

REQUIREMENTS FOR CANDIDATE COUNTRIES



PETAR BAČIĆ

Abstract

The European Union (EU) that we know today has come a long way from three communities that were created in the 1950s. There were only six countries that firmly stood behind the integration project, both in 1951, when the European Coal and Steel Community was established by the Treaty of Paris, and in 1957, when the European Atomic Energy Community and European Economic Community (EEC) were created by the Treaties of Rome. However, it is important to point out that these initial Treaties already made it clear that its signatories did not intend to create a closed community. Moreover, already in the Preamble of the EEC Treaty, the six founding members were ‘calling upon the other peoples of Europe who share their ideal to join in their efforts’. Starting from the first enlargement in 1973 until the last round in 2013, the EU has expanded its membership to 27 states, while the prospect of EU membership is currently open to 10 partner countries. Through a brief overview of each of the enlargement rounds, this study especially analyses the development of the requirements that candidate countries need to accomplish to become full members of the EU.

Keywords: European Union, enlargement process, accession negotiations, candidate countries, accession requirements

Petar Bačić (2026) ‘Requirements for Candidate Countries’. In: Michal Petr (ed.) *EU Enlargement and Successful Integration: Is There a Way?* Volume I., pp. 27–57. Miskolc–Budapest, Central European Academic Publishing.



https://doi.org/10.54237/profnet.2026.mpeesitw_I.2

1. An Introduction to the ‘Ever Closer Union’

From the second half of the 17th century, more precisely after the conclusion of the Peace of Westphalia (1648) that ended the Thirty Years’ War among several European countries and with which began the construction of the ‘European state system’, the process of forming and confronting different concepts of the state; its sovereignty; and in general, its position and relations with other states, commenced. Although the Peace of Westphalia presented the opportunity for creating a new community of states, it was, in fact, a prelude of the ‘era of sovereign absolutist states which recognized no superior authority’.¹ Jealously guarding their sovereignty, absolutist states eventually reached a point where the idea of the international community became an empty phrase, and international law depended upon the will of states that were more concerned with the ‘preservation and expansion of their power than with the establishment of the rule of law’.² In this long historical period, according to L. Gross, the liberty of states was actually incompatible with the concept of the international community and the idea of international law that is independent of their will. In such a framework, characterised by state voluntarism and a consistent attachment to the concepts of state sovereignty, there was hardly any place for the development of the idea of a united Europe.

The story of successful European integration actually begins after World War II, which had a crucial influence on the nature of the idea of European unity and the prospects for its realisation; however, starting from 1945, regarded indeed as ‘Year Zero’ based on so many different aspects,³ the creation of the ‘Community of Europe’ had already laid solid foundations for the activities of numerous European politicians and activists in the interwar period.⁴ Namely, awareness regarding the necessity of achieving unity among the states and peoples of Europe with the aim of preventing the outbreak of new wars was certainly present among many Europeans during and after World War I, and it manifested through numerous initiatives and proposals of various types. For example, in 1923, Count Richard von Coudenhove-Kalergi founded the Pan-European Union, which brought together many European intellectuals (Albert Einstein, Thomas Mann, Sigmund Freud, and Ortega y Gasset, among others), offering a vision of peaceful, democratic unity for Europe with no borders, with a common currency and a single passport.⁵ Being among the first in attempting to realise the vision of the unification of European states, Coudenhove

1 Gross, 1948, p. 39.

2 Gross, 1948; Steiner and Alston, 1996, p. 150.

3 Buruma, 2013.

4 Urwin, 1995.

5 See Chatham House, 2021; Ziegerhofer, 2024. It is interesting to note that the book ‘Pan-Europa’ contained an invitation to readers to become members of the Pan-European Movement by filling out an attached form. Among the members of the Movement were numerous European intellectuals such as Albert Einstein, Thomas Mann, Sigmund Freud, Ortega y Gasset, and many others, and in 1927, the former French prime minister Aristide Briand was elected its honorary president.

Kalergi also published the book (i.e. manifesto) titled 'Pan-Europa' and presented a draft for a Pan-European Pact that would serve as the basis for the establishment of the 'European Confederation'. During the interwar period, different movements were forming in Italy, England, and France, assembled mainly around the idea of the creation of a federal Europe.⁶

The enlightened Europeans who initiated the movement towards the ideal of internationalism after 1918 and before 1939 were, above all, horrified by the hatred that had spread among the European nations during World War I. Among these intellectuals was Jose Ortega y Gasset, who condemned nationalist states because, despite the fact that they had over time 'become a miserable thing', had nevertheless managed, in their misery, to bring European civilisation almost to the point of collapse. A new impetus for the life of a divided continent ravaged by war could only be given through determination to create a great nation consisting of a group of continental nations. Such an impetus would be used by a new generation which would look beyond the narrow borders of the nation-state, and in such a way as to organise a different Europe in which the pluralism of collective customs and the necessary freedom and rights of the individual would be guaranteed. In this new political organisation, the positive lessons, whose negations peoples of Europe and their societies had been confronted with during World War I, should finally prevail.⁷

After World War II, the concept of the idealised political 'federal' Europe, as well as the project of creating a 'large economic area' in which the interest of economic integration would also lead to the release of creative potentials of European citizens, began to be realised in different ways. Over time, these two histories, two integration paths, have overlapped and merged.⁸ However, the foundation of both paths lies in the effort to finally fully realise the establishment of Europe as a pacifist, prosperous and harmonious community in which all European states will refer to the same values – rule of law, human rights and democracy, and to the same rules of the market social economy. To be successful, such a European project had to be built on and supported by the common legal order. It had to be realised as the '*L'Europe Du Droit*'.⁹

The concrete expression of these political, economic, and legal commitments is now precisely set in the form of the accession requirements – that is, conditions for membership in the European Union (EU). However, substantive conditions of entry were missing until the mid-1980s and the adoption of the Single European Act, which foresaw the active position of the European Parliament in the enlargement process, and especially until the 1993 meeting of the European Council in Copenhagen when

6 The federal movement was probably the strongest in England. Numerous influential politicians and intellectuals (e.g. William Beveridge, who was the director of the London School of Economics and dean at Oxford University; Ivor Jennings, one of the most influential lawyers of the time, etc.) were active in the 'Federal Union'.

7 Ortega and Gasset, 1986, p. 883.

8 Keegan, 1997, pp. 85–90.

9 Badinter, 1993, pp. 15–23.

much clearer directions or ‘obligations for membership’ were set. Nevertheless, values of democracy, rule of law, and human rights, although they were not proclaimed in the founding treaties, have in fact always represented common standards shared by the member states. They were shared by the original six member states, while compliance with those standards could be inferred as a necessary condition for membership that in fact allowed successful enlargement of the Union up to a certain point. However, each new application for membership brought with it some new challenges. For example, Greece and Turkey in the early 1960s, as well as Spain and Portugal until the end of the 1970s, simply failed to satisfy the democratic criteria. Therefore, each enlargement cycle offered an occasion to elaborate on the requirements set before countries wishing to join the club.

Over time, the corpus of accession conditions increased, and their nature also changed in terms of determining more objective and measurable standards or benchmarks. The so-called Copenhagen criteria was set by the European Council at a time when it became certain that, due to the fundamental transformation in Central and Eastern Europe, the Union would expand by accepting new democracies (i.e. former socialist countries); it consolidated the previous practice and expanded the corpus of accession conditions. These criteria encompass political, economic, and legal standards: (1) stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and the protection of minorities; (2) the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union; and (3) the ability to take on the obligations of membership, including adherence to the aim of political, economic, and monetary union. After Copenhagen, the entire process was further institutionalised and subjected to more systematic and stricter control.¹⁰

Through a brief overview of each of the enlargement rounds, which is presented in the following chapters, we especially analyse the development of the requirements that candidate countries need to accomplish to become full members of the EU. This process through which the legal, political, and economic conditions are determined and set before the aspirant countries can be perceived as one of the forms of conditionality in the EU. Often assessed as its most successful application of conditionality,¹¹ it is in fact an *ex-ante* approach – that is, pre-accession conditionality is a process intended to ensure that candidate states are prepared to participate in the EU system once they enter the club.¹² In fact, conditions for aspirant countries are already imposed before the beginning of accession negotiations. Although this concept is usually associated with the enlargement processes beginning with the so-called eastward enlargement that started in the early 1990s, this article also covers

10 Hillion, 2004, pp. 2–3.

11 On different forms of conditionality and modes of their application in the EU context, see Becker, 2025, pp. 402–419.

12 According to Cremona and Shuibhne, pre-accession conditionality is ‘intended to ensure that a new Member State is prepared (in the different sense of that word) to participate in the Union system’. Cremona and Shuibhne, 2022, p. 172.

earlier rounds of enlargement. Our focus is nevertheless on more recent rounds of enlargement, negotiations, and requirements placed before candidate countries after the adoption of the Copenhagen criteria. However, respecting the fact that the first four enlargements in that sense were much less strict, we would like to point out that the entire process of pre-accession conditionality is in fact an evolving concept that has developed in parallel with the growth of the *acquis communautaire*, always with the aim of increasing the level of preparedness of both candidate states and the EU.¹³

2. History of Enlargement – From Six to 27 Member States

The EU that we know today has come a long way from three communities that were created in the 1950s. Both in 1951, when the European Coal and Steel Community (ECSC) was established by the Treaty of Paris, and in 1957, when the European Atomic Energy Community (Euroatom) and European Economic Community (EEC) were created by the Treaties of Rome, there were only six countries that firmly stood behind the integration project – Belgium, France, Germany, Italy, Luxembourg, and the Netherlands. However, it is important to point out that the first Community – that is, ECSC – was meant to be only the first of several organisations integrating different economic sectors, while the Treaty establishing the EEC adopted six years later made it clear that its signatories did not create a closed community. Moreover, already in the Preamble of the EEC Treaty, the six founding members were ‘calling upon the other peoples of Europe who share their ideal to join in their efforts’. In addition to the confirmation of the firm will and intention of establishing ‘the foundations of an ever closer union among the European peoples’ embedded in para. 1 of the EEC Treaty Preamble, a separate Article of the Treaty regulates the procedure for admitting new members. Namely, according to Art. 237, any European State may apply to become a member of the Community. The Council, to which such an application has to be addressed, shall decide upon it by means of a unanimous vote, after obtaining the opinion of the Commission. Finally, the conditions of admission, including the necessary amendments to the Treaty, are subject to an agreement between the member states and the applicant State. Any such agreement on accession of new member states has to be submitted to all existing member states for ratification in accordance with their respective constitutional rules.

The aim of creating an ever closer union has remained in the EU Treaties as well as on its political agenda ever since. In the 1983 Solemn Declaration on EU signed at the Stuttgart European Council, the then 10 heads of state and government confirmed ‘their commitment to progress towards an ever closer union among the

13 Blockmans, 2009, pp. 205–206.

peoples and member states of the European Community'.¹⁴ In accordance with the Solemn Declaration, representatives of member states adopted the 1986 Single European Act, which in its Preamble para. 1 expressed, 'the will... to transform relations as a whole among their States into a European Union'.¹⁵ In the Preamble of the Treaty on European Union (TEU) signed in Maastricht in 1992, the then 12 member states retained the objective of achieving the ever closer union, confirming that they are 'resolved to continue the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as closely as possible to the citizen in accordance with the principle of subsidiarity'. Furthermore, this intention is stipulated and thus fortified in Art. 1: 'This Treaty marks a new stage in the process of creating an ever closer union in which decisions are taken as closely as possible to the citizen'.¹⁶ The 1997 Amsterdam revision of TEU adds to the previous version a qualification that in such union, 'decisions are taken as openly as possible', and stipulation is retained in the 2001 Treaty of Nice. Finally, both references from previous Treaties are contained in the Lisbon Treaty: in the TEU, we can find them again in the Preamble and Art. 1, while the Treaty on the Functioning of the European Union (TFEU – renamed from the Treaty establishing the European Community (TEC)) in the Preamble also confirms the determination to 'lay the foundations of an ever closer union among the peoples of Europe'.¹⁷

2.1. Initial Interest for Cooperation and the First Round of Enlargement

It is quite clear that the six founding member states did not intend to create closed communities. Meanwhile, there has never been a lack of interest among countries to join the European integration process. The main factor that led countries to consider cooperation, *l'idée-force* behind the very idea of integration, always was and remains the same – securing a better future for the state and its society. As solely the economic cost of World War II was enormous, in the post-war period, economic rebuilding was among the top priorities of each state. In this sense, the successful cooperation of states at an international level in the direction of creating an economic union based on the integration of the economic sectors, common market, and customs union, among other domains, was attractive to many. It was also quite clear that the goals of those who created communities were never exclusively economic; they were much more ambitious and went in the direction of integrating politics. In the words of Paul-Henri Spaak: 'Those who drew up the Rome Treaty... did not think of it as essentially economic; they thought of it as a stage on the way to political union'.¹⁸

14 Solemn Declaration on European Union, European Council, Stuttgart, 19 June 1983.

15 Single European Act, Official Journal of the European Communities, L 169, Vol. 30, 29 June 1987.

16 Treaty on European Union, Official Journal C 191 of 29 July 1992.

17 Treaty on European Union, consolidated version OJ C 326 of 26 October 2012, p. 13; Treaty on the Functioning of the European Union, consolidated version OJ C 326 of 26 October 2012, p. 47.

18 See Urwin, 1995, p. 76.

In a very short period of time since the EEC Treaty came into force, it became evident that there is in fact a significant interest among other countries in joining the communities. Namely, initial approaches to the European Communities were made already in 1958 by Israel, as the first of several such unsuccessful attempts, followed by Greece and Turkey in 1959, with both countries eventually concluding an agreement with the European Communities on establishing associate status (Greece in 1961, Turkey in 1963), including the clause on a transitional period of 22 years to possible full membership. Furthermore, the first applications for accession and full membership were made just four years after the entry into force of the Treaties of Rome. It was Britain that lodged its first application to join the EEC on 10 August 1961, while Denmark and Ireland almost immediately followed suit, and Norway did the same the following year. Finally, until the end of 1962, one after another, Sweden, Austria, Switzerland, Portugal, and finally Spain and Malta, made requests for a special associate agreement with the EEC.¹⁹ Although this first round of interest did not materialise, primarily because French President de Gaulle declared a veto on British entry into the EEC in 1963, which resulted in the suspension of negotiations and consequently led to the withdrawal of other countries that were interested in joining, negotiations on joining continued already in the second half of the 1960s. After another unsuccessful attempt by the same four countries mainly due to another French veto on British membership in 1967, following de Gaulle's resignation as president in 1969, the early 1970s brought a new initiative towards their accession that this time, would finally be successfully completed. Although Norway withdrew from the process after a surprising negative popular vote on a referendum held in September 1972, Denmark, Ireland, and the United Kingdom became full members of the European Communities in January 1973.²⁰

All seven enlargements from 1973 until 2013 have witnessed the process of the so-called pre-accession conditionality, with the same aim to ensure that incoming countries are prepared to take on the rights and obligations of membership, but the first four enlargements were, in this sense, much easier.²¹ The first, so-called Northern enlargement was realised after relatively short official accession negotiations that were opened in 1970 and came to an end in 1972. The six member states discussed the negotiations for enlargement in detail, starting from the Hague Summit held in July 1969, where the policy of deepening and widening was examined, including extension of the Community's powers and responsibilities and strengthening of its institutions, as well as economic and monetary issues concerning common agricultural policy and the customs union. For France in particular, it was important that deepening complements and precedes enlargement. Although different complicated issues had to be solved in the pre-accession period, everything was made much easier by the fact that besides all candidate countries undoubtedly satisfying

19 Ibid., pp. 116–126.

20 Ibid., pp. 139–145.

21 Inglis, 2009, pp. 139–140.

the democratic criteria, their economies were closely connected, especially under the European Free Trade Association (EFTA). As a precondition for membership, the applicant countries had to adopt the entire body of Community legislation, known as the '*acquis communautaire*'.²²

2.2. Two Enlargements in the 1980s

The second and third rounds of enlargement, which brought about the admission of Greece to the European Community in 1981, and then Portugal and Spain in 1986, are commonly referred to as the Southern enlargement and are very often analysed as a whole. Unlike the previous round of enlargement in which the democratic criterion of applicant states was never questioned, the situation here was different. All three states had to undergo a transformation from autocracy and dictatorship to democracy, and the prospects for their accession in this sense emerged starting from the mid-1970s. Greece applied to join the Communities in 1975, while Portugal and Spain lodged their applications in 1977. All applicant countries shared certain common points: their level of economic development was significantly lower than that of the current member states; further, their accession to the Community was seen as a significant means to their country's international rehabilitation, political stabilisation, and economic modernisation. Indeed, at the Brussels European Council summit held in December 1978, 'the great political significance of enlarging the European Communities for the consolidation of democracy in Europe' was particularly stressed. If this enlargement is compared with the previous one from the Community's perspective, based on the policy of deepening and widening, one might conclude that the priorities have changed: while national political leaders had sought to consolidate the EC politically prior to the UK's accession, in the run-up to the Southern enlargement, they wanted to prepare the EC financially.²³ Finally, although certain problematic economic issues were highlighted in the negotiations, especially regarding the future financing of the common agricultural policy, reasons of a political-strategic nature prevailed in favour of further expansion.

2.3. Fourth Round of Enlargement

The enlargement in which Austria, Finland, and Sweden joined the European Community on 1 January 1995, was, on the whole, the least problematic of all. All three countries were long-term members of the EFTA, and relations between the Community and EFTA had been regulated by bilateral agreements on free trade already since 1972.²⁴ Therefore, economic relations have long been close, and all three candidate countries were well acquainted with the EU's existing policies and

22 Schramm, 2025, pp. 1–22.

23 Ibid., p. 9.

24 See Thirteenth Annual Report of the EFTA, Geneva, September 1973, pp. 7–8.

procedures. Numerous Community legislative acts, primarily the rules concerning the free market and especially so after the signing and entry into force of the Agreement on the European Economic Area, were respected in these countries even before their formal accession. In other words, many of the accession chapters, into which the negotiations were broken down, had thus already been covered.²⁵ In addition, all three countries had very high levels of economic development. At the same time, as one of the most important political issues, their neutral status, which was regarded as an obstacle for their accession during the Cold War, lost its significance after the disappearance of the division between the Eastern and Western Blocs. As these countries were actually ready for membership both politically and economically, negotiations went smoothly and could be quickly brought to an end. Accession negotiations officially started at the beginning of 1993, following a decision taken at the European Council meeting in Edinburgh in December 1992. For all the reasons previously mentioned, but especially because preparations for enlargement towards Central and Eastern Europe had already begun, political leaders of member states determined at the European Council summit held in Copenhagen in June 1993 that the fourth enlargement 'should become a reality by 1 January 1995'.

2.4. Essential Conditions – Eligibility Criteria

Since the entry into force of the TEU on 1 November 1993 until today, the accession of new members is governed by the same Art. 49 of the TEU (ex Art. O in the Maastricht Treaty, repealing provisions of Art. 98 of the ECSC Treaty, Art. 205 of the EAEC Treaty, and Art. 237 of the EEC Treaty already mentioned in the text). This also means that all the accessions to the EU, starting with the fourth round, were based on Art. 49 of the TEU. The Maastricht Treaty stipulated the following:

(1) Any European State may apply to become a Member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members. (2) 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 wording of the Art. was later changed in the Treaty of Amsterdam and the Treaty of Lisbon, which added that the applicant state must respect and commit to the principles (Amsterdam Treaty – liberty, democracy, respect for

25 Schramm, 2025.

human rights and fundamental freedoms, the rule of law),²⁶ that is, values that are outlined today in Art. 2 TEU (Lisbon), upon which the Union is founded: respect for human dignity; freedom; democracy; equality; the rule of law; and respect for human rights, including the rights of persons that belong to minorities. The aforementioned values, which are common to countries of the Union, form the basis of societies in which pluralism, non-discrimination, tolerance, justice, solidarity, and equality between women and men prevail.²⁷

Although it is true that the aforementioned requirement was introduced by the Treaty of Amsterdam in a precise form, we have already outlined that the values of democracy, rule of law, and human rights, in fact, always represented common standards shared by the member states and were deemed to be a fundamental requirement for accession. Thus, in 1978, the European Council concluded – following the 1977 Joint Declaration of the European Parliament, the Council, and the Commission that stressed the supreme importance of the protection of human rights – that ‘respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership of the European Communities’ (Annex D, Declaration on Democracy).²⁸

However, Art. 49 also stipulates another eligibility criteria according to which membership in the Union is opened to ‘any European State’ that shares the common values. In other words, the ‘European identity’ of the state is a basic condition that a country that applies for membership must satisfy. However, what precisely is meant by ‘European’? At first glance, one could start explaining the fact of European identity of the state based on the geographical criterion, but the notion of Europe encompasses various meanings; thus, interpretations of the Europeanness of a state could also be historical, cultural, as well as political. It is true that the interpretation of this condition has never been unequivocally defined, but EU institutions have presented various interpretations over the years. It is well known that in 1987, Morocco applied for membership in the European Communities, but the application was rejected because Morocco was not considered a European state.²⁹ At that occasion, the Council adhered to the geographical interpretation of Europe in which Morocco obviously

26 Treaty of Amsterdam, Art. 6(1) (ex Art. F): ‘1. The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the member states’. Consolidated version of the Treaty on European Union (97/C 340/02), Official Journal of the European Communities, C 340/145.

27 Treaty on European Union, Art. 2: ‘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 that belong to minorities. These values are common to member states in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail’. Treaty on European Union, consolidated version, OJ C 326 of 26 October 2012, p. 13.

28 Lenaerts and van Nuffel, 2005, pp. 358–359. See European Council, Conclusions of the Presidency, 7–8 April 1978 Copenhagen.

29 European Parliament, Legal Questions of Enlargement, Briefing no. 23, 19 May 1998; Mazur, 2024, pp. 105–126.

does not fit.³⁰ Meanwhile, in the case of Turkey, which also lodged an application to accede on 14 April 1987, the interpretation of its 'European Identity' took into account other criteria besides the geographical one, according to which the country is obviously mainly located in Asia. Recalling that historically, Turkey formed part of the so-called European concert, the European Parliament, the Council and the Commission have confirmed Turkey's eligibility. Another example that shows that the term 'European State' need not be interpreted in a strictly geographical sense is the case of Cyprus, which applied for membership in 1990. Conclusions of the Commission regarding the 'European Identity' of Cyprus, such as reference to the 'European culture and civilisation' that exists on the island for two thousand years (para. 44), as well as a reminder that political settlement in Cyprus will strengthen its ties with Europe (para. 45), clearly demonstrate that it is a criterion also subject to political assessment.³¹ The Commission also concluded that the 'European identity' is an open concept subject to review by each succeeding generation.

Besides these basic conditions that each state that applies for membership must satisfy, there is another set of criteria that relates to the applicant State's acceptance of the Community system, and its capacity to implement it. As the legal, economic, and political framework has developed over the years, the obligations of membership have become progressively more difficult to fulfil as they presuppose a functioning and competitive market economy, and an adequate legal and administrative framework in the public and private sectors. These requirements, recognised as the Copenhagen Criteria, including later additions, and the strict standards that were formulated respectively, were set as conditions before all countries that joined the Union in the third millennium.

3. Enlargements to Central and Eastern Europe and the Copenhagen Criteria

Although all four enlargement rounds described thus far took place under different conditions, their course and outcome were influenced by a special combination

30 W. Europe Bloc Bars Morocco as a Member, Los Angeles Times, 21 July 1987.

31 Commission, The challenge of enlargement: Commission opinion on the application by the Republic of Cyprus for membership, Bulletin of the European Communities, Supp. 5/93, Luxembourg, 1993, paras. 44 and 45: '44. Cyprus's geographical position, the deep-lying bonds which, for two thousand years, have located the island at the very fount of European culture and civilization, the intensity of the European influence apparent in the values shared by the people of Cyprus and in the conduct of the cultural, political, economic and social life of its citizens, the wealth of its contacts of every kind with the Community, all these confer on Cyprus, beyond all doubt, its European identity and character and confirm its vocation to belong to the Community. 45. A political settlement of the Cyprus question would serve only to reinforce this vocation and strengthen the ties which link Cyprus to Europe...'

of factors, namely specific national interests and interests in individual sectors, but also considerations about the functioning of the Community after accepting new members. The process of enlargement was characterised by and inseparably linked with the simultaneous deepening and widening of the integration process. Successive enlargements required significant reforms and the continued evolution of the Union, including its institutional and legal framework and decision-making process. However, the collapse of socialism in Europe, the opening of the process of democratic transition in these countries, and their turning towards the EU with the prospect of admission to membership, required a new approach and change in accession conditionality.

3.1. Towards the Largest Enlargement

The report presented by the Commission to the Lisbon European Council held in June 1992 examines the implications of further enlargement, all on the basis of the Treaty of Maastricht, which was signed on 7 February of the same year and by which, of course, the EU was established. At that moment, seven countries applied for membership (Turkey, Cyprus, Malta, Austria, Sweden, Finland, and Switzerland), while many others announced their intention to apply. The Report highlights the existence of new, dramatically changed contexts, both within the Community (completion of the single market, creation of the EU, transition to a single currency, introduction of a common foreign and security policy, etc.) as well as externally (end of the Cold War, emergence of new democracies, etc.), in which future accessions will take place. Acknowledging that the accession of new members will increase diversity and heterogeneity of the Union, the Commission resolutely emphasised that ‘widening must not be at the expense of deepening’.³²

The Commission highlighted that membership implies the acceptance of the *acquis communautaire*, presenting conditions for new members in detail – that is, a set of criteria including acceptance of the Community system and capacity to implement it, relating in particular to a functioning and competitive market economy, and an adequate legal and administrative framework in the public and private sectors, as well as acceptance and implementation of evolving common foreign and security policy.³³ In other words, to become members, applicant states must accept the rights and obligations, actual and potential, of the community system and its institutional framework.

The obligation of accepting the *acquis communautaire* means that they have to accept the contents, principles, and political objectives of the Treaties; the legislation adopted in their implementation; and the jurisprudence of the European Court of Justice. They are also obliged to accept all the declarations and resolutions adopted

32 Europe and the challenge of enlargement, European Commission, 24 June 1992, Bulletin of the European Communities, Supplement 3/92, p. 10.

33 Ibid., pp. 10–13.

in the Community framework, all international agreements concluded by the Community, as well as the agreements between member states connected with the Community's activities.

Careful reflection on the expected impact of future enlargements regarding the Community's effectiveness and overall functioning points out that the critical points are the application of the principle of subsidiarity; the need for reforms regarding the institutional framework to reduce the democratic deficit; as well as the need to strengthen the European Parliament; improve the composition, functioning, and decision-making process in Community institutions; and make necessary adaptations due to the increase in the number of official languages. Furthermore, a significant difference in terms of accession between certain groups of countries is highlighted. At the same time, the conclusion of agreements that will be appropriate to their specific situation, and should provide political dialogue with the Community and facilitate the process of economic preparation, is foreseen for all new European democracies. It was evident that for states of Central and Eastern Europe, and especially for countries that were 'emerging from Yugoslavia', a long and winding road lay ahead.

3.2. Fifth Round of Enlargement

Largest in terms of people and countries, the so-called Eastern enlargement included 10, mainly Central and Eastern European countries: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia. Bulgaria and Romania were also included in talks, but were separated later in the process due to unsatisfactory progress of the negotiations. In the period from March 1994 to June 1996, all countries applied for accession (the only exception was Malta, which officially reactivated its application for accession in 1998).³⁴ The decision that Cyprus and Malta would join the 10 CEE countries in the next phase of enlargement was adopted by the 1994 European Council in Essen, which also set out a pre-accession strategy with the aim of preparing applicant countries for the progressive adoption of the *acquis*.³⁵ It was based on the conclusions adopted at the 1993 meeting of the European Council in Copenhagen, which gave special attention to further enlargement of the EU, and has established three accession criteria – political, economic, and legal – already mentioned above in the text.³⁶ There is also the fourth criterion, adopted at the 1995 European Council in Madrid – this is the

34 Malta had been associated with the EEC since December 1970, while it became an applicant country in July 1990 (its application was then frozen since 1996). Cyprus also concluded an association agreement with the EEC in the 1970s, and had applied for accession in 1990. *The Fifth Enlargement*, CVCE, 2016.

35 European Council in Essen, Conclusions of the Presidency, 9–10 December 1994, Bulletin of the European Communities no. 12/94, p. I.13.

36 European Council in Copenhagen, Conclusions of the Presidency, 21–22 June 1993, SN 180/1/93 REV 1, p. 7. A. iii, p. 13.

so-called administrative criterion, concerning the adjustment of appropriate administrative structures with the aim of ensuring conditions for gradual and harmonious integration (strengthening of administrative capacity, creation of an efficient state administration system with the aim of ensuring an effective process of adoption, and implementation of the *acquis* of the EU). The list of accession conditions was further extended when the 1999 Helsinki European Council added a ‘good neighbourly relations’ criterion, which should secure that no conflicts are imported into the Union.

These criteria represented an understanding that Central and Eastern European countries would be admitted to the EU once they had met certain conditions, while several benchmarks have been established for assessing their progress towards economic and political compatibility with the EU.

3.2.1. *Application for Membership*

The accession procedure begins with submitting a state’s application to become a member of the Union. According to Art. 49, this request has to be addressed to the Council. The Council unanimously decides on such a request, but only after consulting the Commission and after receiving the consent of the European Parliament.

In 1997, the Commission presented a document called ‘Agenda 2000 – for a stronger and wider Union’, in which accession conditions were further elaborated, and an assessment on the basis of the Copenhagen accession criteria on each application for membership was made (although it also criticised the Copenhagen criteria because they are ‘broad in political and economic terms and go beyond the *acquis communautaire*’).³⁷ Based primarily on the questionnaire sent to each of the applicant countries, as well as on other sources including bilateral meetings, the Commission prepared individual opinions on each application for membership. The Commission’s general report in ‘Agenda 2000’ covers three sectors: political conditions (democracy and the rule of law, human rights, respect for minorities), economic conditions (the existence of a functioning market economy, the capacity to withstand competitive pressure and market forces within the Union), and other obligations of membership (the aims of political, economic, and monetary union; adoption of the *acquis*; administrative and judicial capacity to apply the *acquis*).³⁸

This document was prepared at the request of the European Council, which stated during its Luxembourg meeting held in December of the same year, among other points, that fulfilling the political criteria is a prerequisite for the opening of negotiations. The decision has been made to launch an accession process comprising all 10 Central and Eastern European applicant States and Cyprus. The accession process was based on the enhanced pre-accession strategy intended to enable all the applicant states of Central and Eastern Europe to align themselves as far as possible

37 Commission, *Agenda 2000 for a stronger and wider Union*, Brussels, 15 July 1997, COM(97) 2000 final, Vol. 1, p. 42.

38 *Ibid.*, pp. 41–53.

with the Union *acquis* prior to accession, accompanied by an analytical study of the Union *acquis* for each applicant State conducted individually. The European Council also invited the Commission to present regular reports concerning the progress of each of the candidate countries towards accession.³⁹

The Accession Process was launched at the ministerial meeting held on 30 March 1998 in Brussels, for all of the 10 CEE countries and Cyprus. Accession partnerships between the EU and each of the applicant countries were established, objectives to be achieved to satisfy the accession criteria were set in so-called road-maps, and the 'pre-accession' financial arrangements were agreed upon. Nevertheless, not all countries progressed at the same pace in fulfilling the criteria and respecting the commitments made.⁴⁰ Thus, in accordance with the Commission's recommendations, accession negotiations began in 'two waves': on 31 March 1998, negotiations opened with Cyprus, Hungary, Poland, Estonia, the Czech Republic, and Slovenia, while on 15 February 2000, formal negotiations were opened with six other applicants (Bulgaria, Latvia, Lithuania, Malta, Romania, and Slovakia).⁴¹

Although criteria that have been set before candidate countries on their way to full membership are obviously general in nature, several benchmarks for assessing their progress towards economic and political compatibility with the EU have later been set. It is also important to point out that the Copenhagen Conclusions specifically emphasised that 'the Union's capacity to absorb new members' has to be considered. Thus, the absorption or integration capacity also constitutes an important criterion in the accession process, though not formally added to the list.

3.2.2. Screening Process

The first stage in the accession process is screening, which is in fact an examination with the aims to compare national legislative and constitutional frameworks with the *acquis communautaire* and identify where national legislation will have to be changed (or transitional arrangements might be negotiated). Based on

39 European Council in Luxembourg, Conclusions of the Presidency, 12–13 December 1997, SN 180/1/93 REV 1, p. 7. A. III, p. 13.

40 Slovakia was the only country to fail the political criteria, while at that stage, Bulgaria, Latvia, Lithuania, and Romania did not meet economic criteria. As regards Malta, the Commission essentially updated its 1993 positive report and adopted a new one in February 1999. See European Commission, Report updating the Commission opinion on Malta's application for membership, EC Cons Doc 6247/99, 17 February 1999.

41 The 1999 Helsinki European Council also recognised Turkey as a candidate for accession. See European Council in Cardiff, Conclusions of the Presidency, 15–16 June 1998, SN 150/1/98 REV 1, p. 67., p. 24.; European Council in Helsinki, Conclusions of the Presidency, 10–11 December 1999.

a screening process through 31 chapters,⁴² following multilateral meetings that include a detailed presentation of each chapter of the *acquis* to the applicant states and bilateral meetings at which the realisation of the relevant chapters is examined in detail, the Commission reports to member states on potential problematic issues that might arise in negotiations on particular chapters. Through the screening process, a better understanding of the *acquis* and the process of its gradual adoption should be achieved. The screening of the *acquis* with the 11 candidate countries was launched in April 1998, arranged in the two waves explained above.⁴³

3.2.3. *Negotiations*

Following the positive decision of the Council, negotiations as part of the second stage of the accession process could commence. Focusing on the terms under which the applicant states adopt and implement the *acquis*, the accession negotiations are conducted in bilateral conferences – that is, individually with each candidate state. Representatives of all EU member states and negotiators for the applicant state participate in these meetings. Of course, the duration of the negotiations depends on the readiness of each individual candidate. The Luxembourg Council has also pointed out this fact, stating that conclusion of the negotiations and the ‘subsequent accession of the different applicant States will depend on the extent to which each complies with the Copenhagen criteria and on the Union’s ability to assimilate new members’.⁴⁴ The Commission proposes common negotiating positions for each chapter, while individual chapters are opened and closed for negotiations following the decision of the Council, acting as an intergovernmental conference. The most important criteria for closing the negotiations are full acceptance of the EU *acquis*, absence of requests for transitional periods, and satisfactory responses to the EU’s questions.

- (a) The pre-accession strategy, proposed in ‘Agenda 2000’ to improve the level and effectiveness of support for the candidate countries with the intention to help them align with the *acquis* as far as possible before accession, signif-

42 These chapters are as follows: (1) free movement of goods; (2) free movement for persons; (3) freedom to provide services; (4) free movement of capital; (5) company law; (6) competition policy; (7) agriculture; (8) fisheries; (9) transport policy; (10) taxation; (11) economic and monetary union; (12) statistics; (13) employment and social policy; energy; (15) industrial policy; (16) small and medium sized enterprises; (17) science and research; (18) education and training; (19) telecom and information technologies; (20) culture and audiovisual policy; (21) regional policy and co-ordination of structural elements; (22) environment; (23) consumers and health protection; (24) justice and home affairs; (25) customs union; (26) external relations; (27) common foreign and security policy; (28) financial control; (29) finance and budgetary provisions; (30) institutions; (31) other.

43 See Andrews C., *EU Enlargement: from Luxembourg to Helsinki and beyond*, House of Commons Library, Research Paper 00/62, 2000, pp. 1–39.

44 European Council in Luxembourg, *Conclusions of the Presidency*, 12–13 December 1997, SN 180/1/93 REV 1, para. 26.

icantly relied on Accession Partnerships as its main policy instrument. The Commission negotiated this document specifically with each member state so that it would reflect its real needs as closely as possible. The Accession Partnership set out the main short-term and medium-term priorities of the country, the financial assistance offered from the EU for implementing them, as well as the conditions for assistance. Different financial aid programmes were set up under the Accession Partnerships, out of which the PHARE programme was the main financial instrument of the pre-accession strategy. Participation in different programmes of the Union to familiarise the applicant states with EU policies and procedures was also envisaged as part of the strategy. Accession Partnerships with all 12 states were signed in the period between March 1998 and March 2000. The Commission uses annual reports to assess the progress made by the applicant state in meeting the priorities set. These reports follow the same methodology, securing objectivity in evaluating the progress of a state and comparability from year to year. They are based on the Copenhagen accession criteria, complemented with the Madrid criterion.

- (b) The Helsinki European Council adopted important decisions and novelties in the accession strategy, such as granting Turkey candidate status, and this particularly refers to the introduction of the principle of differentiation, securing that each candidate State in the negotiations ‘will be judged on its own merits’. This principle should apply both to the opening of various negotiating chapters and conduct of the negotiations. As it regards the countries included in the ‘second wave’, such an approach would make it possible for them to catch up within a reasonable period of time with those countries already in negotiations, under the condition that they have made sufficient progress in their preparations. It was emphasised that progress in negotiations must go hand in hand with progress in incorporating the *acquis* into legislation as well as with its implementation and enforcement.⁴⁵

3.2.4. Closing of Negotiations and Signing of the Accession Treaty

After the 2000 Nice European Council decided to speed up accession negotiations based on a strategy that included timetables specifying the various chapters that should be addressed during next two years, the 2001 Göteborg European Council set the objective of concluding negotiations by the end of 2002. The latter deadline applied only to those countries that were ready. It turned out that 10 countries were considered by the Commission to be ready for accession, as stated in its 2001 Report, while only Bulgaria and Romania were left out as they did not make satisfactory progress.

The final outcome of the negotiation process for the first 10 successful candidate countries was the signing of the Accession Treaty in Athens on 16 April 2003, which,

⁴⁵ European Council in Helsinki, Conclusions of the Presidency, 10–11 December 1999, para. 11.

according to Art. 49, contains the ‘conditions of admission and the adjustments to the Treaties on which the Union is founded, which such admission entails’. The Accession Agreement was then submitted for ratification by all the contracting states in accordance with their constitutional requirements. Interestingly, referendums, all with successful outcomes as regards the accession, were held in nine of the applicant countries, while in Cyprus, it was ratified in the national parliament.⁴⁶ In a situation where more than one country accedes to the Union, a single Accession Treaty is signed, meaning that in the process of ratification by each of the member states, there is no possibility for approving the accession of only some of the candidate states. Finally, the 10 countries joined the EU on 1 May 2004.

3.3. Sixth Round of Enlargement

The Treaty concerning the accession of the Republic of Bulgaria and Romania to the EU was signed in Luxembourg on 25th April 2005.⁴⁷ Their accession to the EU was postponed due to difficulties concerning their economies, as already noted by the Commission in 2000.⁴⁸ However, the low level of economic development was not the only obstacle on their way to membership; in the case of Romania, negotiations were closed after a last-minute compromise on the chapters of Justice and Home Affairs, Competition, and Environment. That the accession of both countries was burdened with problems is also evidenced by the fact that the post-negotiation period, from signing the Accession Treaty until the earliest possible date of accession, was set to 18 months, which was longer than that for previous applicants. More importantly, the Accession Treaty incorporated an increased number of safeguard clauses in case of unforeseen developments during the first years of accession. The introduction of these clauses and enhanced monitoring for Bulgaria and Romania indicated greater concern on the EU side with their implementation capacity and overall progress.⁴⁹ Nevertheless, both countries joined the EU on 1 January 2007.

By setting the conditions for accession and through their later development, the European Council indeed supplemented and re-defined the EU constitutional enlargement framework. The roles of institutions have been redefined, particularly visible in the example of the Commission, which has been given a pivotal role in the screening process through which the assessment of progress of candidate countries in adopting the *acquis* is carried out. Further, based on its regular annual reports – in which, within the pre-accession framework, it acts as a supervisor based on the conditions previously established by the Accession Partnership – the Council is enabled to make decisions on the conduct of negotiations as objectively as possible. The final approval remains with the European Council. It is therefore an institutionalised

46 Lenaerts and van Nuffel, 2005, pp. 18–19.

47 Treaty concerning the Accession of the Republic of Bulgaria and Romania to the European Union.

48 European Commission, Composite Paper, EC Cons Doc 12053/99, 13 October 1999, p. 30.

49 Nikolova, 2006, pp. 393–412.

monitoring of the candidates' progress that should enable decisions to be made, relying on the most objective criteria possible.

3.4. Seventh Round of Enlargement

Croatia's path to the EU was, in fact, over 12 years long. It formally started on 29 October 2001 by signing the Stabilisation and Association Agreement (SAA).⁵⁰ Croatia was the second country to sign an SAA with the EU,⁵¹ which represented the first formal contractual step in institutionalising its relationship with the EU. Besides the SAA, at the same time, the Interim Agreement was signed and the Joint Declaration of the Republic of Croatia and the EU on Political Dialogue was adopted.⁵² Croatia applied for EU membership on 21 February 2003 in Athens, and subsequently, the Council of the EU asked the Commission to prepare an opinion on Croatia's application bid.

In July 2003, the European Commission handed its Questionnaire to the Republic of Croatia. The questionnaire contained 4,560 questions from various areas concerning the functioning of the state, institutions, economy, etc. Although answering the questionnaire was an extensive job, it was completed within the given deadline of three months; thus, the answers were submitted to the European Commission on 9 October 2003. In December 2003 and January 2004, the European Commission sent an additional 184 questions that the Government of the Republic of Croatia answered. Based on the answers in the questionnaire as well as information from other sources, on 20 April 2004, the Commission gave a positive Opinion (Avis) on Croatia's application for membership in the EU. Based on a positive opinion regarding potential membership, the European Council granted Croatia the status of a candidate country.

The SAA entered into force on 1 February 2005. The European Council set 17 March 2005 as starting date for negotiations, provided that full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) is achieved. However, a confirmation of full cooperation with the ICTY was missing, which is why the starting date for opening negotiations was postponed. However, the Negotiating Framework was already adopted, meaning that negotiations would start when full cooperation with the ICTY is achieved.

50 The Croatian Parliament ratified the Stabilisation and Association Agreement on 5 December 2001, and the European Parliament confirmed it on December 12 of the same year.

51 The first country that signed the Stabilisation and Association Agreement with the European Union (as well as the Interim Agreement on trade and trade-related matters), as the first country of the Region to have successfully concluded negotiations on, was Macedonia (then under the name Former Yugoslav Republic of Macedonia – FYROM) on 9 April 2001. See SAA Agreement between the EU and the FYROM.

52 Stabilisation and Association Agreement between the EU and the Republic of Croatia, Official Journal L 026, 28/01/2005 pp. 0001–0002.

3.4.1. *Additional Conditions and New, Stricter Methodology*

Namely, as a contracting state of the Stabilization and Association Process (SAP), the Republic of Croatia had to respect certain additional conditions. In fact, the EU established special political criteria for the countries of the SAP, determining that they must achieve the following: (a) full cooperation with the ICTY; (b) visible progress in the return of refugees and the protection of minorities and minority rights; (c) progress in judicial reform; (d) full freedom of the media; (e) readiness for regional cooperation and the development of good neighbourly relations.

Upon receiving a positive report from the then ICTY Chief Prosecutor, the Council concluded that conditions for starting negotiations had been met. Accession negotiations were officially launched on 3 October 2005. It is important to point out that the Negotiating Framework agreed for Croatia was significantly strengthened in comparison with the one used for the accession of Central and Eastern European countries. The very process of negotiations on accession had taken over seven years (2005–2011); therefore, it lasted longer than that of any of the countries that joined the EU in 2004 and 2007. Further, the Croatian negotiations proceeded on the basis of different and stricter methodology criteria than those used in previous enlargements.

The screening of the Croatian legal system passed through 35 chapters, instead of 31 chapters as for candidate countries in previous rounds of enlargement. Four new chapters were added, out of which the new Chapter 23 – Judiciary and Fundamental Rights – was by far the most important novelty. Although its content was partially covered in the previous enlargements by the chapter dealing with justice, freedom, and security (retained also in the Croatian negotiations), as a newly introduced chapter, it became very important for Croatian accession. Together with the previously existing and now renumbered Chapter 24 – Justice, Freedom, and Security – it significantly determined the final stages of negotiations.⁵³ A focus on the rule of law issues – in particular, reform of the judiciary and the fight against organised crime and corruption – was the result of the new enlargement approach

53 The negotiating chapters of the *acquis* for Croatia were as follows: (1) free movement of goods, (2) freedom of movement for workers, (3) right of establishment and freedom to provide services, (4) free movement of capital, (5) public procurement, (6) company law, (7) intellectual property law, (8) competition policy, (9) financial services, (10) information society and media, (11) agriculture and rural development, (12) food safety, veterinary and phytosanitary policy, (13) fisheries, (14) transport policy, (15) energy, (16) taxation, (17) economic and monetary policy, (18) statistics, (19) social policy and employment, (20) enterprise and industrial policy, (21) trans-European networks, (22) regional policy and coordination of structural instruments, (23) judiciary and fundamental rights, (24) justice, freedom and security, (25) science and research, (26) education and culture, (27) environment, (28) consumer and health protection, (29) customs union, (30) external relations, (31) foreign, security and defence policy, (32) financial control, (33) financial and budgetary provisions, (34) institutions, and (35) other issues.

agreed upon in 2006, after accession negotiations with Bulgaria and Romania revealed obvious shortcomings in these key areas.⁵⁴

Further, a new instrument of opening and closing benchmarks (there were 127 in total), as one of the key elements in the new negotiations approach and methodology, was introduced. The extensive and more systematic use of benchmarks, providing concrete criteria for opening and closing individual chapters, represented significant novelties in the process. Benchmarks are in fact measurable targets, linked to key elements of the *acquis* chapter, which must be fulfilled by the candidate states. Closing benchmarks primarily concern legislative measures, administrative or judicial bodies, and a track record of implementation of the *acquis*, while for chapters in the economic field, they also include the criterion of being a functioning market economy.⁵⁵ Finally, it can be concluded that the increased number of chapters and stronger focus on the rule of law and political criteria in general than in previous negotiations, together with the suspension clause, safeguard clause, and more intensive use of benchmarks, turned Croatia's negotiations into more demanding process than it was in all previous cases.⁵⁶

Covering and adopting the *acquis communautaire* as described in 35 chapters required comprehensive modifications to Croatian legislation. Annually, on the grounds of new chapters and insights, further changes to the recently accepted legislation were required and urgently passed through the national parliamentary procedure. As expected, the crucial problems had been concentrated around the reform of judiciary and fundamental rights, justice, freedom and security, and financial responsibility. The *acquis communautaire* itself was over a 100,000 pages. Therefore, one can easily agree with the conclusion that very little could have actually been a subject of negotiation.⁵⁷

- (a) Monitoring: Each stage of the negotiation process was verified and closely monitored by the European Commission. The progress in acceptance, transposition, implementation, and enforcement of the EU *acquis* was analysed and evaluated in periodic monitoring reports. Once the negotiation process was completed successfully, the European Parliament and the Council of the EU gave a green light for Croatia's EU accession and negotiations were closed on 30 June 2011. Closing the negotiations further allowed for the signature of the Accession Treaty on 9 December 2011.⁵⁸ Art. 36 of the Accession Treaty required the Commission to closely monitor all commitments undertaken by

54 See Nozar, 2012, pp. 1–4.

55 See Communication from the Commission to the European Parliament and the Council – Enlargement Strategy and Main Challenges 2006–2007, COM (2006) 649 final, para. 3.1.

56 Butković and Samardžija, 2014, pp. 91–108.

57 Croatia amended its Constitution in 2010, aligning its constitutional and legal framework with the requirements for the approaching EU membership. See more in Bačić, 2023, pp. 105–133.

58 Decision of the Council of the European Union of 5 December 2011 on the admission of the Republic of Croatia to the European Union; Treaty on Accession between the EU and the Republic of Croatia, Official Journal of the EU, L 112/6., 24.4.2012.

Croatia in the accession negotiations, focusing, in particular, on competition policy; judiciary and fundamental rights; as well as justice, freedom, and security. As an integral part of its regular monitoring, the Commission has been issuing six-monthly assessments on the implementation of Croatia's commitments in these areas.

The Commission adopted a Monitoring Report on Croatia's accession preparations in April 2012 and a Comprehensive Monitoring Report in October 2012, with Croatia adopting an action plan to follow up on their recommendations. In line with Art. 36, this final Monitoring Report assessed the progress made by Croatia in its preparations for accession in the period between 1 September 2012 and 28 February 2013. This assessment was based on information gathered and analysed by the Commission, including input provided by Croatia; peer assessment missions; as well as information shared by the member states and international and civil society organisations, in their regular correspondence with the Commission. The assessment was also based on the findings of the updated half-yearly Monitoring Tables – a working tool aimed at following up all commitments undertaken by Croatia in the accession negotiations in detail.

- (b) Financial assistance: Prior to full EU membership, Croatia had at its disposal funding from the Instrument for Pre-Accession Assistance (IPA). IPA funding was used for financing projects for the harmonisation of national legislation with the *acquis communautaire*, the application of harmonised legislation, as well as preparations for the implementation of EU cohesion and agricultural policies. The IPA played a key role in the development of the management and control system for the use of EU funds. The EU pre-accession funds available to Croatia as an EU candidate country played an important role in its adjustment for membership. For instance, as a candidate country, Croatia used the Special Pre-Accession Program for Agriculture and Rural Development and the Instrument for Pre-Accession Assistance – Rural Development, one of the goals of which was to strengthen the competitiveness of businesses in the agriculture and food production sectors. IPA was a kind of continuation of the first generation of EU funds – CARDS, PHARE, ISPA, and SAPARD – and at the same time, a preparation for the implementation of ESI funds.

3.4.2. *Entering the Union and Lessons Learnt*

Before finally joining the EU, Croatia had to take one more step. Namely, a referendum on accession was held in January 2012, as the second state referendum after the 1991 independence referendum, and approximately 66% of voters decided in favour of Croatian accession to the EU. On 9 March, the Croatian Parliament unanimously ratified the Accession Treaty of the Republic of Croatia to the EU. Following the ratification procedure in each of the EU member states, as the first country of the so-called Western Balkans region and the second state from ex-Yugoslavia (after

Slovenia), Croatia joined the EU on 1 July 2013, remaining to this day, the last country to be accepted for membership in the Union.

Therefore, one might argue that Croatia has entered the EU prepared as no other country before it. Namely, no state before Croatia had the benchmarks for opening and closing chapters. Croatia's negotiations contained more chapters than any country had before. Croatia is also the first country to have a special chapter – the judiciary. It is important to highlight that in doing so, Croatia has created standards and benchmarks for countries to come in future enlargement rounds. Furthermore, it might be concluded that Croatia has created a basis for assessing the judicial situation of other member states, which can be seen as a major contribution to the functioning of the EU itself.

4. On the Road to the EU – What About Future Enlargements?

Croatia managed to enter the EU as the only nation from the group of Western Balkan countries, which is in fact a geopolitical term coined by the EU and US policy-makers in the early 1990s.⁵⁹ The European Council introduced this term at the 1998 summit in Vienna,⁶⁰ while in 2001, the EU launched its policy towards the Western Balkans in the form of the SAP. The EU decided to reform and strengthen its Regional Approach, already established in 1996, prompted by the conflict in Kosovo, which revealed the potential political effects of instability on neighbouring states, with the risk of destabilisation of Macedonia, Albania, and Montenegro, and which also had economic effects on countries of the region, including Romania and Bulgaria, which almost started accession negotiations.⁶¹ The European Commission therefore proposed the creation of a SAP for Albania, Bosnia and Herzegovina, Croatia, Macedonia, and the Federal Republic of Yugoslavia in May 1999, while in June of the same year, the Stability Pact was agreed upon – a political document whose strategic goal was stabilisation in South Eastern Europe by bringing the countries of the region closer to the Euro-Atlantic structures and strengthening mutual cooperation agreements and good neighbourly relations.⁶²

- (a) Stabilization and Association Process: The main goal of the whole process was therefore to stabilise the region with the prospect of future EU membership for candidate countries and potential candidates from the region, offering,

59 Bugajski, 2019; Dabrowski and Myachenkova, 2018.

60 See EU-Western Balkans Summit, The Future of the Western Balkans is in our Union, 14 December 2013.

61 Albania and Macedonia (FYROM) already had contractual relations with the EU in the form of Cooperation Agreements.

62 Stability Pact for South Eastern Europe, Cologne, 10 June 1999.

at the same time, certain flexibility in the approach of the EU towards each country. The SAP was conceived as a combination of further development of existing instruments of cooperation and new initiatives that place particular emphasis on the development of political dialogue, assistance for democratisation and civil society, regional cooperation in various fields – for example, the development of infrastructure and networks, along with the establishment of a free trade area and promotion of a market economy.⁶³

Although the SAP sets out common political and economic goals, each country's progress is judged on its own merits. The most important instrument of the process was SAA – a new kind of contractual relation, differentiated to consider the individual situation of each country, with a perspective of EU membership on the basis of the Amsterdam Treaty and once the Copenhagen criteria have been met.

Partner countries in the SAP framework were Albania, Bosnia and Herzegovina, Croatia, Macedonia, as well as Montenegro and Serbia (at that moment, these two countries formed the Federal Republic of Yugoslavia). At the Thessaloniki European Council and the EU–Western Balkans Summit held in the period from 19 to 21 June 2003, it was decided that the countries of the so-called Western Balkans may become EU members once they fulfil the accession criteria (Copenhagen, strengthened with the Madrid criterion) and the conditions set for SAP.⁶⁴ Further, since the Thessaloniki Summit, Kosovo was included in the framework of the SAP.⁶⁵ The Thessaloniki Declaration highlights democracy, rule of law, respect for human rights, the market economy, the peaceful resolution of conflicts, and regional cooperation as the values shared by all parties, and confirms the EU's 'unequivocal support to the European perspective of the Western Balkan countries'. It therefore clearly promised the Western Balkan countries full membership of the EU upon fulfilment of the criteria, and it also marked a significant shift in the EU's approach towards the region from post-conflict stabilisation (security) to European integration (enlargement).⁶⁶

Ten years after Thessaloniki, exactly when Croatia entered the EU, the remaining Western Balkan countries were divided in two categories: while Macedonia, Montenegro, and Serbia were officially granted candidate status, Albania, Bosnia and Herzegovina, and Kosovo were still considered potential candidates for membership. The next decade brought the opening of negotiations with almost all of these countries.

(b) Western Balkan countries in negotiations: Macedonia was the first country to start with negotiations on the SAA and the first country to conclude and sign the Agreement in April 2001. The Agreement came into force in April 2004, after ratification by all EU member states. In March 2004, Macedonia applied

63 The main financial instrument introduced to the region was the CARDS Programme (Community Assistance for Reconstruction, Development and Stabilisation), which identified several priority areas: institution building, home and justice affairs, cross-border cooperation, private sector development, and infrastructure development. See Schenker, 2008, pp. 1–19.

64 See Thessaloniki European Council, Presidency Conclusions, D/03/3, 19 and 20 June 2003.

65 See Baliqi, 2013, pp. 1–8.

66 Prifti, 2013, pp. 1–147.

for EU membership, following Croatia's example of not waiting for the SAA to come into force. After having completed and handed over the EU questionnaire in February 2005, Macedonia was granted candidate status at the European Council of December 2005. Accession negotiations with Macedonia were opened on 25 March 2020.

Accession negotiations for Albania were opened in the same occasion as for Macedonia. Albania applied for membership in April 2009, and in June 2014, it was granted candidate status.

Bosnia and Herzegovina applied for EU membership in February 2016. The European Council granted it candidate status in December 2022, and on 21 March 2024, it decided to open accession negotiations with the country.

As for Montenegro, the country applied for membership in December 2008; the SAA entered into force in May 2010; and in December of the same year, it was granted candidate status. The European Council decided to open negotiations with Montenegro in June 2012.

Serbia was granted candidate status in March 2012, while the SAA entered into force and accession negotiations were opened in 2013.

The SAA for Kosovo entered into force in April 2016, while its application for membership was submitted in December 2022. Kosovo still maintains the status of a potential candidate.

In addition to not all being in the same status in terms of candidacy, the countries of Western Balkans are not equally advanced in the negotiations. In this context, it is important to point out that after Croatia's negotiation process, the Commission began to favour an early start on the most difficult areas of reform, such as those in Chapter 23 on Judiciary and Fundamental Rights and Chapter 24 on Justice, Freedom, and Security. Namely, after the Bulgarian and Romanian negotiations, a new enlargement approach was adopted in 2006, and the focus was placed on rule of law issues – in particular, reform of the judiciary and the fight against organised crime and corruption. The Croatian experience has shown that Chapter 23 is by far the most important but also the most difficult novelty, where besides the 'hard acquis', Croatia also had to follow the best practice of the EU member states.⁶⁷

In June 2012, Montenegro was the first country to have to open precisely these two chapters in the early stages of its EU accession talks and close them last. The negotiations are characterised by the method of enhanced conditionality and introduction of new mechanisms, such as opening, intermediary, equilibrium, and closing benchmarks, followed by safeguard clauses to extend monitoring and more routine procedures to suspend negotiations. Candidate countries are required to demonstrate a solid record in reforms, while the EU is more determined in trying to resolve certain pending issues prior to accession.

(c) Revision of the enlargement methodology and new candidate countries: Nevertheless, before opening negotiations with Albania, Bosnia and Herzegovina,

67 See Turkalj, 2022, pp. 55–81.

and Macedonia, as well as with two countries that applied for membership only in 2022 and received candidate status the same year – Moldova⁶⁸ and Ukraine⁶⁹ – the EU decided to revise the enlargement methodology. This also meant that the application of a revised methodology had to be agreed with two countries with which negotiations had already begun. Namely, the European Commission adopted a Communication reviewing the accession methodology in February 2020, which was then endorsed by the Council of the EU in the following month, while its application for Montenegro and Serbia was agreed by the Council of the EU on 6 May 2021. In this sense, it should be noted that three other countries have candidate status, but Turkey and Kosovo were recently joined by Georgia, which was granted candidate status by the European Council in December 2023 (though its accession process is currently *de facto* halted). The review of the enlargement methodology aims at the ‘reinvigoration of the access process by making it more predictable, more credible, more dynamic and subject to stronger political steering’.⁷⁰

Under the revised methodology, 33 negotiating chapters are divided into six thematic clusters: Cluster 1 – Fundamentals; Cluster 2 – Internal market;⁷¹ Cluster 3 – Competitiveness and inclusive growth;⁷² Cluster 4 – Green agenda and sustainable

68 In December 2023, the European Council decided to open accession negotiations with the Republic of Moldova. In June 2024, the Council adopted the negotiating framework, while the Commission started the bilateral phase of the screening process in July 2024. For details, see European Commission, Republic of Moldova 2024 Report, SWD(2024) 699 final, Brussels, 30.10.2024.

69 In December 2023, the European Council decided to open accession negotiations with Ukraine. In June 2024, the Council adopted the negotiating framework, while the Commission started the bilateral phase of the screening process in July 2024. For details, see European Commission, Ukraine 2024 Report, SWD(2024) 699 final, Brussels, 30.10.2024.

70 European Commission, Communication on EU enlargement policy, COM(2024) 690 final, Brussels, 30. 10. 2024.

71 Cluster 2 (Internal market) includes nine chapters: (1) free movement of goods, (2) free movement for workers, (3) right of establishment and freedom to provide services, (4) free movement of capital, (6) company law, (7) intellectual property law, (8) competition policy, (9) financial services, (28) consumer and health protection.

72 Cluster 3 (Competitiveness and inclusive growth) includes eight chapters: (10) digital transformation and media, (16) taxation, (17) economic and monetary policy, (19) social policy and employment, (20) enterprise and industrial policy, (25) science and research, (26) education and culture, (29) customs union.

connectivity;⁷³ Cluster 5 – Resources, agriculture, and cohesion;⁷⁴ Cluster 6 – External relations.⁷⁵ Negotiations on each cluster open as a whole.

As we have seen from the Croatian example, the rule of law issues are of special significance in the accession process. Further, accession negotiations with Montenegro already started with the opening of the ‘rule of law chapters’. They are now placed at the very centre of the new methodology, inside Cluster 1 (Fundamentals) comprising five chapters, out of which Chapter 23 (Judiciary and Fundamental Rights) and Chapter 24 (Justice, Freedom, and Security) are of crucial importance. Negotiations on the Fundamentals cluster open first and close last.⁷⁶ As interim benchmarks for chapters 23 and 24 have been established, no chapter can be closed before these benchmarks have been met. Interestingly, four candidate countries (Albania, Montenegro, North Macedonia, and Serbia) are already covered by the 2024 Rule of Law Report together with member states. This Report includes national chapters, examining positive and negative developments in four key areas for the rule of law: the justice system, the anti-corruption framework, media pluralism and freedom, and other institutional issues related to checks and balances.⁷⁷

It seems that the revision of the enlargement methodology had an important political background. Namely, according to Commissioner O. Várhelyi, the main principle EU ‘wanted to re-establish was the credibility’ of the whole enlargement process, credibility that was

lost somewhat on the way by messages that there will be no enlargement, by not being able to decide on opening accession negotiations three times in a row, and also by not having a process that is capable of delivering progress in the enlargement.⁷⁸

In the same occasion of presenting the 2024 Enlargement Package, Vice-President of the Commission J. Borrell concluded that ‘a detailed assessment of the state of play in countries aspiring to be members of the EU’ is based on their individual efforts and is ‘merit-based with the rule of law at the core of it’.⁷⁹

73 Cluster 4 (Green agenda and sustainable connectivity) includes four chapters: (14) transport policy, (15) energy, (21) Trans-European networks, (27) environment and climate change.

74 Cluster 5 (Resources, agriculture, and cohesion) includes five chapters: (11) agriculture and rural development, (12) food safety, veterinary and phytosanitary policy, (13) fisheries and aquaculture, (22) regional policy and coordination of structural instruments, (33) financial and budgetary provisions.

75 Cluster 6 (External relations) includes two chapters: (30) external relations, (31) foreign, security and defence policy.

76 Besides Chapters 23 and 24, Cluster 1 (Fundamentals) comprises Chapter 5 (Public procurement), Chapter 18 (Statistics), and Chapter 32 (Financial control).

77 European Commission, 2024 Rule of Law Report, COM(2024) 800 final, Brussels, 24. 7. 2024. The Rule of Law Reports are published since 2020.

78 See European Commission – Speech, Remarks by Commissioner Várhelyi at the press conference on the 2024 Enlargement Package, Brussels, 30 October 2024.

79 See European Commission – Speech, Remarks by High Representative/Vice-President Borrell at the press conference on the 2024 Enlargement Package, Brussels, 30 October 2024.

5. Concluding Remarks

In line with the revised enlargement methodology, the EU regularly monitors the progress of candidate states. The Commission assesses the overall progress in accession preparations and negotiations through annual country reports, as well as through annual enlargement reports covering the progress of all countries included in the enlargement process, and proposes the way ahead for each country. In the last such Report, it is emphasised that EU accession remains a key driver of long-term security, peace, stability, and prosperity in Europe. According to the Commission, the enlargement process, which is currently open to 10 countries, entered a new phase in 2024, exactly 20 years after the biggest enlargement in EU history by 10 states. Although one might easily agree with their conclusion that ‘the enlargement process gained new momentum throughout 2023 and 2024’,⁸⁰ especially taking into account the opening of negotiations with Bosnia and Herzegovina, Moldova, and Ukraine, the direction in which the process will take each of the aspirant countries and the dynamics at which it will develop are, at this point, quite uncertain.

Even progress of all candidate countries towards EU membership seems to be the least likely, and in fact, impossible scenario. In addition, accession negotiations are currently underway with countries that became candidates more than 20 years ago, as well as with those that have only recently achieved this status, not to mention the status of Turkey. Therefore, it is important to remember that in ‘Agenda 2000’, the European Commission already concluded that each country should be evaluated based on its own progress; that the European Council repeatedly concluded that countries that have advanced in reforms do not have to wait for those who are slower in this process; and that progress towards the EU for each country depends on its own merit in meeting accession requirements and taking into consideration the EU’s capacity to absorb new members.⁸¹ Finally, no matter how strict and precise the entire accession process has become, with an increasing number of requirements placed before the candidate countries, determining more objective and measurable standards or benchmarks, it should be noted that enlargement decisions have always been very much motivated by political reasons.

80 European Commission, Communication on EU enlargement policy, COM(2024) 690 final, Brussels, 30 October 2024.

81 European Council, Presidency Conclusions, Brussels, 23-24 June 2022, para. 14. See Mazur, 2024, p. 124.

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