treaty amendments

In the years following the establishment of the Copenhagen criteria, a number of Treaty amendments took place that would cement the political requirements they imposed. The Maastricht Treaty came into force in November 1993, officially creating the European Union. While not much substantive change was made to the Treaty provision on application for membership,[159] a more significant development was that the principles of democracy and respect for fundamental rights became explicitly stated in the Treaty.[160] This was the first time that human rights were given formal Treaty recognition in EU law.[161] Further amendments came about with the entry into force of the Treaty of Amsterdam in 1997. The 1990s had seen an increasing debate about the legitimacy of the EU. The Treaty of Amsterdam was intended both to prepare the Union for the upcoming Eastern enlargement and enhance its legitimacy. This was done by adding a provision declaring that the EU was founded on 'the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law'.[162] The Treaty of Amsterdam also included two amendments geared toward ensuring the fulfilment of those principles.[163] Firstly, respect for them was identified as a condition for membership in Article 49 TEU for the first time.[164] It can be said that the Treaty of Amsterdam thereby gave the Copenhagen political

[158] Kochenov (2008) pp. 52-53.
[159] Article O of the Maastricht Treaty. A requirement of the European Parliament's assent for accession was added.
[160] Article F of the Maastricht Treaty.
[161] de Búrca (2011) p. 670.
[162] Article 6(1) of the Treaty of Amsterdam; Craig and de Búrca (2020) p. 14.
[163] Craig and de Búrca (2020) p. 14.
[164] Article 49 of the Treaty of Amsterdam.

criteria a legal basis in the Treaties.[165] However, the amendment to Article 49 did not include the requirement of 'respect for and protection of minorities', which was part of the Copenhagen criteria. This can arguably be explained by it not so much codifying the criteria itself, but rather the pre-existing practice of previous enlargements, which had not included minority protection.[166] Some therefore view Article 49 as a 'partial codification' of the Copenhagen criteria,[167] or say that it 'partly constitutionalised' the previously established political conditionality.[168]

Secondly, the Treaty of Amsterdam introduced Article 7 TEU. Sadurski describes this 'as an act by which the EU was equipping itself with the means to properly respond to violations of fundamental values'.[169] The upcoming Eastern enlargement has been credited as one of the motivating factors for this. Sadurski also considers the subsequent adoption of the Charter of Fundamental Rights of the European Union (the Charter)[170] to have been 'tightly connected to the prospect of the eastward enlargement'.[171] It was a way of stabilising and strengthening the meaning of fundamental rights within the Union, when so many countries were to join that had a substandard track record of human rights protection. He argues that it could also be viewed as a partial solution of the problem of 'double standards', an issue which arose from the fact that the Copenhagen criteria when they were introduced imposed higher demands on fundamental rights protection than the Treaties did on its own Member States.[172] Through these Treaty amendments, it can be said that the political Copenhagen accession criteria evolved from a condition for accession, to a condition for membership – becoming *de facto* touchstones for the conduct of existing Member States as well.[173]

[165] de Búrca (2011) p. 670.
[166] Kochenov (2008) p. 33.
[167] Kochenov (2008) p. 36.
[168] Hillion (2004) p. 3.
[169] Sadurski (2017) p. 421.
[170] Charter of Fundamental Rights of the European Union [2012] OJ C326/391.
[171] Sadurski (2017) p. 419.
[172] Sadurski (2017) p. 419-420.
[173] Kochenov (2008) p. 35.

The final major Treaty amendment to date was Treaty of Lisbon,[174] which entered into force in 2009. With it, the fundamental principles were renamed as 'values', enshrined in Article 2, and expanded upon to include minority rights protection among other things. The wording of Article 49 TEU was also modified into its current version. As these are the current provisions regulating accession, they are examined closer in the next chapter.

3.5 Concluding remarks

This chapter has demonstrated the fluidity of the EU's approach to enlargements. The conditions for membership have never been permanent or stagnant. While there have been persevering core requirements from the beginning, their legal expression and method of application have continuously evolved. The process can in many regards be viewed in tandem with the evolution of the Union itself and its legal order.[175] The years following the adopting of the Copenhagen criteria were characterised by the efforts to cement the values of the political Copenhagen criteria as fundamental to the entire EU. There was a general enthusiasm both toward the prospect of deepening the integration of existing Members by such means as establishing shared founding values, and toward uniting Europe through enlargement. A parallel can also be drawn between the Eastern enlargement and attempt of adopting a 'Constitution for Europe' in the early 2000s. Some scholars argue that the values behind these processes were largely the same; the liberal ideas of democracy, human rights and rule of law that had inspired the overthrow of communism were also the original values driving European integration.[176] However, it also clear that the Treaty amendments was partly inspired by the Union's wish to 'protect' itself from these new Member States, identifying the risk that the process of integration might be hindered if countries that were not ready were allowed to join.

[174] The Treaty of Lisbon [2007] OJ C306/1 (hereinafter Lisbon Treaty).
[175] Hillion (2004) p. 3.
[176] Sadurski (2017) p. 418.

4 Current accession criteria

4.1 Introduction

This chapter takes a closer look on the current criteria for accession to the EU, including their function and meaning. This is followed by an overview of the enlargement procedure. If just looking at the primary law, the criteria and procedure for joining the EU may seem absolutely clear. Article 49 TEU provides the following:

> 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.

The first sentence plainly outlines the criteria that a country must meet before applying for membership. It must 1) be a European state, and 2) respect the values referred to in Article 2 TEU and be committed to promoting them. However, a number of other conditions exist in practice, laid down by the EU using various instruments.[177] Accession is in practice governed by a set of

[177] Tatham (2009) p. 193.

'quasi-legal' means.[178] Article 49 is in reality very much of an 'imperfect guide', forming just the departure point for the actual conditions and procedures which have informed the practice of enlargement.[179] In fact, the criteria for admittance into the EU have often proved complex and contentious.[180]

Article 49 TEU only states that the countries meeting the conditions 'may apply' for membership. Hence, it has been regarded as criteria for eligibility.[181] Admissibility on the other hand, depends on fulfilment of the Copenhagen criteria.[182] The established practice from previous enlargements is that only once all the Copenhagen criteria have been met, is the state allowed to join. There may also be additional conditions established during the process, which has been the case for the Western Balkans (see Chapter 5). This implies that a country can be '*eligible* without being *admissible'*.[183] Additionally, meeting all the accession criteria is technically not a guarantee in itself for being granted membership. The accession still needs to be unanimously accepted by all Member States.

4.2 Criteria for eligibility

4.2.1 European State

This first criteria laid down in Article 49 is that the applicant must be a European state. This requirement can be divided into two elements: 'Statehood' and 'Europeanness'. The applicant needs to be a state under international law to satisfy the statehood criterion.[184] That makes the requirement unproblematic for most European countries, including the current candidate countries. It does, however, create a dilemma for Kosovo,

[178] Kochenov (2004) p. 1.
[179] Tatham (2009) p. 195.
[180] Preston (1997) p. 7.
[181] Hillion (2004) p. 19.
[182] Hillion (2004) p. 20.
[183] Hillion (2004) p. 19.
[184] Kochenov (2008) pp. 24 & 27. See Montevideo Convention on the Rights and Duties of States, opened for signature Dec. 26, 1933, 165 LNTS 19 (entered into force Dec. 26, 1934).

a potential candidate state which at present is not recognised by five EU Member States.[185] Hillion argues that the granting of candidate status is what confirms that a country is formally eligible,[186] which Kosovo has yet to be.

Defining the requirement of 'Europeanness' is more complex. It can be understood either in a purely geographical sense, or in a socio-cultural one.[187] In the case of Morocco, its geographical location outside of Europe was enough for its 1987 application to be automatically rejected by the Council on procedural grounds.[188] In the case of Turkey however, the majority of its territory being geographically located in Asia did not make it ineligible for membership.[189] While a geographical understanding may follow more logically from the wording of criteria, the Commission has indicated having a socio-cultural understanding of European identity, combining 'geographical, historical and cultural elements' and a 'shared experience of proximity, ideas, values, and historical interaction'.[190] As previously stated, some considered the term 'European' in the early Community Treaties to even include requirements of democracy and rule of law.[191] Suffice to say, there is no unequivocal interpretation of the 'European' criterion. It is, in the end, subject to political assessment.[192]

Moreover, the requirements imposed under the criteria of 'European state' may well differ over time. Kochenov considers membership of the Council of Europe to be a requirement for EU membership, despite it not being explicitly reflected in the Treaties.[193] This may be true, as all the EU's Member States have so far been members of the Council of Europe. All

[185] Cyprus, Greece, Romania, Slovakia and Spain do not recognize Kosovo as an independent state.
[186] Hillion (2004) p. 20.
[187] Kochenov (2008) p. 28.
[188] Council Decision of 1 October 1987, cited in Europe Archives, Z 207.
[189] Tatham (2009) p. 204.
[190] European Commission (1992) 'Europe and the challenge of enlargement', para 7.
[191] Kochenov (2004) p. 1.
[192] European Parliament (1998) 'Briefing No 23 Legal questions of enlargement'.
[193] Kochenov (2008) pp. 22 & 36-38.

current candidate and potential candidate states are also members, except Kosovo.[194] This also reflects its contested statehood.

4.2.2 Adherence to Article 2 TEU

Article 49 also includes an eligibility criterion of respect and commitment to the values in Article 2 TEU:

> The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.[195]

The effect of this requirement is not entirely clear. As recalled in the previous chapter, this provision has been considered a codification of the pre-existing Copenhagen political criteria.[196] Yet, fulfilment of the latter is considered a condition for admissibility to open negotiations. So far, the requirement of respect for the values seems to have been determined on purely formal grounds, with the emphasis placed on the existence of constitutional guarantees that the values will be upheld. According to Kochenov, this can be interpreted as Article 49 still just requiring fulfilment of the minimum conditions outlined by the Commission in *Mattheus v Doego*, in order to be eligible to apply.[197] Moreover, the meaning of these values is famously contested. Their inherent lack of specificity makes them difficult to define and measure. An obvious risk is that this leads to different interpretations, and thus inconsistent determinations on what it takes for a country to be eligible for membership.[198]

---

[194] Council of Europe, '47 Member States'.
[195] Article 2 TEU.
[196] Hillion (2004) p. 20.
[197] Kochenov (2008) p. 56.
[198] Kochenov (2008) p. 33.

4.3 Criteria for admissibility

4.3.1 The function of the criteria

A state that is considered eligible based on meeting the requirements in Article 49 TEU, is not automatically admissible for membership. As previously established, admissibility has since the Eastern enlargement depended on satisfying the Copenhagen criteria. The changed wording of Article 49, to condition eligibility on adherence to the values in Article 2, seems not to have impacted their role. The EU institutions have kept referring to the Copenhagen political criteria during accession negotiations as the standard that must be met, rather than focusing on the new Article 49. This could perhaps be more logically explained when the former Article 6(1) TEU had a narrower scope than the political criterion, excluding a requirement minority rights protection.[199] However, it is less understandable now that Article 2 has a wider scope of values than the Copenhagen political criteria, and should therefore be technically harder to meet. Yet, the Copenhagen criteria is still considered the 'blueprint of accession',[200] around which the whole enlargement regulation is built.[201] Article 49 does provide that 'the conditions of eligibility agreed upon by the European Council shall be taken into account', but this is far from an accurate depicting of their actual role.

There are however other mechanisms that lend the Copenhagen criteria efficacy.[202] One such mechanism was the adopting of a Council Regulation that conditioning the award of pre-accession financial assistance on the candidate states making progress toward complying with the political Copenhagen criteria. This meant that the political criteria became *de facto*

[199] Hillion (2004) p. 21.
[200] Kmezic (2015) p. 12.
[201] Kochenov (2004) p. 23.
[202] Marktler (2006) pp. 346-348.

legally enforceable.[203] Making the criteria legally binding in this way was an important step in cementing its role as mandatory.[204]

Along the way, the Copenhagen criteria mutated into a hierarchical system, with the political criteria as the most important.[205] At the Luxembourg European Council in 1997, it was decided that 'compliance with the Copenhagen political criteria is a prerequisite for the opening of any accession negotiations'.[206] This was in line with an already existing tradition of giving high priority to the requirement of democracy.[207] Putting the political criteria on the highest tier in the hierarchy made it instrumental at all steps of the accession process.[208] However, this formal order of doing things has not always been followed in practice. Before the Eastern enlargement, the European Council decided to open negotiations with almost all the applicants at the same time, despite several of them not having met political criteria. This implies an inconsistent application of the criteria already in the earliest days of its use.[209] It should also be clarified that a state having 'met' the political criteria well enough to open official negotiations, does not mean that it has actually been entirely complied with. The process toward satisfying the political criteria continues during the accession negotiations, implying that there can be different levels of meeting it. This problem of inconsistent application if the criteria is closely related to the difficulties in ascertaining their meaning, and hence determining what obligations they actually impose.

4.3.2 The meaning of the political criteria

The Copenhagen criteria were meant to make the enlargement process more predictable.[210] Yet, while well-known and often cited, their scope, meaning

[203] Kochenov (2008) pp. 34-35. See Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships [1998] OJ L85/1.
[204] Kochenov (2004) p. 23.
[205] Kochenov (2008) p. 55.
[206] Conclusions of the Presidency, European Council in Luxembourg, 12–13 December 1997.
[207] Kochenov (2004) pp. 4-5.
[208] Kochenov (2004) p. 23.
[209] Hillion (2004) p. 20.
[210] Kochenov (2008) p. 34.

and legal effect remains far from self-evident.[211] The Copenhagen European Council in 1993 did not provide any further principles for how the progress toward meeting them was to be assessed.[212] It became obvious a few years into the process of the Eastern enlargement that additional guidance was required in order for the candidates to be able to make the reforms necessary to meet them. This became the starting point of many documents issued by the Commission regarding the implementation of the Copenhagen criteria.[213]

While the Copenhagen criteria are the framework for the accession conditions, the details of the obligations they impose are set during the negotiations. The principle of conditionality is dynamic in that, as the reforms undertaken are being monitored, the criteria of assessment is constantly adjusted to solve problems as they arise. Since the conditionality applies throughout the entire accession process, the criteria are in effect constantly being modified.[214] As a result, they imposed changing obligations. Part of this can be explained by the ever-changing nature of the EU legal order. If an enlargement process goes on for years, there may be substantial changes to EU law in the meantime. But the changing nature of the criteria is also the result of their adaption by the Commission and the European Council.[215]

The EU institutions, the Commission in particular, have over the years produced a myriad of documents related to the Copenhagen criteria, which accompany or even guide the enlargement process.[216] Early on, the Commission took to the practice of dividing the criteria into a number of indicators, which in effect became sub-conditions. The elaboration of the criteria could be thought to have made them more articulate and systematic, giving clearer directions to the candidates.[217] However, that has not turned out to be the case. Kochenov analysed the documents used to implement the

[211] Marktler (2006) p. 1; Kochenov (2004) p. 1.
[212] Conclusions of the Presidency, European Council in Copenhagen, 21–22 June 1993.
[213] Kochenov (2004) p. 2.
[214] Kochenov (2008) p. 52.
[215] Hillion (2004) p. 17.
[216] Marktler (2006) pp. 347-348.
[217] Hillion (2004) pp. 11-12.

Copenhagen criteria during the Eastern enlargement. To some surprise, the Commission chose to merge their examination in the fields of democracy and rule of law, uniting them into one.[218] Due to these concepts not being synonymous, fusing them is not unproblematic when determining if the conditions have been met.

It was felt from early on that the broad nature of the criteria has created many uncertainties for the candidate states trying to meet them, which the Union has not done enough to clarify. Scholars have long argued that the accession criteria, particularly the political, is not clear and precise enough to use as a tool for measuring the progress of the candidates.[219] Marktler criticizes the conditions for being too vague and general, making it difficult to ascertain their meaning and how states are to comply with them. She writes that despite there being 'thousands of pages dealing with political prerequisites, their real meaning remains a secret'.[220] The result of the application of the criteria was not that the enlargement process became clearer. In fact, it is seen to have made the process both vaguer and more unpredictable, both in terms of the criteria themselves and the principles for assessing compliance with them. Due to this, the enlargement process has remained a political one, despite the attempts of de-politicisation when establishing the Copenhagen criteria.[221]

However, there is one general pattern. While the Copenhagen criteria have been enforced with varying strictness, it has successively become stricter.[222] For example, several countries during the Eastern enlargement had unresolved border recognition issues, but were allowed to join despite this.[223] Yet, in the ongoing accession process of the Western Balkan countries, equivalent requirements have been strictly imposed. This reflects not only that the obligations under the Copenhagen criteria have been continuously

[218] Kochenov (2004) p. 23.
[219] Kochenov (2004) pp. 1–2.
[220] Marktler (2006) pp. 5-6.
[221] Kochenov (2004) p. 2.
[222] Hillion (2004) p. 15.
[223] Hillion (2004) p. 18. For instance, the disputes between Cyprus and Turkey, and between Estonia, Latvia and Russia.

adapted, but also what could kindly be described as a 'pragmatic' attitude of the Union. By changing the demands imposed, the EU keeps itself flexible to the accession of new states. However, this clearly contrasts with the ambition of having a systematic approach.[224]

4.4 Enlargement procedure

As previously established, the Copenhagen criteria are the main framework of the enlargement procedure. The accession process is geared toward the candidate states meeting them. But just as with the criteria themselves, Article 49 TEU gives very little guidance in the actual procedure. Looking at the provision itself might give the impression that Article 49(1) comprises a supranational 'Union phase', while Article 49(2) is an intergovernmental 'Member State phase'. Given this understanding, the Council would only decide when the negotiations between the Member States and the applicant state are to begin, not on actual enlargement. This is, however, not how the enlargement procedure works in practice. According to official EU documents, these are the main stages:[225]

1. The country submits a formal application
2. The Commission issues an Opinion on the application
3. The country is granted candidate status
4. Negotiations are opened after the conditions have been met
5. The Commission proposes a draft negotiating framework as a basis for the talks, which has to be adopted by the Council
6. Negotiations begin, during which the country works to meet all the accession criteria and implement the *acquis*, until they are deemed to have succeeded
7. When negotiations are finalised, the Commission submits an Opinion on the candidate's readiness for membership

[224] Hillion (2004) pp. 18-19.
[225] EUR-Lex, 'Treaty on European Union – Joining the EU'; European Commission (2020) 'EU accession process step by step'.

8. The Council decides to close the negotiations, which also requires the European Parliaments consent
9. An Accession Treaty is drafted, then signed and ratified by all the Member States and the acceding state

However, this formal overview does not include the phase before the country is granted candidate status, when it is considered a potential candidate. In practice, the country usually has to meet the Copenhagen criteria to a certain extent in order to be granted candidate status. This means that conditionality is being used even before the starting point of the enlargement preparation that is identified in Article 49.[226] Hence, negotiations are technically ongoing long before they are formally opened. Despite their name, the negotiations taking place during the accession process cannot really be considered negotiations, because the candidates have very little room to negotiate. They have virtually no influence over the nature of conditions that are being imposed or their content.[227] There is no renegotiation of the *acquis*, just a discussion of technical changes. It is essence a 'take-it-or-leave-it negotiation'.[228]

There is in general very little mention of the powers of the different actors during the enlargement procedure in Article 49.[229] For example, the provision fails to mention the role of the European Council, despite it being the actor that considers new accessions to the EU.[230] In fact, the European Council holds the 'ultimate political power to take key decisions in the sphere of enlargement'.[231] As can be recalled, it was the European Council that established the Copenhagen criteria, and thereby made the accession process what it is today.[232] It is clear from the formulation of the Copenhagen criteria

[226] Kochenov (2008) p. 50.
[227] Maldini (2019).
[228] Hillion (2004) p. 9.
[229] Kochenov (2008) p. 57.
[230] Craig and de Búrca (2020) p. 78.
[231] Kochenov (2008) p. 58.
[232] Hillion (2004) p. 13.

that the European Council are the principal decision-makers on when to enlarge.[233]

The Council of the EU also has a broader and more important role than Article 49 indicates when it comes to steering the accession process.[234] Each stage of the way that the process is to move forward, a unanimous decision is required by the Council. Traditionally, the *acquis* is divided into chapters of different policy areas. Benchmarks for opening or closing chapters as well as interim benchmarks are set by the Council. For a chapter to be provisionally closed, the candidate country must show that it has implemented the *acquis communautaire* of the chapter, or that it will implement it by the time of accession.[235] All of these assessments are subject to the unanimous approval of the Council, and thus the Member States. While the final decision of granting membership requires unanimity according to Article 49 TEU, the Treaty does not specify that for the other stages of the procedure. This is a requirement that has developed in practice.[236]

The Commission also has a more important role in the enlargement procedure than Article 49 implies. When an application is received, the Commission is normally asked by the Council to conduct a detailed investigation and issue an opinion. During the negotiations, the Commission acts based on guidelines approved by the Council as the Union's main negotiator.[237] Within the pre-accession framework, the Commission functions as a 'screening actor'.[238] It is the 'guardian of the Treaties', not just toward current Member States but also prospective ones, as it promotes the *acquis.* This role is materialized through the number of documents it produces on the candidates' suitability.[239] It includes adopting annual country reports and proposing enlargement strategies and frameworks, enabling a close monitoring of the candidate

[233] Kochenov (2008) p. 58.
[234] Kochenov (2008) p. 58.
[235] EUR-Lex, 'Treaty on European Union – Joining the EU'.
[236] Kochenov (2008) p. 22.
[237] Craig and de Búrca (2020) p. 67.
[238] Hillion (2004) p. 13.
[239] Hillion (2004) p. 13.

states' progress.[240] The Commission also makes the recommendation of whether to move forward to the next step during the pre-accession phase, which the Council and European Council have traditionally always followed.[241] The idea behind giving the Commission this role was to have a more depoliticised process, allowing an impartial and objective assessment of the candidate's level of compliance with the accession criteria.[242] However, some recent events in the enlargement process of the Western Balkans have shown that the Commission's recommendations are not always followed as strictly as they once were. This will be revisited upon in Chapter 6.

4.5 Concluding remarks

The conclusion that can be drawn from this chapter is that the Treaty text of Article 49 TEU has quite little to do with how enlargement is actually conducted. This applies both to the criteria for accession and to the enlargement procedure. Instead, the EU's approach to enlargement has successively developed through practice. The accession criteria have been plagued by an inherent vagueness, and been given ever-changing meaning by the institutions responsible for applying them. This has created a complex set of demands, leading to inconsistent application of the criteria and difficulties in determining when they have been met. The issues have been amplified by the way the enlargement procedure has been constructed, putting all major decisions in the hands of the Council and the European Council, and thus in effect the Member States. As a consequence, despite efforts to make the enlargement process more legal and based on merit, it has remained highly political in its core.

[240] Kochenov (2004) p. 6; Hillion (2004) p. 13.
[241] Kochenov (2008) p. 59.
[242] Hillion (2004) p. 14; Kochenov (2008) pp. 56-57.

5 The Western Balkans

5.1 Introduction

Out of the seven Western Balkan countries vying for EU membership, only one has yet become a member – Croatia acceded to the EU in 2013. Of the remaining six, Montenegro, Serbia, North Macedonia and Albania have candidate status, while Kosovo and Bosnia and Herzegovina are recognised as potential candidates.[243] Just as the states of the former Soviet bloc, their journey toward EU membership has been one of political and economic reforms, setting out on a road to democratization and market liberalism.[244] The Western Balkans' pre-accession process has largely followed the method established during the Eastern enlargement, with conditionality as the main tool. But it has also been adapted to needs arising from to the special characteristics of the region. Ravaged by violent conflicts and state dissolution after the collapse of Yugoslavia, there was and is a demand for reconciliation and rebuilding. In light of this, requirements of good neighbourly relations and regional cooperation have become *de facto* conditions for EU membership. While not explicitly set out in the Copenhagen criteria, they are frequently mentioned in working documents related to the accession of the Western Balkans, making them inseparable from the EU's enlargement rhetoric toward the region.[245] The European Council has also confirmed meeting these conditions as mandatory for membership.[246]

There appears to be a consensus that the prospect of European integration has had a positive impact on stabilization, reconciliation and democratization in the Western Balkans.[247] Despite this, the countries seemingly still have a long way to go until accession is possible. So far, the enlargement process of the

[243] As previously noted, Turkey is also a candidate state, but is left out of this thesis.
[244] Kmezic (2015) p. 6.
[245] Tomić (2013) p. 78.
[246] Conclusions of the Presidency, European Council in Brussels, 15–16 June 2006.
[247] Kmezic (2015) p. 7.

Western Balkans is more than 20 years in the making. After the initial enthusiasm toward their prospects had waned, the past decade has been marked by a sense of 'enlargement fatigue'.[248] As a consequence, some scholars are saying that the tides have started to turn, and that the weaknesses in the EU policies are in fact contributing to a negative development in the region instead.[249] In response to this, the past few years have seen renewed efforts on behalf of the EU institutions to energise the accession process, with new strategies and frameworks launched in both 2018 and 2020.

In this chapter, the developments in the enlargement process and the application of the accession criteria are studied. The Copenhagen criteria remains the overall framework. But just as in previous enlargements, they are given meaning throughout the process, by way of the demands that the EU imposes on the candidates.

5.2 Beginning the journey towards membership

5.2.1 The Stabilisation and Association Process

The process of European integration for the Western Balkans began in the late 1990s. The first step toward a comprehensive EU policy toward the region was taken in 1996, when the Regional Approach was adopted to foster stability and economic prosperity in the war-torn countries.[250] Conditionality was part of the policy from early on. The Council conditioned the establishment of closer bilateral relations on the countries meeting a number of political and economic conditions. This was where the conditions of good neighborly relations and regional cooperation came about for the first time.[251] There was no mention of the Copenhagen criteria at that point, as they were far from being candidate states. But the political requirements were familiar:

[248] Khaze (2018) p. 48.
[249] Ćemalović (2020) p. 195; Mirel (2019).
[250] COM(1998) 618 final.
[251] Tomić (2013) p. 78.

promotion of democratic principles, human rights, the rule of law and respect for and protection of minorities. Already at that stage, a pattern was visible in the scope of the demands imposed. The EU required a wide range of complex reforms in public administration, the judiciary, education, civil society, fight against fraud and corruption, and refugee return. This involved a high level of interference in the countries' internal affairs. Just as during the Eastern enlargement, it went beyond the competences that the Union normally has in relation to the Member States. Due to the imbalanced relation, with the Union holding all the cards and potential rewards, the states had very little influence on what was demanded from them. This pattern seemed to continue in the years that followed.

In 1999, the Stabilisation and Association Process (SAP) was launched as the framework for the relations between the Union and the Western Balkans.[252] The SAP was created as a means for the Union to provide increased assistance for democratisation, civil society, justice and institution-building. An integrational aim of the Union toward the Western Balkans was apparent, as it was stated that countries in the region had the 'perspective of full integration into European structures'.[253] The framework has since developed and now rests on a combination of instruments: contractual relationships, trade relations, financial assistance and regional cooperation.[254] The contractual relationships are based on Stabilisation and Association Agreements (SAA). They are of central importance as the main tool for imposing conditionality, by constituting the framework through which the EU ensures compliance with the accession conditions.[255] The concluding of SAAs became one of the first major steps in the pre-accession process, unique to the Western Balkans. They were required to make credible headway with the political conditions before the SAAs were concluded, which has been described as a 'pre-pre-accession conditionality'.[256]

[252] COM(1999) 0235 final.
[253] COM(1999) 0235 final.
[254] European Commission, 'Stabilisation and Association Process'.
[255] European Commission, 'Stabilisation and Association Agreement'.
[256] Tatham (2009) p. 196.

5.2.2 The Thessaloniki Agenda

The finalizing of negotiations for the upcoming Eastern enlargement, combined with the decade long wars in the region coming to an end, seem to have led to a stronger focus on the integration of the Western Balkans around the turn of the millennia. The European Council stated in 2000 that all the countries were potential candidates for membership, and that the EU's objective was 'the fullest possible integration of the countries of the region into the political and economic mainstream of Europe'.[257] There was an ambition to avoid new dividing lines in Europe.[258] The event that is usually credited as the official start of the Western Balkans' journey toward the EU is the Thessaloniki European Council and the EU-Western Balkans Summit in 2003. All the Western Balkans countries were officially reaffirmed as potential candidates,[259] and the 'Thessaloniki agenda for the Western Balkans: Moving towards European Integration' was adopted.[260] This agenda came to define their enlargement process. The aim of the approach was to clarify the conditions for membership, and move the focus from stabilization and reconstruction to integration, with the aim of future accession. Once more, fulfilment of the Copenhagen criteria was identified as the determining factor for membership. However, the conditions of regional cooperation and peaceful resolution of conflicts were also emphasized in the agenda, and have later been termed the 'SAP conditionality'.[261]

The use of the principle of conditionality was clear as it was stressed that the pace of the movement toward the EU would depend on how well they fulfilled the conditions, putting the responsibility for transformation on the countries themselves. In return, the countries got increased financial support from the

[257] Conclusions of the Presidency, European Council in Santa Maria da Feira, 19–20 June 2000.
[258] Conclusions of the Presidency, European Council in Copenhagen, 12-13 December 2002; Conclusions of the Presidency, European Council in Brussels, 20–21 March 2003.
[259] Conclusions of the Presidency, European Council in Thessaloniki, 19–20 June 2003.
[260] General affairs and External Relations, 2518th Council meeting, Luxembourg, 16 June 2003, 10369/03 (Presse 166).
[261] Conclusions of the Presidency, European Council in Brussels, 15–16 June 2006.

EU.[262] In attempts to incorporate lessons from the Eastern enlargement, it was declared that conditionality would be applied more rigorously, with increased focus on the 'good governance' criteria such as the maintenance of the rule of law, independent judiciary and efficient public administration.[263]

In is within the framework of the SAP and the Thessaloniki agenda that the accession process of the Western Balkans has proceeded. It is often described as a milestone in the relations between the Balkans and the EU, and marked a hopeful beginning of their future within the Union. However, that hopefulness has slowly waned as six out of the seven countries that began the process still have a far way to go.

5.3 The accession of Croatia

As the Croatia is the only Western Balkan country yet to become a member of the EU, it is relevant to look closer at its accession. It has been argued that Croatia had the longest and most arduous accession process so far.[264] Croatia was granted candidate status in 2004, and the negotiations lasted from 2005 to 2011, finally becoming a Member State in July 2013.[265] It's history and preconditions meant that many reforms had to be implemented before EU membership was possible. The accession process and negotiations were prolonged by the legacy of conflict and authoritarianism, which slowed down democratization. Increased negotiating chapters and turmoil going on at the time (such as the financial crisis) were also factors contributing to the slow process. The adoption of the *acquis communautaire*, which was divided into 31 chapters during the Eastern enlargement, had been extended to 35, meaning that Croatia had an extensive body of EU law to implement.[266] In terms of the conditions imposed, they were in broad strokes the same as for

[262] General affairs and External Relations, 2518th Council meeting, Luxembourg, 16 June 2003, 10369/03 (Presse 166); Conclusions of the Presidency, European Council in Thessaloniki, 19–20 June 2003.
[263] European Commission (2020), 'The European Union: What it is and what it does' p. 13.
[264] Maldini (2019).
[265] European Commission, 'Croatia'.
[266] Maldini (2019).

the other Western Balkan countries. However, there were specific elements in several countries that led to differing conditions being set. Croatia, just as Serbia, faced conditions of extradition of war criminals to the International Criminal Tribunal for the former Yugoslavia (ICTY).[267] For Croatia, this blocked their accession for several years, as it refused to extradite a general to the ICTY.[268]

The accession of Croatia has sometimes been credited as a proof of the effectiveness of the EU's enlargement approach, showing that it was a successful instrument of democratization in the Western Balkans.[269] However, there were likely other circumstances at play that enabled Croatia to accede at an earlier stage than the others, which may have more to do with its relatively favourable preconditions as compared to the other countries.[270] Additionally, criticism has appeared post enlargement. Many of the necessary reforms were not finished in Croatia when they joined the EU.[271] And in the years following the accession, the remaining substantial changes and reforms that were expected did not happen. There seemed to be a consensus after Croatia's accession that it was necessary to strengthen the existing enlargement policy for the other Western Balkan states.[272] At this time, similar problems in the aftermath of the Eastern enlargement had also begun to show themselves in some Member States.

[267] Tomić (2013) p. 83.
[268] Maldini (2019).
[269] Maldini (2019).
[270] Freyburg and Richter (2010); Maldini (2019).
[271] Kmezic (2015) pp. 17-20.
[272] Maldini (2019).

5.4 A new approach to the Western Balkans

5.4.1 Enlargement fatigue

While the Thessaloniki Summit in 2003 had opened a potential future of EU membership for all the Western Balkans countries, progress remained slow for the rest. Negotiations were opened with Montenegro and Serbia in 2012 and 2013 respectively,[273] but they as well as the others faced significant difficulties in implementing the economic and political reforms that the EU had demanded, particularly related to the rule of law.[274] Some modifications had been made to the enlargement approach in time for opening Montenegro's and Serbia's negotiations. It was decided that the chapters of the *acquis* related to the political criteria would be opened at an earlier stage in the negotiations.[275] A safeguard was also introduced, that was intended to stop negotiations on other chapters if progress on these areas began to lag behind.[276] Yet, problems remained. It was argued that still greater focus on the rule of law was needed, while also making the conditions clearer. For the conditionality principle to function, the governments must know what they are expected to do to comply with EU's demands.[277] Arguably, that was not the case.

At the same time, the EU had faced a number of difficulties itself, pushing enlargement lower on the agenda. The years since the Balkans' enlargement process began had seen the failure of the Constitutional Treaty, the financial crisis, a refugee crisis, Brexit and an emerging rule of law crisis.[278] This combined into a growing 'enlargement fatigue' within the EU, with negative attitudes toward further enlargement both among the Member States and the

[273] European Commission, 'Serbia'; European Commission, 'Montenegro'.
[274] Stanicek (2020).
[275] European Parliament, 'The Western Balkans'.
[276] Kmezic (2015) p. 9.
[277] Kmezic (2015) p. 20.
[278] Craig and de Búrca (2020) pp. 22–24.

institutions.[279] When a new Commission was elected in 2014, the Commission President Jean-Claude Juncker made the following statement:

> When it comes to enlargement, I fully recognize that this has been an historic success that brought peace and stability to our continent. However, the Union and our citizens now need to digest the addition of 13 Member States in the past ten years. The EU needs to take a break from enlargement so that we can consolidate what has been achieved among the 28. This is why, under my Presidency of the Commission, ongoing negotiations will continue, and notably the Western Balkans will need to keep a European perspective, but no further enlargement will take place over the next five years.[280]

This approach has later been criticized for side-lining enlargement and having negative consequences in the Western Balkans by undermining the credibility of the promise of membership. It has been considered to have negatively affected both the political leaders' will to implement necessary reforms, and the support for enlargement among their citizens.[281]

5.4.2 A new enlargement strategy

In the past few years, there have been efforts to reenergize the enlargement process of the Western Balkans, particularly on behalf of the Commission. Some scholars contribute this change of heart to Brexit, and a desire on the Union's behalf to 'revive its enlargement project'.[282] The Commission President's State of the Union Address in 2017 showed a subtle change in approach. He stressed that if the EU wants more stability in its neighbourhood, a credible enlargement perspective for the Western Balkans must be maintained. He declared that: 'No candidate is ready. But […] the European Union will be greater than 27 in number. Accession candidates must give the rule of law, justice and fundamental rights utmost priority in

[279] Khaze (2018) pp. 49-50.
[280] Juncker (2014) 'A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic. Change. Political Guidelines for the next European Commission.'
[281] Kmezic (2015) p. 12.
[282] Hoxhaj (2020) p. 27.

the negotiations'.[283] This set the tone for the following years, as work began to create a new credible enlargement agenda. This was supported by the European Council, which reaffirmed its support for the European perspective of the Western Balkans in March 2017, stressing that the EU remained committed and engaged to support them in conducting EU-oriented reforms.[284] However, it has later been shown that some Member States were not quite as supportive as this would have indicated.

In February 2018, the Commission published the Communication 'A credible enlargement perspective for and enhanced EU engagement with the Western Balkans'.[285] It contained a new enlargement strategy meant to give renewed momentum to the accession process. The strategy had a dual focus: the efforts required from the candidate states and the support required from the Union. For the first time, Montenegro and Serbia were given a timeframe for accession, stating that they could potentially be ready for membership in a 2025, albeit acknowledging this perspective as extremely ambitious.[286]

The key reforms that were identified as necessary to satisfy the accession criteria were related to the rule of law, economic competitiveness, regional cooperation and reconciliation.[287] While not explicitly linked to specific parts of the Copenhagen criteria, they implicitly reflect them. In order to meet the political criteria, many reforms were required in the areas of rule of law, fundamental rights and good governance. These were identified as the most pressing in the enlargement process, being the key benchmark against which the Commission would judge their prospects. The need to embrace the EU's values fully and credibly was emphasised.[288] The new strategy was also meant to increase EU involvement by launching six flagship initiatives to support the region's reform process.[289]

---

[283] Juncker (2017), 'State of the Union Address 2017'.
[284] Conclusions by the President of the European Council, Brussels, 9 March 2017.
[285] COM(2018) 065 final.
[286] COM(2018) 065 final p. 2.
[287] COM(2018) 065 final p. 3.
[288] COM(2018) 065 final pp. 4-5
[289] ANNEX to COM(2018) 065 final.

In April 2018, the Commission also recommended in its annual enlargement report that accession negotiations be opened with Albania and North Macedonia.[290] The Council's response to this was initially positive, and it set out a path to open negotiations in June 2019, depending on the countries' progress in key areas.[291] However, despite the Commission's recommendation and the European Parliament's agreement, the Council decided in both June and October 2019 to postpone the opening of negotiations with North Macedonia and Albania.[292] The European Council in October 2019 instead chose to revert to the issue of enlargement before the EU-Western Balkans summit in Zagreb in May 2020.[293]

The hesitancy of the Council was heavily criticized by both scholars and other EU institutions. In a resolution, the European Parliament expressed deep disappointment over the European Council's decision not to open negotiations with North Macedonia and Albania. They stressed that both countries already met the requirements to start negotiations, and that the 'non-decision' by EU leaders was a strategic mistake, which damaged the EU's credibility and sent a discouraging message to other potential candidate countries: 'a reform of the enlargement process, advocated by some countries, should not hinder Albania and North Macedonia, which already meet the requirements to be assessed on their own merits and objective criteria, and not judged by domestic political agendas in other countries'.[294] It was feared that by delaying the decision, the EU was 'sending an ambiguous message to the region, reducing its credibility and potentially fuelling nationalistic

[290] COM(2018) 450 final p. 12.
[291] Council conclusions on Enlargement and Stabilisation and Association Process, Brussels, 26 June 2018, 10555/18.
[292] Council conclusions on Enlargement and Stabilisation and Association Process, Luxembourg, 18 June 2019, 10396/19; Presidency conclusions on Enlargement and Stabilisation and Association Process - Albania and the Republic of North Macedonia, Luxembourg, 15 October 2019, 13155/19.
[293] Conclusions, European Council meeting in Brussels, 17–18 October 2019.
[294] European Parliament resolution of 24 October 2019 on opening accession negotiations with North Macedonia and Albania (2019/2883(RSP).

rhetoric, whilst opening the door to the influence of third-country powers, in particular China and Russia'.[295]

The hesitancy to open negotiations can be at least partially, if not solely, be tributed to a lack of confidence in the enlargement method, despite the new 2018 strategy. While many were positive to the renewed engagement with the region, there was not a lot of faith in the revised enlargement strategy.[296] This was partly due to the troubling democratic regression still ongoing in the region, in addition to a precarious demographic and economic situation.[297] This view was shared by France, one of the countries that had blocked the opening of negotiations with North Macedonia and Albania. In November 2019, France published its own 'Non-Paper Reforming the European Union accession process'. The non-paper suggested a reformed process based on four principles: gradual association, stringent conditions, tangible benefits and reversibility. They suggested that the grouping of the acquis into 33 chapters be changed into seven stages, the first one including rule of law, fundamental rights, justice and security. They also suggested including more 'rewards' in terms of access to beneficial EU programmes and funds to be used in stages during the process.[298] This was aimed at strengthening the conditionality by both sweetening the carrot and toughening the stick.[299]

The debate that followed resulted in a re-thinking of the Union's enlargement policy. In November 2019, a new Commission was appointed. In February 2020, it announced a revised methodology for accession talks which would apply to North Macedonia and Albania.[300] Inspired by France's suggestion, it was based on four principles: making the accession process credible, more dynamic, predictable, and guided by a stronger political steer. Instead of the 35 chapters of the *acquis*, it is grouped into six thematic clusters. The first

[295] Stanicek (2020).
[296] Hoxhaj (2020) p. 27; Ćemalović (2020) p. 187.
[297] Mirel (2019).
[298] Non-Paper Reforming the European Union accession process, November 2019.
[299] Hoxhaj (2020) p. 12.
[300] COM(2020) 57 final.

policy cluster, 'fundamentals', includes many of the reforms related to the political criteria, particularly the rule of law. It will be the first cluster opened and will remain open throughout the negotiations.[301] The increased focus on rule of law in this enlargement strategy is in line with a greater EU effort over the past years to strengthen the rule of law within the Union. The goal is that the new methodology will significantly speed up the accession process, and that instead of the six to eight years it presently takes to close a chapter, a policy cluster could be closed in one year.[302] However, the new methodology has gotten a lukewarm reception among scholars, who consider that the approach to enlargement in its core still remains the same. Therefore, the former issues are likely to remain.[303]

Based on the new accession talks frameworks, Council decided to open accession negotiations with North Macedonia and Albania in 2020.[304] However, against the Commission's recommendation to open them with no further pre-conditions, the Member States set 15 pre-conditions which must be met before Albania is technically allowed to open negotiations.[305] In March 2021, the Commission proposed to the Council how the revised methodology could be applied at least partly to both to the negotiations with Montenegro and Serbia as well.

5.5 Concluding remarks

This chapter have demonstrated the complexities of the enlargement process. Due to the perceived lack of result, the framework for the accession of the Western Balkans has been transformed many times. As such, the demands imposed on the candidate states have been continually changing. While these have been attempts to improve the enlargement process and foster reforms needed for membership, it also risks causing an increased confusion about

[301] COM(2020) 57 final.
[302] Stanicek (2020).
[303] Hoxhaj (2020) p. 27; Ćemalović (2020) p. 195.
[304] Council conclusions on Enlargement and Stabilisation and Association Process, Brussels, 25 March 2020, 7002/20.
[305] Hoxhaj (2020) p. 15.

what criteria the states have to meet. Accession becomes a target continually moving further away, and the criteria may end up being inconsistently applied. Thus, despite the attempts at new approaches, the outlook for the countries still looks relatively bleak. This is particularly so as long as the issues from previous enlargement remain, causing a general hesitancy toward enlargement within the EU.

6 The effectiveness of the approach to enlargement

6.1 Connecting objectives and enlargement

In this chapter, a teleological perspective is adopted as the effectiveness of the EU's approach to enlargement and the criteria for accession are examined in light of the Union's aims and objectives.

When looking at the aims of the EU as laid down in the Treaties, enlargement may seem like an obvious choice. Both Article 3(1) and 3(5) express aims to promote peace and Union's values. In this regard, enlarging can be viewed as the epitome of the purpose of the EU, as it represents the chance the to spread the European values to new countries. This can in turn enable such other objectives as peace and security.[306] By the EU aiding its neighbouring countries in democratising through accession, Europe could become more stable and prosperous, contributing to the well-being of all its citizens. An opposite development could on the other hand be detrimental the aim of peace and prosperity on the European continent.[307]

However, when looking at enlargement from a teleological perspective, there are other considerations to be had as well. Article 3 TEU also sets out the objectives of establishing the AFSJ and the internal market. The functioning of these mechanisms requires certain pre-requisites, such as the existence of a mutual trust between the Member States. As was outlined in the second chapter, there is a presumption in the system that such trust exists, justified on the basis of all Member States sharing the same fundamental values. If some members do not adhere to them, it may undermine the functioning of

[306] Hoxhaj (2020) p. 6.
[307] Secretary General of the Council of Europe (2018) 'State of Democracy, Human Rights and the Rule of Law' p. 65.

the entire system that enables the internal market and the AFSJ. All of these objectives outlined in Article 3 TEU, in turn contribute to the fundamental aim of European integration, creating 'an ever closer union among the peoples of Europe'. This has been confirmed by the CJEU, naming integration as 'the raison d'être of the EU itself'. Looking at enlargement through the lens of the integrational aim, a tug of war is clear between the two means of furthering European integration: widening and deepening. While the widening can further the EU's objectives, it may also risk harming them. There is an inherent risk in widening the Union that the deepening might be diluted if Member States are allowed to join that are not prepared to handle the responsibilities of membership.

This inner struggle has been clear when looking at the development of the EU's approach to enlargement. Some scholars argue that several enlargements have been strongly motivated by an idealistic, value-based approach rather than a cost versus benefit one. Sadurski draws a parallel between the Eastern enlargement and a reflection within the Union on its constitutional values.[308] He argues that the enlargement offered a chance to bring back the original ideals into the conversation about European integration, a reminder that the EU's identity was based on values, not just a calculation of potential gains. However, the desire to protect the deepening integration from harm caused by widening has also strongly impacted the enlargement approach. This fear has been present ever since the first enlargement, when it was insisted that all Member States fully accept the *acquis communautaire* without changes. It was also a reason for not letting states join before they had democratised. Successively, the Union's approach to enlargement has been modified to ensure that new countries are not brought in that are ill-prepared to take on the obligations of membership.[309] Scholars such as Maldini argue that 'irrespective of its geopolitical interests, the EU must insist on its conditions, primarily for the sake of its own stability and

[308] Sadurski (2017) pp. 417–419.
[309] Conclusions of the Presidency, European Council in Brussels, 15–16 June 2006.

perspective, particularly amid the internal political challenges it currently faces'.[310]

6.2 The failures of enlargement

6.2.1 Past enlargements

There are different narratives of previous enlargements, particularly the Eastern one. It has been described both as a success story and a failure. In the early days after the Eastern enlargement, it was greeted positively, hailed as the EU's most successful foreign policy.[311] At the European Council in 2006, enlargement was described as having helped overcome the division of Europe, contributed to peace and stability, aided democratization, improved protection of fundamental rights and the rule of law, increased prosperity and competitiveness through economic cooperation, and strengthened the Union's position in foreign relations.[312] Enlargement is still regarded as having had positive results for both the EU and many of the acceding countries, consolidating democracy and helping them develop democratic structures and institutions.[313]

However, as the years have passed, the view of the result of enlargement has become more negative. Despite the conditions imposed during the enlargement process, certain acceding states did not really subscribe to the fundamental values that the Copenhagen criteria were meant to impose. The European values and principles failed to take hold in some Member States, as evident in the emergence of 'illiberal democracies', rule of law backsliding and issues with corruption in several Member States. As Magen concludes: 'the current crises, particularly in Hungary and Poland, represent a failure of the pre-accession strategy and amount to a poignant vindication of those who feared that some candidates' commitment to EU values was incomplete or

[310] Maldini (2019).
[311] Hillion (2010) p. 39.
[312] Conclusions of the Presidency, European Council in Brussels, 15–16 June 2006.
[313] Sadurski (2017) p. 427.

shallow at the time of accession and in its aftermath'.[314] The EU's conditionality-based enlargement approach has therefore been seen as neither able to guarantee the necessary transformation and reforms in key areas of state-building, nor a true, long-lasting commitment to the Union's values.[315]

6.2.2 Ongoing enlargements

While the enlargement process of the Western Balkans began at a time when the effects Eastern enlargements were not yet clear, their accession process has since been strongly affected by the changing tides. The problems identified after the Eastern enlargement have had much impact on the accession process of the Western Balkans. As it became clear that the conditionality has not worked well enough, the strategy was modified, and stricter conditions were imposed. Yet, this has not led to the desired results. Despite new strategies being launched, the approach has remained the same in its core, and is considered unlikely to produce better results.[316] As noted by Maldini, 'it remained questionable how (and how much) the accession process has influenced the consolidation of democracy'.[317]

The foremost problem with the enlargement policy toward the Balkans has been lack of real transformative change in the region. It can be summarized as conditionality failing in two regards: in some countries it has failed entirely, leading to no reform. In others, it has led to reform on paper, but not real change. Kmezic argues that the focus of the EU has been more on 'checking boxes' than making real progress with the reforms. In turn, 'aspiring Member States pretend to be reformed in order to advance the accession process'.[318] Neither is effective for ensuring actual compliance with the EU's requirements for membership.[319]

[314] Magen (2016) p. 1057.
[315] Kochenov (2014) p. 14.
[316] Ćemalović (2020) p. 196.
[317] Maldini (2019).
[318] Kmezic (2015) p. 25.
[319] Wakelin (2013).

Due to the problems, it has even been suggested that EU's involvement might lead to less stability in the region.[320] The current approach to enlargement in the Western Balkans has been accused of slowing down the integration process, rather than promoting it. There is a wide consensus that 'the lack of credible accession prospects risks derailing Western Balkan reform efforts and eroding Europe's influence in the region'.[321] This is problematic as the already existing democratic and socio-economic issues in the region threatens to undermine the stability there.[322] This could potentially affect the EU's objectives of peace and security.

6.3 The problems with the enlargement regulation

The above leads to the question of why the problems have arisen. While there are certainly many contributing factors to the issues in the Member States as well as to the lack of progress in the Western Balkans, the focus here is on the shortcomings of the enlargement method. Looking at the criteria and the enlargement procedure, a number of issues stand out. Firstly, the vagueness of the accession criteria has resulted in a lack of clarity, where no one knows exactly what needed to be done to fulfil them. Secondly, the threshold for meeting the criteria has been set to low. Thirdly, the process is supposed to be based on merit and monitoring of actual change, but largely has not been. These are factors in why the true reforms and the real change that the enlargement approach was supposed to enable did not take place.

6.3.1 Issues with the accession criteria and their application

In terms of vagueness and lack of clarity, it can first be stated that Article 49 TEU sheds very little light on both the procedure and the criteria. Due to the lack of substantive requirements in the provision, the conditions for accession

[320] Wakelin (2013).
[321] Kmezic (2015).
[322] Kmezic (2015).

have largely been established through practice. As a result, the Copenhagen criteria were created to supplement the regulation in the Treaties. However, they were not given a clear meaning, but instead varying interpretations during the processes. The political criterion is based on values, compliance with which are hard to define and measure. That meant that it was and is almost impossible to pinpoint what the political criterion means and what is needed to meet the requirements. Due to their broad and overinclusive wording, neither the Commission nor the candidate states knew how to apply them during the Eastern enlargement. The preparation for enlargement thus became a 'game of guesses', a direct result of general uncertainty regarding the criteria's meaning and scope.[323] Kochenov reflects that this vagueness and ambiguity of meaning caused the entire enlargement process to suffer. Using abstract values such as rule of law and democracy as a basis for conditionality is therefore both problematic and impractical. In the words of Kochenov: 'by including analysis of democracy and the rule of law within the field of the EU enlargement law, the Union entered an unstable terrain of vague causal connections and blurred definitions'.[324]

The uncertainties of the meaning of the criteria created problems when it came to judging how well the candidates had fulfilled them. It has been concluded that the thresholds were set to low by the EU institutions.[325] In the Eastern enlargements, there were issues with both the applicant's justice systems and parliaments, which did not nearly meet the requirements. Yet, this was not treated as an obstacle for accession, as the conditions were still considered to have been met to a sufficient degree.[326] It was the same with the systematic violations of minority rights in several countries, which did not have any negative impact on their perceived ability to meet the criteria.[327] Even in the states which were hailed as a success, there were still sometimes failures of conditionality. One such example is the case of Latvia. The

[323] Kochenov (2004) p. 23.
[324] Kochenov (2008) p. 2.
[325] Marktler (2006) p. 351.
[326] Marktler (2006) p. 351
[327] Marktler (2006) p. 353.

conditionality led to substantial reforms of minority rights, which have been seen as a success. However, the main focus was on legislation being adopted, not on the application or the actual effects. In reality, the situation for the minorities did not really change, which has been clear post-accession.[328]

It also became apparent after the Eastern enlargement that the Commission had failed in its role as an impartial judge. The process had not really been merit-based, as the Commission had not succeeded in its task of making the reports on the candidates' preparedness for membership full and impartial.[329] Kochenov concludes that 'the assessment of democracy and the rule of law criterion was not really full, consistent and impartial and that the threshold to meet this criterion was very low'. Due to this, the Commission was unable to to link the real state of reform in the candidate countries to the determination that the Copenhagen political criteria had been met.[330] Combined with a general vagueness of the criteria's meaning and a lack of consistent application, the result was that the criteria was considered met even when there was no actual reform. In effect, the demands imposed in the Eastern enlargement was not, despite efforts to the contrary, that different from the earlier enlargements. The requirements essentially remained the same as the formal conditions that the Commission had laid down in *Mattheus v Doego*.[331]

Many of the issues from the Eastern enlargements have also plagued the Western Balkans. Just as during the Eastern enlargement, the conditionality used in the Western Balkans have 'suffered from a lack of clarity and vague definitions, making it difficult to determine the necessary reforms'.[332] The specific approach to the integration of the Western Balkans have created an assortment of demands that keeps getting more complex.[333] A reason for this is the wide variety of frameworks that have been used. For every new round

[328] Wakelin (2013).
[329] Kochenov (2004) p. 23.
[330] Kochenov (2004) p. 1.
[331] Kochenov (2004) p. 24.
[332] Wakelin (2013).
[333] Kmezic (2015).

of negotiations to be opened, the method has been modified somewhat, trying to improve the process. The problem with having different processes and frameworks for all the candidates is that it becomes difficult to synchronize the application of the criteria. The Commission has claimed that the new 2020 accession talks framework will not result in a changed meaning of the Copenhagen criteria and other conditions for accession.[334] However, as the conditions are only what they are interpreted as during the process, it seems unlikely that this would not be the case. There is a risk of this creating further 'moving target' problems, with the goalpost for accession continually being moved. This is in addition to an already difficult situation regarding the acquis, which is constantly changing and making implementation a challenge. It is likely that the problems may contribute to a lack of credibility, making the countries and their population less motivated to make the reforms that the EU demands.[335]

6.3.2 Issues with the enlargement procedure

While the lack of success of the enlargement policy in the Balkans is attributable to several factors, an important one is the approach of the EU and individual Member States. The current enlargement procedure has put a lot of power in the hands of the Member States, as all major decisions regarding enlargement are made by unanimous vote by the Council or the European Council. The issue with this has become apparent during the recent years of the Western Balkans accession process, when the enthusiasm toward enlargement has waned. Individual Member States can, due to the practice of requiring unanimous decisions, easily delay enlargement if they wish. This requirement of unanimity has developed without a basis in Article 49 TEU. The result is that a bilateral dispute between a Member State and a candidate country risks halting its progress entirely. Many such disputes have held up the accession process for different Western Balkan countries. To name a few examples, Croatia's accession was delayed as was it being blocked by

[334] European Commission, 'Revised enlargement methodology: Questions and Answers'.
[335] Wakelin (2013).

Slovenia due to a maritime border dispute.[336] North Macedonia could also not proceed forward for many years, as it was blocked by a name dispute with Greece.[337] That was not solved until it changed its name to North Macedonia in 2018.[338] Serbia has had bilateral issues with different Member States as well, which has made their accession efforts more difficult.[339] Kosovo on the other hand has issues related to statehood, as it is not recognized by all Member States.[340] These are all examples of how much power individual Member States have in the enlargement procedure due to the practice of requiring unanimous decisions at all stages of the enlargement procedure. The consequence is that while the Commission and some Member States have in recent years been trying to re-engage with the enlargement process, other Member States have been effectively blocking it.

In effect, Member States are able to impose their own conditions on the candidate states. This is especially problematic as creates an additional uncertainty about when the accession conditions have been met. The Commission is supposed to be the impartial judge of how well the candidates have performed. But there have been several occasions where the Commission has considered conditions to be met and recommended moving forward, but the Council has gone against their recommendation. The Commission cannot be the impartial actor that it is supposed to be if the Member States continually go against its recommendations. This will likely make the candidates question why they should work to implement reforms, if the reward will still be withheld. Member States getting involved in the process and imposing their own membership conditions are thereby 'threatening the already fragile credibility of EU conditionality'.[341] This clearly shows that despite the efforts taken to make the accession process more 'legal' and less political, it still is very political in the end.

---

[336] Maldini (2019); Khaze (2018) p. 50.
[337] Tomić (2013) p. 83.
[338] It was previously known as 'the former Yugoslav Republic of Macedonia'.
[339] Khaze (2018) p. 50.
[340] Cf. Speech by Commissioner Olivér Várhelyi at EP plenary debate on 2019-2020 Progress reports on Albania, Kosovo, North Macedonia and Serbia, 25 March 2021.
[341] Kmezic (2015) p. 14.

That these bilateral issues have increased during this ongoing enlargement process can perhaps be attributed to the greater plurality and diversity among existing Member States, which increases the potential for bilateral disagreements.[342] I think that this problem will prevail as long as the decision-making structure of the Union remains as it is. In fact, further enlargement might even make the problems worse, as there would be more Member States having to agree on candidate states' readiness.

6.4 Concluding remarks

The EU's approach toward enlargement has proven ineffective in key regards. It has not been able to properly prepare the acceding countries for membership, as evident from issues arising post-accession in several Member States. As previously established, the lack of adherence to the values poses a risk to achievement of the Union's objectives of an internal market and AFSJ, by undermining the foundation of mutual trust. As regards the ongoing accession process of the Western Balkans, the lack of coherency and consistency in the application of the accession conditions undermines the credibility of their prospects. This risk leading to more issues in the region, and perhaps negatively impacting the EU's objectives of peace and security. In both regards, the overarching aim of European integration could ultimately be at stake. Of course, the enlargement approach cannot be blamed by itself for all of the issues. Yet, I think it can be concluded that if the accession process had been more effectively conducted, some of the problems could have been avoided.

I fear however that the issues of the EU's enlargement approach will be difficult to overcome. There could of course be further changes made to the enlargement process, and particularly to the decision-making structure. But I think that it may be difficult to get the Member States to agree on such reforms. First, a way to deal with breaches of the values by existing Member

[342] Khaze (2018) p. 50.

States properly must be found. That would work as an insurance policy by knowing that even if there are problems post-accession, they can be dealt with.

However, the problems can also be connected to a deeper problem of not all the actors in the enlargement process subscribing to the values that are supposed to be guiding it. Too many political forces within the Member States do not currently share the Union's aim of a more integrated Europe, and therefore do not act in a way that will further this objective. As long as this lack of agreement of the aims persist, I predict that it will be hard to get a coherent and consistent enlargement policy.

7 Conclusion

The conditions for accession to the EU derive from various sources. While Article 49 TEU and the Copenhagen criteria provide the formal basis, the actual content and meaning of the accession criteria are formed by the obligations imposed during the enlargement process. The difficulty in giving an exact definition of what the criteria for accession are, have been cause for much criticism and identified as the root of main issues in the enlargement process.

When adopting a teleological perspective to criteria and the EU's approach to enlargement, by examining the effectiveness in light of the EU's aims and objectives, it does not fare well. As the EU has not been able to develop a coherent and consistent approach to accession, it has failed to ensure that acceding Member States reform to the degree that is necessary to ensure adherence to the Union's values post-accession. Considering the role of the values in enabling key objectives such as the internal market and the AFSJ, this may undermine fundamental mechanisms of the EU system. As the EU has also struggled to find an effective way of dealing with breaches of the values post-accession, this has become an acute problem for the Union.

In turn, many of the problems from the past enlargements have remained in the ongoing accession process of the Western Balkans, despite attempts to reform the enlargement strategy. Coupled with an institutional structure that permit individual Member States to block the accession process when they wish, this has resulted both in a lack of credibility in the process and lack of progress in the candidate states. This is troublesome as some argue that it risks further destabilizing the region, which could ultimately be a threat to the EU's objectives of peace and security.

As the fulfilment of the objectives is considered the road to achieving the EU's founding aim of peace and prosperity through integration, the failure of

the enlargement approach may hence affect the core of European project. This leads to the conclusion that the current approach to enlargement is not fit for purpose in the light of the Union's aims and objectives.

Bibliography

LITERATURE

de Búrca, Gráinne (2011), 'The road not taken: The European Union as a global human rights actor.' *The American Journal of International Law*, Vol. 105, No. 4, pp. 649-693.

Ćemalović, Uroš (2020), 'One Step Forward, Two Steps Back: The EU and the Western Balkans After the Adoption of the New Enlargement Methodology and the Conclusions of the Zagreb Summit.' 16 *CYELP* 179, pp. 179–196.

Craig, Paul and de Búrca, Gráinne (2020), *EU law: Text, Cases, and Materials*. Seventh edition, Oxford: Oxford University Press.

Everling, Ulrich (2009), 'The European Union as a Federal Association of States and Citizens', in: von Bogdandy, Armin and Bast, Jürgen (eds.), *Principles of European Constitutional Law*. 2 rev. ed., Oxford: Hart, pp. 701-734.

Freyburg, Tina and Richter, Solveig (2010), 'National Identity Matters: The Limited Impact of EU Political Conditionality in the Western Balkans.' *Journal of European Public Policy*, 17(2), pp. 262-280.

Hillion, Christophe (2004), 'The Copenhagen Criteria and Their Progeny', in: Hillion, Christophe (eds.), *EU enlargement*. Oxford: Hart Publishing, pp. 1–22.

Hettne, Jörgen och Otken Eriksson, Ida (2011), *EU-rättslig metod: teori och genomslag i svensk rättstillämpning*. 2 rev. ed., Stockholm: Norstedts juridik.

Hoxhaj, Andi (2020) ‘The EU Rule of Law Initiative Towards the Western Balkans.’ *Hague Journal on the Rule of Law,* 13(3), pp. 1–30.

Jareborg, Nils (2004), ‘Rättsdogmatik som vetenskap.’ *Svensk Juristtidning* pp. 1–10.

Khaze, Nina Markovich (2018), ‘European Union’s enlargement fatigue: Russia’s and China’s rise in Southeast Europe.’ *Australian and New Zealand Journal of European Studies*, Vol 10 (1), pp. 48–63.

Kleineman, Jan (2018), ‘Rättsdogmatisk metod’, in: Nääv, Maria and Zamboni, Mauro (eds.), *Juridisk metodlära.* Second edition, Lund: Studentlitteratur.

Kochenov, Dimitry (2004), ‘Behind the Copenhagen Facade. The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law.’ *European Integration Online Papers,* Vol. 8, No. 10, pp. 1-24.

Kochenov, Dimitry (2008), *EU enlargement and the failure of conditionality: pre-accession conditionality in the fields of democracy and the rule of law*. Austin: Wolters Kluwer Law & Business.

Kochenov, Dimitry and Pech, Laurent (2015), ‘Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality.’ *European Constitutional Law Review*, Vol 11, pp. 512–540.

Lane Scheppele, Kim, Kochenov, Dimitry and Grabowska-Moroz, Barbara (2020), ‘EU Values Are Law, after All: Enforcing EU Values through Systemic Infringement Actions by the European Commission and the Member States of the European Union’. *Yearbook of European Law*, Vol. 39, pp. 3–121.

Magen, Amichai (2016), ‘Cracks in the Foundations: Understanding the Great Rule of Law debate in the EU’. *Journal of Common Market Studies* 54(5).

Maldini, Pero (2019) ‘Croatia and the European Union’, in: *Oxford Encyclopedia of European Union Politics,* Oxford: Oxford University Press, pp. 1–26.

Marktler, Tanya (2006), ‘The Power of the Copenhagen criteria.’ *Croatian Yearbook of European Law and Policy,* 2(2), pp. 343–363.

Monar, Jörg (2009), ‘The Area of Freedom, Security and Justice’ in: von Bogdandy, Armin and Bast, Jürgen (eds.), *Principles of European Constitutional Law*. 2 rev. ed., Oxford: Hart, pp. 552–584.

Narud, Hanne Marthe and Strøm, Kaare (2000), ‘Adaptation without EU membership: Norway and the European Economic Area.’ *The Journal of Legislative Studies*, Vol 6, pp. 125-150.

Pech, Laurent (2020), ‘Protecting Polish judges from Poland’s Disciplinary 'Star Chamber': Commission v Poland. Case C-791/19 R, Order of the Court (Grand Chamber) of 8 April 2020, EU:C:2020:277.’ Available at SSRN: https://ssrn.com/abstract=3683683.

Peczenik, Aleksander, (2005) ‘Legal doctrine and legal theory’, in: Roversi, Corrado (eds.), *A Treatise of Legal Philosophy and General Jurisprudence*. Dordrecht: Springer, pp. 814-842.

Preston, Christopher (1997), *Enlargement & integration in the European Union*. London: Routledge.

Puissochet, Jean-Pierre (1975), *The enlargement of the European Communities: a commentary on the Treaty and the Acts concerning the accession of Denmark, Ireland, and the United Kingdom*. Leyden: Sijthoff.

Reichel, Jane (2018), ’EU-rättslig metod’, in: Nääv, Maria and Zamboni, Mauro (eds.), *Juridisk metodlära.* Second edition, Lund: Studentlitteratur.

Sadurski, Wojciech (2017), ‘That Other Anniversary (Guest Editorial).’ *European Constitutional Law Review*, 13(3), p. 417–427.

Schwarz, Michael (2018), ‘Let's talk about trust, baby! Theorizing trust and mutual recognition in the EU's area of freedom, security and justice.’ *European Law Journal*, Vol 24, Issue 2–3, pp. 124–141.

Tatham, Allan F. (2009). *Enlargement of the European Union*. Alphen Aan Den Rijn: Kluwer law international.

Tomić, Nikola (2013), ‘When the carrot is not sweet enough: conditionality versus norms as modes of EU influence on Serbia's foreign policy.’ *Südosteuropäische Hefte*, 2(1), pp. 77-106.

von Bogdandy, Armin (2009), ‘Founding Principles’ in: von Bogdandy, Armin and Bast, Jürgen (eds.), *Principles of European Constitutional Law*. 2 rev. ed., Oxford: Hart, pp. 11–54.

Wakelin, Elyse (2013), ‘EU Conditionality: An Effective Means for Policy Reform?’ Available at: <https://www.e-ir.info/2013/11/01/eu-conditionality-an-effective-means-for-policy-reform/>.

LEGISLATION

Consolidated version of the Treaty on European Union [2016] OJ C202/1.

Consolidated version of the Treaty on the Functioning of the European Union [2016] OJ C202/1.

Council Decision of 1 October 1987, cited in Europe Archives, Z 207.

Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships [1998] OJ L85/1.

Montevideo Convention on the Rights and Duties of States, opened for signature Dec. 26, 1933, 165 LNTS 19 (entered into force Dec. 26, 1934).

Treaty Establishing the European Atomic Energy Community [1957] 298 UNTS 167.

Treaty Establishing the European Coal and Steel Community [1951] 261 UNTS 140.

Treaty establishing the European Economic Community [1957] 298 UNTS 11.

Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Communities and certain related acts [1997] OJ C340/1.

Treaty of Lisbon [2007] OJ C306/1

Treaty on European Union [1992] OJ 191/1.

OFFICIAL DOCUMENTS

European Commission

Commission Communication on Operational Conclusions, Regional Approach to the countries of South-East Europe, COM(1998) 618 final.

Communication from the Commission to the Council and the European Parliament on the stabilisation and association process for countries of South-Eastern Europe - Bosnia and Herzegovina, Croatia, Federal Republic of Yugoslavia, former Yugoslav Republic of Macedonia and Albania, COM(1999) 0235 final.

Communication from the Commission to the European Parliament and the Council, A new EU Framework to strengthen the Rule of Law, COM(2014) 0158 final.

Communication from the Commission to the European Parliament, the Council, European Economic and Social Committee and the Committee of the Regions, Enlargement Strategy and Main Challenges 2014-15, COM(2014) 0700 final.

Communication from the Commission to the European Parliament, the Council, European Economic and Social Committee and the Committee of the Regions, A credible enlargement perspective for and enhanced EU engagement with the Western Balkans, COM(2018) 065 final.

Communication from the Commission to the European Parliament, the Council, European Economic and Social Committee and the Committee of the Regions, 2018 Communication on EU Enlargement Policy, COM(2018) 450 final.

Communication from the Commission to the European Parliament, the Council, European Economic and Social Committee and the Committee of the Regions, Enhancing the accession process - A credible EU perspective for the Western Balkans, COM(2020) 57 final.

European Council

Conclusions of the Presidency, European Council in Copenhagen, 7–8 April 1978.

Conclusions of the Presidency, European Council in Copenhagen, 21–22 June 1993.

Conclusions of the Presidency, European Council in Madrid, 15–16 December 1995.

Conclusions of the Presidency, European Council in Luxembourg, 12–13 December 1997.

Conclusions of the Presidency, European Council in Tampere, 15–16 October 1999.
Conclusions of the Presidency, European Council in Santa Maria da Feira, 19–20 June 2000.
Conclusions of the Presidency, European Council in Copenhagen, 12-13 December 2002.
Conclusions of the Presidency, European Council in Brussels, 20–21 March 2003.
Conclusions of the Presidency, European Council in Thessaloniki, 19–20 June 2003.
Conclusions of the Presidency, European Council in Brussels, 15–16 June 2006.
The Stockholm Programme – An Open and Secure Europe Serving and Protecting Citizens, OJ [2010] C 115/1.
Conclusions by the President of the European Council, Brussels, 9 March 2017.
Conclusions, European Council meeting in Brussels, 17–18 October 2019.

Council of the EU

General affairs and External Relations, 2518th Council meeting, Luxembourg, 16 June 2003, 10369/03 (Presse 166).
Council conclusions on Enlargement and Stabilisation and Association Process, Brussels, 26 June 2018, 10555/18.
Council conclusions on Enlargement and Stabilisation and Association Process, Luxembourg, 18 June 2019, 10396/19.
Presidency conclusions on Enlargement and Stabilisation and Association Process - Albania and the Republic of North Macedonia, Luxembourg, 15 October 2019, 13155/19.

European Parliament

European Parliament resolution of 24 October 2019 on opening accession negotiations with North Macedonia and Albania (2019/2883(RSP)

REPORTS AND PUBLICATIONS

European Commission, 'The European Union: What it is and what it does', <https://op.europa.eu/en/publication-detail/-/publication/ac0a88a6-4369-11ea-b81b-01aa75ed71a1>, published 2020-02-01.

European Commission, 'Europe and the challenge of enlargement', <https://op.europa.eu/en/publication-detail/-/publication/d94b400d-b92f-4d91-995e-5f0ad1b36abe>, published 1992-10-16.

European Parliament, 'Briefing No 23 Legal questions of enlargement', <https://www.europarl.europa.eu/enlargement/briefings/23a2_en.htm#F7>, published 1998-95-19.

European Parliament, 'The Western Balkans', <https://www.europarl.europa.eu/ftu/pdf/en/FTU_5.5.2.pdf>, published November 2020.

Kmezic, Marko (2015), 'The Western Balkans and EU Enlargement: Lessons learned, ways forward and prospects ahead.' *European Parliament, Directorate General for External Policies, Policy Department.* <https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/534999/EXPO_IDA(2015)534999_EN.pdf>.

Mirel, Pierre (2019) 'European Union-Western Balkans: for a revised membership negotiation framework.' *Foundation Robert Schuman.* <https://www.robert-schuman.eu/en/doc/questions-d-europe/qe-529-en.pdf>.

Secretary General of the Council of Europe, 'State of Democracy, Human Rights and the Rule of Law' <https://rm.coe.int/state-of-democracy-human-rights-and-the-rule-of-law-role-of-institutio/168086c0c5>, published 2018-05-18.

Stanicek, Branislav (2020), ’A new approach to EU enlargement’. *European Parliament Briefing,* <*https://www.europarl.europa.eu/RegData/etudes/BRIE/2020/649332/EPRS_BRI(2020)649332_EN.pdf*>, published 2018-05-18.

OTHER MATERIALS

Council of Europe, ‘47 Member States’, <https://www.coe.int/en/web/portal/47-members-states>, accessed 2021-05-18.

EUR-Lex, ‘Sources of European Union law’, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14534>, accessed 2021-05-18.

EUR-Lex, ‘Treaty on European Union – Joining the EU’, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l14536>, accessed 2021-05-18.

European Commission, ‘Conditions for membership’, <https://ec.europa.eu/neighbourhood-enlargement/policy/conditions-membership_en>, accessed 2021-05-18.

European Commission, ’Croatia’, <https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/croatia_en>, accessed 2021-05-18.

European Commission, ‘Iceland’, <https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/iceland_en>, accessed 2021-05-19.

European Commission, ‘EU accession process step by step’, <https://ec.europa.eu/neighbourhood-

enlargement/sites/default/files/eu_accession_process_october_2020.pdf>, accessed 2021-05-18.

European Commission, ‘EU Enlargement’, <https://ec.europa.eu/info/policies/eu-enlargement_en>, accessed 2021-05-18.

European Commission, ‘From 6 to 27 members’ <https://ec.europa.eu/neighbourhood-enlargement/policy/from-6-to-27-members_en>, accessed 2021-05-18.

European Commission, ‘Montenegro’, <https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/montenegro_en>, accessed 2021-05-18.

European Commission, ‘Revised enlargement methodology: Questions and Answers’, <https://ec.europa.eu/commission/presscorner/detail/en/qanda_20_182>, accessed 2021-05-18.

European Commission, ‘Serbia’, <https://ec.europa.eu/neighbourhood-enlargement/countries/detailed-country-information/serbia_en>, accessed 2021-05-18.

European Commission, ‘Stabilisation and Association Process’, <https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/sap_en>, accessed 2021-05-18.

European Commission, ‘Stabilisation and Association Agreement’, < https://ec.europa.eu/neighbourhood-enlargement/policy/glossary/terms/saa_en >, accessed 2021-05-18.

European Union, ‘Countries’, <https://europa.eu/european-union/about-eu/countries_en>, accessed 2021-05-18.

European Union, ‘The Schuman Declaration – 9 May 1950’, <https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en>, accessed 2021-05-18.

Non-Paper Reforming the European Union accession process (November 2019). Available at: <https://www.politico.eu/wp-content/uploads/2019/11/Enlargement-nonpaper.pdf>, accessed 2021-05-18.

SPEECHES

Juncker, Jean-Claude (2014), ’A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. Political Guidelines for the next European Commission’. Opening Statement in the European Parliament Plenary Session, Strasbourg, 15 July 2014.

Juncker, Jean-Claude (2017), ’State of the Union Address 2017’.

Speech by Commissioner Olivér Várhelyi at EP plenary debate on 2019-2020 Progress reports on Albania, Kosovo, North Macedonia and Serbia, 25 March 2021.

Table of Cases

Court of Justice

Case law

Case 26/62 *van Gend & Loos*, EU:C:1963:1.

Case 93/78 *Mattheus v Doego*, EU:C:1978:206.

Case 283/81 *CILFIT*, EU:C:1982:335.

Case 294/83 *Les Verts*, EU:C:1986:166.

Case C-322/88 *Grimaldi*, EU:C:1989:646.

Joined cases C-411/10 and C-493/10 *N.S. and Others*, EU:C:2011:86.

C-491/10 PPU *Aguirre Zarraga*, EU: C:2010:828.

C-399/11 *Melloni*, EU:C:2013:107.

Case C-168/13 PPU *Jeremy F.*, ECLI:EU:C:2013:358.

Joined Cases C-404/15 and C-659/15 PPU *Aranyosi & Căldăraru*, EU:C:2016:198.

C-64/16 *Associação Sindical dos Juízes Portugueses*, EU:C:2018:117.

C-284/16 *Achmea*, EU:C:2018:158.

C-441/17 *Commission v Poland*, EU:C:2018:255.

Case C-619/18 *Commission v Poland*, EU:C:2019:531.

C-621/18 *Wightman and Others*, EU:C:2018:999.

Joined Cases C-354/20 PPU and C-412/20 PPU *L and P*, EU:C:2020:1033.

Opinions

Opinion 2/13 of the Court, 18 December 2014, *Accession by the Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, EU:C:2014:2454.

General Court

Case T-258/06 *Germany v Commission*, EU:T:2010:214.