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CONTINUITY AND DISCONTINUITY IN UKRAINE'S ADMISSION TO THE EU

by *Marco Evola**

SUMMARY: 1. Introduction. – 2. The Geostrategic Dimension of Enlargement. – 3. Membership Conditions and Their Application: 3.1. Good Neighbourliness. – 3.2. The *Acquis Communautaire*. – 3.3. Democracy, Rule of Law, and Human Rights. – 4. Legal Problems of Continuity and Discontinuity – 5. Geostrategy, Neutrality and Defence Policy. – 6. Concluding Remarks.

1. Introduction

The decision of the European Council to give Ukraine the status of candidate country on 23 June 2022¹, just a few months after its application for membership of the European Union (EU) in the aftermath of the Russian invasion², and the simultaneous decisions on Moldova's and Georgia's applications for membership, have given a new impetus to the already pending proceedings of admission³, putting an end to the long period of stalemate which has marked the policy of enlargement in recent years. The more recent decision of the European Council to start admission negotiations with Ukraine and the Republic of Moldova⁴ does not only make it clear that enlargement of the EU is conceived among the answers to the Russian Federation's aggressions and its breach of international legality, but witnesses a fresh interest of the Union in reviving admission. This interest is confirmed by the decisions the EU has taken in the aftermath of the start of the admission proceedings involving Ukraine and the Republic of Moldova, with reference to the Western Balkans that have been queuing up at the door of the Union for many years⁵. The relaunching of the talks with North Macedonia⁶ and the granting of candidate status to Bosnia and Herzegovina⁷ are a litmus paper of a change in the EU's attitude towards countries aspiring to membership.

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The text is the revised version of the presentation the author did at the Conference on "A New Chapter of EU's Enlargement?" which Professor Teresa Russo organised and which was held at the University of Salerno on 18 September 2025. The author wants to express his gratitude to Professor Russo for the Conference.

¹ *Conclusions of the European Council*, of 23 and 24 June 2022, para. 11.

² Ukraine applied for membership of the European Union on 28 February 2022.

³ See F. FABBRINI, *The War in Ukraine and the Enlargement of the European Union: Securing the Blessings of Liberty and its Challenges*, in *Centro Studi sul Federalismo*, Research Paper, 2024, p. 6 ff.

⁴ *Conclusions of the European Council*, of 14 and 15 December 2023, para. 15. On the relationships between the EU and Ukraine before the application for membership see R. PETROV, *All's Well That Ends Well: Short Story of Ukraine's Road Towards European Union Membership*, in *Yearbook of European Law*, 2024, p. 3 ff.; E. PIONTEK, *Ukraine*, in S. BLOCKMANS, A. ŁAZOWSKI, *The European Union and Its Neighbours. A Legal Appraisal of the EU's Policies of Stabilisation, Partnership and Integration*, The Hague, 2006, p. 499 ff.

⁵ On the stalemate of enlargement towards the countries of the Western Balkans see F. DEANA, *L'allargamento dell'Unione europea nei Balcani occidentali: una strada oscura che conduce al nulla?*, in *Eurojus*, no. 2, 2022, p. 177 ff.

⁶ *Conclusions of the European Council*, of 14 and 15 December 2023, para. 18.

⁷ *Conclusions of the European Council*, of 15 December 2022, para. 30. In *Conclusions of the European Council*, of 15 December 2023, para. 17, the European Council expressed its willingness to start admission talks with Bosnia and Herzegovina.

However, Ukraine is a *sui generis* case in the history of the process of European integration since the application of the rules on admission involves a State which is engaged in a war to defend itself against an invasion⁸. As things stand at the time of writing, the Russian Federation has control of part of the invaded country, which has lost its jurisdiction over a vast area of its land.

The Ukrainian situation has no historical precedents in admission to the EU and cannot be compared to other applications for membership. Only apparently does the case of Cyprus resemble that of Ukraine, because in fact there was no war between the two parties between which the island was divided in those times, a division which has persisted nowadays too, so that the Cypriot State has to be considered as a divided State. During the proceeding which led to the admission of Cyprus into the Union the Turkish and Greek parties, under the auspices of the United Nations, were discussing a solution for reunifying the island under one single State entity and the then Secretary of the organization Kofi Annan submitted a plan for reconciliation the EU supported within the framework of its activities aiming at favouring future admission of the country as a whole⁹. The plan was rejected by the Greek voters in the referendum which was held in 2004¹⁰, but although no reconciliation took place, the proceeding was successfully completed with the admission of Cyprus in its entirety and the limited application of EU law to the part of the island the Greek community rules over¹¹ as the only State entity the international community recognises¹². In the same vein, the territorial disputes existing between some Eastern European States before being admitted into the Union never gave rise to war or armed conflicts of whatever nature.

The starting of admission negotiations with a country at war stresses the function that the EU has been giving to admission with reference to the States of the former Yugoslavia and pushes it forward giving rise to a shift of a geostrategic character. In developing its initiatives towards the Western Balkans within the framework of enlargement the Union has primarily pursued the objective of stabilization of the area, thus giving admission a geopolitical function¹³. As a consequence of this approach, admission has been embedded in geopolitical considerations, leaving future membership of the EU in the shadow¹⁴. The

⁸ Scholars have stressed this specific feature of the Ukrainian application for membership of the Union. See F. FABBRINI, *The Impact of the War in Ukraine and the Enlargement of the European Union: Securing the 'Blessings of Liberty' and its Challenges*, in *International and Comparative Law Quarterly*, vol. 74, no. 1, 2025, p. 134; S. BLOCKMANS, *The EU's Security Commitments to Negotiate Ukraine's Accession*, in CEPS, 17 July 2024, p. 2.

⁹ N. NUGENT, *EU Enlargement and 'the Cyprus Problem'*, in *Journal of Common Market Studies*, vol. 38, no. 1, 2000, p. 131 ff.; ID., *Cyprus and the European Union: A Particularly Difficult Membership Application*, in *Mediterranean Politics*, 1995, p. 53 ff.

¹⁰ N. TOCCI, *The EU and Conflict Resolution: Promoting Peace in the Backyard*, New York, 2007, p. 28 ff.

¹¹ Protocol no. 10 to the Act concerning the conditions of accession, in OJ L 236, of 23 September 2009, p. 955.

¹² S. BILGE, *La situation juridique de Chypre dans ses deux composantes par rapport au droit communautaire*, in *Revue du marché commun et de l'Union européenne*, 2006, p. 586 ff.; F. HOFFMEISTER, *Legal Aspects of the Cyprus Problem. Annan Plan and the EU Accession*, Leiden, 2006; H. ANASTASIOU, *Cyprus and the EU Anomaly*, in *Global Society*, vol. 23, no. 2, 2009, p. 130.

¹³ See M. EVOLA, *La promozione dei valori dell'Unione europea nella procedura di ammissione tra dimensione costituzionale del processo di integrazione e realizzazione degli obiettivi della politica estera e di sicurezza comune*, in P. DE PASQUALE, A. CIRCOLO (a cura di), *La gestione delle emergenze nel diritto dell'Unione e nel diritto internazionale. Emergenza migratoria e valoriale*, II vol. Napoli, 2025, p. 116 ff.

¹⁴ On this development of the policy of admission into the Union in relation to the Western Balkans, see V. ANGHEL, J. DŽANKIĆ, *Wartime EU: Consequences of the Russia-Ukraine War on the Enlargement Process*, in *Journal of European Integration*, vol. 45, no. 3, 2023, p. 491; M. PETROVIC, *30 Years of the EU's Peace, State and Democracy Building Efforts in the Western Balkans: A Fragile Peace, Incomplete State Building, Some Democracy... and No EU Accession*, in *Security Dialogues*, vol. 13, no. 2, 2022, p. 7 ff.; U. VILLANI,

policy towards Ukraine makes it clear that the EU does not only pursue the aim of establishing peaceful relationships in the neighbouring countries and supporting State-building processes in order to safeguard stability, but that enlargement is conceived as part and parcel of the EU geostrategy, giving rise to a revived and enhanced conception of admission and the policy of enlargement the Union carries out to promote and sustain applicant States' reforms that are necessary for complying with the conditions for membership¹⁵. The tie the EU established between admission and geostrategy was summarised in the opening statement for accession negotiations in which the EU affirmed that *"the enlargement process is a geo-strategic investment in peace, security, stability and prosperity"*¹⁶.

This new approach strengthens the connection between admission and the EU Common Foreign and Security Policy (CFSP)¹⁷, as well as the Common Security and Defence Policy (CSDP).

The shift was expressed by the Granada Declaration in which the Heads of State and government of the Members States pointed out that *"enlargement is a geo-strategic investment in peace, security, stability and prosperity. It is a driver for improving the economic and social conditions of European citizens, reducing disparities between countries, and must foster the values on which the Union is founded"*¹⁸.

In stressing this function of admission, the recent 2025 Commission Communication on the enlargement policy reaffirmed that *"geopolitical challenges have strengthened Europe's unity of purpose. They have reinforced the conviction across the continent that Europeans need to do a lot more to protect our own security and our prosperity. This also means defending European democratic values and addressing new global security challenges. This can only be done successfully by working hand in hand with our neighbours to create a strong, stable, secure and united Europe based on common democratic values. In today's world, enlargement policy is a key geopolitical tool that contributes to our joint safety, prosperity and security. In an era marked by transformative global shifts, enlargement unifies Europe, based on shared values and identity, while embodying an economic, social and democratic model that continues to inspire and*

Le responsabilità dell'Unione europea nell'area mediterranea, in *Studi sull'integrazione europea*, no. 3, 2009, p. 551 ff.; S. BLOCKMANS, *Tough Love: The European Union's Relations with the Western Balkans*, The Hague, 2007; S. BLOCKMANS, *Western Balkans (Albania, Bosnia-Herzegovina, Croatia, Macedonia and Serbia and Montenegro including Kosovo)*, in S. BLOCKMANS, A. ŁAZOWSKI (eds.), *The European Union and its Neighbours*, The Hague, 2006, p. 315 ff.

¹⁵ F. FABBRINI, *The Impact of the War in Ukraine and the Enlargement of the European Union*, cit., p. 133; M. RABINOVYCH, A. PINTSCH, *Ukraine's Thorny Path to the EU – From 'Integration without Membership' to 'Integration Through War'*, Cham, 2025, p. 4; S. BLOCKMANS, *The EU's security commitments to negotiate Ukraine's accession*, pp. 2-3; T. RUSSO, *Allargamento e membership dell'Unione europea*, Napoli, 2024, p. 65 ff.; P. BURAS, E. MORINA, *Catch 27: The Contradictory Thinking About Enlargement in the EU*, European Council on Foreign Affairs, Policy Brief, 2023, p. 4; European Stability Initiative, *The Balkan Turtle Race. A Warning for Ukraine*, 2022, pp. 20-21; R. PETROV, C. HILLION, *"Accession Through War" – Ukraine's Road to Membership*, in *Common Market Law Review*, vol. 59, no. 5, 2022, p. 1291.

¹⁶ *EU opening statement for accession negotiations*, 21 June 2024, para. 6.

¹⁷ M. CREMONA, *Enlargement as a Foreign Policy*, in H.A. IKONOMOU, A. ANDRY, R. BYBERG (eds.), *European Enlargement across Rounds and Beyond Borders*, London, 2017, p. 36 ff.; A. LANG, *La politica di allargamento dell'Unione europea*, in *Studi sull'integrazione europea*, no. 5, 2010, p. 477 ff., in part. 491; C. CREMONA, *Enlargement: A Successful Instrument of EU Foreign Policy?*, in T. TRIDIMAS, P. NEBBIA (eds.), *European Union Law for the Twenty-First Century. Rethinking the New Legal Order*, Oxford, 2004, p. 317 ff.; ID., *The Impact of Enlargement: External Policy and External relations*, in *IDEM* (ed.), *The Enlargement of the European Union*, Oxford, 2003, p. 161.

¹⁸ The Granada Declaration has been adopted by the Heads of State and government of the Member States on 6 October 2023. The Declaration is available at <https://www.consilium.europa.eu/en/press/press-releases/2023/10/06/granada-declaration/>.

attract”¹⁹. On the basis of this reasoning, the Communication ends up stating that “*EU membership is a geostrategic investment in a strong, stable, secure and united Europe based on common democratic values. Investing in enlargement is also in the EU’s strategic security and long-term economic interest*”²⁰.

Enhancement of the geostrategic dimension of admission has to be evaluated against the wider framework of the several initiatives the EU has adopted to react against the invasion of Ukraine and the spread of war in the European Continent²¹. The idea of corroborating cooperation among neighbouring countries in the face of war lies behind the setting up of the European Political Community²². Although the objectives to pursue in concrete terms via this initiative are still vague and many uncertainties mark its launching²³, there is no doubt that the gathering together of Member States and countries that aspire to membership or are in any case interested in collaborating with the Union supports the establishment of a bloc of interests opposing Russian expansionist projects.

Moreover, the EU has relaunched the dialogue with the Council of Europe to solve the already pending problems hindering the signature of the agreement to enable the EU to accede to the ECHR²⁴, a move to which the decision on the Russian Federation’s membership of the organisation is not alien. The stress on human rights as a constitutive element of the European identity signals the intention to enhance multilateralism as an instrument against the breach of international law the aggression entails.

The determination to bolster multilateralism in order to put a halt to the expansionist policy of the Russian Federation also lies behind the strengthening of the relationship with NATO. The leaders of the two Organizations in a common statement they released on January 2023 highlighted the shared commitment to push forward the “*strategic partnership*” already existing between the two organizations and the common commitment to relaunch cooperation “*on growing geostrategic competition, resilience issues, protection and critical infrastructure, emerging and disruptive technologies, space, the security implications of climate change, as well as foreign information manipulation and interference*”²⁵.

In the same vein of establishing and reviving cooperation at the international level, scholars have stressed the importance of the rapprochement between the UK and the EU in the military field, via the British joining of the EU’s Permanent Structure Cooperation project on military mobility, and the Windsor Framework on adjustment of the Ireland/Northern Ireland Protocol²⁶.

¹⁹ Communication of the European Commission, *2025 Communication on EU enlargement policy*, of 4 November 2025, COM (2025) 690 final, p. 1. The European Commission adopted a similar approach in the *2024 Communication on EU enlargement policy*, of 30 October 2024, COM (2024) 690 final, p. 1, in which the institution argued that “*twenty years after the biggest enlargement in EU history by 10 new Member States, EU accession remains a key driver of long-term security, peace, stability and prosperity in Europe*” and stressed “*the geopolitical weight of EU enlargement*”.

²⁰ *2025 Communication on EU enlargement policy*, cit., p. 25.

²¹ F. FABBRINI, *The Impact of the War in Ukraine on the Enlargement of the European Union*, cit., p. 127 ff.

²² *Conclusions of the European Council*, of 23 and 24 June 2022, para 1. See L. LONARDO, *The European Political Community: A Nebulous Answer to the Strategic Question of How to Unite Europe*, in *European Papers*, vol. 8, no. 2, 2023, p. 755 ff.; B. DE WITTE, *The European Political Community and the Future of the EU*, in I. GOVAERE, S. GARBEN, E. SPAVENTA (eds.), *The Impact of War (in Ukraine) on the EU*, Oxford-London-New York-New Delhi-Sydney, 2025, p. 101 ff.

²³ T. RUSSO, *op. cit.*, 177 ff.

²⁴ Court of Justice of the European Union, Opinion 2/13 of 18 December 2014, *Accession of the European Union to the ECHR*.

²⁵ *Joint Declaration on EU-NATO Cooperation*, of 10 January 2023, para. 12.

²⁶ *Windsor Political Declaration by the European Commission and Government of the United Kingdom*, of 27 February 2023. See F. FABBRINI, *The Impact of the War in Ukraine on the Enlargement of the European*

In line with the said understanding of admission, recent proposals on the peace agreement between Ukraine and Russia envisage the former's membership of the Union as one of the elements of the deal that should put an end to the aggression the latter perpetrated²⁷.

However, notwithstanding the quick decision of the European Council to open negotiations with Ukraine, a speediness which seems to show a widespread consent among the Member States, the scenario is still marked by a series of variables making any prevision on time and the eventual outcome of the application to enter the club unpredictable. In this vein, the proposal to embed Ukraine's joining the Union into the wider framework of the peace agreement between Ukraine and the Russian Federation has been met with fierce opposition as well as nuanced resistance within the Member States of the Union²⁸.

Although there are several uncertainties surrounding the outcome of the Ukrainian application for membership, the time is already ripe for a first evaluation of the way in which the proceeding has been shaped. This paper aims at evaluating whether or not the special features of the Ukrainian candidature for membership of the Union stemming from its engagement in a war and the new paradigm originating from the connection between enlargement and EU geostrategy have been affecting admission to the Union under both of its aspects: the conditions for membership and the policy of enlargement the Union develops with reference to candidate countries.

In this vein, the elements already emerging from the decisions taken and the activities which have been carried out clarify that there are continuity and discontinuity in Ukrainian admission to the EU, both of them being of interest not only in themselves. The changes that have been introduced and those that have been proposed shed light on issues going beyond the mere Ukrainian case. Against the framework of the procedure of admission which was shaped in previous rounds of enlargement, the practice relating to Ukraine's application raises the problem of the possible existence of limits in the adjustments that can be enacted in the admission procedure.

Moreover, the Union's attitude towards Ukraine's application for membership and the way in which it handles it are part and parcel of more extensive legal phenomena involving the nature of the process of admission and the relationship between the supranationalist character of the EU and the intergovernmental approach towards the shaping of the "ever closer Union". Seen against these trends, the procedure the EU has enacted for the admission of Ukraine seems to enhance the shift towards the latter shaping of cooperation within the framework of the founding treaties.

2. The Geostrategic Dimension of Enlargement

The scenario that has been briefly traced out in the previous Section clarifies that the EU's attitude towards the Ukrainian application for membership is grounded on considerations of foreign policy going beyond mere interest in enlargement as such. Flowing from the

Union, cit., p. 132 ff. See also A. GUERRERA, *Brexit, il ministro britannico per l'Europa: 'Ecco perché ci avvicineremo sempre di più alla UE*, in *La Repubblica*, 27 April 2026.

²⁷ A. RINKE, *Merz suggests Ukraine May Have to Accept Territorial Loss to Help Pave Way for EU membership*, in *Reuters*, 27 April 2026, available at <https://www.reuters.com/world/europe/merz-suggests-ukraine-may-have-to-accept-territorial-loss-help-pave-way-eu-2026-04-27/>.

²⁸ L. BAYER, A. GRAY, *European Capitals Push Back as Ukraine Seeks Fast-Track EU Membership*, in *Reuters*, 3 March 2026, available at: <https://www.reuters.com/world/european-capitals-push-back-ukraine-seeks-fast-track-eu-membership-2026-03-03/>.

stress on geostrategy, the policy towards Ukrainian membership enhances the use of admission as an instrument of the foreign policy of the Union.

Such an approach is of interest not only in political terms, since it affects the way in which the proceeding works, the understanding of the conditions the EU has established in order to accept new members, and the evaluation of compliance with the requirements for membership, including the weight which is given to each condition in the assessment of the candidature as a whole.

The stress on the common foreign and security policy targets lying behind the admission proceedings involving Ukraine has given rise to a first change in the procedure which concerns its length. The time that elapsed from the application Ukraine made to the opening of negotiations is quite limited in comparison with previous practice as well as with today's proceedings in which the Western Balkans are engaged. It might be useful to remember that the shortest admission proceeding, the one involving Finland, lasted fewer than three years since the application was introduced on 6 March 1992 and the country entered the Union on 1 January 1995. Admission proceedings last nine years on average, but some of today's applicants have been engaged in admission procedures for more than ten years. However, the change seems to be more apparent than real since the EU has not acceded to the Ukrainian request for a fast-track proceeding to immediately join the Union. The political stance of the EU has found the support of part of the legal literature²⁹. Despite the speediness in screening Ukrainian candidature and in opening the negotiations for concluding the agreement art. 49 of the Treaty on European Union (TEU) envisages on 25 June 2024, the EU has clearly decided to make use of the proceeding which has been shaped by previous practice and the recent new methodology³⁰, thus subjecting Ukraine to the same mechanisms and stages it has put into place both in the other rounds of enlargement and in dealing with the Western Balkans candidates to membership. The refusal to grant Ukraine quick entry and the decision to rely on the practice of admission was put to the fore by the EU in the Opening Statement for accession negotiations in which it pointed out that the negotiations are based on art. 49 TEU and “*take account of all relevant Council and European Council conclusions (...) endorsing the revised enlargement methodology, the renewed consensus on enlargement agreed by the December 2006 European Council and the conclusions of the 1993 European Council in Copenhagen. The Council remains firmly committed to taking the enlargement process forward on the basis of agreed principles and conclusions, which*

²⁹A. HOXHAI, *How to Make EU Enlargement a Fairer and Merit Based Process: A Legal and Policy Analysis*, in *European Law Journal*, 2025, p. 578; M. COLI, *La tutela dei valori fondanti dell'Unione alla prova delle recenti domande di adesione: alla ricerca della coerenza perduta*, in S. POLI, S. MARINAI (a cura di), *L'Unione europea sulla scena internazionale. Sfide e trasformazioni sul piano interno ed esterno*, Napoli, 2025, p. 189 ff.; L. DELCOUR, K. WOLCZUK, *Ukraine and the EU at the Time of War*, in *LibMod Policy Paper*, 2023, p. 4; F. CASOLARI, *L'Ucraina e la (difficile) prospettiva europea*, in *BlogDUE*, 22 marzo 2022, pp. 3-4; R. PETROV, C. HILLION, *op. cit.*, p. 1293; A. NATO, *L'adesione dell'Ucraina all'Unione europea: il processo di integrazione europea nel contesto bellico*, in *Diritti comparati. Comparare i diritti in Europa*, 19 dicembre 2022, p. 6. *Contra*, D. KOCHENOV, R. JANSE, *Admitting Ukraine to the EU: Article 49 TEU is the 'Special Procedure'*, in *EU Law Live*, 30 March 2022.

³⁰ Communication of the European Commission, *Enhancing the accession process - A credible EU perspective for the Western Balkans*, of 5 February 2020, COM (2020) 57 final. The new methodology was approved by the Joint Statement of the Members of the European Council, 26 March 2020, p. 6. See also the more recent Communication of the European Commission, *Communication on pre-enlargement reforms and policy reviews*, of 20 March 2024, COM (2024) 146 final. For critical remarks on the new methodology see U. ĆEMALOVIĆ, *One Step Forward, Two Steps Back: The EU and the Western Balkans After the Adoption of the New Enlargement Methodology and the Conclusions of the Zagreb Summit*, in *Croatian Yearbook of European Law and Policy*, 2020, p. 9 ff.

*integrate the revised methodology*³¹. Consistently with this approach, the Negotiating Framework reproduces the content and instruments of previous accession negotiations as the Opening Statement clarifies in affirming that “*the Negotiating Framework (...) takes account of the experience of past enlargements and on-going accession negotiations*”³².

One of the most interesting consequences of the geostrategic role of admission to the EU is the growing importance that alignment of candidate countries to the EU's CFSP and CDSF has been acquiring in screening States that aspire to membership of the Union. The highlighted shift in the EU attitude towards enlargement has an impact on the weighing of the reform's candidates are called on to enact in order to advance in the path towards final admission. The Commission put this change to the fore in the 2024 Communication on enlargement policy in which the institution affirmed that “*countries choosing to join the EU must fully and unequivocally embrace and promote EU values, including aligning with the EU's common foreign and security policy*”³³, a duty which is linked to Russia's invasion of Ukraine³⁴, giving rise to a “*new geopolitical context in which the alignment is not only considered as a matter of respect for the *acquis communautaire*, but rather a more significant signal than ever of shared values and strategic orientation*”³⁵. In the 2025 Communication on enlargement the Commission pointed out that “*alignment with the common foreign and security policy, including with EU restrictive measures is a more significant signal than ever of shared values and strategic orientation in the new geopolitical context*”³⁶, and argued that the advantages of gradual integration have to be based not only on the pace of reforms, but also on that convergence³⁷. The annual reports on the progress of the single countries pay greater and greater attention to adherence to the measures and objectives of the EU's CFSP, and it will be interesting to observe in future years how the Union will apply this condition in light of the ties it established between the said alignment and the safeguard and promotion of the values on which the process of European integration is grounded.

3. Membership Conditions and Their Application

3.1. Good Neighbourliness

The weight given to single conditions is, as previously hinted, one of the consequences of waging war, since it also involves an understanding of single conditions for entering the club. This is the case of the condition of regional cooperation and good neighbourly relations. The previously mentioned 2025 Communication of the Commission emphasised the role of this requirement, arguing that it has to be considered as an “*essential element*” of enlargement³⁸.

³¹ *EU Opening Statement for Accession negotiations*, 21 June 2024, para. 10.

³² *Ibidem*.

³³ European Commission, *2024 Communication on EU enlargement policy*, cit., p. 1.

³⁴ *Ibidem*, p. 6.

³⁵ *Ibidem*, p. 19.

³⁶ European Commission, *2025 Communication on EU enlargement policy*, cit., p. 25

³⁷ *Ibidem*, p. 1.

³⁸ *Ibidem*, p. 21. On this condition for membership of the Union see P. VAN ELSUWEGE, *Good Neighbourliness as a Condition for Accession to the European Union: Searching the Balance between Law and Politics*, in D. KOCHENOV, E. BASHEKA (eds.), *Good Neighbourly Relations in the European Legal Context*, Leiden-Boston, 2015, p. 217 ff.

In the proceedings involving the Western Balkans, the EU institution observed that overcoming the legacy of the past and addressing disputes arising from the conflict of the 1990s is key. Furthermore, compliance with the conditions at stake entails solving pending bilateral issues which “*continue to negatively affect the accession process of the enlargement countries and are holding back regional integration*”.³⁹

The EU has applied the condition in question in an ever-stricter manner in recent years on the basis of a narrow understanding of compliance requiring the solution of any pending dispute and the contribution to establishment of cooperation at the regional level as a preliminary step for admission. The soft approach towards this condition, which was put into place in the case of admission of the countries from Eastern Europe, has been abandoned.⁴⁰ Facing the problems embedded in the relationships between Serbia and Kosovo, the 2025 Communication observed that “*in the absence of constructive engagement, both parties risk missing major opportunities*” since advancement in their respective paths depends on “*meaningful progress in the normalisation of their relations*”⁴¹. The EU has taken a similar approach towards Türkiye’s candidature. The drilling activities the Turkish State carried out in the Eastern Mediterranean and the unresolved dispute with Greece on the continental shelf and exclusive zone still continue to strain bilateral dispute, thus prejudicing fulfilment of this requirement. In the same vein, the reluctance of Türkiye to contribute to the settlement of the Cyprus case represents a severe impediment to its progress towards membership since the EU attaches particular importance to progress in this matter.⁴²

The progress reports the Commission drafts every year make it clear that the war Ukraine is waging against Russian invaders is not considered in evaluating the Ukrainian application for membership. This practice seems to highlight a different understanding of the condition under examination, according to which good neighbourliness is not applied in the relationships between the Candidate State and the invading State⁴³. Alternatively, it could be argued that the Ukrainian case represents an exception to the practice Member States agreed upon through an informal agreement. Both of the rationales are strictly tied to the geostrategic function of Ukraine’s admission to the EU and shape the condition in a way which is functional to the achievement of the geopolitical targets lying behind the opening of the proceedings.

3.2. The *Acquis Communautaire*

Moreover, discontinuity might be found in the application of the condition relating to full acceptance of the *acquis communautaire*. The 1993 Copenhagen European Council referred to candidates’ ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law, in addition to adherence to the aims of political, economic and monetary union.

³⁹ European Commission, *2025 Communication on EU enlargement policy*, cit., p. 21.

⁴⁰ K. INGLIS, *EU Enlargement – Membership Conditions Applied to Future and Potential Member States*, in K. INGLIS, A. OTT (eds.), *The Constitution for Europe and an Enlarging Union: Unity in Diversity?*, Groeningen, 2005, p. 238; E. BASHESKA, *The Good Neighbourliness Condition in the EU Enlargement*, in *Contemporary Southeastern Europe*, no. 1, 2014, p. 99.

⁴¹ European Commission, *2025 Communication on EU enlargement policy*, cit., p. 22.

⁴² *Ibidem*, p. 23; European Commission, *Türkiye 2025 Progress Report*, of 4 November 2025, SWD (2025) 756 final, p. 61 ff. On the admission of Türkiye, see A. VALVO, *Oltre l’integrazione: criticità e prospettive dell’allargamento dell’Unione europea tra retorica politica e sostenibilità istituzionale*, in *EUWeb Legal Essays Global and International Perspectives*, 2025, p. 10 ff.

⁴³ European Commission, *Ukraine 2025 Report*, of 4 November 2025, SWD (2025) 759, p. 68 ff.; European Commission, *Ukraine 2024 Report*, of 30 October 2024, SWD (2024) 699 final, p. 62.

The mere decision to open negotiations with Ukraine seems to show that the understanding of this condition is under review. Ukraine does not have full jurisdiction over its territory because of the occupation of an extensive part of its land by the Russian Federation. As a consequence, Ukraine cannot guarantee respect for its law, including the EU *acquis*, in those areas which are not under its control⁴⁴. This situation differs from that of Cyprus, which was mentioned before, because of the connection between admission to the EU and reunification of the island that was established at that time. In the case of Ukraine, admission to the EU is an answer to the Russian aggression and is conceived neither as an instrument to support negotiations for a peace agreement, nor as part of a project aiming at restoration of Ukrainian jurisdiction over the territories that have been occupied by the aggressor State.

Whatever the eventual result of the peace talks and the desirable peace agreement, reproducing the solution envisaged in the case of Cyprus seems almost impossible, thus confirming the existence of a change.

The issue of taking on the Union *acquis* has been dealt with in legal literature because of its connection with the immediate admission of Ukraine via a fast-track proceeding. Kochenov argued that today's approach based on *ex ante* pre-accession adaptation has failed to secure compliance with EU values⁴⁵. Moving from this consideration and pushing forward the need for admitting Ukraine into the club immediately after the end of the war, the author argued that a new approach has to be adopted, giving a prominent role to full commitment only on matters of principle. In this perspective, admission has to be subjected to full acceptance of the *acquis*, especially of the core values on which the Union is grounded pursuant to art. 2 TEU, and the promise to create institutional capacity. The agreement art. 49 TEU provides for should envisage lengthy transitional periods, which have to be differentiated in order to secure full compliance with the obligation in question in the many areas of EU competence, in order to allow full implementation of the *acquis* within ten or twenty years⁴⁶. The immediate admission of Ukraine is conceived in terms identical to the first round of enlargement, in which accession was realised through the provision of transitional periods for adapting the domestic legal system of the newcomers.

This reasoning raises two different legal issues: the consistency of the proposed approach with the law on admission as it stands today; and the material feasibility of this solution. The former matter will be considered in Section 4. The reference to transitional periods for complying with the obligation to accept the *acquis* of the Union and the connected flexibility in their duration refers to the practice of the first enlargement. The Accession Treaty concluded with the United Kingdom, Denmark and Ireland was based on the provision of a transitional arrangement to enable the new members to transpose the law the Communities had already enacted into the domestic legal system. However, this practice has been progressively abandoned, and the policy of pre-accession has been shaped as a consequence of the functions admission has played in the different rounds of enlargement. Recalling the case of the first entry into the club does not seem persuasive for at least two reasons. The first of these reasons is to be found in the weakness of the Ukrainian economy, which the war has exacerbated, and the many differences between its structure and development and the structure and development of the countries taking part in the common market. In this sense, it is useful to remember that all of the first

⁴⁴ F. CASOLARI, *L'Ucraina e la (difficile) prospettiva europea*, cit., p. 4.

⁴⁵ D. KOCHENOV, *Take Down the Wall. And Make Russia Pay for It. The Case for the Immediate Accession of Ukraine to the European Union*, in *Verfassungsblog*, 21 March 2022.

⁴⁶ *Ibidem*.

newcomers in the Communities possessed an economic organisation almost identical in its structure to that of the founding Member States.

The second reason is tied to the large system of competences the Treaties have transferred to the Union and the extensive body of laws that have been enacted in the exercise of those competences. When the United Kingdom, Ireland and Denmark entered the Communities, the latter were holders of a few competences and the laws that were adopted constituted a limited group of rules in comparison with today's *acquis*.

Entitling Ukraine to adapt its legal system to that of the Union's *acquis* in ten or twenty years would severely affect the proper working of the internal market. This is one of the reasons why the EU has progressively developed the pre-accession policy to support candidate countries in reshaping the arrangements of their economic framework and in accepting in full the existing *acquis* before becoming members of the Union. Departing from this practice does not seem persuasive. Moreover, the thesis under examination does not explain how compliance with the condition at stake can be ensured without full control over the territory⁴⁷.

The approach of the Union towards adoption of the reforms that are necessary to adapt the domestic legal system to EU laws is therefore marked by a certain cautionary approach since, notwithstanding the highlighted change, it seems to prefer adaptation to take place mainly before admission, rather than after acquisition of membership through the provision of transitory periods. The Progress Reports on Ukraine, in stressing the contribution that Ukraine's compliance with the obligations flowing from the Association Agreement it entered into with the Union (EU-Ukraine Association Agreement)⁴⁸ – and, more specifically, with those that are provided for by the rules establishing the Deep and Comprehensive Free Trade Area (DCFTA) – makes to progressive implementation of the *acquis* of the Union and reshaping of the economic system in line with the EU internal market confirm the unwillingness of the Union to set aside the traditional arrangement of the admission proceeding and, more specifically, the so-called pre-accession policy⁴⁹.

This mention of pre-accession and the role of the EU-Ukraine Association Agreement in paving the way to the EU's future membership thanks to the adaptation to the Union's *acquis* is worth considering in more detail since it highlights further elements of continuity and discontinuity in the Ukrainian case.

Association agreements allow the setting up of a wide array of ties between the contracting parties, including their preparation for being admitted into the Union, so that they have become a stepping-stone towards EU membership⁵⁰.

The EU's reliance on the existing Association Agreement with Ukraine has to be attributed to continuity. However, that agreement is marked by discontinuity in comparison to already existing association agreements because of the many features distinguishing it from them and making it a unique agreement in many respects⁵¹.

⁴⁷ F. CASOLARI, *L'Ucraina e la (difficile) prospettiva europea*, cit., p. 4.

⁴⁸ *Association Agreement between the European Union and its Member States, on one side, and Ukraine, on the other*, in OJ L 161, of 29 May 2014.

⁴⁹ European Commission, *Ukraine 2025 Report*, cit., p. 70 ff.; European Commission, *Ukraine 2024 Report*, cit., p. 64 ff.

⁵⁰ P. VAN ELSUWEGE, *Revisiting the EU-Ukraine Association Agreement: A Crucial Instrument on the Road to Membership*, in M. RABINOVYCH, A. PINTSCH (eds.), *Ukraine's Thorny Path to the EU. From "Integration without Membership" to "Integration through War"*, Cham, 2025, p. 70.

⁵¹ R. PETROV, G. VAN DER LOO, P. VAN ELSUWEGE, *The EU-Ukraine Association Agreements: A New Legal Instrument of Integration Without Membership?*, in *Kyiv-Mohyla Law and Politics Journal*, no., 1, 2015, p. 2. For a general assessment of the agreement see G. VAN DER LOO, *The EU-Ukraine Association Agreement and Deep and Comprehensive Free Trade Area. A New Legal Instrument of Integration Without Membership*, Leiden, 2016.

The aim of the EU-Ukraine Association Agreement is to establish “*close and privileged links*” between the Parties (art. 1, para. 2, let. a)), but no express reference to admission is provided for in the shaping of the objectives to pursue. In this sense, the Union undertook no commitment towards Ukraine.

The agreement lays down an extensive legal regulation encompassing all of the activities the Union carries out, ranging from foreign and security policy to cooperation in the area of justice and home affairs. Utmost importance is given to the setting up of the DCFTA in order to progressively bring Ukraine into the EU internal market through partial integration. Attainment of this objective entails a far-reaching liberalisation of trade in goods and services and abolition of non-tariff barriers. In light of this objective, granting candidate status is a recognition of the progresses under the EU-Ukraine Association Agreement in aligning domestic law with the *acquis communautaire*⁵².

In order to attain the objectives established, the agreement resorts to conditionality which is articulated in two different areas.

The first area covers the values underpinning the process of European integration. The EU-Ukraine Association Agreement imposes on Ukraine a commitment to respect the values of democracy, Rule of Law, respect for human rights and fundamental freedoms.

The second of the said areas relates to the EU's internal market. Unlike the already existing integration agreements the EU has concluded⁵³, the Deep and Comprehensive Free Trade applies conditionality to market access so that the progress in acceding to additional sections of the EU internal market presupposes positive evaluation of the Union of Ukraine's compliance with the commitments to approximate internal law to the *acquis communautaire* the EU-Ukraine Association Agreements establishes⁵⁴.

Enactment of mechanisms based on conditionality and extensive integration in the internal market of the EU make the agreement functional to admission into the Union. In this vein, the Ukrainian case is in a line of continuity with the already established practice. It could be recalled that the Union reoriented the association agreements with the countries of Eastern and Central Europe towards admission after having outlined their future membership⁵⁵.

Having regard to the function the EU-Ukraine Association Agreement has been playing in shaping the relations between the two parties, scholars have argued that there was a shift from the integration without membership the agreement embodied to actual membership⁵⁶. In the opinion of this author, this continuity in relying on existing contractual relationships with candidates can be explained by taking into consideration the flexibility of the instruments the EU-Ukraine Association Agreement makes use of, such as conditionality, which is one of the most important.

⁵² M. RABINOVYCH, A. PINTSCH, *op. cit.*, p. 5.; R. DRAGENVA, K. WOLCZUK, *Integration and Modernization: EU's Association Agreement with Ukraine*, in M. RABINOVYCH, A. PINTSCH (eds.), *op. cit.*, p. 54 ff., criticized the choice to ground the DCFTA on the EU *acquis*, since there is no consideration of the difficulties the Associated State may face.

⁵³ R. DRAGENVA, K. WOLCZUK, *op. cit.*, p. 63.

⁵⁴ On the two types of conditionality and their working see R. PETROV, G. VAN DER LOO, P. VAN ELSUWEGE, *op. cit.*, p. 13.

⁵⁵ P. VAN ELSUWEGE, p. 71.

⁵⁶ M. RABINOVYCH, A. PINTSCH, *op. cit.* On integration-oriented agreements see M. MARESCEAU, *Les accords d'intégration dans les relations de proximité de l'Union européenne*, in C. BLUMANN (ed.), *Les frontières de l'Union européenne*, 2013, Brussels, p. 151. On integration without membership see A. ŁAZOWSKI, *Enhanced Multilateralism and Enhanced Bilateralism: Integration Without Membership in the European Union*, in *Common Market Law Review*, vol. 45, no. 5, 2008, p. 1433 ff.

Thanks to that feature the instruments at stake can support different policies and objectives of the external action of the Union, thus facilitating the move from a privileged association to the proceeding for acquiring membership of the club⁵⁷.

3.3. *Democracy, Rule of Law, and Human Rights*

The intertwining between continuity and discontinuity also marks the application of the political conditions relating to democracy, Rule of Law and respect for human rights.

The opinion the Commission delivered recommending the granting of candidate status to Ukraine on the understanding that a series of steps were taken by the Ukrainian authorities and the decisions the European Council undertook have given rise to a series of questions relating to their relationship with those conditions. To put it bluntly, the question stemming from the Union practice in dealing with the Ukrainian application for membership is whether it is based on a different understanding of the conditions in question or rather upon a different application of the criteria the Union resorts to with reference to the other candidates since the results of the Commission's evaluation as well as the following decisions of the Heads of State and governments of the Member States are grounded on a flawed and unpersuasive application of political conditionality⁵⁸. As this author sees things, the practice in question is based on a different application of the political conditions and leads to their devaluation. Assessment of the way in which both the opinion and the following annual reports on Ukraine apply the said conditions seems to show that there is no discontinuity because the Union takes into consideration the same items and problems that are under scrutiny in relation to the Western Balkans. The decisions on Ukraine originate from an inconsistent application of the political conditions for membership and represent the logical consequence of the political reasons that have shaped EU policy towards the country after the Russian aggression. In this vein, the inconsistent application goes hand in hand with a stress on the geopolitical and geostrategical function of admission. However, such an outcome is not surprising because politically-biased considerations have also lain behind previous enlargements, including the big enlargement of 2004 and the following granting of membership to Bulgaria, Romania and Croatia⁵⁹.

This flawed application is best illustrated by a comparison of the candidatures of Ukraine and Georgia. The European Council granted candidate status to Ukraine and denied it to Georgia in the conclusion it adopted at the meeting of June 2022⁶⁰. Both decisions were based on the Commission's opinions on the applications recommending the granting of candidate status to both countries once the priorities they identified were addressed by the two States. However, the Commission differentiated the positions of the countries as regards compliance with the political conditions, stating that Ukraine is "*well advanced*"⁶¹, while Georgia "*has a foundation*"⁶² in reaching the stability of institutions guaranteeing democracy, the Rule of law, human rights and respect for and protection of minorities.

⁵⁷ M. EVOLA, *The EU-Ukraine Association Agreement between the European Neighbourhood Policy and Admission*, in *Il Diritto dell'Unione europea*, no. 1, 2015, p. 224 ff.

⁵⁸ T. RUSSO, *op. cit.*, p. 52.

⁵⁹ D. KOCHENOV, *EU Enlargement and the Failure of Conditionality. Pre-accession Conditionality in the Fields of Democracy and the Rule of Law*, The Hague, 2008.

⁶⁰ *Conclusions of the European Council*, of 23 and 24 June 2022, paras. 11 and 13.

⁶¹ European Commission, *Commission Opinion on Ukraine's application for membership of the European Union*, of 17 June 2022, COM (2022) 407 final, p. 20.

⁶² European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, of 17 June 2022, COM (2022) 405 final, p. 16.

The distinction the Commission drew is unpersuasive.

Both countries are called on to ensure the independence of the judiciary. The Commission found that the Constitutional Court of Ukraine is still in urgent need of reform in line with the recommendations of the Venice Commission⁶³ and added that “*attempts of undue internal and external interference on the judiciary remain an issue of concern*” so that “*the judiciary continues to be regarded as one of the least trusted and credible institutions*”.⁶⁴ In the case of Georgia the Commission moved from the positive consideration of the reforms enacted to ensure independency and liability of the judicial system and pointed out that some backward steps have been taken⁶⁵.

With reference to the legislation in force, the Georgian system appears to be better equipped than the Ukrainian system for ensuring the independent activity of the judiciary.

No striking differences emerge in the functioning of the electoral systems, since they guarantee fair and free elections in both countries. Furthermore, the two applicants face the same challenges the Commission identified in amendments related to the transparency of campaign financing, balanced and impartial media coverage, and certain aspects of the procedures for handling electoral complaints and appeals⁶⁶.

The public administration has undergone major reforms in the two States to guarantee the independence and accountability of the institutional apparatus and the effectiveness of its action. Notwithstanding the changes that were enacted, the Commission pointed out in both opinions that the new laws have not been fully implemented⁶⁷, so that the governments are called on to continue in carrying out the reforms already launched⁶⁸.

Similarly, the gap between the consistency of the reforms with the EU *acquis* and international norms on the fight against corruption and effective enforcement of the rules enacted characterises the situation of both countries in the field of anti-corruption. Ukraine and Georgia still face widespread corruption in all areas and levels of the State from the judiciary to the public administration, and some of the recommendations international bodies addressed to them remained outstanding in many cases. Moreover, the applicants still suffered from the excessive influence of the vested interests of the oligarchs that exercise influence on political life and the economic sphere⁶⁹. With reference to the latest point, it has to be stressed that oligarchs exercise a powerful control over the Ukrainian media system, which severely affects Ukrainian politics and the exercise of the right to freedom of expression⁷⁰.

The fight against corruption witnesses a struggle of the candidate countries in adopting measures in light of international instruments and standards to counteract the

⁶³ European Commission, *Commission Opinion on Ukraine's application for membership of the European Union*, cit., p. 5.

⁶⁴ *Ibidem*, p. 8.

⁶⁵ European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, cit., p. 7.

⁶⁶ European Commission, *Commission Opinion on Ukraine's application for membership of the European Union*, cit., p. 6; European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, cit., p. 5.

⁶⁷ European Commission, *Commission Opinion on Ukraine's application for membership of the European Union*, cit., p. 6.

⁶⁸ European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, cit., p.6.

⁶⁹ European Commission, *Commission Opinion on Ukraine's application for membership of the European Union*, cit., pp. 9-11; European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, cit., pp. 8-9.

⁷⁰ European Commission, *Commission Opinion on Ukraine's application for membership of the European Union*, cit., p. 12; European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, cit., p.17.

spread of criminal nets, but the need for continued and sustained efforts to strengthen law enforcement marks the situation of both of them⁷¹.

Eventually, consideration of the protection of human rights highlighted shortcomings in the system of the applicants for membership. Ukraine neither acknowledged sexual and gender identity as protected grounds in antidiscrimination legislation, nor ratified the Istanbul Convention. Furthermore, it has not aligned its system to international standards in the field of protection of minorities' rights⁷².

Georgia has afforded proper protection to minorities, but has not given concrete implementation to the laws on discrimination against women⁷³.

At the end of the day, there are not such substantial and profound differences between Ukraine and Georgia as to argue that the former complied with the conditions of democracy, Rule of law and protection of human rights, while the latter still lagged behind.

Inconsistent assessment of the situation of the two applicants was due to the political reasons underpinning the decision of the European Council that were grounded on the war in Ukraine and on polarisation of the political debate in Georgia between advocates of EU membership and supporters of a privileged relationship with Russia, giving rise to political instability.

From a legal point of view the overriding role of political reasons can easily be explained if we consider the main features of the application of the conditions of democracy, Rule of law and human rights to candidate countries.

The EU pays greater attention to formal data, such as the existence of a constitution and guaranteeing of human rights at the constitutional level and through ratification of the most important international treaties on human rights, and the setting up of a series of bodies to perform the several functions of States, rather than to the concrete working of the different powers and their reciprocal relationships. Furthermore, the EU has neither clarified the content of each condition, the criteria to make use of in evaluating candidates' compliance, and the hierarchy between them, nor has it identified the international and European standards it makes use of as a parameter for the consistency of candidates' reforms with the political conditions. All these limits give a wide margin of discretion to Member States in deciding on applications for membership, thus causing political considerations to outweigh strict application of conditionality⁷⁴.

But, notwithstanding the observed continuity, a more profound assessment of the way in which the Union has been handling the Ukrainian candidature shows the existence of limited discontinuity in the application of the political conditions for membership.

Against this way of applying the political conditions, the promotion of EU values, which is embedded in admission pursuant to art. 49 TEU has to be taken into consideration.

The intertwining between continuity and discontinuity might severely affect the strategy the Union has outlined in order to ensure full acceptance of the values of the process of European integration before a country joins the EU. This strategy aims at preventing the phenomena of backsliding that have marked recent developments of the political situations in members such as Hungary, Poland and Romania, which identify

⁷¹ European Commission, *Commission Opinion on Ukraine's application for membership of the European Union*, cit., pp. 10-11; European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, cit., p. 9.

⁷² European Commission, *Commission Opinion on Ukraine's application for membership of the European Union*, cit., pp. 12-13.

⁷³ European Commission, *Commission Opinion on Georgia's application for membership of the European Union*, cit., pp. 10-11.

⁷⁴ M. EVOLA, *La promozione dei valori dell'Unione europea nella procedura di ammissione*, cit., *passim*.

compliance with the political requirements for membership as a pre-condition for future admission. This point clearly emerges from the 2024 Communication on pre-enlargement reforms, in which the Commission stated that “*functioning democratic institutions, the protection of fundamental rights and the rule of law are (...) a fundamental precondition for joining the EU in the first place*” and put a special emphasis on the functional role of the Rule of law in fulfilment of the requirements embedded in the other political conditions which can be explained keeping in mind that it “*ensures that democracy, equality and fundamental rights are protected across the Union*”⁷⁵.

Such an approach was reaffirmed in the 2025 Communication on enlargement in which the Commission argued that “*the renewed impetus for enlargement comes with high expectations on reforms. (...) to fully adjust to the democratic standards and values of the European Union. This needs to be underpinned by compliance with the rule of law and fundamental rights and clear adherence to the EU's geopolitical orientation*”⁷⁶.

This relationship between adhesion to the values of the Union and its membership perfectly corresponds to the way in which the Court of Justice of the European Union (CJEU) has identified the significance of sharing the values of the Union and its relationship with the rights and duties that are embedded in gaining membership. The ruling the Court delivered in the case *Eurobox Promotion* stated that “*compliance with the values referred to in Article 2 TEU constitutes a precondition for the accession to the European Union of any European State applying to become an EU member*”⁷⁷. In the same vein the CJEU affirmed in *Repubblika* that “*it follows that compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. A Member State cannot therefore amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law*”⁷⁸. This conclusion is based on the idea that “*article 49, which provides for the possibility for any European State to apply to become a member of the European Union, states that the European Union is composed of States which have freely and voluntarily committed themselves to the common values referred to in Article 2 TEU, which respect those values and which undertake to promote them*”⁷⁹.

The decisions on the Ukrainian application favour targeting of the CFSP objectives, but impair the political conditions, thus severely limiting the Union's capacity to promote the values on which it is grounded by making use of conditionality in the admission process. Such an outcome signals a further element of continuity with the function practice has given to admission in handling Western Balkans' candidatures in the most recent years, setting aside the aim of delivering admission and pursuing the target of stabilisation of the area, which has become the primary objective of its activities in that region.⁸⁰ The change has given rise to a series of important consequences in the working of the proceedings and evaluation of fulfilment of the membership conditions. To achieve the aim of stabilisation, the Union has tolerated the progressive slowing down of the pace of the reforms that are necessary to transpose the EU *acquis* into the domestic legal

⁷⁵ European Commission, *2024 Communication on pre-enlargement reforms and policy reviews*, cit., p. 4.

⁷⁶ European Commission, *2025 Communication on EU enlargement policy*, cit., p. 1.

⁷⁷ Court of Justice of the European Union, Judgment of 31 December 2021, Joined Cases C-357/19, C-379/19, C-547/19, C-811/19 and C-840/19, *Euro Box Promotion and Others*, para. 161.

⁷⁸ Court of Justice of the European Union, Judgment of 20 April 2021, Case C-896/19, *Repubblika v. II Prim Ministru*, para. 63.

⁷⁹ *Ibidem*, para. 61.

⁸⁰ J. PEJIĆ NIKIĆ, *An Open Door: Can the New Methodology Revive the Political Will for Enlargement?*, in *prEUgovor*, 20 February 2020; J. PEJIĆ NIKIĆ, B. ELEK, D. POKUŠEVSKI, N. MUMIN, L. ŠTERIĆ, *Reclaiming the Fundamentals. Unleashing Reform Potential of the EU Enlargement Process*, 2022, p. 11 ff.

system. The same attitude underlies the tolerance of the EU towards the regression of the Western Balkans in complying with the political conditions for being admitted into the Union, such as the recurring institutional crises in Bosnia and Herzegovina that have been kindling internal conflicts among the different communities, the profound crisis of the Serbian democratic legal arrangement and the instability of the political situation in Montenegro since 2020 that has given rise to inter-ethnic conflicts.

In fact, the policies the EU has enacted to support the Western Balkans in their path towards membership have favoured phenomena of State capture that local political elites have promoted⁸¹.

The EU approach towards Ukrainian candidature entails that the proceeding of admission is in stark contrast with the revised strategy and the new methodology and the aim to overcome the limits that emerged in the processes of backsliding in the values upon which the Union is founded.

4. Legal Problems of Continuity and Discontinuity

The combining of continuity and discontinuity raises legal issues that are of interest in understanding the practice of admission and the way in which it conceives this item as a whole.

In submitting the application on behalf of Ukraine, President Zelenski requested a “*new special procedure*”, that has been labelled fast-track proceeding. The formula hints at the need for speeding up the time of the proceeding and simplifying it. The request of the Ukrainian government has given rise to a series of legal questions starting from mere identification of the substance of fast-tracking⁸². Scholars have tried to put flesh on the bones of the concept at stake, making proposals which pose the question of their compatibility with the legal framework of admission. This legal framework is the result of the combination between the rules the founding Treaties lay down and the practice that Member States and EU institutions have been enacting with the aim of making up for the lacunae in the Treaty text and the many functions admission has been called on to exercise with regard to the problems flowing from the condition of the applicant States. Dealing with the said proposals leads to consideration of the nature of that practice and the combination between written law and practice in the shaping of admission.

The point of departure of this assessment is the principle the CJEU established in the *Defrenne* case⁸³ according to which the rules art. 49 TEU lay down are subject to no derogation by practice. In other words, the decisions, the acts and the stages the Treaty establishes cannot be substituted to arrange a procedure accelerating Ukrainian membership without reforming art. 49 TEU in accordance with the laws regulating revision of the founding treaties⁸⁴.

⁸¹ S. RICHTER, N. WUNSCH, *Money, Power, Glory: the Linkages Between EU Conditionality and State Capture in the Western Balkans*, in *Journal of European Public Policy*, vol. 27, no. 1, 2020, p. 41 ff.; J. PEJIĆ NIKIĆ, B. ELEK, D. POKUŠEVSKI, N. MUMIN, L. ŠTERIĆ, *op. cit.*, pp. 33-35. European Commission, *Enhancing the accession process - A credible EU perspective for the Western Balkans*, cit., p. 3.

⁸² S. LASHYN, *Fast-Tracking Applications for EU Membership*, in *European Law Blog*, 22 May 2025, p. 1.

⁸³ Court of Justice of the European Union, Judgment of 8 April 1976, Case 43/75, *Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena*, paras. 56-58.

⁸⁴ F. CASOLARI, *L'Ucraina e la (difficile) prospettiva europea*, cit., pp. 3-4; G. VAN DER LOO, P. VAN ELSUWEGE, *The EU-Ukraine Association Agreement after Ukraine's EU Membership application: Still fit for purpose*, in *EPC Discussion Papers*, 2022, p. 5.

The Court's attitude towards practice is related to the statement that the founding Treaties, unlike ordinary international treaties, established a new legal order⁸⁵.

Despite the hostility stemming from its consistent case law, the Court made use of practice in order to construe EU law in the judgment delivered in the *Ecovas* case⁸⁶. In its reasoning, the CJEU referred to several policy documents that were adopted either by the Council or by different institutions acting jointly with the aim of establishing the dividing line between the Common Foreign and Security Policy and Community Development Co-operation⁸⁷. The judgment shows the Court readiness to consider practice an interpretative tool in line with the rule that art. 31, para. 3, let. b), of the Vienna Convention on the Law of Treaties envisages⁸⁸.

Furthermore, it can be argued that the approach of the Court towards practice overriding Treaties' provisions does not bar the admissibility of practice which is *praeter legem* in nature, for it integrates the laws in force⁸⁹.

This is the general framework against which to assess the legal literature on admissibility of a fast-track proceeding.

Lashyn argued that there is a need to distinguish between hard law and soft law in order to identify the limits flowing from Treaty provisions⁹⁰. Pursuant to art. 49 TEU, States aspiring to membership are obliged to respect and promote the values that are considered in art. 2 TEU. This obligation is imposed by hard law and therefore leaves no room for fast-tracking. In the opinion of the author mentioned, a different approach has to be taken with regard to the Copenhagen criteria since art. 49 TEU establishes that the conditions of eligibility the European Council has agreed upon are to be taken into account. Moving from the text of this provision, Lashyn held that art. 49 TEU does not require full compliance with the Copenhagen criteria. Moreover, the rule entitles the European Council to revise and change the conditions it has previously set if it deems it necessary to do so. In this interpretative theory, fast-tracking may cover the Copenhagen conditions that can be repealed or not applied.

This understanding cannot be shared because it is grounded on a wrong assessment of practice referring to the substantial conditions of admission. The so-called Copenhagen criteria are part and parcel of an old and consistent practice which has progressively introduced political, economic and legal conditions into the system filling the lacunae that existed in the field of admission. This practice has to be considered as an integrative

⁸⁵ Court of Justice of the European Union, Judgment of 15 February 1963, Case 26/62, *NV Algemene Transporten Expeditie Onderneming van Gend & Loos v. Netherlands Inland Revenue Administration*; Court of Justice of the European Union, Opinion 2/13 of 18 December 2014, *Accession of the European Union to the ECHR*, para. 157.

⁸⁶ Court of Justice of the European Union, Judgement of 20 May 2008, Case C-91/05, *Commission of the European Communities v. Council of the European Union*.

⁸⁷ See P.J. KUIJPER, *The European Courts and the Law of Treaties: The Continuing Story*, in E. CANNIZZARO (ed.), *The Law of Treaties Beyond the Vienna Convention*, Oxford, 2011, p. 266.

⁸⁸ Art. 31, para. 3, let. b), of the Vienna Convention on the Law of Treaties provides that "there shall be taken into account together with the context (...) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation".

⁸⁹ For a more extensive elaboration of the legal nature of practice of admission see M. EVOLA, *L'ammissione di Stati terzi all'Unione europea*, Milano, 2025, p. 185 ff. On the admissibility of a practice which is *praeter legem*, see O. PORCHIA, *Il diritto non scritto nel funzionamento delle istituzioni dell'Unione europea*, in P. PALCHETTI (a cura di), *L'incidenza del diritto non scritto sul diritto internazionale ed europeo*, XX Convegno, Macerata 5-6 giugno 2015, Napoli, p. 356. In the same vein, see Court of Justice of the European Union, Opinion of AG Poiares Maduro of 27 September 2007, Case C-133/06, *European Parliament v. Council of the European Union*, paras. 26-36. For a different point of view, see R. BARATTA, *Diritto e prassi evolutiva dell'Eurogruppo*, in *Il Diritto dell'Unione europea*, no. 2, 2015, p. 515, who argues that social rules become legal rules only if the Court of justice assesses their validity.

⁹⁰ S. LASHYN, *op. cit.*, p. 2 ff.

practice that is *praeter legem* in character⁹¹. As a consequence, the Conclusions the European Council adopted in Copenhagen in 1993 are not soft law and cannot be modified at whim because of the specific nature they possess.

The theory under examination also applies the distinction between hard law and soft law to a proceeding as such, pointing out that its deployment is not subject to the constraints that originate from hard law. In developing this approach, Lashyn thought that the Enlargement Methodology can be revised. Again, the author does not address the problem of the nature of the practice and its relation with the written law. Negotiations have been shaped in order to guarantee the reform of domestic law in light of the *acquis* and the safeguarding of the function of the proceeding to promote compliance with the conditions of admission. To attain these aims, the Member States enter into *ad hoc* agreements to regulate negotiations⁹².

A similar criticism can be addressed to the attitude in favour of fast-tracking Kochenov has adopted, arguing that accession to the EU is regulated by Treaty provisions and customary law⁹³. This reconstruction of the nature of practice is not persuasive because it is grounded on an international law perspective which does not correspond to the evolution of the process of European integration and the progressive insertion in it of elements which are constitutional in character⁹⁴. In particular, acceptance of the *acquis* is the outcome of an interpretative practice pursuant to art. 31, para. 3, let. b), of the Vienna Convention on the Law of Treaties⁹⁵. The way in which the admission proceeding has been shaped is functional to the aims it pursues, giving rise to a practice which is variegated and different in nature so that there are constraints in its modification⁹⁶, a point Kochenov has not considered.

But Kochenov's approach leading to the inexistence of limits in moulding the fast-track proceeding can also be criticised from the perspective of customary law regulating admission⁹⁷. Customary law is grounded on States' practice, which has to be general practice accepted as law and has to last for an appreciable length of time. These requirements could not occur in the case of Ukraine if it were admitted after the conclusion of the treaty of peace through recourse to transitional periods for adapting to the EU *acquis* in the accession treaty.

Problems of a legal nature also arise from an element of continuity which marks the proceeding and relates to the most recent practice on the relationship between admission and safeguarding of the Union *acquis* through introduction into the accession treaties of clauses of permanent exclusion of new members from participating in some policies of the Union or from exercising rights the EU legal system has enshrined. The negotiating framework with Ukraine reiterates this technique to safeguard the Union *acquis*. The aim Member States pursue through the use of these clauses is to counteract candidates' inability to comply with the obligations that are entrenched in membership of the Union and to prevent achievement of the process of integration from being compromised by the

⁹¹ M. EVOLA, *L'ammissione di Stati terzi all'Unione europea*, cit., p. 198.

⁹² *Ibidem*, p. 204.

⁹³ D. KOCHENOV, *Take Down the Wall. And Make Russia Pay for It*, cit., p. 20 ff.

⁹⁴ M. EVOLA, *L'ammissione di Stati terzi all'Unione europea*, cit., p. 193.

⁹⁵ *Ibidem*, p. 198.

⁹⁶ *Ibidem*, p. 201 ff.

⁹⁷ On custom in the EU legal order, see P. PESCATORE, *L'ordre juridique des Communautés européennes: étude des sources du droit Communautaire*, Brussels, 2006, p. 174; T. BLANCHET, J. KELLER-NÖLLET, *Peut-on parler de « coutume » en droit de l'Union européenne?*, in I. HACHEZ, Y. CARTUYVELS, H. DUMONT, P. GERARD, F. OST., M. VAN DE KERCHOVE (dir.), *Les sources du droit revisitées, Vol. 1, Normes internationales et constitutionnelles*, Brussels, 2011, p. 207; P. MARCISZ, *Custom in European Union Law*, in *Studia Juridica LIV Uniwersitet Warszawski*, 2012, p. 141.

newcomers' entry into the EU. The December 2004 European Council outlined this new arrangement of the relationship between membership of the Union and its *acquis*. In defining the main features of the future negotiating frameworks the Council was called on to adopt, the Heads of State or government of the Member States established that “*long transitional periods, derogations, specific arrangements or permanent safeguard clauses, i.e. clauses which are permanently available as a basis for safeguard measures, may be considered (...) for areas such as freedom of movement of persons, structural policies or agriculture*”⁹⁸.

This approach was applied for the first time in the drafting of the negotiating framework with Türkiye, in which it is expressly established that “*long transitional periods, derogations, specific arrangements or permanent safeguard clauses, i.e. clauses which are permanently available as a basis for safeguard measures, may be considered*”⁹⁹. All of the subsequent negotiating frameworks the EU has established envisage the introduction of the said clauses into the accession agreements¹⁰⁰, including the negotiating framework shaping negotiations with Ukraine, in which it is established that “*safeguard clauses may be considered*”¹⁰¹. Clauses so conceived are larger in scope since there is no reference to specific areas.

In dealing with this practice Hillion argued that the possibility to resort to clauses that permanently exclude the citizens of the States entering the Union from exercise of the right of free movement is in breach of the Treaty since the permanent character of the limitation of the right at stake violates the principle of non-discrimination on the ground of citizenship of the Union as a fundamental status of the citizens of the Member States which is embedded in the Union *acquis*. To support his opinion, Hillion relies on the case law of the Court¹⁰² and points out that the Judge sitting in Luxembourg stated that derogations to the rights of free movement in the cases the founding Treaties have envisaged can be adopted only for reasons that are strictly tied to the personal conduct of the person who is the addressee of the measure restricting those rights¹⁰³. Moreover, the permanent clauses of derogation the negotiating frameworks envisage would impose a restriction on the Union *acquis* which contradicts the objective of maintaining in full the *acquis* and building on it that was enshrined in art. 2 TEU before the entry into force of the Lisbon Treaty¹⁰⁴. Hillion's view of citizenship is entrenched in a constitutional understanding of the process of European integration which has established a series of constraints on the prerogatives of the Member States.

It could be argued that the most recent case law of the Court supports this approach. In *Opinion 2/13* it is stated that the laws on Union citizenship are part and parcel of a

⁹⁸ *Conclusions of the European Council*, of 16 and 17 December 2004, para. 2.

⁹⁹ Council of the European Union, *Türkiye Negotiating Framework*, 3 October 2005, para. 12.

¹⁰⁰ Council of the European Union, *Montenegro Negotiating Framework*, 29 March 2012, para. 13; Council of the European Union, *Serbia Negotiating Framework*, 9 January 2014, para. 33; Council of the European Union, *North Macedonia Negotiating Framework*, 17 July 2022, para. 26; Council of the European Union, *Albania Negotiating Framework*, 18 July 2022, para. 26; Council of the European Union, *Republic of Moldova Negotiating Framework*, 21 June 2024, para. 29.

¹⁰¹ Council of the European Union, *Ukraine Negotiating Framework*, 21 June 2024, para. 29.

¹⁰² Court of Justice of the European Union, Judgment of 29 April 2004, Joined Cases C-482/01 and C-493/01, *Georgios Orphanopoulos and Others (C-482/01) and v. Land Bade-Württemberg*, para. 66.

¹⁰³ C. HILLION, *You Cannot Have Your Cake and Eat It! The Limits to Member States' Discretion in EU Enlargement Negotiations*, Leiden, 2006.

¹⁰⁴ Art. 2, para. 1, of the consolidated text of the TEU after the entry into force of the Treaty of Nice used to read as follows: “*the Union shall set itself the following objectives: to maintain in full the *acquis communautaire* and build on it with a view to considering to what extent the policies and forms of cooperation introduced by this Treaty may need to be revised with the aim of ensuring the effectiveness of the mechanisms and the institutions of the Community*”.

larger series of rules which constitute the framework of a system that is specific to the Union and are framed in such a way as to contribute to the implementation of the process of integration that is the *raison d'être* of the EU itself¹⁰⁵. Moreover, the Court relied on the same line of reasoning in the more recent judgment it delivered in *Commission v Malta* on the Maltese legislation on the granting of citizenship, in which EU citizenship was traced back to the values on which the Union is founded pursuant to art. 2 TEU¹⁰⁶ since it is the fundamental status of the citizens of the Member States¹⁰⁷. The Court connected citizenship of the Union to the values upon which it is grounded and stated that “*the provisions relating to citizenship of the Union are among the fundamental provisions of the Treaties (...) and thus form an integral part of its constitutional framework*”¹⁰⁸.

As this author sees things, introduction into the accession agreements of clauses permanently excluding exercise of the right to free movement within the Union is not incompatible with the EU legal system.

The consideration of the maintenance of the *acquis* does not appear persuasive in light of the reforms of the Lisbon Treaty providing that the competences that have been conferred upon the Union can be reduced (art. 48, para. 2, TEU).

The Court in the *Matheus v. Doego* case stated that States are free to establish the conditions for admission and the content of these conditions cannot be determined judicially in advance¹⁰⁹, thus giving Member States a wide margin of discretion in deciding the conditions to comply with in order to enter the Union.

Moreover, art. 49 TEU sets no limits to reforms to the founding Treaties that admission treaties can adopt. As a consequence, art. 49 TEU gives no legal ground to the reading of the EU legal system arguing that there is a set of rules constituting the hard core of that system, the application of which cannot be restricted when new members join the EU. The process of European integration has not achieved such a high degree of constitutionalization the theory under examination presupposes and the judgement of the Court in *Matheus v. Doego* confirms this point.

In addition to the reasons already given, it has to be observed that the shaping of citizenship the previously mentioned case of the Maltese legislation laid out cannot support Hillion's powerful conclusion since the reasoning underpinning the judgement is fraught with limits and misunderstandings¹¹⁰. Moving from the latter, the reading of the ruling delivered in *Grzelczyk* is wrong since in that case the Court did not State that the status of citizens of the European Union is the fundamental status of nationals of the Member States but rather that it “*is destined to be the fundamental status*” of those nationals¹¹¹. AG Collins highlighted this difference in his Opinion in the case on the Maltese law on citizenship¹¹². The Court's wrong reading of its previous case law makes

¹⁰⁵ Court of Justice of the European Union, *Accession of the European Union to the ECHR*, cit., para. 172.

¹⁰⁶ Court of Justice of the European Union, Judgment of 29 April 2025, Case C-181/23, *European Commission v. Republic of Malta*, para. 95. On this ruling, see S. POLI, *Revoca e attribuzione della cittadinanza: quali condizionamenti impongono le disposizioni dei Trattati sulla cittadinanza europea e quelle sulla Politica Estera e di Sicurezza Comune?*, in *Quaderni AISDUE*, 2024, pp. 1-36.

¹⁰⁷ Court of Justice of the European Union, *European Commission v Republic of Malta*, cit., para. 92.

¹⁰⁸ *Ibidem*, para. 91.

¹⁰⁹ Court of Justice of the European Union, Judgment of 22 November 1978, Case 93/78, *Lothar Mattheus v. Doego Fruchtimport und Tiefkühlkost eG*, para. 8.

¹¹⁰ F. CASOLARI, *La tutela dei valori dell'Unione europea e le prerogative sovrane degli Stati membri: quale limitazione?*, in *Diritto europeo e diritti*, no. 3, 2025, p. 8 ff.

¹¹¹ Court of Justice of the European Union, Judgment of 20 September 2001, Case C-184/99, *Rudy Grzelczyk v. Centre public d'aide sociale d'Ottignies-Louvain-la-Neuve*, para. 31.

¹¹² Court of Justice of the European Union, Opinion of AG Collins of 4 October 2024, Case C-181/23, *European Commission v. Republic of Malta*, para. 43. For this criticism, see D. KOCHENOV, *Never Mind the Law, Again: Commission v. Malta (C-181/23)*, in *EU Law Live*, 30 April 2025; J.H.H. WEILER, *Vendesi*

the grounding of citizenship in the axiological dimension of the values art. 2 TEU lays down and its departing from the original matrix of citizenship, which is free movement, unpersuasive. This shortcoming is illustrative of the main limit of the Court's case law: its non-correspondence to today's status of EU law¹¹³. In this perspective it has been pointed out that the statement of the CJEU that "*the special relationship of solidarity and good faith between each Member State and its nationals also forms the basis of the rights and obligations reserved to Union citizens by the Treaties*"¹¹⁴ is untenable in light of the *Dano* case, in which the Court dramatically devalued the significance of solidarity as a principle underlying free movement as a right which is inherent to Union citizenship and supportive of its extensive exercise by citizens of the Member States¹¹⁵.

To put in a nutshell, the case law on admission and the judgements on citizenship do not support a constitutional reading of the rules on admission. Instead, they confirm the perfect consistency between the rules art. 49 TEU establishes and the practice Member States have put into place grounding admission on intergovernmentalism.

5. Geostrategy, Neutrality and Defence Policy

The analysis of the main elements of continuity and discontinuity of the proceeding of admission of Ukraine urges us to push the assessment forward and to connect it with the large series of actions the Union has been setting up with the aim to support Ukraine and its citizens in resistance to the invasion by the Russian Federation. This assessment will contribute to better understanding the impact that the case of Ukraine has produced on the nature of the proceeding of admission, highlighting wider phenomena which involve the process of integration as a whole.

The initiatives the EU has resorted to in order to support Ukraine have been enacted within the realm of several policies of the Union, combining instruments different in features, aims and nature. The protection afforded pursuant to the Directive on temporary protection¹¹⁶ to face the challenges entrenched in the management of the floods of

cittadinanza. Commissione c. Malta: *chi, davvero, smercia i valori europei?*, in *Quaderni Costituzionali*, no. 2, 2024, pp. 459-460.

¹¹³ F. CASOLARI, *La tutela dei valori dell'Unione europea e le prerogative sovrane degli Stati membri*, cit., p. 10; D. KOCHENOV, *Never Mind the Law, Again*, cit., p. 21; S. PEERS, *Pirates of the Mediterranean Meet Judges of the Kirchberg: The CJEU Rules on Malta's Investor Citizenship Law*, in *EU Law Analysis*, 30 april 2023.

¹¹⁴ Court of Justice of the European Union, *European Commission v Republic of Malta*, cit., para. 97.

¹¹⁵ Court of Justice of the European Union, Judgment of 11 November 2014, Case C-333/13, *Elisabeta Dano e Florin Dano v. Jobcenter Leipzig*. On the *Dano* case, see M.E. BARTOLONI, *La libera circolazione dei cittadini europei economicamente inattivi tra principio di non discriminazione e tutela dei sistemi nazionali di welfare*, in *Diritti umani e diritto internazionale*, vol. 9, 2015, p. 474 ff.; F. CASOLARI, *EU Citizenship and Money: A Liaison Dangereuse? – International and EU Legal Issues Concerning the Selling of EU Citizenship*, in *Biblioteca della Libertà*, no. 212, 2015, p. 45 ff.; A. McDONELL, *Equality for Citizens in the EU: Where Did All the Flowers Go?*, in L.S. ROSSI, F. CASOLARI (eds.), *The Principle of Equality in EU Law*, Cham, 2017, p. 199 ff.; F. COSTAMAGNA, "*Chi non lavora...*": alcune considerazioni su cittadinanza europea, solidarietà e accesso ai benefici sociali a margine della sentenza *Dano*, in *SIDI Blog*, 25 novembre 2014.

¹¹⁶ Council Directive 2001/55/EC, *on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof*, of 20 July 2001, in OJ L 212, of 7 August 2001, p. 12. See G. MORGESE, *L'attivazione della protezione temporanea per gli sfollati provenienti dall'Ucraina: Old but Gold?*, in *Quaderni AISDUE*, no. 1, 2022, p. 381 ff.; D. VITIELLO, *The Nansen Passport and the EU Temporary Protection Directive: reflections on solidarity, mobility rights and the future of asylum in Europe*, in *European Papers*, vol. 7, no. 1, 2022, p. 15 ff.

Ukrainian people fleeing their country gives an idea of the complex problems the Union has come up against in facing the Ukrainian crisis.

Set in this scenario, the handling of the Ukrainian application for membership has to be connected to a profound and important change that has taken place in the practice of the CSDP of the EU. This link contributes to better understanding both the geostrategical shift and the tie of the proceeding to the practice of admission as it stood before Ukraine submitted its application.

Aspiration to peace lies at the basis of the process of European integration and encompasses not only the relations among the States taking part in it, but also the relationships with the outer world. There were no legal impediments preventing the Union to become a subject permanently neutral, but neither the EU, nor its Member States have shown the intention to make the Union to be considered as a permanent neutral actor, notwithstanding the engagement in maintaining or restoring peace.

In light of the consideration of the practice that has been carried out within the framework of the policy on defence, it could be argued that the Union acted in the international arena as a *de facto* neutral subject until the war in Ukraine broke out¹¹⁷. This qualification stems from the nature of the activities the EU has realised and the legal framework within which they have been developed. In deploying its action, the Union has put into place humanitarian, peacekeeping and crisis management interventions. By contrast, the EU was never engaged in peace enforcement interventions¹¹⁸. The military operations the Union carried out until the aggression of Ukraine neither pursued the aim of defending the EU against aggression, nor were developed in order to support one of the parties involved in the conflict. As a consequence, the action of the Union could be equated with the conduct of a neutrally active subject which politically sided with none of the belligerents, but intervened in order to maintain or restore peace in a situation of civil war¹¹⁹.

Against this backdrop, the measures the EU has been enacting to help Ukraine have to be considered a watershed, projecting the Union into a new era.

The first step of this change came just a few days after the beginning of the invasion through the adoption of Council Decision (CFSP) 2022/338 of 28 February 2022¹²⁰. The Council Decision establishes an assistance measure benefiting Ukraine with the aim of contributing to strengthening the capabilities and resilience of the Ukrainian Armed Forces to defend the territorial integrity and sovereignty of Ukraine and protect the civilian population against the ongoing military aggression (art. 1, para. 2). To attain the said objective the Union makes use of the financial resources which were made available under the European Peace Facility¹²¹ and finances the provision of military equipment, and platforms, designed to deliver lethal force to the Ukrainian Army. The delivery of lethal force to Ukraine put an end to the hypothetical status of the Union as a permanently

¹¹⁷ M. VELLANO, *L'evoluzione dell'aspirazione pacifista e della neutralità nell'azione dell'Unione europea e il suo futuro*, in *Percorsi costituzionali*, no. 1, 2023, p. 100. On the status of neutrality, see N. RONZITTI, *Diritto internazionale dei conflitti armati*, Torino, 2014, p. 118 ff.

¹¹⁸ See L. GROSSIO, *Le missioni e le operazioni militari dell'Unione europea*, in M. VELLANO, A. MIGLIO (a cura di), *Sicurezza e difesa comune dell'Unione europea*, Milano, 2022, p. 145.

¹¹⁹ M. VELLANO, *L'evoluzione dell'aspirazione pacifista*, cit., p. 101.

¹²⁰ Council Decision (CFSP) 2022/338, *on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force*, of 28 February 2022, in OJ L 60, of 28 February 2022.

¹²¹ Council Decision (CFSP) 2021/509, *establishing a European Peace Facility, and repealing Decision (CFSP) 2015/528*, of 22 March 2021, in OJ L102, of 24 March 2023. See D. GENINI, *How the War in Ukraine Has Transformed the EU's Common Foreign and Security Policy*, in *Yearbook of European Law*, 2025, p. 6 ff.

neutral international entity and opened up a new phase in its CSDP. This decision marks a change because the Union provides lethal weapons and equipment to a State at war¹²², thus concretely supporting one of the parties of the conflict to the detriment of the other party. Furthermore, the objective to attain is not ending the conflict, but rather enhancing the military capacity and resilience of one of the belligerents in order to discourage the other from prosecuting the aggression. The aspiration to peace survives, since the intervention aims at restoring international legality, but the way of achieving this objective has undergone a major modification since the Union does not maintain a posture of equidistance between the parties engaged in the conflict.

Decision (CFSP) 2022/338 was followed by a series of further acts the EU enacted with the aim to provide Ukrainian forces with military equipment of a lethal nature¹²³. The most interesting of these initiatives, in our perspective, is Regulation 2023/1525¹²⁴ which pursues the targets to support the ramping-up of the production capacity and timely delivery of relevant defence products through industrial reinforcement (art. 4, para. 1) which consists “*of initiating and speeding up the adjustment of industry to the rapid structural changes imposed by the supply crisis affecting the relevant defence products which are necessary for the swift replenishment of the ammunition and missile stocks of the Member States and of Ukraine*”. (art. 3, para. 2). For the attainment of the said objectives the instrument finances up to 35% of the eligible costs of an eligible action related to the production capacities of relevant defence products, and up to 40% of the possible costs of a possible action related to the production capacities of components and raw materials (art. 9).

The measures in question have contributed to the transformation and enhancement of EU policy on defence that was foreshadowed by the Strategic Compass for Security and Defence the Council adopted on 22 March 2022 and the European Council approved on the meeting that was held in March 2022¹²⁵.

Though the first drafts of the Strategic Compass were elaborated before Ukraine was invaded, the strategy the final text outlines clearly highlights the many challenges that are embedded in the aggression by the Russian Federation, as the beginning of the document clarifies in pointing out that “*the return of war in Europe, with Russia's unjustified and unprovoked aggression against Ukraine, as well as major geopolitical shifts are challenging our ability to promote our vision and defend our interests. (...) The European Union is more united than ever. We are committed to defend the European security order. Sovereignty, territorial integrity and independence within internationally recognised borders should be fully respected. Supporting Ukraine in facing Russia's military aggression, we are showing an unprecedented resolve to restore peace in Europe, together with our partners*”¹²⁶.

¹²² M. VELLANO, *L'evoluzione dell'aspirazione pacifista*, cit., p. 103.

¹²³ Council Decision (CFSP) 2022/339, *on an assistance measure under the European Peace Facility to support the Ukrainian Armed Forces*, of 28 February 2022, in OJ L 61, of 28 February 2022; Council Decision (CFSP) 2022/471, *amending Decision (CFSP) 2022/338 on an assistance measure under the European Peace Facility for the supply to the Ukrainian Armed Forces of military equipment, and platforms, designed to deliver lethal force*, of 23 March 2022, in OJ L 96, of 24 March 2022. See M. VELLANO, *La guerra in Ucraina e le conseguenti decisioni dell'Unione europea in materia di sicurezza e difesa comune*, in *Il Diritto dell'Unione europea*, no. 1, 2022, p. 125.

¹²⁴ Regulation (EU) 2023/1525 of the European Parliament and of the Council, *on supporting ammunition production (ASAP)*, of 20 July 2023, in OJ L 185, of 24 July 2023. See A. MIGLIO, *ASAP: una politica industriale europea per produrre munizioni?*, in *Commenti Centro Studi sul Federalismo*, no. 274, 2023, p. 1 ff.

¹²⁵ Council of the European Union, *A Strategic Compass for Security and Defence*, 21 March 2022. See F. FABBRINI, *La bussola strategica dell'UE: luci e ombre*, in *Centro Studi sul Federalismo*, 2022.

¹²⁶ Council of the European Union, *A Strategic Compass for Security and Defence*, cit., p. 10.

To face the challenges flowing from this new international scenario the Strategic Compass outlines the new role of the Union in the future and calls on the EU and its Member States to bolster the policy on defence stating that “*the more hostile security environment requires us to make a quantum leap forward and increase our capacity and willingness to act, strengthen our resilience and ensure solidarity and mutual assistance*”¹²⁷.

The admission proceeding relating to Ukraine not only enhances the resilience of Ukraine, thus paralleling the delivery of military support through lethal equipment, but also contributes to defining the new role the Union wants to play in the international arena. In this vein offering Ukraine the perspective of the granting of membership is a step forward in the profound revision of the Union’s external action as a whole in accordance with the new strategy the Compass has defined.

The connection between the redefining of the CSDP of the Union the Strategic Compass outlines and the prospective Ukraine’s membership identifies the major element of discontinuity of the latter, which is to be found in its functionality to the change of attitude towards the international role of the EU and the way in which the Union’s contribution to international peace is conceived.

This conception of peace, which is perfectly identified in the more recently launched Rearm Europe Plan¹²⁸, signals an intense revision of the genetic code of the Union, an operation which is also carried out through reliance on the admission proceeding.

The Plan of the Commission departs from the traditional military intervention aiming at putting an end to international crisis and restoring international legality and almost sets aside the operations in which the EU has been engaged. The Plan focuses rather on re-arming Europe to “*develop the necessary capabilities and military readiness to credibly deter armed aggression*” and on securing the future of the Member States¹²⁹. Peace thus requires enforcement of deterrence against those who would harm Europe, endangering its wealth and democracy. This new approach has to be adopted because of the deteriorating strategic context in which menaces to European security are proliferating, posing a threat to the way of life of the EU Member States. The prevention of a war of aggression becomes the guiding principle of the new policy on defence the Commission frames in the Plan to “*built up a sufficient deterrence capacity*”¹³⁰.

Enhancing military support to Ukraine is one of the elements of this strategy because the country “*will remain at the frontline of European defence and security and is the key theatre to define the new international order with its own security interlinked with that of the European Union*”¹³¹.

The way in which the Union has been handling the Ukrainian application for membership takes place within the wider framework described and contributes to the enhancement of this impressive discontinuity in the EU shaping its external action. Prospective membership of the Union and bolstering of the relationships between the EU and Ukraine as a consequence of the pre-accession policy the former develops towards the latter are parts of the more extensive strategy the EU has been enacting in providing the candidate for membership with military support.

¹²⁷ *Ibidem*.

¹²⁸ European Commission and High representative of the Union for Foreign Affairs and Security Policy, *Joint White Paper for European Defence – Readiness 2030*, of 19 March 2025, JOIN/2025/120 final.

¹²⁹ *Ibidem*, p. 3.

¹³⁰ *Ibidem*, p. 6.

¹³¹ *Ibidem*, p. 10.

6. Concluding Remarks

The legal items marking the proceeding of admission of Ukraine shed light on wider processes which relate to the balance between the supranational approach and the intergovernmental approach¹³² towards European integration.

The war is at the basis of the EU's handling of Ukraine's candidature for membership¹³³, but the connection between admission and the reshaping of the EU's CFSP and CSDP goes beyond mere acceleration of the proceeding and affects the way in which it works.

The sliding of admission towards the area of the Union CFSP and CSDP produces two types of effects on respect for and promotion of the values of the Union. The first of these effects has to be identified in the fact that considerations of a geopolitical and geostrategic nature have already led to devaluation of the political conditions for being admitted into the Union in the assessment of the Ukrainian candidature and have prevailed over strict application of the criteria for evaluating compliance with the requirements for membership.

The second type of effect is enacted within the framework of the so-called pre-accession policy and relates to the content of the values the political conditions for membership embody. In the shaping of its external relations, the Union faces states that are independent entities, so that the content of the values upon which those relations are framed cannot be identical to the content of the values lying at the basis of the process of European integration, but has to be established making reference to a common ground within the framework of international law. As a consequence of this approach towards values, the function of admission to promote candidate countries' compliance with the conditions for admission is gravely affected. This effect weakens the capacity of the admission proceeding to foster the constitutional dimension of the process of European integration¹³⁴.

Enhancement of the intergovernmental dimension also derives from reiteration of the admission proceeding as it stands in light of the 2020 new methodology and the practice of the Member States and the EU institutions, the outcome of which is progressive bolstering of the role of the former and the shrinking of the role of the latter¹³⁵. The Member States take by unanimous consent the most important decisions on the states aspiring to membership move from one stage of the proceeding to the following one. This process has progressively driven the centre of gravity of admission back to the intergovernmental dimension which marks it pursuant to the provisions art. 49 TEU lays down. This outcome has been achieved through the dismantling of the supranational features the older practice of admission introduced in previous rounds of enlargement, which were related to the pre-eminent role of the Commission.

¹³² For a general overview of the relationships between the two methods, see U. VILLANI, *Metodo comunitario e metodo intergovernativo nell'attuale fase dell'Unione europea*, in *Studi sull'integrazione europea*, no. 2, 2019, p. 259 ff.

¹³³ R. PETROV, *Bumpy Road of Ukraine Towards the EU Membership in Time of War: 'Accession Through War' v. 'Gradual Integration'*, in *European Papers*, vol. 8, no. 3, 2023, p. 1057 ff.

¹³⁴ On the constitutional dimension of the process of European integration, see J.H.H. WEILER, *The Constitution of Europe. Do the New Clothes have an Emperor? and Other Essays on European Integration*, Cambridge, 1999; L.F. PACE, *La natura giuridica dell'Unione europea: teorie a confronto. L'Unione ai tempi della pandemia*, Bari, 2021.

¹³⁵ On these processes see C. HILLION, *Masters or Servants? Member States in the EU Enlargement Process*, in R. BALFOUR, C. STRATULAT (eds.), *EU Member States and Enlargement towards the Balkans*, 2015, p. 19 ff.

The veto that some of the Member States availed themselves of to slow down the pace of some of the candidates, such as the French and Bulgarian veto against Albania or the Bulgarian veto against North Macedonia¹³⁶, are a good example of the leading role Member States play in today's practice of admission.

Fostering of intergovernmentalism seems consistent with the admission's functionality to the discontinuity in the shaping of the CSDP that was highlighted above. Notwithstanding the stress on enhancement of the Union's military power, the policy at stake is still based on a system of decision-making grounded on unanimity. Moreover, the Rearm Europe Plan neither pursues the aim of setting up a European army, nor aims at enhancing the defence policy of the Union as such. The Plan aims to foster the capacity of deterrence of the Member States of the Union which "*will always retain responsibility for their own troops, from doctrine to deployment, and for the definition needs of their armed forces*"¹³⁷.

The Union is called on to support and complement the actions of the Member States to multiply their efforts. The strategy the Commission envisaged does not advance supranationalism within the field of defence policy, but rather buttresses its intergovernmental nature.

In turn, the connection between the CSDP and admission entails that the reinvigorated intergovernmentalism of the former projects its effects on the latter, contributing to the trend of enhancing the intergovernmental approach in shaping the procedure for joining the Union.

Scholars have argued that the case law of the Court of Justice that was summarised in the previous pages on the relationship between respect for EU values, admission and exercise of the rights the Treaty establishes identified a dual dynamic in defining the axiological dimension of the Union, the first of these dynamics being bottom-up, while the second is top-down. According to this approach, the second dynamic occurs in admission to the EU and leads candidates to membership to comply with the political conditions that were set for entering the EU and that are necessary for enjoyment of the rights deriving from application of the Treaties¹³⁸. This view seems unpersuasive because today's working of the proceeding of admission makes it clear that the second of the said dynamics is still in an embryonic stage. This outcome is more evident in light of the predominance of geopolitical and geostrategic interests underlying single decisions on admission over ascertainment of fulfilment of the requirements for membership.

The Ukrainian case therefore sheds light on the nature of the process of European integration and contributes to limiting its constitutionalization at an early stage¹³⁹.

The equilibrium between supranationalism and intergovernmentalism emerging from today's practice could be temporary.

The way in which the peace agreement will set the relations between the belligerents might modify the balance that has been struck between the competing forces underlying

¹³⁶ C. HILLION, *A New Chapter on EU Enlargement? Some Candid Considerations*, in *EUWEB Legal Essays*, no. 1, 2026, p. 123; J. PEJIĆ NIKIĆ, B. ELEK, D. POKUŠEVSKI, N. MUMIN, L. ŠTERIĆ, *op. cit.*, p. 12.

¹³⁷ European Commission and High representative of the Union for Foreign Affairs and Security Policy, *White Paper for European Defence – Readiness 2030*, cit., p. 6. On these limits and contradictions in the EU policy, see M. VELLANO, *La guerra in Ucraina e le conseguenti decisioni dell'Unione europea in materia di sicurezza e difesa comune*, cit., p. 133.

¹³⁸ F. CASOLARI, *Il processo di europeizzazione delle identità nazionali degli Stati membri: riflessioni sulle traiettorie del costituzionalismo europeo*, in *Quaderni AISDUE*, Fasc. speciale no. 1, 2024, p. 5 ff.

¹³⁹ On this issue, see M. EVOLA, *La promozione dei valori dell'Unione europea nella procedura di ammissione*, cit., p. 135.

the process of European integration.¹⁴⁰ It cannot be excluded that the Member States will give the proceeding of admission further functions, such as reconstruction of the country or restoration of the political institutions, which will be strictly linked to the situation in Ukraine after the end of the war and the political scenario and will establish new conditions to comply with to enable the country to join the club.

However, any reshaping of that balance presupposes a softening of the ties between admission and the Union's foreign policy, a scenario which seems implausible in facing today's challenges in the international arena.

ABSTRACT

Ukraine is a “sui generis” case in the history of the process of European integration since the application of the rules on admission involves a state which is engaged in a war. The decision to start admission negotiations with Ukraine clarifies that enlargement is conceived as part and parcel of the EU geostrategy, giving rise to a revived and enhanced conception of admission and the policy of enlargement the Union carries out. This new approach strengthens the connection between admission and the EU Common Foreign and Security Policy, as well as the Common Security and Defence Policy. The paper evaluates whether or not the special features of the Ukrainian candidature for membership of the Union and the new paradigm originating from the connection between enlargement and EU geostrategy have been affecting admission to the Union under both of its aspects: the conditions for membership and the policy of enlargement the Union develops with reference to candidate countries. Practice makes it clear that there are continuity and discontinuity in Ukraine's admission to the EU. The Union's attitude towards Ukraine's application for membership and the way in which it handles it are part and parcel of more extensive legal phenomena involving the nature of the process of admission and the relationship between the supranationalist character of the EU and the intergovernmental approach towards the shaping of the “ever closer union”. Seen against these trends, the procedure the EU has enacted for the admission of Ukraine seems to enhance the shift towards the latter shaping of cooperation within the framework of the founding treaties.

KEYWORDS

Admission to the EU, Conditionality, CSDP, Intergovernmental Approach to the European Integration, Ukraine's Application for EU Membership.

CONTINUITÀ E DISCONTINUITÀ NELL'AMMISSIONE DELL'UCRAINA NELL'UE

ABSTRACT

L'Ucraina è un caso “sui generis” nella storia del processo di integrazione europea, poiché l'applicazione delle regole di ammissione coinvolge uno Stato impegnato in guerra. La decisione di avviare i negoziati di ammissione con l'Ucraina chiarisce che l'allargamento è concepito come parte integrante della geostrategia dell'UE, dando

¹⁴⁰ On the relationships between the end of the war and Ukrainian membership of the Union, see R. PETROV, C. HILLION, *op. cit.*, p. 1289; A. SAPIR, *Ukraine and the EU: Enlargement at a New Crossroads*, in *Intereconomics*, vol. 57, no. 4, 2022, p. 214.

origine a una concezione rinnovata e rafforzata dell'ammissione e della politica di allargamento che l'Unione attua. Questo nuovo approccio rafforza il legame tra l'ammissione e la Politica Estera e di Sicurezza Comune dell'UE, nonché la Politica di Sicurezza e Difesa Comune. L'articolo valuta se le caratteristiche particolari della candidatura ucraina all'adesione all'Unione e il nuovo paradigma nato dal legame tra ampliamento e geostrategia dell'UE abbiano influenzato l'ammissione all'Unione sotto entrambi i suoi aspetti: le condizioni di ammissione e la politica di allargamento che l'Unione sviluppa in riferimento ai Paesi candidati. La prassi mostra che ci sono continuità e discontinuità nell'ammissione ucraina all'UE. L'atteggiamento dell'Unione verso la domanda di ammissione dell'Ucraina e il modo in cui la gestisce fanno parte integrante di fenomeni giuridici più estesi che riguardano la natura del processo di ammissione e il rapporto tra il carattere sovranazionalista dell'UE e l'approccio intergovernativo alla formazione di una "unione più stretta". Considerando queste tendenze, la procedura che l'UE ha adottato per l'ammissione dell'Ucraina sembra favorire la tendenza verso quest'ultimo orientamento della cooperazione nel quadro dei trattati istitutivi.

KEYWORDS

Ammissione all'UE, Approccio intergovernativo all'integrazione europea, Condizionalità, Domanda dell'Ucraina per l'ammissione all'UE, PSDC.