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EU Accession Criteria and
Procedures: Up for the Challenge?

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A. Introduction

Russia's invasion of Ukraine has brought the issue of EU enlargement back to the forefront of the European Union's policy agenda. While Russia's war has rekindled the enlargement process, it has also sparked debates about the long-term continuity and credibility of the process, raising questions about the consistency of EU membership priorities and values and the pressing security concerns overshadowing long-term democratic transformations.

Since the "big bang" Eastern enlargement, the European Union's transformative power become central to EU enlargement studies, focusing on EU conditionality and compliance with accession criteria (Europeanization research) rather than mere EU membership.¹ Concerns have emerged regarding post-accession compliance in certain EU Member States (e.g., Hungary, Poland) and the limited transformative impact of EU accession criteria in Southeastern European countries (e.g., Bulgaria, Romania). The current complex enlargement process emphasizes the pivotal role of accession criteria and procedures in shaping the pathways to the EU membership process. The EU has evolved its accession procedures and criteria to ensure that aspiring member states express their willingness and demonstrate their capability and commitment to meet the EU's political, economic, and legal standards. The EU and its Member States consider stricter accession conditionality and additional obligations essential to (effectively) prepare aspiring members thoroughly before they become full members. However, since 2008, the EU has faced internal challenges, often called the "polycrisis". This situation temporarily slowed the enlargement process, placing it on a temporary standby. During this period, the EU's focus on internal reform challenges disadvantaged candidate countries and the enlargement process.

Building on this context, our prior study in the 2000s examined the EU's approach towards the Western Balkans. We acknowledged the EU's irreversible enlargement strategy in the region and noted that EU membership

¹ Studies on EU enlargement involve two key research stages: the first one is an ontological examination of the incentives driving the enlargement process, that is the politics of EU Enlargement, including that of the EU member states and the applicants, answering the "why" question; the second one, a post-ontological stage, focus on the effects of enlargement (Europeanization) and addresses "how" and "to what extent" the process has altered potential candidate states. See *Schimmelfennig, F./Sedelmeier, U., Theorizing EU enlargement: Research Focus, Hypotheses, and the State of Research, Journal of European Public Policy* 2002 9(4), pp. 500 - 528; *Grabbe, H., Europeanization Goes East: Power and Uncertainty in the EU Accession Process*, in: *Featherstone, K./Radaelli, C. (eds.), The Politics of Europeanization*, Oxford University Press/Oxford, 2003, pp. 303 - 330.

would have taken more time than initially predicted. We argued that the primary concern at that time was not *whether* but *when* to achieve EU membership.² Two decades later, echoing the French President's statement, the predominant question on the current EU enlargement is not *whether* and *when* to enlarge but *how* to enlarge efficiently amidst the dynamic shifts in the geopolitical landscape.³ The recent revival of the process underscores the need for a balanced approach that addresses both internal and external issues. The evolving landscape of EU enlargement, influenced by geopolitical events, security concerns, and internal challenges, necessitates carefully examining accession criteria and procedures.

This article explores the historical trajectory of EU accession criteria and procedures, unraveling the debates and shifts from pre- to post-Copenhagen eras. It scrutinizes the origins and evolution of membership norms, emphasizing the transition from geopolitical considerations to political criteria. The examination spans democratic principles' emergence in the accession process, tracing their development from initial prerequisites in the 1960s to formalization in 1993 with the Copenhagen Criteria. The post-Copenhagen phase is dissected, detailing the institutionalization of accession criteria and the transformation of procedures from the classical to multi-step EU Accession Procedures. Unveiling challenges, the article navigates the complexities of evolving criteria, advocating for a re-evaluation to reclaim normative consistency and prioritize democratic values back into the EU accession process.

B. Pre-Copenhagen Criteria – The Debate on the Origin of the Accession Criteria

I. The Debate on the Evolution of Accession Criteria: Shifting from Geopolitical to Political Criteria

The genesis of accession criteria and procedures in the context of EU enlargement triggers continuous scholarly debate, with varying perspectives on its origins.

² See *Jano, D.*, EU-Western Balkans Relations: The Many EU Approaches, *The Journal of the International University Institute of European Studies (IUIES)* 2008 2(1), pp. 143 – 160.

³ French President Emmanuel Macron's speech at the Globsec Conference in Bratislava stated, "For us, the question is not whether we should enlarge – we answered that question a year ago – nor when we should enlarge – for me, as swiftly as possible – but rather how we should do it." Closing speech by the President of the French Republic, 31 May 2023, available at <<https://www.elysee.fr/en/emmanuel-macron/2023/06/01/globsec-summit-in-bratislava>>.

The mainstream view suggests that earlier enlargements lacked explicit criteria. Scholars like Daniel C. Thomas argue about the evolution and the changing nature of the EU membership norms over time. He identifies four critical junctures with normative shifts in the European Community's self-definition that have consequently shaped the membership norms or triggered pressure for change in the existing accession criteria.⁴ The initial democratic principles were established as essential criteria for membership due to aspirating states' contested and illiberal political context and the role of non-state EU actors.⁵ On the other hand, other scholars exploring the historical evolution of the European Community's engagement with democratic and human rights have challenged the mainstream narrative, offering a different perspective on the origins and development of the EU's democratic and human rights regimes. They argue that democratic standards have been a consistent set of core norms and values since the inception of the European Community or even earlier, supporting the idea of a firm commitment to democratic principles by the European Community. Hartmut Behr argues that EU accession and its political ideas and practices are intricately linked to the legacies of 19th-century imperial rule.⁶ Gráinne de Búrca contends that the European Community has been devoted to democratic ideals since its establishment, inspiring and influencing the Statute of the Council of Europe (1949) and, notably, the draft treaty for a European Political Community (1953).⁷ At the same time, Emma De Angelis and Eirini Karamouzi associate the formal establishment of democratic principles with the 1978 Declaration on Democracy, which played a

⁴ "...identify four eras in the evolution of EU membership norms over seven decades. From the signing of the Treaty of Rome in 1957 through the end of 1961, the EEC defined itself as a community of non-Communist states and expected any state seeking membership to fit this norm. Through the remainder of the 1960s, the EEC defined itself as a community of non-Communist parliamentary democracies. Starting about 1970 and continuing for another thirty-five years, the EEC (and later EC then EU) defined itself as a community of liberal democracies. Most recently, since about 2006, the EU has lacked a dominant conception of itself as a political community and thus of what type of state is eligible for membership". See *Thomas, D. C., The Limits of Europe: Membership Norms and the Contestation of Regional Integration*, Oxford University Press/Oxford, 2021, pp. 25 – 26.

⁵ See *Thomas, D. C., Constitutionalization through enlargement: The contested origins of the EU's democratic identity*, *Journal of European Public Policy*, 2006 13(8), pp. 1190 – 1210.

⁶ See, for example, *Behr, H., The European Union in the legacies of imperial rule? EU accession politics viewed from a historical comparative perspective*, *European Journal of International Relations*, 2007 13(2), pp. 239 – 262.

⁷ *De Búrca, G., The Road not taken: The EU as a global human rights actor*, *The American Journal of International Law*, 2011 105(4), pp. 649 – 693.

crucial role in shaping the Community's approach to enlargement and served as a mechanism for consolidating emerging democracies within the European framework.⁸

Although there is no conclusive agreement on the origins of accession criteria, scholars generally acknowledge that core principles, although not explicitly articulated from the start, gradually became more concrete and formal over time, with increased scrutiny and comprehensive procedures. Thus, the historical evolution of accession criteria for countries seeking EU membership has been complex and dynamic. It has transitioned from an initial emphasis on geographic requirements laid down in the treaties founding the European Communities,⁹ aiming to pursue peace and stability in Europe, to incorporating crucial political conditions such as democracy, the rule of law, and human rights. The initial emphasis on geography addressed practical considerations and post-war Europe's geopolitical context (European Non-Communist states), laying the foundational principle for the evolution of subsequent accession criteria. As the European Community progressed toward more political cooperation and economic integration and other European countries expressed their desire to become a part of it, additional criteria, including democratic governance, economic stability, and shared values, became the community's and membership's integral norms to ensure compatibility. The shift in emphasis from geography to democratic norms reflected the founding members' goal of preventing future conflicts among European nations and building a united Europe based on mutual interests and shared values. This transition marked a notable shift in the accession criteria of the European Community, moving from a geopolitically centered approach to more inclusive democratic eligibility standards.

⁸ See De Angelis, E./Karamouzi, E., Enlargement and the historical origins of the European Community's democratic identity 1961-1978, *Contemporary European History*, 2016 25, pp. 439 - 458.

⁹ "The treaties which founded the European Communities only mentioned a geographical criterion. Articles 98 of the European Coal and Steel Community, Article 237 of the European Economic Community, and Article 205 of Euratom stated that 'any European State may apply to become a member of the Community' (EEC and Euratom) or 'accede to the present Treaty'" (ECSC). See Janse, R., The Evolution of the political criteria for accession to the European Community 1957-1973, *European Law Journal*, 2018 24(1), pp. 57 - 76.

II. Democratic Principles in EU Accession: From Initial Prerequisites (1962) to Reinforcement (1973-1978) and Formalization (1993) of Democratic Values

A debate on democratic principles in the EU association and accession process emerged during the 1960s in response to several European states expressing interest in joining the European Community. Although the first countries to join, Denmark, Ireland, and the United Kingdom, had no significant problems with their democratic credentials, the persistence of dictatorships and authoritarianism in Mediterranean countries (Greece, Spain, Portugal, and Turkey) prompted the Community to focus on crafting political terms for future relationships, being either association with or accession to the European Community.¹⁰ In 1962, the Birkelbach Report initiated a formal change in the prerequisites for joining the European Community, indicating the political and institutional aspects of the accession or association process with the EC, emphasizing democracy as an essential requirement for Community membership. Subsequent initiatives, including the Declaration on European Identity (1973), the Joint Declaration on Fundamental Rights (1977), and the Declaration on Democracy (1978), reinforced the notion of democracy and commitment to democratic values as a precondition for European Community membership.¹¹ These initiatives, coupled with other declarations and resolutions by the European Parliament, the Commission, and the Council on the issue of democracy as a fundamental value, played a crucial role in shaping the political discourse, criteria, and decisions on EU accession, eventually

¹⁰ Greece was the first country to submit its formal application in June 1959, and sign the Association Agreement with the EEC in June 1961 but was suspended in 1967 during the 'Junta coup d'état' and military dictatorship. Spain's first formal request to join the European Community was in February 1962, but it was ignored because of Franco's dictatorial regime. Portugal requested to start the talks with the European Community in May 1970, but the accession talks were out of the question for as long as the country was under the authoritarian regime of Salazar. The European Community's political decision to suspend association and accession agreements with these Mediterranean countries was driven by their lack of alignment with democratic and human rights values, which the European Community aimed to uphold and advance. The principled stance on democracy and human rights became the normative foundation influencing decision-making on enlargement. See Verney, S., Justifying the second enlargement: promoting interests, consolidating democracy or returning to the roots?, in: H. Sjursen (ed.), *Questioning EU Enlargement: Europe in Search of Identity*, Routledge, 2006, pp. 19 – 43; Ekiert, G., Dilemmas of Europeanization: Eastern and Central Europe after the EU enlargement, *Acta Slavica Iaponica*, 2008 25, pp. 1 – 28, p. 2; Lippert, B., Turkey as a special and (almost) dead case of EU enlargement policy, in: *EU-Turkey Relations: Theories, institutions, and policies*, Cham: Springer International Publishing 2021, pp. 267 – 293, p. 270.

¹¹ For more on the argument see *De Angelis/Karamouzi* (footnote 8).

leading to the formalization of the now-known “Copenhagen criteria” for EU membership.¹² Established in 1993, the Copenhagen criteria not only codified existing enlargement practices¹³ but also constitutionalized the democratic values of the European Community.¹⁴ While they formally institutionalized the political, economic, and institutional aspects relevant to EU accession for the first time, they did not represent clear U-turns from preceding enlargement processes.¹⁵ Instead, they have been continuously and progressively elaborated, becoming more articulate and systematic.¹⁶ Furthermore, the prominence and significance of the political, economic, and institutional criteria in advancing or impeding enlargement, along with the level of scrutiny applied, differs in their relative importance across the different rounds of enlargements.¹⁷

C. Post-Copenhagen Criteria – The Many Faces of the Current Accession Criteria

I. Institutionalization of EU Accession Criteria: Legal Framework and Ongoing Adjustments

The Copenhagen criteria, established in 1993, serve as fundamental conditions for EU membership, assessing a country’s readiness to join the EU based on the institutional stability for democracy, a functioning market economy, and the ability to fulfill EU membership obligations.¹⁸ Initially designed for

¹² See *Thomas* (footnote 4), p. 1206 – 1207; *De Angelis/Karamouzi* (footnote 8), p. 442 – 457.

¹³ See *Kochenov, D.*, Behind the Copenhagen façade: The meaning and structure of the Copenhagen political criterion of democracy and the rule of law, *European Integration Online Papers*, 2004 8, p. 23.

¹⁴ *Thomas* (footnote 4); *Thomas, D. C.*, Constitutionalization through enlargement: the contested origins of the EU’s democratic identity, *Journal of European Public Policy*, 2006 13, pp. 1190 – 1210.

¹⁵ Even here, scholars take different approaches and consider the formal endorsement of the accession criteria at the Copenhagen European Council of 1993 as a U-turn in the enlargement process (e.g. see: *Dehousse, F./Coussens, W.*, The enlargement of the European Union: Opportunities and threats. *Studia Diplomatica*, 2001 54(4), pp. 1 – 139), whereas others, for example, have argued that the (Copenhagen) political criteria, except minority protection, were firmly established earlier in 1973 (e.g. see: *Janse* footnote 9).

¹⁶ For details see *Hillion, C.*, The Copenhagen criteria and their progeny, in: *Hillion, C.* (ed.), *EU Enlargement: A Legal Approach*, Hart/Oxford, 2004.

¹⁷ See: *Wallace, H.*, Enlarging the European Union: Reflections on the challenge of analysis, *Journal of European Public Policy*, 2002 9(4), pp. 658 – 665; *Kochenov* (footnote 13).

¹⁸ Accession criteria, also known as the Copenhagen criteria, were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council

Central and Eastern European Countries, these criteria have become standard accession conditions and crucial reference points for any enlargement policy or strategy. However, across various EU enlargement rounds, these criteria underwent incremental and asymmetric adjustments, guided by core principles and enriched with new elements. While not explicitly stated in the EU treaties, they supplement the provisions of Article 49 and Article 2 of the Treaty on the European Union (TEU), indicating a more formalized and institutionalized approach to the EU enlargement process.¹⁹ Article 49 of the Treaty specifies that any European state respecting the values outlined in Article 2 (human dignity, freedom, democracy, equality, the rule of law, and respect for human rights, including the minorities' rights) and committed to promoting them may apply for Union membership.²⁰ The replacement of the previous assertion that the EU is "open" to any European state with the phrase "may apply" and the introduction of a new sentence stating that "the conditions of eligibility agreed upon by the European Council shall be taken into account" suggest the potential reluctance and re-nationalization towards further enlargements as the Union is not obligated to accept all European applicant states, and the conditions of membership eligibility (Copenhagen criteria) are subject to further development by the European Council.²¹ The original Copenhagen Criteria for EU membership, having only a single referencing provision in the treaties and an additional statement empowering the European Council to provide further details, have undergone continuous

in 1995. They include stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the "acquis"), and adherence to the aims of political, economic and monetary union. See Accession criteria (Copenhagen criteria), EUR-Lex, Access to European Union law, available at <<https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html>>; Accession criteria, European Commission – Enlargement, available at <https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/glossary/accession-criteria_en>.

¹⁹ See Hillion (footnote 16), pp. 20-22.

²⁰ Refer to the Summaries of EU legislation, Enlargement Chapter 16, Treaty on European Union – Joining the EU, available at <<https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-european-union-joining-the-eu.html>>.

²¹ See Thomas (footnote 4), p. 82; Limante, A., The Western Balkans on the Way to the EU: Revisiting EU Conditionality, in: Meškić, Z./Kunda, I./Popović, D.V./Omerović, E. (eds.) Balkan Yearbook of European and International Law 2020, Springer/Cham, 2021, FT 39 and 40;

elaboration, growing into a detailed set of conditions through the EU Presidency and Council conclusions as well as Commission Opinions, Strategy Papers, Annual (Progress) Reports, Accession, and European Partnerships.²²

Over time, the accession criteria expanded significantly, including detailed provisions and additional obligations known as Copenhagen “Plus” Criteria or post-Copenhagen Criteria.²³ For instance, the detailed administrative capacity criteria, introduced in 1995 during the Madrid European Council, emphasized the role of administrative and judicial capacities and structures in implementing the EU *acquis* effectively.²⁴ Furthermore, the 1994 Essen European Council’s Presidency Conclusions added to the accession criteria the good neighborliness conditionality, placing a strong emphasis on regional cooperation and good relations between candidate countries and/or member states with the aim to prevent conflicts from entering the Union.²⁵ This condition was re-affirmed in the 1999 Helsinki European Council, urging candidate countries to resolve any border disputes and other related issues.²⁶ The good neighborliness condition is seen as a mechanism to address security concerns related to unresolved issues, such as border disputes and minority protection,

²² Emerson, M./Lazarevic, M./Blockmans, S./Subotic, S., A Template for Staged Accession to the EU, European Policy Centre and Centre for European Policy Studies, October 2021, p. 17.

²³ The Copenhagen accession criteria, once broadly defined, have evolved to include details and specific mechanisms previously not explicitly defined, such as, for example, the introduction of the managerial accountability approach in the administrations (part of Chapter 32 – financial control agenda), an implicit condition in previous enlargements and nowadays it is being introduced as a highly-detailed, explicit requirement, which needs to be proven in the accession process. See Mihajlović, M., *Away with the enlargement*, Discussion paper, European Policy Paper, 2018.

²⁴ See Dimitrova, A., *Enlargement, institution-building and the EU’s administrative capacity requirement*. *West European Politics*, 2002 25(4), pp. 171 – 190.

²⁵ “Being aware of the role of regional cooperation within the Union, the Heads of State and Government emphasize the importance of similar cooperation between the associated countries for the promotion of economic development and good neighbourly relations”. See European Council meeting on 9 and 10 December 1994 in Essen, Presidency Conclusions, available at <https://www.europarl.europa.eu/summits/ess1_en.htm>.

²⁶ In this respect, the European Council stresses the principle of peaceful settlement of disputes in accordance with the United Nations Charter and urges candidate States to make every effort to resolve any outstanding border disputes and other related issues. Failing this, they should, within a reasonable time, bring the dispute to the International Court of Justice. The European Council will review the situation relating to any outstanding disputes, in particular concerning the repercussions on the accession process and in order to promote their settlement through the International Court of Justice, at the latest by the end of 2004. See Helsinki European Council 10 and 11 December 1999, Presidency Conclusions, available at <https://www.europarl.europa.eu/summits/hell_en.htm>.

in applicant countries.²⁷ The absorption capacity, often referred to as the “fourth” Copenhagen criteria, was first mentioned in the Copenhagen Council Conclusion of 1993,²⁸ yet with no significant impact on the timing of previous enlargements.²⁹ Although the notion of absorption capacity remains somewhat ambiguous, it has gained importance over time, particularly in recent years.

The European Union introduced additional accession criteria that considered factors such as the political situation of candidate countries and/or past experiences with EU enlargements. The Western Balkan countries faced additional accession criteria, shaped by insights gained from prior enlargements and addressing politically sensitive matters with a significant security dimension.³⁰ Initially, the EU’s primary focus in the region was on addressing the aftermath of the armed conflicts of the 1990s and promoting adherence to various political and peace agreements. To accomplish this, the EU conditioned the accession process to fulfilling international obligations (e.g., the full cooperation with the International Criminal Tribunal for the Former Yugoslavia) and regional cooperation. Both criteria were crucial components of the Stabilization and Association process, integrated into the Stabilization and Association Agreement signed with the ex-Yugoslav countries, including Albania and excluding Slovenia. Other criteria included the resolution of bilateral disputes (such as the longstanding disagreement between Greece and North Macedonia over the latter’s name) and statehood issues (most notably for Kosovo and Serbia). Over time, accession criteria have been enriched

²⁷ See *Basheska, E., The Good Neighbourliness Condition in the EU Enlargement, Contemporary Southeastern Europe, 2014 1(1), pp. 92 – 111, p. 99.*

²⁸ The Copenhagen Council Conclusion of 1993 refers to “[t]he 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”. See European Council, Conclusions of the Presidency - Copenhagen, June 21-22, 1993, SN 180/1/93 REV 1, p. 13.

²⁹ See *Petrovic, M., (What about) the further enlargement of the EU? In between European enlargement fatigue and Balkan instability challenges, Australian and New Zealand Journal of European Studies, 2009 1(2), p. 46.*

³⁰ In the case of the Western Balkans, the EU’s special requirements included full cooperation with the International Criminal Tribunal for Former Yugoslavia (ICTY), as well as normalization of relations with Kosovo; then, resolution of bilateral standoffs such as between Greece and North Macedonia over the name issue. See *Balkans in Europe Policy Advisory Group (BiEPAG), The Unfulfilled Promise: Completing the Balkan Enlargement, Policy Paper, 2014; Kmezić, M., The Western Balkans and EU Enlargement: Lessons learned, ways forward and prospects ahead. Policy Department, Directorate-General for External Policies, 2015, p.13, available at <[https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/534999/EXPO_IDA\(2015\)534999_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/534999/EXPO_IDA(2015)534999_EN.pdf)>.*

with new elements from the critical lessons learned from previous accession experiences. The rule of law and judicial reform became the primary focus for Western Balkan accession, informed by experiences with Bulgaria, Romania, and Croatia.³¹

II. From Classical to Multi-Step EU Accession Procedures: Introducing Flexibility, Reversibility, and Uncertainty

In terms of procedures, the accession process has shifted from the classical method to a multi-step and open-ended approach, dividing EU *acquis* chapters into clusters with intermediary conditions, allowing greater flexibility or reversibility before proceeding further or stopping the process if regress occurs. The earlier accession process was characterized by the “classical Community method,” focusing on the applicant’s acceptance of the EU *acquis* and the negotiations of the transition periods,³² whereas the current process is more complex, introducing the multiplication of procedural steps and an increasing role of EU member states.³³ Although the EU enlargement process is an “updated version” previously applied in the earlier enlargement rounds, it has nonetheless embraced a multi-step process with stages and reversibility and introduced mechanisms to steer and restrain the process at all stages and at any time. The classical procedure was characterized by a relatively straightforward process consisting of issuing the Commission opinion on the candidate’s readiness, the opening and closing of negotiations, the treaty signing and ratification, and then the accession of the candidate country. Often, the first two Copenhagen Criteria (the democracy and market economy) should be fulfilled before the opening of EU accession negotiations, whose primary focus is the adoption and implementation of the EU *acquis* (the third Copenhagen Criteria). The EU *acquis* is divided into various policy areas (chapters), the number and arrangement of which have evolved over time.³⁴ The revised enlargement methodology has introduced a multi-step process, breaking down the *acquis* chapters into clusters, each marked by

³¹ See *Fagan, A./Sircar, I., Judicial Independence in the Western Balkans: Is the EU’s “New Approach” Changing Judicial Practices, MAXCAP Working Paper Series, 2015; Börzel, T. A., Building Member States: How the EU Promotes Political Change in its New Members, Accession Candidates and Eastern Neighbors, Geopolitics, History, and International Relations, 2016 8(1), pp. 76 – 112, p. 93.*

³² see *Preston, C., Enlargement and Integration in the European Union, Routledge/London, 1997.*

³³ See *Hillion, C., EU Enlargement: The evolution of EU law, in: P. Craig/G. De Búrca (eds.), The Evolution of EU Law, Oxford University Press/Oxford, 2011, pp. 188 – 216.*

³⁴ *Dudley, D., European Union membership conditionality: the Copenhagen criteria and the quality of democracy, Southeast European and Black Sea Studies, 2020 20(4), 525 – 545.*

specific intermediary conditions, and with fundamentals to be open first and close last, deciding the accession.³⁵ This new methodology and approach allow for greater flexibility and scrutiny at each stage, introducing conditions that must be met before proceeding further or stopping the process if conditions are not met or regress has been made, thus making the process reversible.³⁶ Unlike previous rounds, the current accession negotiations are open-ended, with no guaranteed membership beforehand. The 2004 European conclusions made the process flexible and uncertain, introducing long transition periods, derogations, specific arrangements, or permanent safeguard clauses.³⁷ Even though a country may open and close negotiations on different groupings of the *acquis* chapters (according to the new methodology as of 2020), the accession time may not be specified, and other exemptions may restrict membership entitlement.³⁸ The new methodology provides instruments for phasing negotiations throughout time, and the additional pre-accession requirements to resolve existing “open issues” with EU member states are all “temporal devices” that could halt the process and delay accession at any time. The case of Turkey best illustrates the complex multi-step and open-ended accession negotiations since it applied in 1959, signed an association agreement in 1963, faced rejection of its application for full membership in 1987, officially gained candidacy status in 1999 but initiated accession negotiations only in 2005, and from 2019 it is facing a suspension of accession negotiations as a result of the European Council decision.

³⁵ See European Commission, A more credible, dynamic, predictable and political EU accession process - Commission lays out its proposals, Press release, 5 February 2020, Brussels, available at <https://ec.europa.eu/commission/presscorner/detail/en/IP_20_181>.

³⁶ See also *Steunenbergh, B./Dimitrova, A. L.*, Compliance in the EU enlargement process: The limits of conditionality, *European Integration online Papers (EIoP)*, 2007 11(5), p. 11.

³⁷ See Council of the European Union, Presidency Conclusions, 16238/1/04 REV 1 CONCL 4, Brussels, 1 February 2005, available at <https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/83201.pdf>.

³⁸ *Ugur, M.*, Open-ended membership prospect and commitment credibility: Explaining the deadlock in EU-Turkey accession negotiations, *Journal of Common Market Studies*, 2010 48(4), pp. 967 – 992, p. 968.

D. Challenges and the Way Forward with the Accession Criteria

I. Navigating the Challenges of Evolving Accession Criteria and Procedures

A comprehensive examination of the European Union's current accession procedures and criteria reveals several challenges.

The main criticism revolves around double standards and asymmetric positioning, where the minority protection and Member States' veto on negotiations exemplify these claims.³⁹ Some accession conditions have been perceived as very rigorous and excessively demanding, surpassing EU member states obligations under Community law or at least the degree of compliance with EU *acquis*, creating double standards or "super Member States."⁴⁰ Additionally, the pre-accession requirement to resolve any "open issue" between an EU member state and a candidate country, coupled with the unequal power dynamics during accession negotiations, places the accession process at the discretion of the Member state's will. The current EU legal framework has made it easier for individual member states to delay or block the accession process through the (mis)use of the veto power, enabling them to push their own national interests and block the accession process at any time, given that unanimous agreement among all member states is required at the various stages of the accession process.⁴¹ Accession delays were evident in 2019-2022, when France and, later on, Bulgaria vetoed the start of accession negotiations with North Macedonia over bilateral disputes despite the positive opinion

³⁹ Throughout its entire history, the EU's enlargement process has consistently been characterized as asymmetrical from the first enlargement, with the EU serving as a regime-setter and establishing accession rules. Yet the current asymmetry is far more significant, with each member state vetoing at various stages of the accession process. On the issue of the asymmetric dimension with further references, see *Jano* (footnote 2), pp. 148-150.

⁴⁰ The EU sometimes imposes double standards in some areas, mainly on the protection of ethnic minority rights, where candidates are asked to meet standards that the EU-15 have never set for themselves. *Moravcsik, A/Vachudova, M. A., National Interests, State Power, and EU Enlargement, Perspectives*, 2002 19, pp. 21 – 31, p. 24; see also: *Hillion* (footnote 16) p. 12.

⁴¹ Hypothetically, the 27 member states have approximately 1900 occasions to block accession negotiations since each of the EU member states has at least 70 occasions to veto when deciding on the opening and closing of each of the 35 negotiating chapters. See *Marić, S., Let's set things straight: Accession talks do not equate EU membership promise*, Euractiv, 24 June 2019, available at <<https://www.euractiv.com/section/enlargement/opinion/lets-set-things-straight-accession-talks-do-not-equate-eu-membership-promise/>>.

from other EU institutions.⁴² In contrast to employing the “delaying” or “blocking tactics,” the 2023 EU Council meeting witnessed an “accelerator tactic”—an unconventional practice to overcome a Member state’s opposition and attain unanimity through the absence of the Member state’s leader, given (s)he does not explicitly express opposition or cast a vote against it.⁴³

Criticism also extends to the broad, inconsistent, and subject-to-interpretation nature of the accession criteria and the continuously additional conditions that have made the accession process a dynamic moving target with no clear objectives and detailed timelines.⁴⁴ Despite formalization, the accession criteria have exhibited flexibility and continuous adjustments in meaning, scope, and function, introducing unpredictability and complicating the process for EU-aspiring countries.⁴⁵ The broad and all-inclusive nature of these criteria, extending beyond the core Copenhagen criteria, has introduced complexities, challenging the accession process. While designed to induce reforms and provide a comprehensive evaluation framework, the broad scope of conditions and the growing complexity have raised concerns about fairness and equity, unintentionally compromising their credibility as an effective tool for assessing the reform progress of the candidate countries.⁴⁶ To enhance the credibility of accession criteria, scholars suggest a more focused approach of strategically singling out specific conditions instead of the very numerous requirements currently in place.⁴⁷

⁴² For a critical analysis of making EU membership conditional on the settlement of bilateral disputes with concrete examples of issues in the Western Balkans, see *Basheska, E.*, EU Enlargement in Disregard of the Rule of Law: A Way Forward Following the Unsuccessful Dispute Settlement between Croatia and Slovenia and the Name Change of Macedonia. Hague J Rule Law 2022 14, pp. 221 – 256.

⁴³ The German Chancellor invited the Hungarian Prime Minister to temporarily leave the Council room during the discussions and the decision regarding the opening of accession negotiations with Ukraine, thus making it possible for the other EU leaders to unanimously (in his absence) take the decision. Although the German Chancellor acknowledges that ‘leaving the room’ is an exception and should not become a common practice, it serves as a practical example, opening the possibility for other EU actors to strategically employ or use absence to bypass a Member state’s objection in future decisions. See Euronews, EU Summit: Germany’s Scholz gets Orbán to leave room for decision on Ukraine accession, 16/12/2023, available at <<https://www.euronews.com/2023/12/16/eu-summit-germanys-scholz-gets-orban-to-leave-room-for-decision-on-ukraine-accession>>.

⁴⁴ *Grabbe, H.*, European Union Conditionality and the “Acquis Communautaire”, *International Political Science Review / Revue Internationale de Science Politique*, 2002 23(3), pp. 249 – 268.

⁴⁵ See *Hillion* (footnote 16), pp. 16 – 17.

⁴⁶ See *Kochenov* (footnote 13).

⁴⁷ See *Steunenberg/Dimitrova* (footnote 36).

II. Rethinking EU Accession: Reclaiming Normative Consistency and Prioritizing Democratic Values

The failure of objective conditionality and inconsistency in applying the Copenhagen criteria, especially concerning certain candidate countries like Turkey or groups of countries like the Western Balkans, raises broader questions about the normative consistency of the EU's conditionality strategy, positioning EU-candidate relations on a transactional or geopolitical axis outside the established accession framework with a tendency to prioritize (geo)political convenience over strict adherence to the Copenhagen norms.⁴⁸ The case in the Western Balkans has shown the limit of these conflicting objectives in the political conditionality of prioritizing geopolitical considerations over stricter demands for liberal democracy.⁴⁹ On a more general note, the post-2005 EU lacks a clear consensus on its identity as a political community of liberal democracies and, thus, on the requirements for the type of state eligible for membership.⁵⁰ This lack of the core normative consensus on membership norms necessitates re-establishing the core democratic values and standards as envisioned by the Copenhagen criteria to render the EU accession process credible and consistent. Adherence to the Copenhagen criteria should be the norm for accession, where candidate countries and the EU (including its member states) alike should commit to the principle of liberal democracy and deliver membership after plausibly fulfilling this standard.

⁴⁸ In the case of Turkey see e.g. *Saatçioğlu, B.*, How closely does the European Union's membership conditionality reflect the Copenhagen criteria? *Insights from Turkey*. *Turkish Studies*, 2009 10(4), 559-576; *Turhan, E./Wessels, W.*, The European Council as a Key Driver of EU-Turkey Relations: Central Functions, Internal Dynamics, and Evolving Preferences, in: *Reiners, W./Turhan, E.*, (eds.), *EU-Turkey Relations: Theories, Institutions, and Policies*, Palgrave Macmillan/Cham, 2021.

⁴⁹ See *Richter, S.*, Two at one blow? The EU and its quest for security and democracy by political conditionality in the Western Balkans. *Democratization*, 2012 19(3), 507-534; *Smith, N. R./Khaze, N. M./Kovacevic, M.*, The EU's stability-democracy dilemma in the context of the problematic accession of the Western Balkan states, *Journal of Contemporary European Studies*, 2021 29(2), 169-183.

⁵⁰ "It is thus apparent that the Council was deeply divided by 2006 over the nature of the EU as a political community and thus over the definition of which neighbouring states were eligible for membership, in stark contrast to earlier periods, when the member states accepted a common definition of European identity regardless of their preferences regarding particular applicant states". *Thomas* (footnote 4), p. 81.

Regarding the procedures of the accession process, innovative solutions of a staged approach⁵¹ combined with the use of transition periods have been proposed by civil society and think tanks. Staged accession involves the EU maintaining a firm stance on accession criteria (including democracy and the rule of law) while gradually integrating candidates with specific milestones, ensuring tangible progress and the option of reversibility in the event of setbacks in candidate countries.⁵² Incorporating transitional arrangements⁵³ aligns with the flexibility-differentiation principles inherent in the EU's enlargement strategy. Such practices recognize the unique circumstances of candidate countries and allow for a phased implementation of membership obligations or opt-out from specific common EU policy fields. These arrangements have been systematically applied to previous enlargements, although to a lesser extent and form. The aim is to foster a cooperative and accommodative approach to accession, reflecting on the pragmatic need to manage the complexities of integrating diverse economies and legal systems.⁵⁴

Frank Schimmelfennig argues for a swift formal accession through differentiated integration, that is, a partial membership or staged accession, which is not only a way to address the trade-off between the urgency of enlargement and the thoroughness of reforms but also will allow candidate countries to participate in selected EU policies.⁵⁵ Still, the way forward is reclaiming the “fundamentals first”—adherence to the rule of law and democratic prin-

⁵¹ The debate was first initiated in the autumn of 2021 (see: *Emerson et al.*, (footnote 22) revised in 2023, Mihajlović, M./Blockmans, S./Subotić, S./Emerson, M., *Template 2.0 for Staged Accession to the EU*, Revised proposal - August 2023, European Policy Center.

⁵² Ribera, E./Wirmer, A., *What does future EU enlargement require to be a success?* European Council Experts' Debrief, Ninth Issue, Trans European Policy Studies Association (TEPSA), 29 November 2023.

⁵³ “Transitional arrangements—the parties also discuss whether (and how) some rules can be introduced gradually to allow the accession country or EU Member States (countries) time to adapt. This is mainly discussed during the final stages of the negotiations”. See *Summaries of EU legislation*, Enlargement Chapter 16, *Treaty on European Union—Joining the EU*, available at <<https://eur-lex.europa.eu/EN/legal-content/summary/treaty-on-european-union-joining-the-eu.html>>.

⁵⁴ See Inglis, K., *The Accession Treaty and its transitional arrangements: A twilight zone for the new members of the Union*, in: Hillion C. (ed.), *EU enlargement: A legal approach*, Hart/Oxford, 2004, pp. 78.

⁵⁵ Schimmelfennig, F., *Fit through Flexibility? differentiated Integration and Geopolitical EU Enlargement*, in: Von Sydow, G./Kreilinger, V. (eds.), *Fit for 35? Reforming the Politics and Institutions of the EU for an Enlarged Union*, SIEPS 2023, p. 16.

ciples—as the core norm and common foundation of all EU enlargements, regardless of any new flexibility or staged accession⁵⁶ in the upcoming accessions.⁵⁷

E. Concluding Remarks

The integration of new member states into the European Union has emerged as a significant issue of the EU, reigniting debates on the accession process. The EU's current procedures and accession criteria are complex, moving beyond the traditional linear stages to a multi-step approach marked by various conditionalities and safeguards clauses. The continuous shifts in the prominence of accession criteria, oscillating between geostrategic calculations and community-building norms, underscores its ongoing complexity. As the EU navigates future enlargements, a thoughtful debate is essential to address the evolving context, define priorities, and ensure the credibility of the accession process. The meticulous procedure and accession criteria are to be designed in a way that ensures aspiring member states align fully with EU core values and standards. Upholding EU conditionality at the core values requires a delicate balance, emphasizing the clear relationship between democratic, economic, and *acquis* reforms and the membership rewards. Maintaining this linkage is imperative, as deviations from the core Copenhagen Criteria and their Membership goal risk undermining the credibility and consistency of the process. Any deviation may lead candidate states to perceive discriminatory practices, challenging the integrity of the EU's commitment to enlargement.

In conclusion, this chapter aims to contribute to a comprehensive understanding of the complexities inherent in the EU accession procedures and criteria, guiding future discussions on the enlargement and consolidation of the European Union. We aimed to provide food for thought on the historical

⁵⁶ The revised proposal for a stage accession highlights the importance of the EU's "fundamentals first" and introduces certain temporary and proportional safeguards to ensure no democratic backsliding of newcomers. See Mihajlović, M./Blockmans, S./Subotić, S./Emerson, M. (footnote 51), especially section IV.2 Guarding the EU's fundamental values in Stage 3.

⁵⁷ Costa, O., et al., *Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century*, Report of the Franco-German working group on the EU institutional reform, Paris-Berlin. 18 September 2023, p. 44, available at <<https://institutdelors.eu/en/publications/sailing-on-high-seas-reforming-and-enlarging-the-eu-for-the-21st-century/>>.

evolution of accession procedures and criteria and their complex dynamics, emphasizing the need for a balanced approach to conditionality and the unwavering commitment to EU core values.

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