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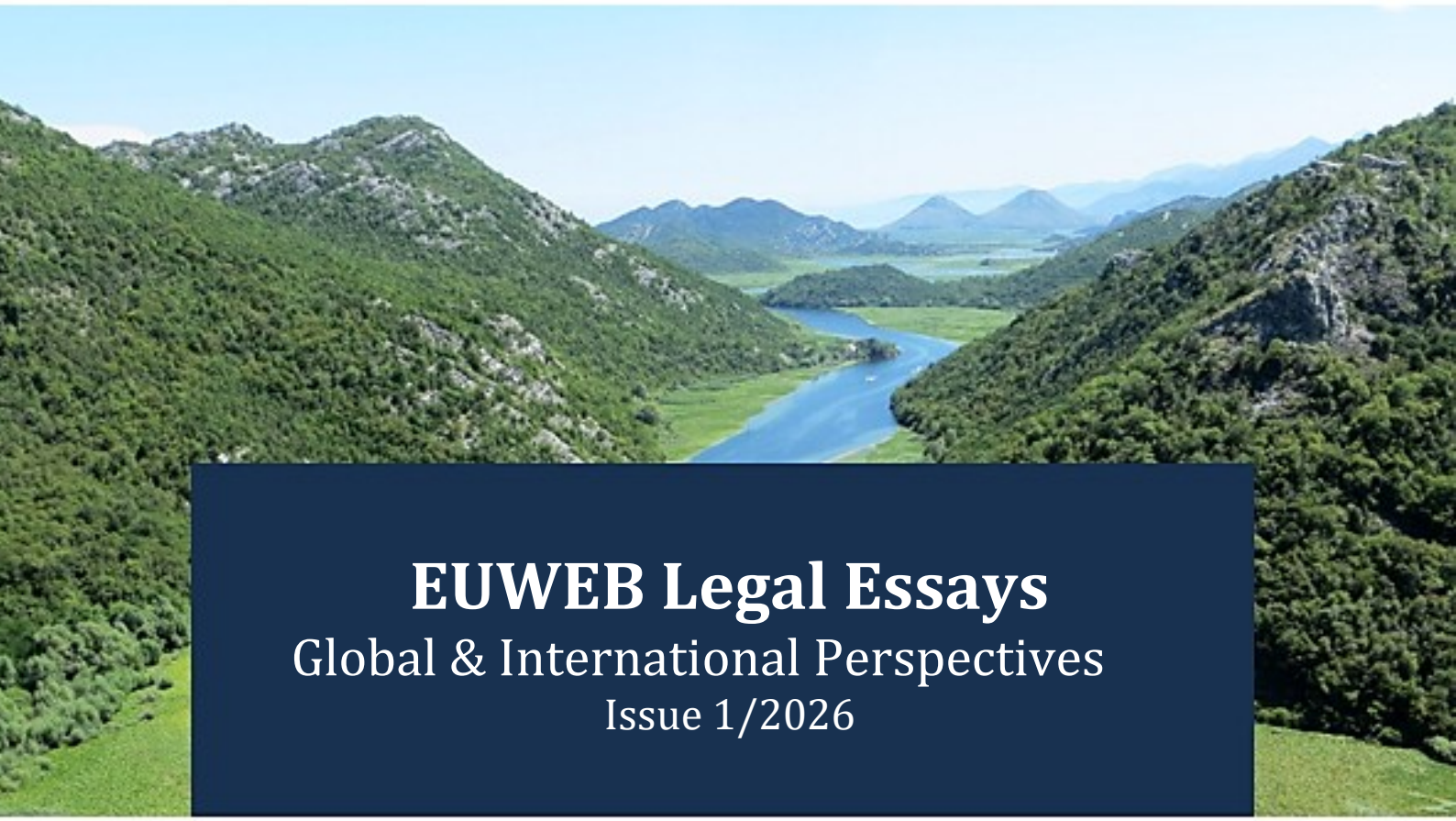

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A NEW CHAPTER IN EU ENLARGEMENT? SOME CANDID CONSIDERATIONS

by Christophe Hillion[*]

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1. Introduction

After years of (culpable) neglect[1], the EU enlargement policy is back. It took Russia's full-scale invasion of Ukraine[2] for Member States to revive it[3], as "*a geostrategic investment in peace, security, stability and prosperity*"[4]. If all goes according to plan, the EU could comprise 37 members in the years to come[5] – that is six times the original size of the initial European Community.

Considering the condition of (some of) the candidates, the state of (some of) the Union members, and the international environment in which it is to proceed, the envisaged enlargement will be particularly demanding in terms of preparation. A 2024 Commission's "*Communication on pre-enlargement reforms and policy reviews*" acknowledged that being "*in the Union's own strategic interest* (…) *does not mean that enlargement comes without* challenges" (emphasis added) – a word that appears 25 times in the 22-page document[6], adding that "*candidate countries and potential candidates* (…) *will need to carry out substantive political, institutional and policy reforms to be ready for membership,* [while] *the Union* (…) *will have to deal with, inter alia, increased heterogeneity, the need for new resources, further complexity of decision-making processes*"[7].

That the candidates should be prepared for membership, and that the functioning of the Union should be adapted in view of its enlargement, is obvious. It is indeed what art. 49 TEU, the procedure for the EU (Member States) to admit more members, requires. But perhaps more than on previous occasions, further EU enlargement will also necessitate

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[1] Following then European Commission President Juncker's announcement available at: https://ec.europa.eu/commission/presscorner/detail/en/SPEECH_14_567.

[2] See Guest Editorial, *Accession Through War – Ukraine's Road to the EU*, in *Common Market Law Review*, Vol. 59, 2022, p. 1289.

[3] Recall the Preamble of the Treaty of Rome (now included in TFEU), particularly the founders' "*call* (…) *upon the other peoples of Europe who share their ideal to join in their efforts*".

[4] See *e.g.* European Council, *Granada Declaration*, of 6 October 2023; and European Council, *Conclusions*, of 15 December 2023.

[5] Including Albania, Bosnia and Herzegovina, Georgia, Moldova, Montenegro, North Macedonia, Serbia, Türkiye and Ukraine.

[6] European Commission, *Communication on pre-enlargement reforms and policy reviews*, COM(2024) 146 final, p. 1.

[7] *Ibidem*.

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steady political resolve and methodological inventiveness. One finds signs of such a determination both rhetorically in several European Council, Commission and Parliament's official statements and documents, and in practice as typified by the exceptional speed with which the membership applications of Ukraine, Moldova and Georgia were initially processed[8]. Yet it will have to be sustained, strengthened over time and operationalised across all levels of EU governance and society – as much as in the candidates themselves – ultimately to safeguard the very foundations and functioning of the EU[9].

Whether this involves EU institutional reforms by way of a formal treaty change *before* new accessions is debatable[10]. Legally, the procedure of art. 49 TEU stipulates that "*adjustments to the Treaties on which the Union is founded, which (...) admission entails*" should be introduced through the accession treaty negotiated and concluded between the Member States and the candidate(s). Politically, there seems to be little appetite in several EU States to embark on a formal treaty revision. Indeed, convincing Europhobes and vetocrats in power in various capitals of the expediency of further integration, by *e.g*. giving up unanimity in the Council's decision-making including in the context of the suspension procedure of art. 7 TEU, would be a tall order. Opening such a discussion, at this particular time, with such protagonists would (yet again) enable their hostage-taking[11], stalling both reforms and accessions, ultimately further damaging the Union, and what is left of the stability of the continent.

That said, proceeding with enlargement would be self-defeating if it were badly prepared and arranged hurriedly. Therefore, if Member States' declarations about its geostrategic importance for the Union are to be trusted, reforming the EU (and the way Member States operate therein) to secure its ability to function must be envisaged *à traité constant*. Indeed, as the following discussion argues, it is primarily by changing the ways *existing* EU rules are applied, internally and in relation to the candidates, that the envisaged enlargement can be successfully prepared, and that EU constitutional reforms can be initiated. Changing practices ought to be considered around three related imperatives: effectively repairing EU membership (Section 2), credibly preparing candidates' accession (Section 3) and progressively sharing ownership in the EU's future with those Countries, ahead of their admission (Section 4).

2. Repairing EU Membership

At the risk of stating the obvious, the first condition to make enlargement a success is for EU institutions (and Member States, as co-custodians of the Union's constitutional order) (more) resolutely to confront, with available legal tools, the lingering deterioration of the rule of law and democracy in some Member States[12]. Such a deterioration corrodes the

[8] Accession negotiations were formally opened with Moldova and Ukraine on 25 June 2024; see *e.g.* the EU Negotiating Framework for Ukraine: www.consilium.europa.eu/media/ksodan30/ad00009en24.pdf . See Guest Editorial, *op. cit.*, and P. BLENKINSOP, *EU Agrees on Start of Accession Talks with Ukraine, Moldova*, in *Reuters*, 14 June 2024.

[9] Instead of endangering its integrity: see *e.g. EU "Membership-Lite" Plan for Ukraine Spooks European Capitals*, in *Financial Times,* 16 January 2026.

[10] See *e.g.* Report of the Franco-German working group of EU institutional reform, *Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century,* Paris-Berlin, 18 September 2023.

[11] See Editorial Comments, *Compromising (on) the General Conditionality Mechanism and the Rule of Law*, in *Common Market Law Review*, Vol. 58, 2021, pp. 267-284.

[12] On the notion of "fundamentals" in the accession process, see *e.g.* European Commission, *Enhancing the accession process – A credible EU perspective for the Western* Balkans, of 5 February 2020, COM(2020)

fundamentals of EU membership and impairs the Union's functioning and sustainability. It is indeed the (increasingly explicit) agenda of regressive member governments: free riding on the benefits of EU membership and dilapidating it from the inside[13].

The Court of Justice has repeatedly held that Member States' regressions from the "fundamentals" of membership, that is from the commitments which they make upon choosing to be (and remain) EU member (*e.g.* to respect and promote the values of art. 2 TEU), are unlawful and must be reversed. In underlining the need to "*maintain undisputed respect for and continued application of the EU's core values*", the Commission's 2024 Communication on necessary pre-enlargement EU reforms[14], equally underscores the fundamental connection between value observance and membership. Yet, the "Guardian of the Treaties" does it too weakly. For enlargement requires not only to "maintain", but first and foremost to *restore* and *secure* such "undisputed respect" within the Union as it stands.

The (mis)handling of the procedure of art. 7, para. 1, TEU – activated against the Hungarian and Polish governments respectively – has indeed exposed not only the Member States' lingering powerlessness, if not unwillingness, decisively to enforce the agreed requirements of membership whose fulfilment they otherwise expect from the candidates. The speed with which the Commission decided to terminate that very procedure of art. 7, para. 1, TEU, which it had itself initiated against the recalcitrant PiS government of Poland – after the latter's replacement in the autumn of 2023 but *before* the established regression had effectively been reversed[15] – has also raised (again) questions as to whether the Guardian of the Treaties is determined enough to perform its constitutional mandate (as bolstered by post-Lisbon art. 17, para. 1, TEU)[16]. Its earlier initiative to unblock substantial EU funds (EUR 10,2 Bn) to Hungary on the eve of – and in the hope of easing – the European Council meeting of December 2023[17], allegedly on the basis of "*sufficient guarantees to say that independence of the judiciary will be strengthened*" in that Member State[18], did little to help dispel those doubts. The European Parliament has indeed contested that move before the Court of Justice, potentially offering a welcome occasion to bolster the Commission's accountability in the exercise of its supervisory functions, and clarify its constitutional responsibilities[19]. The Commission's decision was all the more astounding since it came while the Hungarian Parliament was adopting a Kremlin-inspired legislation on the "*Protection of National*

57 final; see also European Commission, *2023 Communication on EU Enlargement Policy*, of 8 November 2023, COM(2023) 690, in part. p. 8 ff.

[13] See in this regard the declarations of Viktor Orbán on the occasion of his visit to Serbia in November 2025, available at https://miniszterelnok.hu/en/hungarian-and-serbian-people-live-not-side-by-side-but-together/.

[14] European Commission, *Communication on pre-enlargement reforms and policy reviews*, of 20 March 2024, COM(2024) 146 final, p. 1.

[15] See *Commission decides to close the Article 7(1) TEU procedure for Poland*, in *Daily News*, 29 May 2024.

[16] Its quick decision to release EU funds to the post-2023 government is equally remarkable in view of the limited reforms actually implemented, see https://www.gov.pl/web/justice/european-commission-unblocks-funds-for-poland-from-the-national-recovery-plan.

[17] Available at https://ec.europa.eu/commission/presscorner/detail/en/ip_23_6465.

[18] European Commission's Press Release, *Commission Considers that Hungary's Judicial Reform Addressed Deficiencies in Judicial Independence, But Maintains Measures on Budget Conditionality*, 13 December 2023.

[19] Court of Justice of the European Union, Case C-225/24, *Parliament v. Commission*, action brought on 25 March 2024. Out of consistency, the Parliament could have also contested the Commission's decision to release EU funds to the new Polish Government, before the required reforms were effectively implemented and the rule of law restored.

Sovereignty Act and the establishment of the Sovereignty Protection Office"[20], and in relation to which the same Commission opened an infringement procedure just a few weeks later on the grounds that such a legislation violates no less than: "*the democratic values of the Union; the principle of democracy and the electoral rights of EU citizens; several fundamental rights enshrined in the EU Charter of Fundamental Rights, such as the right to respect for private and family life, the right to protection of personal data, the freedom of expression and information, the freedom of association, the electoral rights of EU citizens, the right to an effective remedy and to a fair trial, the privilege against self-incrimination and the legal professional privilege; the requirements of EU law relating to data protection and several rules applicable to the internal market*"[21].

The ambivalence of EU institutions and Member States in upholding the fundamentals of membership internally, hampers the Union and its enlargement policy. Instead of leading by example and incentivising their transformation, the EU's flip-flopping also fuels the candidates' disillusion, if not cynicism towards its values, which malevolent forces easily amplify and instrumentalise further to undermine the Union's image across candidates' societies, and increasingly that of the EU itself. The lack of resolute protection of the Union's integrity thus affects European citizens' trust in the authority of its institutions, and in the validity of the social contract EU membership encapsulates, let alone their backing for further enlargement of the Union – a backing that is essential, not least because the ratification of future accession treaties will in principle have to be carried out by referendum in at least one Member State (viz. France). While popular support may have increased in favour of Ukraine and Moldova in the wake of Russia's aggression, it remains highly volatile, and risks becoming even more fragile as policy and financial consequences of further accessions are publicly debated, and unscrupulously politicised[22].

In sum, domestic regression from the commitments of membership, and the lingering failure to reverse it, is a major impediment to the Union's sustainability and *a fortiori* to its ability to welcome new members. To be credible, reinvigorated enlargement talks must therefore go hand in hand with – and should be a major incentive for – a strengthened commitment to preserve the integrity of the EU's foundations and membership. The fundamental change of approach this requires from the Member States and institutions is essential to demonstrate internally that the Union can effectively cope with the consequences of another significant enlargement, and to show to the candidate countries that it is effectively preparing for their admission by buttressing the foundations of the polity that they aspire to join.

As respect for, and promotion of the fundamentals of membership is a prerequisite for entering the Union, and a condition for Member States to continue to enjoy the full benefits of membership[23], restoring the "*undisputed respect for and continued application of the EU's core values*" within the existing Union is thus the bedrock of its enlargement preparation. It is also the *condition préalable* for deeper revision to improve the functioning of the EU – not the other way around[24]. Indeed, more QMV in EU decision-

[20] European Parliament, *Motion B9-0223/2024 for a resolution on ongoing hearings under Article 7(1) TEU regarding Hungary to strengthen the rule of law and its budgetary implications*, of 19 April 2024, 2024/2683(RSP).
[21] European Commission's Press Release, *February Infringement Package: Key Decisions*, 7 February 2024, available at https://ec.europa.eu/commission/presscorner/detail/en/inf_24_301.
[22] See M. KASZTELAN, C. CARLILE, J. GROSTERN, *Orbán-backed Think Tank Courts Farmers Linked to Far Right Ahead of EU Poll*, in *DeSmog*, 2 May 2024.
[23] See *e.g.* Court of Justice of the European Union, Judgment of 20 April 2021, Case C-896/19, *Repubblika v Il-Prim Ministru*.
[24] *Cf.* https://www.elysee.fr/en/emmanuel-macron/2024/04/24/europe-speech; *Sailing on High*, cit.

making procedures, and/or fewer commissioners will do little to improve the Union's operation and capacity to integrate new members – a more apposite concern than that of the EUs "*capacity to absorb*" them[25] – if existing Member States keep on flouting EU decisions, including those of the Court of Justice of the EU[26]. Confronting regression from, and securing Member States' genuine observance of the fundamentals of EU membership is therefore the mother of all EU internal "reforms" to prepare the Union for enlargement.

As the Court of Justice confirmed[27]. EU law already provides an elaborate toolbox which, as alluded to above, remains to be fully used. Indeed, it should be mobilised not only to stop Member States' regression, but also to secure the full restoration of their constitutional democracy in line with the fundamentals of membership, as presently attempted by Poland's government[28]. Rather than giving up all leverage on the post-2023 government, as has unexpectedly been done, the Commission (and other institutions) should maintain the pressure on the reformist authorities to ensure that they effectively reinstate "*undisputed respect for and continued application of the EU's core values*". This is the essential logic of arts. 258-260 TFEU which, in the words of the Court of Justice, entails that: "*mere administrative practices, which by their nature are alterable at will by the authorities and are not given the appropriate publicity, cannot be regarded as constituting the proper fulfilment of obligations under EU law*"[29]. Moreover, the EU in general and the Commission in particular, must ascertain that – and help the reformist authorities confront – the remnants of the past regressive regime – viz. the President of the Republic and "Constitutional Tribunal" of Poland which have kept obstructing the post-2023 government's restorative reforms, leaving the risk of a serious breach of the EU core values intact, if not bigger[30], especially after the Court of Justice has found the composition of the "Constitutional Tribunal" unlawful[31]. To be sure, and to quote the Court again: "[a] *Member State cannot plead practical, administrative or financial*

[25] European Council, *Conclusions*, 21-22 June 1993, pt. 7.A.iii); Communication from the Commission to the European Parliament and the Council, *EU's capacity to integrate new members*, of 8 November 2006, COM(2006) 649 final, Annex I.

[26] See in this sense Court of Justice of the European Union, Judgment of 15 June 2023, Case C-132/22 *Commission v. Hungary*.

[27] Court of Justice of the European Union, Judgment of 16 February 2022, Case C-156/21, *Hungary v. EP and Council (Conditionality)*; Court of Justice of the European Union, Judgment of 16 February 2022, Case C-157/21, *Poland v. Council and EP (Conditionality)*.

[28] See C. HILLION, T. PAVONE, A. SCHERZ, *Democratic Frontsliding in the European Union: The Problem of Autocratic Enclaves and the Case for Restorative Disobedience*, in *University of Oslo Faculty of Law Research Papers*, 2025.

[29] Case C-123/22, *Commission v Hungary*, cit., confirming a well-established case law in *e.g.* Court of Justice of the European Communities, Judgment of 15 October 1986, Case 168/85, *Commission v. Italy*; and Court of Justice of the European Communities, Judgment of 7 February 1985, Case 173/83, *Commission v. France*.

[30] See *Commission intends to close Article 7(1)TEU procedure for Poland*, in *Daily News*, 6 May 2024; *Commission decides to close the Article 7(1) TEU procedure for Poland*, in *Daily News*, 29 May 2024. The Commission's considerations seem all the more premature in view of the action it itself launched against Poland before the Court of Justice, following the declaration by that problematic "Constitutional Tribunal" that several provisions of the TEU as interpreted by the Court of Justice are incompatible with the Polish Constitution. See "*Case C-448/23: Action brought on 17 July 2023 – European Commission v Republic of Poland*", in O.J. 2023, C 304/17. The Court has in the meantime confirmed the unlawful composition of Poland's Constitutional Tribunal in Court of Justice of the European Union, Judgment of 18 December 2025, Case C-448/23, *Commission v. Poland.*

[31] Case C-448/23 *Commission v Poland*, cit.

difficulties or difficulties of a domestic nature to justify failure to observe obligations arising under EU law"[32].

3. Preparing Candidates' Accession

The second change to help prepare the Union for further enlargement concerns the accession process itself. If enlargement is as geo-strategically significant as the European Council, Parliament and Commission have repeatedly proclaimed, then both Member States and institutions must correspondingly engage, notably by sharpening the process to carry it out, and their involvement therein.

First, Member States and institutions should consistently apply the sophisticated methodology they have themselves crafted and which structures the pre-accession phase, namely "*fair and rigorous conditionality*"[33]. It requires that they acknowledge and commensurately reward the candidates' fulfilment of the accession conditions, wherever and whenever progress effectively occurs[34]. Conversely a candidate's lack of reform, or indeed regression as regards the fulfilment of membership conditions, should be met with correspondingly negative EU (Member States) response, including by way of slowing down or even suspending the accession process[35], in line with the terms of *e.g.* EU negotiating frameworks[36]. In other words, contrary to what they have misguidedly done, Member States and institutions should not reward candidates that prevaricate. As it has been recalled, "*Europe's transformative power is only as great as the credibility of the accession process to offer a clear prospect for membership*"[37]. It is also only as great as the credibility of its accession methodology. Failing a consistent application of conditionality, Member States and EU institutions alike fuel further distrust in the EU enlargement policy and in the EU's preparedness, not only among the candidates but also across the Union.

Secondly, and further to restore the trustworthiness of accession conditionality, Member States' sincere cooperation is essential. Since the episode of 2004, they have instead considerably tightened their grip on the overall enlargement process in ways that have hampered its efficacy. Procedural steps and instances of unanimous decision-making have thus proliferated throughout the accession negotiations, whereby the opening, closing of, and indeed progress in each of the negotiation chapters have been subject to their unanimous approval. Despite a slight reduction of the number of required decisions

[32] Case C-123/22 *Commission v Hungary,* cit.; also confirming a well-established case law in *e.g.* Court of Justice of the European Communities, Judgment of 14 December 1979, Case 93/79, *Commission v Italy*.
[33] European Commission, *Communication on pre-enlargement reforms and policy reviews*, of 20 March 2024, COM(2024) 146 final, p. 2.
[34] Consider in this respect how Member States have repeatedly stalled the process of North Macedonia's accession.
[35] Consider in this respect how Serbia's accession process has not been adjusted.
[36] Point 4 of the negotiating framework for the accession negotiations with Montenegro (2012) foresees that: "*In the case of a serious and persistent breach by Montenegro of the values on which the Union is founded, the Commission will, on its own initiative or on the request of one third of the Member States, recommend the suspension of negotiations and propose the conditions for eventual resumption. The Council will decide by qualified majority on such a recommendation, after having heard Montenegro, whether to suspend the negotiations and on the conditions for their resumption*". See in the same vein, though differently formulated, see pt. 17 of the EU Negotiating Framework for Ukraine, cit.
[37] V. ANGHEL, E. JONES, *Three Lessons from the 2004 "Big Bang" Enlargement*, in *Politics and Governance*, Vol. 12, No. 1, 2024.

following the 2020 reform of the negotiations process[38], the increased proceduralisation of EU enlargement has not only mechanically slowed accession down. It has also led to its increased instrumentalization. Some Member States have thus (ab)used the inflated veto opportunities to extract concessions from candidates, or indeed from other Member States, including on matters that are not related to EU membership requirements, actual preparation of candidates, or to the EU itself[39].

While bolstering Member States' involvement could admittedly propel more quality control over the candidates' preparation[40] – after all, Member States are and must act as the custodians of EU membership – it has had the opposite effect. Enabling vetocracy, itself bolstered by the bigger number of Member States involved, this evolution has generated numerous unilateral blockages, and in turn a loss of momentum in the pre-accession transformation. For it has also fuelled candidates' distrust, if not disillusion over the veracity of the EU and Member States' commitments, thereby discouraging their leadership to pay the (sometimes high) political costs for introducing difficult (and controversial) reforms[41].

That some Member States continue to capture the accession process for domestic political gains, while others persistently deviate, equally unchallenged, from the very conditions that they require candidates to meet, profoundly damage the whole enlargement policy. The phenomenon exposes a discrepancy between the strategic decisions that Member States take in the European Council, and their individual (mis)conducts that hamper the implementation of those decisions.

Politically, it is doubtful that progress on the accession path should be made subject to dozens of unanimous Member States' decisions and an equal number of veto opportunities if enlargement is the EU geostrategic investment in peace and stability it is proclaimed to be. Legally, the inflated number of EU states' unanimous decisions in the negotiations is not justifiable in view of the procedure stipulated in art. 49 TEU. The latter envisages very few procedural points at which Member States have a veto power. One such point is the decision that they – qua (European) Council – are empowered to take to initiate the Union's enlargement in response to a state application for membership. Another is the Member States decision to accept (or not) the accession treaty establishing the "*conditions of admission and the adjustments to the* [EU] *Treaties*", which they have negotiated with the candidate State, formally to allow its admission.

At the initial point of the procedure, Member States admittedly enjoy a wide political discretion – as typified by France's double veto over the UK's membership application in the 1960s. However, such a discretion arguably diminishes while the Member States' obligation of sincere cooperation (art. 4, para. 3, TEU) proportionally increases, once the

[38] See European Commission, *Enhancing the accession process – A credible EU perspective for the Western Balkans*, of 5 February 2020, COM(2020) 57 final.

[39] See C. HILLION, *EU Enlargement*, in O. CRAIG, G. DE BÚRCA (eds.), *The Evolution of EU Law*, Oxford, 2011, pp. 187-216; E. FOUÉRÉ, *EU Enlargement and the Resolution of Bilateral Disputes in the Western BALKANS*, in *CEPS*, 10 July 2023.

[40] As mentioned before, holding up the accession process should be the legitimate Member States' reaction if the candidate does fail to make progress in meeting the accession conditions.

[41] Recall that one applicant (viz. North Macedonia) was asked to change its official name upon the request from a Member State (Greece) as a condition to start accession negotiations. The latter were then blocked again by another Member State (Bulgaria) over a dispute on the candidate's language and identity. See further Y. CHRISTIDIS, *North Macedonia. After Greece, Bulgaria Appears. North Macedonia's Obstacle Course to Enter the EU*, in *IEMed. Mediterranean Yearbook*, 2022, pp. 230-233; F. BYTYCI, O. TEOFILOVSKI, *North Macedonia Votes to End Dispute with BULGARIA, Clears Way for EU Talks*, in *Reuters*, 17 July 2022; and O. VANGELOV, *Exiting the Bulgarian Labyrinth: Safeguarding North Macedonia's EU Accession from Entrenched Bilateral Conditionality*, in *The SAIS Review of International Affairs*, 30 December 2025.

initial political decision to activate the enlargement procedure is taken, and particularly as the latter proceeds to its *implementation* phase, namely the negotiations of the terms of accession governed by the second subparagraph of art. 49 TEU**.** Provided the candidate otherwise meets the conditions of membership, the initial political decision prompts an obligation for the Member States to facilitate the process which they have initiated, and refrain from measures that would impede it, in line with their obligation of sincere cooperation[42]: not only in the application of accession conditionality, but also in the conduct of accession negotiations, and later in the process of ratification of the accession treaty. A corresponding obligation to practice sincere cooperation does apply to EU institutions, including the European Council and the Commission, as foreseen in art. 13, para. 2, TEU.

Therefore, the more the enlargement process advances, the less room the admission procedure established and governed by the EU constitutional charter, allows for obstructive postures and *vetocracy*. Thus, a Member State's negative stance – *e.g.* in relation to the opening or closing of a particular cluster/chapter of the accession negotiations – must not be permitted to hold up the overall process *unless* that stance is adequately justified. Such justification entails that the Member State concerned compellingly establish that a fundamental EU interest is being affected as a result of a contentious behaviour of the candidate at hand[43], *and* the demonstration that suspending the negotiation process would be the proportionate means to address the issue, *i.e*., that there is no other, less disruptive, method available to safeguard that interest. The understanding should indeed be that unilateral suspension of the accession process should always be a last resort, particularly in view of the latter's strategic importance for the Union as a whole.

Such an approach would help address and hopefully reduce the disruptive nationalisation of the EU enlargement policy. But it would also prevent the Member States' actually circumventing the procedure they have themselves included in the negotiating framework precisely for the purpose of suspending the negotiations in case the candidate deviates from the fundamentals of membership, or if its progress stagnates, and which involves a (reverse) qualified majority decision in the Council[44]. To be sure, once the European Council has decided to open accession negotiations, it is unusual that the subsequent implementation of that decision should be made subject to dozens and dozens of legally unwarranted *unanimous* Member States decisions to implement it. Once the fundamental political decision is taken, following demanding procedural requirements, its implementation ought instead to proceed based on procedural arrangements that facilitate rather than obstruct it, especially if the policy at hand is in the strategic interest of the Union. Indeed, the established EU rule is that a European Council decision is to be subsequently implemented by measures adopted by *e.g.* qualified majority in the Council (see *e.g*. art. 31, para. 2, TEU, or art. 50 TEU).

The suggestion has thus been made to replace unanimity by qualified majority at various stages of the accession negotiations to reduce vetocracy[45]. This would merely require a change in the current *practice* of accession negotiations, not a modification of the law of art. 49 TEU itself, which says very little about their organisation. While the

[42] Consider, in this regard, the Member States' obligations of sincere cooperation which the Court robustly recalled in Court of Justice of the European Union, Judgment of 27 March 2019, Case C-620/16, *Commission v. Germany (COTIF II)*, in part. para. 92 ff.

[43] In line with the conditions for the suspension mechanism envisaged in the EU negotiating framework for *e.g.* Ukraine at pts. 16-17: https://www.consilium.europa.eu/media/hzmfw1ji/public-ad00009en24.pdf

[44] See *e.g.* the different negotiating frameworks for Montenegro, cit., pt. 4, and for Ukraine, *ibidem,* pt. 17.

[45] See *e.g.* W. ZWEERS, I. IOANNIDES, Z. NECHEV, N. DIMITROV, *Unblocking Decision-Making in EU Enlargement: Qualified Majority Voting As a Way Forward*in , *Clingendael Policy Brief*, 2024, pp. 1-15.

move would likely help prevent Member States hijacking the process, once activated, at least until the ratification stage, it still does not directly address the fundamental problem of inflated number of Member States' decisions in the negotiations, itself debatable in view of the provisions of art. 49 TEU. Another – also legally sound – approach could therefore be further to reduce the number of decisions in accession negotiations, thereby respecting the letter and purpose of art. 49 TEU and doing justice to the strategic dimension of the enlargement at hand.

4. Sharing Ownership in the EU's Future

A third enlargement-related reform worth considering is for Member States and institutions incrementally to integrate candidates prior to their accession. In line with its original purpose, the enlargement policy ought to assist aspiring members to *become* Member States, thus able to behave and operate as such within the future enlarged Union. This requires far more than their scrupulous absorption of the EU *acquis*, and the timid forms of "gradual integration" thus far contemplated. It rather entails that candidate States acquire a familiarity with EU governance, which an incremental inclusion would provide, foreshadowing the full institutional integration resulting from full membership. The candidates' institutional acclimatisation[46], which is arguably in the interest of the Union too, could take at least two complementary forms.

First, EU institutions should gradually include candidates in their structures prior to their accession, by allowing them to take part in the Union policy discussions, in return – and as a tangible reward – for their effective progress in meeting membership obligations. For instance, rather than waiting for the signature of the accession treaty to grant them observer status in EU institutions as traditionally done – but not legally required –, the inclusion of candidates' representatives in the EU governance could take place gradually, on a policy basis[47]. The arrangements established by the (30-year-old) EEA agreement, and the Schengen association offer ample inspiration to craft appropriate mechanisms to allow such an institutional inclusion[48], while respecting the sacrosanct principle of autonomy of EU decision-making. Hence, upon the closure of a particular chapter – and *a fortiori* upon the closure of an entire cluster – of the accession negotiations, that would certify the candidates' fulfilment of the related conditions, representatives of the State concerned could then participate in policy discussions relating to that chapter (*e.g.* transport, energy, or CFSP). This could be done, for example, through their inclusion in the relevant expert/working groups in the Commission, the Council, and/or parliamentary committees, though short of any decision-making rights – as exclusive and essential membership privileges – and thus building on their existing participation in *e.g.* the transport and energy communities, or CFSP/CSDP missions.

[46] The need to familiarize the candidates with the EU operation was already recognized at the Luxembourg meeting of the European Council on 12-13 Dec. 1997; see *Presidency Conclusions*, pt. 19.

[47] Consider in this regard the Commission's proposal in: *Enhancing the accession process –A credible EU perspective for the Western Balkans*, of 5 February 2020, COM(2020)57 final, p. 3, and that of M. MIHAJLOVIĆ, S. BLOCKMANS, S. SUBOTIĆ, M. EMERSON, *Template 2.0 for Staged Accession to the EU*, in *CEPS*, June 2023, pp. 1-25.

[48] Precedents which the Council Legal Service hardly explored in a note it submitted to COREPER, in response to a suggestion from the Commission that the Western Balkan countries could participate in Council meetings or Council works on matters of substantial importance to them: https://data.consilium.europa.eu/doc/document/ST-6566-2020-INIT/en/pdf

Such a progressive inclusion in the EU governance – as inaugurated by the European Economic and Social Committee[49], various EU agencies, and as seemingly envisaged by the European Commission[50] – would instil new vigour into the accession conditionality which, as discussed above, needs it to recover some efficacy. It would in effect offer tangible, intermediate rewards to candidate States before their ultimate accession – which may take time. It would in turn stimulate candidates' internal reforms that are deeper and more in line with the requirements of membership, than the mere EU *acquis* absorption[51].

Anchoring the candidates in the EU governance would also increase their sense of ownership in the future of the EU, in policy and strategic terms, possibly contributing to preventing the reversibility of pre-accession reforms. It would indeed lock them in and allow EU institutions and Member States to keep them, and their drive to reform, more closely in check – with the possibility to suspend/terminate that participation in case of regression, using the decision-making mechanism established by the negotiating framework[52]. It could thus help entrench candidates' pre-membership preparations and ascertain their readiness loyally to take part as fully operational Member States. Their inclusion in the Commission's annual rule of law reporting, and in the regular Council rule of law dialogue is a step in that direction[53]. It will incidentally bolster the consistency between accession conditions and membership obligations, thereby helping to overcome the unhelpful perception of the EU applying double standards, alluded to above.

Secondly, and alongside that incremental policy-based institutional inclusion, candidates should be associated with the announced deliberation on EU (constitutional) reforms, the way candidates from Central and Eastern Europe were involved in the work of the Convention on the Future of Europe which drafted the defunct EU Constitutional Treaty prior to their accession. Thus, contrary to what has been suggested, the preparations for enlargement and reforms should not take place "*in parallel*"[54], as if they were entirely secluded from one another. The two processes should instead be intimately connected – as indeed foreseen by art. 49, sub-para. 2, TEU. While the European Political Community may have provided a useful forum for candidates and Member States to meet, among other European States, it has fallen short of providing the adequate structured conversation between existing and future Member States about their shared EU constitutional future.

5. In Sum

If enlargement is to be a genuine "*geo-strategic investment in peace, security, stability and prosperity*"[55], the EU must engage and act accordingly. However, it cannot do this so long as its institutions and Member States are incapable to neutralize free-riders, vetocrats

[49] EESC, *Enlargement Candidate Members' Initiative*, available at www.eesc.europa.eu/en/initiatives/enlargement-candidate-members-initiative

[50] European Commission, *Enhancing the accession process –A credible EU perspective for the Western Balkans*, of 5 February 2020, COM(2020)57 final.

[51] Participation in EU policy discussions would arguably require the development of internal expertise and mobilisation, and thus commensurate education and competence building programmes, thus contributing to further membership preparation within the candidates' structures and societies.

[52] See *e.g.* pt. 4 of the negotiating framework for Montenegro, cit.; and pt. 17 of the Negotiating Framework for Ukraine, cit.

[53] Further in this regard, see C. BRASSEUR, V. PACHTA, C. GRIGOLO, *Towards an Enlarged Union: Upholding the Rule of Law*, in *International IDEA Policy Paper*, No. 30, April 2024.

[54] European Council, *Conclusions*, of 22 March 2024, pt. 29.

[55] *Granada Declaration*, cit.

and spoilers within their midst, and thus to safeguard the integrity of EU membership. Enlarging such a captured Union would further cripple its functioning and erode its trustworthiness in the eyes of citizens, ultimately threatening its existence and in turn "*peace, security, stability and prosperity*" on the continent – a geo-strategic failure for Europe and a geopolitical feat for its foes.