

# EXEMPTIONS AND DEROGATIONS FROM EU LAW



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### Abstract

This part of the book addresses special rules for acceding countries and subsequent transitional periods, or derogations given to individual EU Member States in the process of EU enlargement. The accession process itself is typical for each acceding country and is of a specific nature. At the same time, it is a complicated process, the consequences of which survive the accession itself and into the country's functioning as a Member State. Although in the accession process states are expected to meet the same basic conditions within the framework of political and economic criteria (the so-called Copenhagen criteria), the EU takes into account the historical, cultural, economic and social peculiarities of each acceding state. From an historical point of view, accession processes may be perceived as occurring in certain stages or waves. After the initial slight enlargement, when one, two or three countries joined the then European Communities (1973 – Denmark, Ireland and the UK, 1981 – Greece, 1986 – Portugal and Spain), the enlargement that followed was one of the EU itself. Its first enlargement in 1995 (Finland, Austria and Sweden), even before the revision of the Amsterdam Treaty, was a harbinger of the so-called Major Enlargement of 2004 (Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovakia and Slovenia). The next wave of enlargement was the accession of Bulgaria and Romania (2007), the last accession country, in 2013, was Croatia. In this part of the book, the specific particulars of special conditions and transitional periods, especially after 1995, will be analysed. The countries from the so-called Major Enlargement of 2004 will carry the main focus, but at a basic level, other countries will also be analysed.

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## 1. Introduction

The so-called ‘European integration project’, as originally set up by the six founding states<sup>1</sup> in 1950, gradually developed and gained popularity in other, at the time, non-member states. It was only a matter of time before the number of Member States would increase and the area of the European Communities would naturally expand.<sup>2</sup> Development of the economies of individual Member States predetermined the interest of other European countries to integrate into prosperous structures. At that time, the European Communities were at the beginning of their expansion. That is why they also approached the expansion of their membership base more cautiously. In the preamble, the founding treaties indirectly called on ‘the other nations of Europe, who share the same ideals, to join their efforts’.<sup>3</sup> Therefore, when after unsuccessful applications for enlargement in 1962 and 1964, the Treaty of Accession of Denmark, Ireland and the United Kingdom<sup>4</sup> was finally signed on 27 March 1972, the metaphor of a positive Pandora’s box was opened, bringing new challenges to the expansion of European integration.

On the one hand, the expansion process was inevitable, but on the other hand, it can be assessed that sometimes its course was intuitive. In their provisions, which began to represent a closer integration of countries,<sup>5</sup> the Treaties of Rome as such made it possible to submit applications for accession to the Community.

Any European state may apply for membership in the Community. Requests shall be addressed to the Council, which shall act unanimously after receiving the Commission’s opinion. The conditions of admission and the related necessary adjustments to the Treaties shall be the subject of an agreement between the Member States and

- 1 France, Germany, Italy, Belgium, the Netherlands and Luxembourg.
- 2 Hereinafter, we shall use the term to refer to the three Communities – the European Coal and Steel community (ECSC), the European Economic Community (EEC) and the European Atomic Energy Community (EURATOM).
- 3 Treaty establishing the European Economic Community of 17 April 1957.
- 4 Treaty between the Kingdom of Belgium, the Federal Republic of Germany, the French Republic, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, Member States of the European Communities, the Kingdom of Denmark, Ireland, the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland concerning the accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the EEC and to the European Atomic Energy Community.
- 5 In its introductory provisions, the Treaty immediately declares ‘Determined to lay the foundations for an ever-closer unification of the peoples of Europe...’.

the State requesting admission. This agreement shall be submitted for ratification by all the contracting States in accordance with their respective constitutional requirements. The Community may conclude agreements establishing an association with one or more States or international organisations, involving reciprocal rights and obligations, common action and special procedures. These agreements shall be concluded by the Council by unanimous decision after consultation with the Assembly. If such agreements are to entail an amendment to this Treaty, they shall first be adopted in accordance with the procedure laid down in Art. 236.<sup>6</sup>

At the same time, the original founding treaties give the impression that the original Member States respected each other's peculiarities and allowed for derogations from general obligations. Thus, for example, even though it was explicitly stated in the Treaty that 'any European state may apply for membership in the Community',<sup>7</sup> it is also directly stated that 'Member States agree to associate with the Community non-European countries and territories which have special relations with Belgium, France, Italy and the Netherlands'.<sup>8</sup> Under the Treaty, the purpose of such association is

to promote the economic and social development of the countries and territories and to establish close economic relations between them and the Community as a whole. In accordance with the principles set out in the preamble to this Treaty, association shall serve primarily to further the interests and prosperity of the inhabitants of these countries and territories in order to lead them to the economic, social and cultural development to which they aspire.<sup>9</sup>

These provisions make perceptible the legal basis for derogations from the established rules and the willingness of the Communities to treat each Member State individually, including the acceding countries. At the same time, the above-mentioned Arts declare the peculiarity of interest in the economic, social and cultural development of states, which exists to such an extent that it entitles the state to certain derogations in relation to the Community.

In connection with the above, it is also appropriate to perceive provision no. 136 of the Treaty establishing the European Economic Community (EEC), according to which

6 Art. 236 and 237 of the Treaty establishing the European Economic Community.

7 Art. 236 of the Treaty establishing the European Economic Community.

8 Art. 131 of the Treaty establishing the European Economic Community.

9 Thus, for example, pursuant to Art. 227, Algeria and the French overseas departments are subject to the general and specific provisions of the Treaty relating to the free movement of goods, agriculture, with the exception of Art. 40 para. 4, liberalisation of services, competition rules, safeguard measures as defined in Arts. 108, 109 and 226, and authorities.

The details of the association of countries and territories with the Community and its procedure shall be laid down in an initial period of five years after the entry into force of this Treaty by the implementing convention annexed to this Treaty.<sup>10</sup>

This provision may be considered the legal basis for the so-called transitional periods, within which the Community allows a special legal regime for the so-called settlement of differences and gradual balancing of the stages of integration.

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## 2. Special Rules or Derogations?

The linguistic meaning of the word ‘derogation’ or the phrase ‘special rules’, comes with a connotation of dissatisfaction, specific status, better position or privilege. Therefore, the question naturally arises as to what (or for whom) the derogations are good for and what their significance is. It is also worth posing the question as to whether it even makes sense to grant them.

As mentioned above, the European Communities cared about possible enlargement. The issue of broader European integration seemed to be interesting for both the acceding, but also for the existing member countries. Naturally, this required negotiations, which resulted in conditions favourable to both parties. At this stage of enlargement, derogations were not discussed. It was rather the specific particulars for the acceding countries that the Community would provide them with, in order to more successfully harmonise their legal systems with the so-called *acquis communautaire* of the European Communities. Thus, upon the first enlargement of the European Communities in 1973, the new Member States were not granted such derogations that would be comparable to those of the enlargement of the European Union (especially the so-called ‘Major Enlargement of 2004’). On the other hand, it should be noted that certain specificities were also necessary in order to protect the European Communities, particularly within the context of the subsequent opening of the internal market or in the context of trade policy. With later enlargements, accession negotiations were already more detailed and could also include transitional periods or specific arrangements for the new Member States. However, upon the first enlargement in 1973, such derogations were not an important part of the accession process. Therefore, if a certain derogation is mentioned in connection with the first

10 In this sense, the Convention amending the Treaty establishing the European Economic Community was adopted in order to enable the application of the special system of association provided for in Part IV of the Treaty to the Netherlands Antilles and the Protocol on imports into the European Economic Community of petroleum products refined in the Netherlands Antilles (64/534/EEC) of 13.11.1962 - in accordance with this Protocol, Member States undertake to grant tariff advantages to petroleum products refined in the Netherlands Antilles resulting from the accession of the Netherlands Antilles to the Community (Art. 2).

enlargement of the European Communities, it means only specificities in relation to a particular acceding country.

The special rules for acceding countries and possible derogations from the law are, therefore, relevant for both parties – for the European Communities and for the acceding country. They take into account various specific aspects, and that is why they cannot be unified. They have certain common features, that is, based on all stages of enlargement, we can perceive certain policies in which the acceding countries are interested in specific conditions (e.g., the common agricultural policy). At the same time, sectors are also apparent where the European Communities, or the European Union, is interested in certain transitional periods in order to protect itself or existing Member States (e.g., free movement of workers on the internal market). Special rules and derogations have gradually taken various factors into account, including economic, geographical, social, demographic, political, historical, sociological, territorial, legal environment, or the level of self-government. These factors were assessed from both the position of the acceding countries and the *acquis communautaire*, as well as from the position of existing individual Member States.

Based on their respective development, we can divide them into: (a) Special rules for acceding countries before 1992; (b) Special rules and derogations for acceding countries after 1992; (c) Transitional periods.

Based on duration, we can identify: (a) Temporary special rules and derogations – these are usually all limited by a transitional period or a transitional phase of the country's integration into the common market. (b) Permanent special rules and derogations – e.g., exceptions in connection with the non-application of the EURO currency, or on the basis of pre-negotiated protocols.<sup>11</sup>

Before the creation of the EU, the European Community had expanded three times.<sup>12</sup> The enlargement process took place on the basis of association agreements and certain emerging principles.<sup>13</sup> In simple terms, we can say that the acceding countries undertook to align their legal system with the *acquis communautaire* but, at the same time, they were provided with special rules reflecting the specificities

11 Protocol No. 16 – on certain provisions relating to Denmark. The High Contracting Parties, considering that the Danish Constitution contains provisions according to which, before Denmark renounces the exception, it may require a referendum, in view of the fact that on 3 November 1993 the Government of Denmark notified the Council of its intention not to participate in the third stage of Economic and Monetary Union, have agreed on the following provisions, which are annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union: in view of the notification made by the Government of Denmark to the Council on 3 November 1993, Denmark is covered by derogation. As a result of the derogation, all Arts and provisions of the Treaties and the Statute of the ESCB and the ECB containing derogations apply to Denmark. The derogation may be abrogated in accordance with the procedure laid down in Art. 140 of the Treaty on the Functioning of the European Union, which may only be invoked at the initiative of Denmark.

12 1973 – United Kingdom, Ireland, Denmark; 1981 – Greece; 1986 – Spain, Portugal.

13 For example, countries wishing to join the European Communities must have a democratic state system, a functioning market economy, be able to participate in the customs union and the emerging internal market and adhere to common objectives.

of the country in question.<sup>14</sup> Based on a certain generalisation, we can recognise the following general conditions that were required from countries in the process of accession to the European Communities at the beginning of enlargement: (1) Political and economic stability – Countries had to demonstrate political stability and the ability to implement EEC rules concerning the free movement of goods, persons, services and capital, as well as the harmonisation of economic policies and legal standards. (2) Improvement of economic relations – Each of these countries had to prove that their economy was sufficiently compatible with the EEC common market. This meant that their trade and economic policies had to adapt to EEC rules and standards. (3) Commitment to integration – Countries had to commit to further integrate and implement common EEC policies such as agricultural subsidies, trade policy and practices of economic competition. (4) Lowering trade barriers – Joining the EEC meant lowering trade barriers and tariffs between Member States, which required an adjustment of the trade policies of the countries that wanted to join. (5) Level playing field for free movement of people and goods – Countries had to adopt the principles of free movement of goods, services, capital and labour, which meant facilitating migration and trade between Member States.

As part of the aforementioned requirements regarding the economy, legislation and political commitments, the countries subsequently negotiated a temporary special status, specific to the conditions of the country, which are listed in the second part of this chapter.

A slightly different situation occurred after the creation of the EU, when the number of Member States was already twice that of the founding states. The prospect of development was favourable for further enlargements, so in an effort to simplify the rather complex processes that were emerging, in June 1993 in Copenhagen, the European Council adopted the so-called Copenhagen criteria, setting out the basic rules of the accession process. These criteria are also perceived as a practical indicator of whether the state is based on solid democratic foundations and intends to respect the values of the Union. During the membership negotiations, by harmonising its law, the candidate country not only prepared for the implementation of EU law and standards, but also set forth its own requirements in the negotiations, which were reflected in the derogations granted.<sup>15</sup>

The Copenhagen criteria are still perceived as the so-called basic convergence criteria (political and economic), the fulfilment of which is a prerequisite for the accession of associated countries to the EU. Associated countries must respect democratic principles, must meet the requirements of the *acquis communautaire*, must have a functioning market economy, must accept the objectives of economic, monetary and political union in the EU, and must be competitive. At the same time, it is

14 European Commission, no date.

15 During the negotiations, the Commission shall monitor the progress of the candidate country and inform the Council and the European Parliament thereof through regular reports and communications.

in the interest of the EU to accept a new member without jeopardising its integration dynamics. The Copenhagen criteria go beyond the *acquis communautaire*. However, even meeting these criteria does not mean automatic entry into the EU.

The Copenhagen criteria were created before the accession of the countries of Central and Eastern Europe. European leaders of that time responded to the difficult and specific circumstances of the late 1980s. The face of Europe was radically changing, and a number of states appeared that wanted to move away from the East and integrate into European structures. The European Union faced its greatest enlargement and a very difficult period where it needed to support the former socialist countries in their liberalisation and transformation into democratic countries.<sup>16</sup> This process can be divided into three areas. Political criteria require the stability of institutions that guarantee democracy, the rule of law, human rights and the protection of minorities. Economic ones, in turn, include a functioning market economy in the state and resistance to competitive pressure within the EU. The third area consists of criteria related to the country's ability to implement the *acquis communautaire*, i.e., European legislation and its correct application.

Regarding specific rules and derogations, the EU is in favour of granting temporary derogations and transitional periods for the gradual but smooth integration of the acceding country. It is reluctant to grant permanent derogations (opt-outs), and it has granted only a few of these. Denmark and Ireland benefit from participation in the Schengen area; Poland from the full application of the EU Charter of Fundamental Rights; Denmark from participation in measures in the area of freedom, security and justice, which until 2022 also had an exemption from participation in EU decisions and actions with implications on defence.<sup>17</sup> Permanent derogations were also typical for the United Kingdom, but they became irrelevant after its official withdrawal from the EU. In this context, it is also important to note that in 2019, the European Parliament expressed its opposition to permanent derogations from EU law and proposed their termination at the next revision of the Treaties and primary law, indicating possible future changes in the approach to derogations within the EU<sup>18</sup> as well.

16 However, European leaders knew that they had to complete the internal reform of the Community first. This was represented by the Maastricht Treaty, which was signed in 1991 and which clarified the issues of deepening cooperation. Thus, the Union could consider further enlargement.

17 On 1 June 2022, Denmark decided in a referendum to abolish the derogation according to which they did not have to participate in EU defence policies. As many as 67 percent of Danes who participated in the referendum were in favour of joining the common defence of the bloc. This decision is perceived as a consequence of the outbreak of war in Ukraine. EURACTIV.sk, 2022.

18 EU Monitor, 2019.

### 3. Specific Rules for Accession Processes Before Creation of the European Union (up to 1992)

#### 3.1. *United Kingdom, Ireland and Denmark*

As already mentioned, the will of certain countries to join the European Communities were apparent relatively early on in its existence, but the first enlargement only took place in 1973, when Denmark, Ireland and the United Kingdom became new Member States.<sup>19</sup> It was natural that the acceding countries had to fulfil the general conditions for joining the European Communities and adapt their legal system to the existing legal system of the Communities, especially since the original member countries were not equally inclined to the enlargement of the Communities, and the process of the first enlargement was accompanied by an initial rejection of attitudes. In 1962, the United Kingdom, Ireland, Norway and Denmark formally requested the EEC to open accession negotiations. At that time, the four countries were part of their own association, called the European Free Trade Association (EFTA), which formed as a competitive community without the intention of deeper integration. The initiator of the accession negotiations was the United Kingdom, seeing the success and further potential of the larger emerging common market. France, through its then-president Charles de Gaulle, vetoed accession in January 1963, among other things, for the fear that the United Kingdom would become the so-called 'Trojan horse' of the USA, against which de Gaulle tried to position Europe and France in a reserved manner. Out of solidarity with the United Kingdom, Norway, Denmark and Ireland also withdrew their respective accession applications. Things ran a similar course, when in 1967,<sup>20</sup> the first enlargement finally took place without Norway, which to this day is still not part of the European Union. Thus, as part of this first enlargement, the states had to fulfil general (common) conditions, which for all three countries included a commitment to adopt the rules of the EEC, the opening of markets and the adaptation of the common trade policy. It was during this period that the special specificities of the acceding countries were formed and the idea that the European Communities would accept certain derogations from the implementation of the so-called Community law for the newly acceding countries was admitted.

- 19 Yet the accession of the United Kingdom was vetoed twice by France. Paradoxically, the determination of the United Kingdom and its efforts to try to enter up to three times was clearly negated in the first attempt to leave the European Union. The impetus was a referendum on withdrawal (the so-called Brexit referendum), the positive outcome of which was expected by only a few.
- 20 The negative attitude of France changed only after Charles De Gaulle left the presidential office.

### *3.1.1. Common Specific Provisions in the Framework of Accession*

The accession of Denmark, Ireland and the United Kingdom to the European Communities (the predecessor of the European Union) in 1973 was a significant event not only in terms of the enlargement of the Communities, but also globally. By enlarging the number of their members, the European Community demonstrated its openness to other countries of Europe. The long-awaited building of a united Europe began with this step. Entry conditions naturally varied for those four countries depending on their specific circumstances and requirements, but there were also some common factors that influenced their entry. Each country was granted certain specificities in the area of the common agricultural policy and trade relations, which concerned their own economic interests. Thus, the United Kingdom, Denmark and Ireland negotiated a number of specificities and specific conditions relating to various sectors, in particular agriculture, trade and fisheries. This was important to ensure the smooth integration of these countries into the European Communities, taking into account their national interests and specific economic and political conditions. All three countries (the United Kingdom especially), already having trade ties or specific trade blocs with their former colonies, received certain exemptions and specific adjustments in the area of customs policy. This allowed them to trade more flexibly with some of the country's non-EEC trading partners (e.g., British traders with former colonies). In addition, each country had its own circumstances within the framework of accession, which were reflected in the peculiarities specific to that country alone.

### *3.1.2. Special Accession Exceptions*

#### *3.1.2.1. The United Kingdom*

As part of its accession, and also as a result of repeated negotiations during unsuccessful attempts at accession, the United Kingdom achieved substantial derogations for itself, especially in the field of agriculture and colonial trade relations. It gained some flexibility in agricultural policy and could retain part of its historical trade relations, especially with former colonies, which are often of a sensitive nature in British politics.

#### *3.1.2.2. Denmark*

This country also joined the negotiations for accession to the EEC in the mid-1960s, but its approach was more restrained until political and economic conditions were clarified. Denmark was willing to accept EEC conditions, but with some adjustments to allow for its specific national interests. It was interested in protecting its agricultural policy and obtained derogations in this area, as well as in the field of fisheries. It also retained the possibility of signing cooperation agreements with

other countries, which needed to allow for some form of flexibility in trade relations. The aforementioned Protocol No. 16 on certain provisions relating to Denmark, according to which Denmark retains its own currency, currently applies to the currency and the ECB.

### 3.1.2.3. Ireland

Ireland's position was slightly different, as it was heavily dependent on trade with Great Britain. Therefore, it was also interested in improving economic relations with other EEC Member States. For Ireland, accession to the EEC common market meant the opening of the market for products and services, which improved trade relations, especially in the field of agriculture and production. Ireland was granted fewer derogations than Denmark and Britain, but on the other hand, it was allowed some flexibility in the implementation of the common agricultural policy and secured some benefits under agricultural subsidies.

### 3.2. *Greece*

Another acceding country was Greece (1st January 1981). Following the example of the accession of the previous countries, Greece, too, was granted a number of specific derogations and transitional periods to allow it to quicker adapt to European standards and policies. These consisted of exceptions, especially in the field of agriculture, economic policy and the free movement of workers. As far as the common agricultural policy is concerned, Greece obtained derogations for its implementation. The transitional period in this area lasted four years (until 1985). During this period, Greece had access to agricultural subsidies, but with some deviations in order to adapt its agricultural production and implement European standards. Greece had a very strong agricultural sector, which represented a significant part of its economy. At the beginning of EEC membership, Greece was one of the countries that negotiated special conditions in the field of the Common Agricultural Policy (CAP). These conditions allowed it to obtain higher agricultural subsidies compared to other Member States in order to help close the large differences in agricultural productivity between Greece and the older EEC members. Greece received financial assistance to modernise its agricultural industry, which at the time suffered from low productivity and was lagging behind other Western European countries from a technological point of view. This programme was implemented to help increase the competitiveness of Greek agriculture. Greece also had specific trade advantages when it came to trade with the Mediterranean, which was advantageous for its export products (e.g., olive oil).

It also had certain derogations from complying with the prescribed budgetary rules and standards in the area of economic and monetary policy, particularly with regards to budget deficits and public finances. This meant that Greece had some time

(five years) to improve its fiscal discipline and adapt to public spending and deficit requirements.

Another area in which Greece applied the transitional period was with the labour market of other EU Member States. Other Member States could thus impose restrictions on the access of Greek workers to their labour markets for several years. This transitional period lasted five years, during which the restrictions for individual categories of workers were gradually relaxed.

The longest transitional period (12 years) was granted to Greece in the area of customs and trade policy. At the beginning of its EEC membership, the competitiveness of Greece was weaker in many sectors which required time to adjust its prices and products in order to meet EEC standards. These measures were intended to help the country adapt to EEC rules and improve the competitiveness of its economy. All these exceptions led to a gradual adaptation of the Greek economy to the rules of the common market and enabled it to ensure stability to aid its integration into the common market, as well as European political and economic structures. Thus, Greece gained significant advantages and support at the beginning of its EEC membership, which was intended to help the country overcome the economic and development disparities that existed between Greece and the Western European countries.

### ***3.3. Portugal and Spain***

#### ***3.3.1. Portugal***

During the next phase of enlargement, Portugal joined the European Communities together with Spain (1st January 1986). As a result, the number of Member States before the EU was established stood at 12. Similarly to the accession case of Greece, Portugal had a number of specificities and transitional periods, which concerned in particular the common agricultural policy, the free movement of workers, as well as customs and economic policy. In addition, it obtained a specific position in the areas of fisheries and agricultural quotas. In the area of the Common Agricultural Policy (CAP), the transitional period lasted five years. As part of the gradual transition to the common market, the main objective was to support the modernisation of Portuguese agriculture. During the CAP transition period, the access of Portuguese citizens to the labour markets of other Member States was restricted, and it was not until 1991 that full freedom of movement for workers was achieved in this respect. The longest transitional period concerned customs and trade policy (12 years), as well as exceptions in the field of fisheries and agricultural quotas, which lasted until 1996 (10 years).

### 3.3.2. Spain

Spain and Portugal faced similar conditions when entering the European Communities; both countries had recently come out of long periods of dictatorship and needed some time to harmonise their legal systems. Compared to Portugal, Spain had slightly more special conditions and transitional periods in various sectors. An area where all acceding countries demanded a specific position, i.e., the Common Agricultural Policy (CAP), was more challenging for Spain. Its agricultural sector was stronger and more dependent on domestic subventions, so Spain needed more derogations and a longer transitional period (until 1999). In the area of trade policy, both countries had transitional periods to eliminate customs duties and unify the trade system, but Spain had more sectoral exemptions (for example in the area of fisheries and agricultural products) than Portugal. The transitional period for the full trade liberalisation and tariff elimination lasted until 1992. During this period, tariffs and duties were gradually reduced on Spanish products and products imported from the EEC states. Similarly, the transitional periods in the field of VAT harmonisation and tax policies lasted until 1992, when Spain adapted its tax legislation to the rules of Community law. In terms of restrictions on the free movement of workers between Spain and some European Community Area (EEA) countries, and subsequently the EU, the transitional period lasted until 1994, when the labour market was opened fully. These exceptions and transitional periods were part of a broader integration process that allowed states to gradually integrate into the common European system, while gradually reducing the gap between themselves and other Member States as well.

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## 4. Particular Features of Accession Processes After 1992 – After the Creation of the European Union

The Maastricht Treaty was a significant revision treaty under primary law, which, among other essential legal facts, prepared the European Union for further enlargement. It set a clearer framework for assessing candidate countries' readiness for EU membership.<sup>21</sup> It stressed the need for candidate countries to fulfil not only the economic but also the political conditions and laid the basis for a gradual process of accession negotiations and evaluation of the progress of candidate countries. It laid the foundations for a more consistent and comprehensive approach to EU enlargement, which was further developed and refined in the following years, *inter alia*, it introduced the requirement that each current Member State and the European Parliament must unanimously agree to any enlargement of the EU. All the conditions previously

<sup>21</sup> Gabel, 2025.

established for each country applying for membership in the European Communities continued to apply to the process of integration. In addition, the Treaty of the European Union laid down basic conditions (Art. 49) and principles (Art. 6, para. 1), which must be fulfilled by all countries that want to become the EU members.<sup>22</sup> The basic criteria constituting the essential conditions for the candidate countries were: (a) the creation of stable institutions that would guarantee democracy, the rule of law, human rights and respect for and the protection of minorities; (b) a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; (c) the ability to assume the obligations of membership, including the ability to effectively implement the rules, standards and policies that make up the body of EU law; (d) compliance with the objectives of political, economic and monetary union; and (e) having a stable public administration, with the ability to adopt and implement EU legislation.<sup>23</sup>

As early as December 1994, at the European Council meeting in Essen, these conditions became part of a broader material, known as the 'Pre-Accession Strategy', which combined the European Agreements and the PHARE Programme into a single whole, as a specific policy towards the candidate countries. At the following European Council meeting in December 1995, the so-called White Paper on the Single Market, which specified 'compliance with the objectives of political, economic and monetary union' and added the stability of the candidates' economic and monetary environment to the entry conditions, was accepted. The EU conceived the White Paper as a document to be adopted by candidates as a guideline (as well as a condition for full membership) for economic reforms and their sequence. Such clarification was made 'in connection with the creation of conditions for the gradual and harmonious integration of candidate countries'.<sup>24</sup> In practice, this meant that candidate countries would have to gradually adopt EU legislative standards, which mainly focused on the liberalisation of external economic relations and regulated trade in goods and services on the internal market. The White Paper and the Structured Dialogue also became part of the pre-accession strategy as instruments to accelerate the acceptance of EU conditions. After clarifying and adding further criteria for entry, the monitoring process became even more extensive and affected new areas, in particular the reform of state and public administration, the legal system and also the rights of ethnic minorities. Thus, the conditions for accession to the Union kept changing and were not stable, rendering the general view of the whole process

22 First of all, geographically it is a European state that respects and promotes the fundamental values of the EU, such as respect for human dignity, freedom, democracy, equality, the rule of law, human rights, including the rights of persons belonging to minorities. At the same time, the state has a functioning market economy, achieves the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; and demonstrates the ability to take over the law of the Union, including commitment to the goals of political, economic and monetary union.

23 European Union, no date.

24 Figel' and Adamiš, 2004, p. 12.

uncertain and unpredictable by the candidate countries, as several enlargement options were discussed, but none was officially adopted. Individual governments had to prepare their own national plans for the adoption of the *acquis*. The political criteria were gradually tightened and made more precise in individual negotiations, with the structured dialogue serving as the main tool for the implementation and mediation of conditionality. This was also indicated by the first reports (*avis*) prepared and published by the Commission. The Commission focused on evaluating the candidate countries under the Copenhagen criteria and assessed the readiness of countries to join the Union accordingly.

#### 4.1. Finland, Austria and Sweden – 1995

Finland, Austria and Sweden joined the European Union on 1st January 1995, but each of these countries had their own transitional periods in different areas following accession, which varied according to the needs and specificities of these states. This expansion followed the period of neutrality of these countries during the Cold War and was mainly motivated by the economic challenges of the 1980s and access to the EU single market.<sup>25</sup> Also in this respect, some common transitional periods and adjustments were agreed, e.g., all three countries had a transitional period for the full implementation of the EU *acquis communautaire*, as well as for the implementation of the common agricultural policy with the gradual introduction of compensatory payments. There was also a transitional period for the full implementation of free movement of workers for the new Member States.<sup>26</sup> Preparations for joining the eurozone were postponed to a later date, and Sweden is not a member of the eurozone to this day. All three countries negotiated certain derogations from their contributions to the EU budget when they joined the EU. Temporarily reduced contributions helped them cover the high costs of accession.

##### 4.1.1. Finland

In addition to these common derogations and transitional periods in the areas of the common agricultural policy and the internal market, Finland had specific conditions in relation to its national regime. Thus, for example, it retained the possibility of adopting derogations from the Constitution through ordinary laws, which are adopted by the same procedure as constitutional amendments. Finland also negotiated partial derogations from the EU law for the Åland Islands.<sup>27</sup> In terms of direct

25 We consider it important to note that before accession, referendums were held in these countries, with varying results – clear support in Finland and Austria, moderate in Sweden. At that time, there was also a referendum on EU accession in Norway, but again with a negative result.

26 cvce.eu, no date.

27 EUROIURIS, no date.

derogations, Finland agreed on certain concessions regarding the EU budgetary contribution in order to have time to adapt to the new costs of membership.

#### 4.1.2. Austria

Despite initial concerns about the compatibility of Austrian neutrality with EU membership, Austria has successfully integrated into the Union without the need for significant derogations. Thus, Austria retained its permanent neutrality, which was initially considered potentially problematic for EU membership. However, it had to adopt and implement the *acquis communautaire* in full, although it had a transitional period for such full implementation.<sup>28</sup> Like Finland, Austria also had a transitional period in the sector of agriculture, particularly with regards to market access conditions. At the same time, it had to consolidate its budget and implement austerity measures to meet the convergence criteria for joining the European Monetary Union, of which it is a member to this day. It did thus obtain some derogations in the area of taxation, particularly in relation to VAT. In terms of direct derogations, it was given the opportunity to set restrictions on the transit of heavy vehicles through its territory.

#### 4.1.3. Sweden

As with Austria and Finland, Sweden, too, had a transitional period for the full implementation of EU legislation. It maintained its policy of neutrality, although it was not a formal derogation from the EU rules. On the other hand, Sweden committed to adopting the Euro, but it is still not a member of the Eurozone, as Swedish citizens rejected the adoption of the Euro in a referendum in 2003. However, this is not an official derogation but rather a consequence of non-compliance with the convergence criteria.<sup>29</sup> In terms of direct derogations, Sweden has maintained stricter environmental standards, certain adjustments to fishing opportunities and certain restrictions on alcohol and tobacco monopolies in some areas.<sup>30</sup>

### 4.2. Major Enlargement of the European Union – 1st May 2004

For this enlargement, the European Union had been preparing for arguably the longest time and with the most comprehensively effort in the entire history of its enlargement, by revising the founding treaties, starting with the Maastricht, Amsterdam and Nice Treaties. Interest in accession was quite high immediately after the collapse of the so-called Socialist Bloc. The Copenhagen criteria, which the EU was able to rely on to start closer negotiations with a relatively large number of countries,

28 Treaty of Accession of Austria, Finland and Sweden, 1994.

29 Government Offices of Sweden, 2025.

30 Treaty of Accession of Austria, Finland and Sweden, 1994.

were decisive in the accession process. The whole process was quite demanding and took more than ten years.

Individual countries began the process of applying for membership and meeting the criteria in the 1990s. Malta and Cyprus were the first to apply for EU accession (in 1990), followed by Hungary and Poland (in 1994), Slovakia, Latvia, Estonia, Romania and Bulgaria (in 1995), the Czech Republic and Slovenia (in 1996). Lithuania was the last to apply for EU accession in 2000. Accession negotiations commenced in two stages. Negotiations with the first group of six countries (Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia) were initiated in Phase I on 31st March 1998. On 15th February 2000 Phase II was started, involving negotiations with a second group of six countries (Bulgaria, Latvia, Lithuania, Malta, Romania and Slovakia). The negotiations were based on the principle of 'differentiation', which meant that each country proceeded at its own pace according to the level of its readiness for entry. Therefore, the length of negotiations varied depending on the progress of individual countries. Following the adoption of the pre-accession strategy, the European Commission began to monitor, check and evaluate the fulfilment of all the Copenhagen criteria in an intensive and organised manner. In July 1997, the Commission published an assessment of progress of each candidate country for the first time. On this basis, it recommended that accession negotiations be opened with only six countries: the Czech Republic, Estonia, Hungary, Poland, Slovenia and Cyprus. The countries of Bulgaria, Lithuania, Latvia and Romania did not meet the economic conditions that Slovakia was able to comply with, but in the Commission's opinion, the latter was the only country that did not meet the political criteria for the start of negotiations. The summit of the European Council in Luxembourg thus divided the candidate countries into two groups; only a later meeting of the Council in Helsinki in 1999 changed this model.

In preparation for the accession of the new Member States in 1997, the Commission drew up a specific document called Agenda 2000. It merged all the requirements and assistance provided from the EU into one framework, called the Accession Partnership. The European Commission played a key role in the negotiation process, both preparing documents and negotiating positions for the Council of the EU, while strongly supervising the candidates' readiness as well as the general development of their economy and societies. Negotiations were concluded at the end of 2002; the Accession Treaty was signed in Athens on 16th April 2003 and ten countries (except for Bulgaria and Romania) became members of the EU on 1st May 2004.

A deeper analysis of the accession processes is the subject of national reports as part of the project, so in this section the basic scope of derogations and their characteristics will be focussed on.

#### *4.2.1. Common Derogations and Transitional Periods*

Each of the countries that joined the EU in 2004 had its own way of fulfilling the demands of accession negotiations, as well as its own way of negotiating and

obtaining derogations or transitional periods.<sup>31</sup> As part of the screening and negotiating positions, there were different developments, both in terms of time and content. Nevertheless, it can be stated that Cyprus, the Czech Republic, Estonia, Hungary, Lithuania, Latvia, Malta, Poland, Slovakia and Slovenia had certain common derogations and transitional periods. Most of the original EU Member States introduced a transitional period for the free movement of workers from the newly acceding Member States (with the exception of Cyprus and Malta).<sup>32</sup> This transitional period lasted until 1st May 2011, when the completely free movement of workers was introduced throughout the EU, but it was divided into three phases: (1) a basic two-year period until 30 April 2006; (2) the option of a three year extension until 30th April 2009; (3) and in exceptional cases, the option of another two year extension until 30th April 2011.

A common derogation was the fact that the acceding states did not become part of the Schengen area as soon as they joined, but needed a longer timeframe to complete and modernise the rules for external borders. The same was true for the Euro area, which some of these Member States are not a part of to this day.

Transitional periods for certain areas such as agriculture and the coordination of social security systems were equally common. All new Member States except Slovenia had a transitional period concerning agriculture. Some countries had transitional periods for the acquisition of agricultural land and forests by foreign nationals (e.g., Czech Republic, Slovakia, Hungary, Poland). Transitional periods were also granted for the implementation of certain EU environmental standards. Some countries had transitional periods regarding tax regulations, especially in the area of VAT, or transitional measures in the sector of road transport. These transitional periods were temporary and served to facilitate the adaptation of EU rules by the new Member States.

All these countries had to adopt the *acquis communautaire* in full, although they had transitional periods concerning different areas. However, some of these countries are still not part of certain sectors of EU cooperation. Cyprus is still not a member of the Schengen zone. The Czech Republic, Hungary and Poland are still not members of the Euro zone. However, the above facts are not permanent derogations, but rather a consequence of failures to meet the necessary criteria or of political decisions. These countries may join these areas of cooperation in the future if they meet the necessary conditions and decide to do so.

31 See e.g., Commission Regulation (EC) no. 886/2004 of 4 March 2004 adapting certain regulations and decisions in the area of free movement of goods, competition policy, agriculture, the environment and external relations by reason of the accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia.

32 Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (2003).

#### 4.2.2. Cyprus

Cyprus had a number of specific derogations and transitional measures when it joined the European Union in 2004. Pursuant to Protocol No. 10 on Cyprus, the application of the *acquis* is deferred in those parts of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective administration (i.e., the Eastern Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland).<sup>33</sup> In order to address the unique situation of the divided island and support its gradual unification within the EU, certain measures were proposed, e.g., special conditions for trade with areas not effectively controlled by the Cypriot government in July 2004, or a financial support instrument to support the economic development of the Turkish Cypriot community.<sup>34</sup> At the same time, it should be noted that Cyprus did not immediately become part of either the Schengen or the Euro area.<sup>35</sup> However, it is currently finalising its preparations to join the Schengen area, as the accession of Cyprus to the Schengen area has long been hampered by the Cypriot conflict and the division of the island.<sup>36</sup>

#### 4.2.3. Czech Republic

Drawing on the National Report on the Accession Process, it can be stated that the country had several derogations. The first was a seven-year limitation for the acquisition of agricultural land and forests by those who do not have permanent residence in the Czech Republic. This rule was open to revision three years after joining the EU. At the same time, the acquisition of real estate intended for secondary housing for foreigners (EU citizens) was also limited for up to five years of the Czech Republic's accession to the EU.

In the area of agriculture, the Czech Republic negotiated a transitional period until the end of 2006 to achieve full harmonisation of sanitary parameters with the

33 Pursuant to this Protocol, the Council, acting unanimously on a proposal from the Commission, shall determine the conditions under which the provisions of European Union law shall apply to the boundary between the two territories referred to in Art. 1 and the areas in which the Government of the Republic of Cyprus exercises effective control. The boundary between the Eastern Sovereign Base Areas and the areas referred to in Art. 1 shall, for the duration of the deferral of application of the *acquis* for the purposes of Part IV of the Annex to the Protocol on the Sovereign Base Areas of the United Kingdom of Great Britain and Northern Ireland in Cyprus, be considered as forming part of the external border of the Sovereign Base Areas. Nothing in this Protocol shall prejudice measures taken to promote the economic development of those areas. Such measures shall not affect the application of the *acquis* under the conditions defined in the Accession Treaty to the rest of the Republic of Cyprus. In the event of a solution to the Cyprus problem, the Council, acting unanimously on a proposal from the Commission, shall decide on the adaptation of the conditions of accession of Cyprus to the European Union with regard to the Turkish Cypriot population.

34 Sotiropoulou, 2024.

35 Cyprus joined the euro zone on 1 January 2008.

36 In July 2023, Cyprus joined the Schengen Information System (SIS) and plans to resolve all technical requirements for entry to the Schengen area by the end of 2025.

conditions applicable in the EU for 52 processing enterprises, as well as a transitional period until the end of 2009 for non-adapted cage systems for egg-laying hens that had already been in use and that did not meet the technical requirements of secondary EU law.

Another large group of special provisions concerned taxation. Until the end of 2007, the Czech Republic would be able to maintain a reduced rate of VAT on the supply of thermal energy, as well as to maintain a transitional period for construction works for residential purposes. Its transitional period of lower excise duty rates on cigarettes and tobacco products lasted until the end of 2006. The exemption for people with a turnover below EUR 35,000 from registering as a VAT payers was also significant, as was the special arrangement of the exemption of excise duty on alcohol for small distilleries in order to maintain the traditional domestic production of fruit spirits.

In the area of power engineering, a transitional period was agreed for the creation of full mandatory emergency stocks of crude oil and petroleum products by the end of 2005 and a transitional period until the end of 2004 related to the liberalisation of the gas market. In the field of the environment, a transitional period was agreed until the end of 2005 for the area of waste management, as well as a transitional period to achieve the target values for the recycling and reuse of packaging, or a transitional period until 2010 for water quality in connection with urban water treatment and the practical implementation of the requirement for the construction of wastewater treatment plants in municipalities from 2,000 to 10,000 inhabitants. Until the end of 2007, there was also a transitional period for the implementation of a restrictive directive on emissions of pollutants into the air from large combustion plants (or for meeting the set emission limits).

As far as the free movement of persons is concerned, the Czech Republic had a 7-year transitional period to limit the free movement of workers, while during the validity of the above-mentioned regulation, the old Member States and the new Member States could sign bilateral agreements if they agreed to liberalise the movement of labour. The Netherlands, Ireland, Sweden, Denmark and the United Kingdom immediately declared that they were waiving the transitional period, which meant that Czech citizens could exercise their right to move and work freely in these countries immediately upon joining the EU.

In relation to national road transport, a transitional period of up to five years was set. At the same time, carriers from old and new Member States could sign bilateral agreements if they agreed to fully liberalise the market during the transitional period. As far as agriculture is concerned, the transitional period for the gradual onset of direct payments was applied in the following two phases. In the first phase, new Member States' direct payments were introduced at a level of 25% in 2004, and until 2007 direct payments were increased annually by 5%, i.e., 30% in

2005 and 35% in 2006. Phase two, starting in 2007, saw a gradual increase of 10% in direct payments until 2013, when direct payments should reach 100%.<sup>37</sup>

#### 4.2.4. Estonia

Estonia was the first former Soviet state to join the EU, undergoing a difficult process of harmonising its economic, legal and political system with the EU legal framework.<sup>38</sup> Despite initial scepticism, most Estonians supported EU membership.<sup>39</sup> When it joined the European Union in 2004, it did not negotiate any permanent derogations, but received several transitional periods to facilitate adaptation to EU rules. Estonia had a transitional period for the full implementation of the *acquis communautaire* and for certain areas of agriculture. It also had a restriction on the acquisition of agricultural land and forests by foreigners until 2011.

Most of the original EU Member States introduced a transitional period for the free movement of Estonian workers lasting up to seven years, which was divided into three phases – initially two years, followed by the option of extending it by three years, and in exceptional cases by another two years.

There were exceptions from the Schengen and the Euro areas. In 2007, Estonia became part of the Schengen area. It joined the European Exchange Rate Mechanism II (ERM II) in May 2004 and adopted the Euro as its currency in 2011, becoming the 17th member of the Euro zone.

#### 4.2.5. Lithuania

The integration of Lithuania, being another of the Baltic countries, into the European Union, was a long-term process of the country's transformation. Like Estonia, Lithuania had to implement extensive economic and legal reforms, take over the *acquis communautaire*, strengthen the fight against corruption and reform the

37 However, the EU also provided the Czech Republic with the opportunity to request direct payments (so-called surcharges) using rural development funds, or from national resources, up to 55% in 2004, 60% in 2005 and 65% in 2006. For more information, see the National Report on the Accession Process of the Czech Republic.

38 Estonia has gone through a remarkable journey from independence through EU accession to the EU Presidency in the second half of 2017, demonstrating its successful integration into European structures. This required overcoming scepticism about joining the new Union after the experience of the Soviet Union and coping with low support for EU entry among the population, especially in the period 1997–2001.

39 Before Estonia's accession to the European Union, a referendum was held on 14 September 2003. According to the final results, 66.9% of voters voted for the entry and 33.1% voted against it. The turnout in the referendum reached 63% of the 850,000 eligible voters. Although the result of the referendum was not legally binding on the Estonian parliament, it provided significant support for the pro-European policy of the then ruling conservative coalition. Novinky, 2003.

judiciary.<sup>40</sup> Within the acceding Baltic countries, the exceptions and transitional periods were comparable. Lithuania did not negotiate any permanent exemptions from the EU law. Most of the transitional periods were designed to facilitate adaptation to EU rules and ended in 2011 at the latest. These transitional periods concerned certain areas of agriculture and restrictions on the acquisition of agricultural land and forests by foreigners. Lithuania also received a transitional period until 1st January 2007 for the renewal of certain regulations concerning the free movement of goods, e.g., concerning the renewal of authorisations for certain pharmaceutical products to be launched onto the market.

From the position of EU Member States, a transitional period for the free movement of workers was established for Lithuania, divided into three phases – a basic two-year period until 30th April 2006, the option of extending it by another three years until 30th April 2009 and, in exceptional cases, the option of extending it by another two years until 30th April 2011.<sup>41</sup>

#### 4.2.6. *Latvia*

Latvia has much in common with its Baltic neighbours, Lithuania and Estonia.<sup>42</sup> As part of its EU membership, it has made progress in recent years, and together with Lithuania and Estonia, is one of the EU countries showing the highest economic growth.<sup>43</sup> Accession to the EU has brought Latvia, among other things, significant economic benefits, including an increase in trade and investment, as well as the option of free movement of citizens within the EU. At the same time, it strengthened the country's security and its position on the international scene.

Latvia, like Lithuania and Estonia, did not have any permanent derogations from the EU law. Transitional periods were designed to facilitate adaptation to EU rules and most of them ended in 2011 at the latest. In order to protect its agricultural land, Latvia negotiated a transitional period of seven years to limit the acquisition of agricultural land by foreigners. In 2011, it requested an extension of this transitional period by another three years, i.e., until 30 April 2014.

With regards to the free movement of workers, most of the original EU Member States introduced a transitional period for the free movement of workers from Latvia, which could last a maximum of seven years.

40 On 10 and 11 May 2003, a referendum on accession to the EU was held, with the participation of 63.4%, while 91.1% of citizens voted in favour of accession to the European Union. Lithuania continues to maintain this optimistic view of the EU. See [slovensko.stvr.sk](http://slovensko.stvr.sk), 2024.

41 Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia and Slovakia (2003).

42 It was incorporated into the Soviet Union in 1940 and gained independence only in 1991. However, Latvia is overcoming the remains of the Soviet past much more painfully due to the fact that up to a third of its population are Russian-speaking citizens and it still has tense relations with Moscow.

43 [bbc.co.uk](http://bbc.co.uk), no date.

The initial exception from the integration of Latvia into the Schengen area ended in December 2007, when Latvia joined the Schengen area. In January 2014, the Euro currency began to be used in Latvia, making it the 18th member of the eurozone.

#### 4.2.7. Malta

Malta did not gain independence from Britain until 1964. It started to seek its membership of the European structures relatively early, but the whole accession process was lengthy.<sup>44</sup> On the other hand, Malta sought to use its position as a small country to justify special requests from the EU. Therefore, it was granted several derogations and transitional periods in order to facilitate the process of transformation of its law.

Malta requested special adaptations in about twelve chapters of the *acquis communautaire*. Thus, for example, it obtained a transitional period for the implementation of obligations under Directive 68/414/EEC on the maintenance of minimum crude oil stocks until 31st December 2006.<sup>45</sup> Also, until 31st December 2006, a transitional period for the renewal of authorisations for launching pharmaceutical products onto the market. For a period of seven years, it was able to introduce restrictions on the acquisition of real estate by foreigners. It was allowed to introduce safeguard measures for the agricultural and fisheries sectors, as well as transitional periods in the areas of environment and competition. It also received a seven-year transitional period during which it could apply safeguards for the rights of EU citizens who wished to seek employment in Malta.

In order to prevent the unrestricted acquisition of real estate by foreigners and a disproportionate increase in the prices of local real estate, Malta has been granted a permanent derogation. Citizens of EU Member States who have not lived in Malta for at least five years can only buy one secondary residence (known as a holiday home) with the permission of the competent authorities (AIP). Citizens of EU Member States who have lived in Malta continuously for 5 years or more can buy another property without the need for a permit. Malta joined the Schengen area in 2007 and adopted the Euro in 2008, thereby becoming part of the Euro zone.<sup>46</sup> At the same time, it is important to note that Cyprus and Malta had different conditions in some areas than the other new Member States. For example, Cyprus and Malta were not subject to a transitional period for the free movement of workers that would be enforced by other Member States.

44 Malta signed the Association Agreement with the EEC on 5 December 1970, but it did not submit an official application for EU membership until 16 July 1990. In October 1996, the new Labour government suspended the application for membership and in September 1998, the new nationalist government reactivated the application for membership. The official opening of accession negotiations started on 15 February 2000.

45 EU Monitor, 2001.

46 Pace, 2003.

#### 4.2.8. Hungary

As with the examples of other countries, Hungary negotiated several exemptions and transitional periods when it joined the European Union in 2004. The National Report can once again be referred to here, which is elaborated in detail and which is relied upon as source material. Attention will be drawn here to some aspects.

Hungary based its negotiations on the identification of the so-called national interest. In the negotiations, it called for specific adjustments in seven of the 31 chapters (free movement of persons; free movement of capital; agricultural subsidies; structural and cohesion policy; competition; and implementation of the ‘Schengen *acquis*’).

Finally, it was granted the option of derogations in nine areas - free movement of persons; freedom to provide services; free movement of capital (restriction on the acquisition of agricultural land); competition policy; agriculture; transport policy; taxation; environment and customs union. From the above exceptions, I will select the following.

The free movement of workers was a sensitive issue, Hungary demanded the freedom of movement of workers without restrictions in this area. Finally, a seven-year transitional period was enforced, as for the other Member States under this enlargement, implemented in a compromise arrangement of (2+3+2). Existing Member States were allowed to maintain the restrictions for two years, and then extend them for a further three years if they so wished, and in the event of a serious disruption of the labour market (or a real threat thereof) for a further two years. Member States gradually opened their labour markets, complete restrictions, i.e., throughout the full seven years, only applied in Germany and Austria (until 2011).

The free movement of capital – ie: acquisition of agricultural land by nationals of other EU Member States or legal entities established in EU Member States - was another sensitive issue in the negotiations. Hungary was granted a transitional period to limit the acquisition of agricultural land and forests by foreigners for seven years, with the option of extending this period for another 3 years if there was a risk of serious disruption of the agricultural land market.

Hungary also received shorter transitional periods,<sup>47</sup> for example regarding the full implementation of access to the Trans-European Rail Freight Network, which was valid until 31st December 2006. One of the essential issues was also the issue of the Schengen area and the precise determination of Hungary’s external and internal borders, as it was interested in joining the Schengen area together with neighbouring countries. Hungary became part of the Schengen area together with Slovakia and Slovenia on 21st December 2007 and, at the same time, adopted a new visa system based on common EU standards and regulations (the so-called Schengen *acquis*).

As for the Eurozone and Hungary’s specificity in relation to the euro – Hungary originally planned to adopt the euro in 2007 or 2008, but like the Czech Republic

47 International Monetary Fund, 2004.

and some other EU countries, it still retains its own currency and remains positioned outside of the Eurozone.

#### 4.2.9. Slovakia

Like other acceding countries, Slovakia did not achieve any permanent derogations from the implementation of the *acquis communautaire* when it joined the European Union in 2004. However, it negotiated several transitional periods in various areas in order to allow Slovakia to gradually adapt to EU rules and improve the performance of the Slovak economy. (a) Free movement of persons – seven years; (b) freedom to provide services – three years; (c) free movement of capital – seven years; (d) power engineering – five years; (e) the environment – three years; (f) taxation – between one to five years, depending on the type of goods; (g) transport – two years; (h) agriculture – from three years (for the production of certain foodstuffs) to ten years (direct payments to the agricultural sector); (i) competition – from five to six years.

In the case of the free movement of capital, Slovakia negotiated a seven-year transitional period for the acquisition of agricultural and forest land by foreign nationals. In the area of free movement of services, it was able to enforce the requirement of a three-year transitional period for investor compensation schemes. In the Energy chapter, Slovakia achieved a five-year transitional period to ensure the mandatory emergency 90-day stockpiles of crude oil and petroleum products. In the chapter concerning taxes, Slovakia requested several transitional periods and exemptions for VAT and excise duties. At the conclusion of this chapter, Slovakia obtained in total seven transitional periods. Some other hard-earned exemptions from VAT (tax reduction in the area of gas, thermal energy, basic foodstuffs, construction and construction works) did not come into force after all, as the government changed the tax system as of January 1st 2004. Slovakia also received a permanent derogation for the fruit distillation by the growers, where a reduced excise duty was applied.

The transitional periods on the part of the EU mainly concerned the free movement of workers in order to protect the labour market of the original Member States. Thus, Slovakia initially did not have the opportunity to fully exercise the freedom of movement of workers within the EU. However, this did not apply equally to all Member States - the United Kingdom, Sweden and Ireland did not apply the transitional period and made their labour markets available immediately upon enlargement. Two years after Slovakia's joining, at the end of April 2006, Spain, Finland, Portugal and Greece also waived the transitional period. In July 2006, Italy also opened its labour market without restrictions. Belgium partially restricted access to its labour market until 2009. It gradually expanded the list of sectors in which it facilitated the employment the new Member States' citizens. The Netherlands, Luxembourg, France and Denmark proceeded in a similar fashion. They first partially opened their market and only completely ended the application of the transitional period as of May 2009. Germany and Austria (in May 2011) opened their respective

labour markets as the last ones. Slovakia became part of the Schengen area on 21st December 2007, but it already acceded to the Schengen Convention by signing the Treaty in Athens in April 2003. Two years later, Slovakia also managed to meet the conditions for joining the eurozone and started using the common currency, the Euro, on 1st January 2009.

#### *4.2.10. Poland*

At the time of its status of an acceding country, Poland also tried to achieve such derogations and transitional periods that would allow it to gradually adapt to EU standards but at the same time protect its national interests in sensitive areas.

As a result, it had received several temporary transitional periods and derogations. An important derogation (although already for Poland as a Member State) was the Charter of Fundamental Rights of the European Union. In 2007, together with the United Kingdom, Poland signed the so-called 'British Protocol' which limited the application of the EU Charter of Fundamental Rights in these countries.<sup>48</sup> This derogation modifies the application of the EU Charter of Fundamental Rights in Poland and excludes the possibility for the Charter to confer rights beyond those enshrined in the Polish domestic order. At the same time, the Protocol limits the jurisdiction of the Court of Justice of the EU and the Polish courts in relation to the Charter, thus preventing the direct application of its provisions in Polish law. The Accession Treaty also contained a number of transitional provisions designed to protect the interests of Poland and, in some cases, the interests of the countries of the European Union.

The transitional period in relation to agriculture was considered one of the priorities, as the sector was quite extensive in the country. Poland considered it important that direct subsidies to agriculture should be increased gradually, as the full and immediate application of all the provisions of the Common Agricultural Policy would not be advantageous.<sup>49</sup>

As far as real estate rights are concerned, Poland was also concerned with the limitation of the right to purchase real estate by foreigners, and it obtained a five-year transitional period for the purchase in relation to second homes – with the exception of those purchased for business purposes. In relation to agriculture and forestry, this ban had a twelve-year transitional period.

Others were exemptions for the pharmaceutical industry, where Poland negotiated a five-year transitional period for the marketing authorisation of certain pharmaceutical products and a two-year period in relation to certificates issued by the

48 Despite the fact that, after the 2007 elections, the new Polish government considered abolishing this derogation, it finally decided to keep it. The reason was the effort to comply with the agreements negotiated by the previous government and the need of support from the opposition in ratifying the Lisbon Treaty. Formal renunciation of the derogation would require a treaty change that would have to be ratified by all EU Member States.

49 These subsidies were expected to reach 25% of full level in 2004, 30% in 2005, and increase by 10% in the following years.

Institute of Medicinal Products for Medical Devices, defined as ‘medical supplies’. Specific provisions were those relating to particular derogations in relation to the implementation of secondary EU law.<sup>50</sup> There were also specificities in the fisheries policy, under which Poland retained its previous catch quotas resulting from previously concluded bilateral agreements with third countries.

On the part of the Member States, Polish workers had limited access to the internal labour markets of the existing Member States for a period of seven years.<sup>51</sup>

At the time of accession, derogations from membership in the Schengen area and the Euro area also applied to Poland. As far as the Eurozone is concerned, Poland has not yet adopted the euro as its currency. Despite the original plans to join the Eurozone between 2012 to 2015, the Zloty is still in use as its currency. At present, no specific date for the adoption of the euro is set. Poland became a member of the Schengen area on 21st December 2007 for land and maritime borders and on 29th March 2008 for airports and airspace.

With regards to Poland, it is also appropriate to note that the Polish government attached Declaration No. 39 to the Accession Treaty, in which it stated that:

nothing in the provisions of the Treaty on European Union, the Treaties establishing the European Communities and the provisions of the Treaties amending or supplementing those Treaties shall prevent the Polish State from regulating matters of moral importance as well as matters relating to the protection of human life as it sees fit.

By doing so, Poland has explicitly defined itself against EU primary law.

#### 4.2.11. Slovenia

Slovenia was the first former Yugoslav Republic to join the EU.<sup>52</sup> This entry was considered significant because Slovenia represented a successful model of transformation after the partition of Yugoslavia, with an emphasis on political stability and economic growth.<sup>53</sup> At the same time, it was considered one of the best prepared

50 For example, it emerged from the negotiations that the provisions of Directive 77/780/EEC, the so-called First Banking Directive, would not apply to some Polish institutions, these were the *Spółdzielcza Kasa Oszczędnościowo-Krednościowo* (SKOK) and *Bank Gospodarstwa Krajowego* (BGK). In addition, due to the nature of its activities, the Export Credit Insurance Corporation was also excluded from the scope of EU law (Art. 2 of Directive 73/239/EEC).

51 More detailed information can be found in the national report, from which these data are also derived.

52 After the breakup of Yugoslavia, Slovenia gained independence in 1991. A year later, in 1992, it applied for EU membership.

53 It can be perceived that the Slovenian transformation process had a threefold dimension – the transformation of the economic system, the transition from the regional to the national economy and the change from membership of a federal state to a member state of the EU.

candidate countries upon accession. The accession negotiations lasted only six years (from 1998 to 2004).<sup>54</sup>

It also had relatively decent success in pre-accession negotiations, gaining a total of 18 temporary derogations and transitional periods in various areas. One of the most challenging areas in the negotiations was agriculture, in the context of alignment under the Common Agricultural Policy, including subsidies and agricultural standards. Slovenia negotiated a gradual increase in the level of direct payments from 25% in 2004 to 100% in 2013. It was also given the opportunity to supplement direct payments from the national budget.<sup>55</sup> Slovenia also negotiated a transitional period for the implementation of some EU environmental standards.<sup>56</sup> In the area of justice and home affairs, temporary derogations were negotiated for immigration, asylum and border control issues.<sup>57</sup>

Regarding the free movement of workers, Slovenia retained the ability to control access to its labour market. It could therefore apply restrictions on access to its labour market for workers from other EU Member States.<sup>58</sup> Although the original proposal of the European Commission was disadvantageous for Slovenia, the final result of the negotiations was assessed as favourable.

It can be stated that Slovenia continued to integrate rapidly after joining the EU. On 1st January 2007 it was the first of the then newly acceded Member States to introduce the Euro. Slovenia joined the Schengen area also in 2007,<sup>59</sup> and in the first half of the year it took over the presidency of the Council of the EU as the first of the newly acceded batch of countries.

#### ***4.3. Bulgaria and Romania – Joint Accession in 2007***

In both countries, the issue of EU accession was addressed over the long term. Although they applied to join the EU in 1995 (Romania in June and Bulgaria in December), the state of the countries required longer preparation and fundamental political, economic, sectoral and administrative reforms that would translate into

54 As the National Accession Report shows, the period of real and tough negotiations began at the final stage of the negotiations on the financial package, which included negotiations on inflows from the EU budget to Slovenia as well as on its payments to the EU budget. In fact, the negotiations on the financial package for Slovenia's accession to the EU began in January 2002, when the European Commission published the document 'Common Financial Perspective 2004–2006', in which it defined the basic framework for the discussion on the financial aspects of the candidate countries' integration into the EU, and which was rather disadvantageous for Slovenia.

55 It could start with top-ups of 75% of payments in the existing EU Member States in 2003, with the option of increasing this level by 10% in 2004 and by a further 5% in the next three years.

56 It also received significant funds for rural development, which were mainly aimed at supporting disadvantaged areas and various environmental supports.

57 See the national report on Slovenia's EU accession process.

58 Concerns were mainly in relation to Romania and Bulgaria.

59 On 21 December 2007, Slovenia became a member of the Schengen area for land and maritime borders, and on 30 March 2008 for air borders.

legislative changes. In this respect, it was necessary for both countries to demonstrate the strengthening of their democracies and rule of law; ensuring the protection of human and minority rights, in particular with regards to the Roma minority, reforming the judiciary to increase its efficiency and accountability, and making the fight against high-level corruption and organised crime more effective.

In the economic sphere, the country had to demonstrate the transition to a functioning market economy, the completion of privatisation, the restructuring of the corporate and banking sectors, and the increase of its economic competitiveness. Among other things, reforms in the field of public administration at all levels, decentralisation of the political system and increasing the efficiency and transparency of public services were also necessary.

Given the relatively small progress that has been made over a long period of time, the Cooperation and Verification Mechanism (CVM) was introduced when these countries joined the EU in 2007 to monitor countries' progress in the areas of judicial reform and the fight against corruption. This mechanism was specific to Romania and Bulgaria and constituted an extension of EU conditionality even after the conclusion of the Accession Treaties. The Commission issues reports assessing the progress of Romania and Bulgaria in these areas fairly regularly (usually every six months). Given the satisfactory fulfilment of all the established criteria, this mechanism was formally closed by the European Commission on 15th September 2023.<sup>60</sup> The monitoring of Romania and Bulgaria has continued only through common EU rule of law control tools applicable to all Member States.

Even with the accession of Bulgaria and Romania to the European Union in 2007, the countries were perceived as being together, which is why several common derogations and transitional measures were introduced, but also in terms of protecting existing Member States and the EU. For example, the existence of so-called safeguard clauses, which allowed the benefits of Bulgaria's and Romania's membership to be withheld for up to three years after accession if certain demanding reforms were not completed. The common derogations and transitional measures were intended to ensure a smooth transition of Bulgaria and Romania into the EU structures while protecting the interests of the existing Member States. Each of the existing Member States had the possibility to regulate the access of Bulgarian and Romanian workers to its labour market during a transitional period of seven years.

Restrictions in relation to these countries also concerned the Schengen area, into which they were gradually integrated. They have been partially integrated into the Schengen area since 31st March 2024, by removing controls at airports and ports. They became full members of the Schengen area on 1st January 2025.

60 The conditions for its abolition were met earlier, in November 2022 the European Commission requested the abolition of the Cooperation and Verification Mechanism for Romania and in July 2023 the Vice-President of the European Commission Věra Jourová stated that the Commission is sending a letter to the Council and the European Parliament with a view to close the Cooperation and Verification Mechanism for Bulgaria and Romania.

Despite the above-mentioned common features and very similar transitional measures, it is also possible to identify certain differences in country-specific derogations.<sup>61</sup>

Some EU Member States were sceptical about the accession of these countries, especially Romania. As the national report shows, the internal political situation itself was tense in relation to accession to the EU. Therefore, it was necessary to resolve the issue of accession in such a way that certain guarantees were also given, not only to the acceding countries, but also to the EU.

Thus, the so-called deferral clause was introduced in the Treaty of Accession to the EU, which applied to both Bulgaria and Romania. Art. 39 of the Protocol on the conditions and arrangements for admission of the Republic of Bulgaria and Romania to the European Union provided an option to postpone the date of accession of both countries by one year, from 1st January 2007 to 1st January 2008. This clause allowed the Council of the EU, on the basis of a recommendation from the Commission, to decide to postpone accession if there was clear evidence that the state of preparations for the adoption and implementation of the *acquis* in Bulgaria or Romania was at serious risk of clearly not being ready to meet their membership requirements by the date of accession.

However, there were some differences in the application of this clause for both countries, and this required a unanimous decision of the Council for Bulgaria to activate the deferral clause, while for Romania a qualified majority in the Council, on the basis of a recommendation from the Commission, would suffice if serious deficiencies in the fulfilment of commitments and requirements were identified.<sup>62</sup> As can be seen from the National Accession Report, for the above reasons, Romania did not submit any requests for the negotiation of derogations to the accession process. Nevertheless, in the process of accession negotiations, there was a need to extend the time necessary for the implementation and application of the *acquis*. In this sense, Romania arranged for 50 transitional periods, which is unique among the countries of the fifth enlargement (the longest period needed for the chapter Environment – twelve years). Despite the initial difficulties, it can be stated that the membership of these countries in the EU currently enjoys relatively high public support.

61 Accession of the Republic of Bulgaria and Romania to the European Union – Treaty of Accession, Protocol and its Annexes.

62 This clause served as a tool to maintain pressure on both countries to continue reforms even after the closing of accession negotiations. The European Commission committed to invoke this ‘safeguard clause’ if Romania and Bulgaria did not fulfil their commitments on the way to the planned accession to the EU on 1 January 2007.

#### 4.4. Croatia – 2013

Croatia is the last country to have so far passed the accession processes with a positive outcome.<sup>63</sup> On 1st July 2013, it became the twenty-eighth EU Member State, although in the meantime the number of EU Member States has once again stabilised at twenty-seven due to the subsequent exit of the United Kingdom in 2021. Croatia's accession negotiations lasted for a relatively long time, from 2005 to 2011, and were subject to resolving issues related to the International Criminal Tribunal for the former Yugoslavia (ICTY). In addition, Slovenia, then an EU Member State, blocked accession negotiations due to a bilateral border dispute. It was also unfavourable that Croatia's accession took place at a time of economic difficulties when it was in the fifth year of recession with 21% unemployment. Nevertheless, Croatia became the first country to join the EU on its own, and not as part of a wider group.

In the accession process, Croatia did not negotiate any specific derogations; its accession process instead adhered to the standard framework established for all candidate countries.

The negotiations included a review of 35 chapters of the *acquis communautaire*. In addition, four more chapters were included due to concerns about potential difficulties in areas such as agriculture or the environment. Croatia's accession to the EU was, therefore, characterised by compliance with the established protocols without any negotiated temporary or permanent derogations. Instead, Croatia focused on harmonising its legislation with that of the EU's legal framework. Negotiations included addressing issues similar to those of previous candidate countries, where discussions on transitional arrangements were ongoing but did not lead to permanent derogations from the EU law.

After joining the European Union, Croatia had to withdraw from the Central European Free Trade Agreement (CEFTA), as both EU and CEFTA membership are mutually exclusive. Croatia has become part of the EU customs union and the single market and has adopted the EU's common trade policy, including EU trade agreements with third countries, which is not compatible with membership in any other free trade area. Its previous bilateral trade agreements with CEFTA countries have thus ceased to apply.<sup>64</sup>

In order to ensure the smooth integration of Croatia into the EU and, at the same time, to protect the labour markets of the existing Member States from potential

63 The EU-Croatia Accession Treaty was signed on 9 December 2011, a successful referendum on Croatia's accession to the EU was held on 22 January 2012, and on 9 March the Croatian Parliament unanimously ratified the Accession Treaty.

64 By joining the EU, Croatia became part of the Stabilisation and Association Agreements (SAA) that the EU has concluded with most CEFTA countries. These agreements are asymmetrical in nature and provide different terms of trade than CEFTA. This step had a significant impact on Croatia's trade relations, in particular with CEFTA countries. Croatia has lost some preferential conditions of access to CEFTA markets, especially in the area of agricultural products. On the other hand, EU membership has opened Croatia's access to a larger and more competitive European market.

disruptions, Croatia was granted transitional periods. The Accession Treaty provided that Member States could implement transitional measures for a period of up to seven years after accession.<sup>65</sup> This flexibility allowed Croatia to gradually adapt to EU standards while minimising potential economic distortions. Regarding the free movement of workers, there was a seven-year transitional period in three phases (2+3+2).<sup>66</sup> Austria and Germany also had the right to apply transitional periods in the service sectors. The transitional period also covered, for example, agriculture, when transitional quotas for raw cane sugar for refining (transitional tariff quotas for raw cane sugar for refining for a period of three economic years after its accession)<sup>67</sup> and temporary direct payments were established.<sup>68</sup>

For Croatia, there were special rules for joining the Eurozone and the Schengen area. Croatia adopted the Euro on 1st January 2023, making it the twentieth full member of the Eurozone. Similarly, controls at internal land and sea borders were lifted on 1st January 2023 and controls at internal air borders were lifted on 26th March 2023, making Croatia the twenty-seventh member of the Schengen area.

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## 5. Conclusion

As a supranational organisation, the European Union brings together independent states for the purpose of joint integration. At the time of its inception, European integration was rightly referred to as a one-of-a-kind and unique project, built on the desire for joint peaceful cooperation. The foundations of this cooperation, based on the requirements and conditions of the six founding states, assumed favourable development and progress. There was little to complain about this historical concept, as evidenced by the fact that the efforts of other European countries for accession began to appear relatively early.<sup>69</sup>

Each current Member State, with the exception of the six founding Member States, went through an accession process that was created with the best intentions in relation to the acceding State, but also in relation to the EU as a whole. It is natural that the negotiation processes were conducted in an attempt to seek compromise,

65 Act concerning the conditions of Croatia's accession.

66 The first two years (until 30 June 2015) allowed EU Member States to regulate the access of Croatian workers to their labour markets under national law, the next three years (until 30 June 2018) allowed Member States to continue restrictions following notification to the European Commission, and the last two years (until 30 June 2020) allowed Member States to extend restrictions only in case of serious labour market disturbances.

67 This quota was to ensure a smooth transition of the Croatian sugar industry to the new conditions within the EU.

68 Croatia was given the option to complement direct payments up to 100% of the level applicable in Member States that are not new Member States.

69 Greece and Turkey applied for accession in 1959.

but also with the intention of creating a smooth transition to the existing (and often significantly different) system for the acceding state. Naturally, this corresponded to the varying length of accession negotiations.

Austria, Finland and Sweden were the shortest negotiators in the accession process – approximately 1.3 years (negotiations began on 1st February 1993 and ended in 1994). Portugal took the longest to negotiate (6.7 years), followed by Spain (6.3 years) and Croatia (6.2 years), with Croatia's overall accession process taking almost ten years, from its application in 2003 to accession in 2013. On average, the accession negotiations lasted about four years, which is about half of the overall accession process. It is important to note that the length of negotiations often also depended on political factors, the country's readiness for membership and the complexity of the areas negotiated. For example, in the case of Spain and Portugal, negotiations were prolonged due to the economic challenges that these countries posed to the EU.<sup>70</sup>

The nature and length of accession of each new country had its own reasons, consequences and specific characteristics. The first enlargement (Denmark, Ireland, Great Britain) was about improving economic cooperation and political stability in Europe after the crises of the 1960s. The UK sought to revitalise its economy through EU membership. The accession of Greece was about its stabilisation and support for democracy after the fall of a military dictatorship. In the case of Spain and Portugal (1986), it was about restoring democracy in both countries and striving for economic development with the support of the EU. As a result of the accession of Austria, Finland, Sweden in 1995, tensions following the Cold War were eased, and the integration of these countries into the EU common market were anticipated.

During the so-called Major Enlargement of 2004, the countries of Central and Eastern Europe tried to stabilise their democratic systems and economies through EU membership after the fall of communism. The cases of Bulgaria and Romania in 2007 were a continuation of the process of integration of Central and Eastern European countries into the EU. The accession of Croatia in 2013 continued the stabilisation of the Balkans after the wars in the former Yugoslavia.

The enlargement of the EU has brought a number of economic benefits, such as increased trade between the old and new Member States, inflows of investment into the new Member States and improved economic stability and GDP growth in new Member States. However, it has also raised challenges such as concerns about migration from new Member States to older Members and public scepticism about further EU enlargement, especially after the Major Enlargement of 2004.

As the number of Member States grew, so did the number of derogations and transitional periods that were negotiated by the acceding states. With some generalisation, it can be stated that almost every country sought derogations in agriculture and the environment. The accession countries also used the derogations option when joining the Eurozone and the Schengen area. Concerns about the sale of state-owned

70 Pew Research Center, 2022.

land to foreigners were also common, which was also reflected in the negotiation of derogations. States were happy to use the introduction of transitional periods in connection with the opening of their labour market, which naturally restricted the free movement of workers of the acceding states. Most of the derogations and transitional periods were related to the so-called Major Enlargement. Cyprus had a unique situation due to its division. In Malta the transitional period was less extensive due to its smaller economy and area. Estonia and Slovenia faced fewer sweeping reforms as a result of better pre-accession economic conditions. Austria, Sweden and Finland had minimal transitional periods due to their high economic level. All these derogations and transitional periods must be seen in the context of each individual state and application. However their number, structure and importance may change in the future, since the EU, despite the complexity of present times and the modern challenges that the present brings, remains open to other acceding countries. Negotiations are currently ongoing with nine candidate countries, which will also strive to achieve derogations or transitional periods as part of their potential EU membership.

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