Vladimir Georgiev, LL.B.,[1]
LLM Student,
Faculty of Law, Goce Delchev University, Shtip,
Republic of North Macedonia

UDK: 341.217.02(4-672EU)
UDK: 341.176(4-672EU)
UDK: 341.232(4-672EU)

DOI: 10.5281/zenodo.14424863

Прегледни научни чланак

Примљен: 9. 11. 2024.
Прихваћен: 19. 11. 2024.

THE ENLARGEMENT OF THE EUROPEAN UNION: CRITICAL ASSESSMENT OF THE LEGAL CONDITIONS FOR ACCESSION

Abstract**:** *This article examines the existing procedures for acceding to the European Union. In theory, enlargement is a policy driven by EU institutions as a methodology to prepare the applicant states to become members of the EU. However, we may witness that the EU Member States have increased their control over this process to gain points in their domestic political battles. The importance of fostering the enlargement process towards a more objective field will be argued in this paper, based on predictable legal standards prescribed by the EU legal order, enhancing the credibility of EU commitments towards candidate states and, consequently, the effectiveness of the enlargement policy´s acclaimed transformative power. A clear example of this unfortunate scenario is the case of North Macedonia's accession process towards the European Union, where the process of enlargement is a clear example of an instrumentalisation of EU law and cultural-identitarian offensive arguments that negatively impact the rule of law of the EU.*

Keywords: *accession, enlargement, EU institutions, constitution, Copenhagen criteria, European integration.*

1. INTRODUCTION

The enlargement process is constantly analysed via the prism of EU conditionality and compliance with accession criteria rather than mere EU membership (Jano, 2024:2). The insistence on conditionality and clear accession criteria is forced due to concerns about the post-accession compliance of the

[1] Vladimir Georgiev, a graduate student in legal studies at the Faculty of Law, "*Goce Delchev*" University, Shtip, Republic of North Macedonia; e-mail: vladimir.georgiev169@gmail.com.

latest EU member states, such as Bulgaria, Romania, and Croatia (Schimmelfennig, Trauner, 2009: 4). In this light, the EU has reformed its accession procedures and criteria rules to ensure that aspiring states express their willingness and demonstrate their capability and commitment to meet the EU's political, economic, and legal standards. The EU and its Member States consider stricter accession conditionality and additional obligations essential to prepare aspiring candidate states thoroughly before becoming full members.

However, this has been used as a pretext by the EU member states to exert greater control over the enlargement process and to be dictated by the national political agenda. The recent hurdles in the process are motivated by purely political and domestic reasons of member states, which underscore the need for a balanced approach that addresses the need to change the attitude of EU institutions and their members towards the legal accession criteria and procedures. This negative tendency compromises the integrity of the Lisbon Treaty provisions and conflicts with the fundamental principles of EU law.

This article attempts to present the historical evolution of the EU accession criteria and procedures, focusing on the debates from the pre- to post-Copenhagen era. It will scrutinise the origins and evolutions of the membership norms, emphasizing the legal nuances of the procedures and the normative criteria. An attempt will be made to detail the institutionalisation of accession criteria and the transformation of procedures from the classical to multi-step EU accession. Unveiling the present challenges, the article advocates for a re-evaluation to reclaim normative consistency in the EU accession process. Some light will be cast on existing legal remedies to address the problem and redirect the process from the purely nationalistic interests of the Member States and the EU commitments, and the underlying policy formulated in the EU founding treaties.

2. ELEMENTS OF THE ENLARGEMENT POLICY

Nine countries are currently waiting to become EU member states. Serbia, Montenegro, Albania, Ukraine, Moldova, Bosnia and Herzegovina, Georgia, Turkey, and North Macedonia have been acknowledged as candidate states. The normative pathway for their accession towards full membership is guided by the provisions of Article 49 of the Lisbon Treaty. However, in practice, the essential roadmap for the accession process is derived from the established practice of the EU institutions within each of the expansion phases (Hillion, 2010: 9). This leads to situations where the material and procedural requirements are part of different sets of EU rules and mechanisms, which

should supplement the basic requirements provided in Article 49 of the Lisbon Treaty. Jointly taken, the law and practice have devised policy criteria for certain states' eligibility for membership and the means for one state to prepare itself to become a member. However, the latest developments in the enlargement process have raised serious questions about the credibility of the whole policy and practice.

2.1. Accession Conditions under the EU Founding Treaties

In the beginning, the European identity was the only condition for membership in the Community. Article 237 of the Rome Treaty proclaimed that "any European state may apply to become a member of the Community". The first enlargement of the European Community in 1973 (Britain, Ireland and Denmark) did not occur on the basis of any other explicit membership criteria. Towards the end of the 1970s, the membership conditions became an explicit matter of concern because of the unfolding events in Greece, Portugal and Spain. These countries were making a transition from authoritarian rule to democracy. The Council wanted to support and encourage democratic forces and clarified that these countries could join the Community if they proceeded with democratisation (Smith, 2010: 109). It was declared by the European Council that "respect for and maintenance of representative democracy and human rights in each Member State are essential elements of membership in the European Communities".[2]

Afterwards, many other conditions have evolved. Nowadays, for a country to be able to apply for EU membership, it must meet the criteria set out in the EC Treaty. To gain membership, it must meet the Copenhagen Criteria established by the European Council in 1993 and enforced by previous enlargements.[3] Thus, according to the Copenhagen criteria, the candidate countries must demonstrate the stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; the existence of a functioning economy as well as the capacity to cope with competitive pressure and market forces in the European Union; and the ability to take on the obligations of membership, including the adherence to the aims of political, economic and monetary union.[4]

Under the leading role of the European Commission, the European Council subsequently redefined the normative content of these admission conditions,

[2] Copenhagen European Council, Declaration on Democracy, 8 April (EC Bull. 4-1978).

[3] Conclusions of the Presidency, European Council in Copenhagen, 21-22 June 1993, p 13.

[4] EUR-Lex: Assession criteria (the Copenhagen criteria), https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html

bearing in mind the circumstances of each round of enlargement and the candidates involved. Thus, the Madrid European Council of December 1995 referred to the need 'to create the conditions for the gradual, harmonious integration of [the applicant] countries, particularly through the development of the market economy, the adjustment of their administrative structures and the creation of a stable economic and monetary environment.' The European Council thereby emphasised the importance of establishing the appropriate administrative structures for the candidates to cope with the well-established obligations of membership, e.g., the implementation of the *acquis* (Dimitrova, 2002:171). Furthermore, the 1994 Essen European Council's Presidency Conclusions added to the accession criteria the good neighbourliness conditionality, emphasising regional cooperation and good relations between candidate countries and member states to prevent conflicts from entering the Union.[5] This condition was re-affirmed in the 1999 Helsinki European Council, urging candidate countries to resolve border disputes and related issues. The good neighbourliness condition is seen as a mechanism to address security concerns about unresolved issues, such as border disputes and minority protection in candidate countries (Basheska, 2014: 99).

Throughout the latter part of the 1990s, new instruments were added to enhance the pre-accession strategy.[6] Hence, following the 1997 Luxembourg European Council, the Copenhagen criteria were progressively spelt out in short, medium, and long-term priorities compiled in 'accession partnerships' (APs) adopted by the EU, which the candidates would have to meet in view of and as a condition of their ultimate accession.[7] The Commission was also requested to produce detailed evaluations of each candidate's performance in implementing the APs by publishing annual progress reports, based on which the European Council would determine the pace of accession negotiations. In particular, the pre-accession financial assistance could be reviewed if progress in meeting the Copenhagen criteria was deemed insufficient. This periodical reporting on candidates' progress contrasted with previous accession procedures where the Commission issued only two opinions on any membership application (Hillion, 2010:14).

Thus, the European Council vested far-reaching powers to EU institutions, particularly the Commission, to monitor how candidates prepared for their accession. The Commission was indeed re-organized to include a specific

[5] Presidency Conclusions, European Council, Essen, 9–10 December 1994.

[6] Agenda 2000. The Challenge of Enlargement', COM(97) 2000, vol. II.

[7] Council Regulation 622/98 (OJ 1998 L85/1).

Directorate General for Enlargement. Acting well beyond its traditional role of 'guardian of the [EC] Treaty' vis-à- vis the Member States, the Commission acquired the pivotal function of promoting and controlling the progressive application of the wider EU acquis by future members.

The European Union introduced additional accession criteria that considered factors such as the political situation of candidate countries and past experiences with EU enlargements. Most Western Balkan countries face additional accession criteria, shaped by insights gained from prior enlargements and addressing politically sensitive matters with a significant security dimension (Jano, 2024: 12). For Serbia, these additional requirements included full cooperation with the International Criminal Tribunal for Former Yugoslavia (ICTY) and normalisation of relations with Kosovo. Meanwhile, North Macedonia faced the importance of resolving bilateral standoffs, such as the ones with Greece over the name issue and Bulgaria over the language and historical issues (Kmezić, 2015:13).

As a concluding remark from this historical overview, we can establish that the enlargement has thus become a policy, as opposed to merely a procedure governed by a set of detailed substantive rules encompassing evolving accession conditions and principles. Through this policy, the EU has actively prepared the candidates to transform them into Member States. Notably, the evolution from procedure to policy has nuanced the original intergovernmental character of the enlargement process. It has allowed for an increased role in the EU institutional framework. Over time, accession criteria have enriched the broad Copenhagen political criteria with contents that may have needed to be improved given the limited, if not non-existent, relevant EU norms (Albi, 2005:46).

2.2. Concerns over the Efficiency of the Enlargement Procedure

One of the main criticisms of the EU's current accession procedures and criteria revolves around double standards and asymmetric positioning. The EU's demands on candidates differ from those they face once accepted as members (Hillion, 2010:15). This discrepancy may be the root cause of several of the enlargement policy's shortcomings.

Firstly, there is an established practice where various member states have utilised veto power at various stages of the accession process for different candidate states. Thus, the pre-accession requirement to resolve any "open issue" between an EU member state and a candidate country, coupled with the unequal power dynamics during accession negotiations, places the accession process at the discretion of the Member State's will. The established

practices have made it easier for individual member states to delay or block the accession process through the (mis)use of the veto power, enabling them to push their national interests and block the accession process at any time, given that unanimous agreement among all member states is required at the various stages of the accession process (Jano, 2024:13). The latest examples of this problematic tendency were evident between 2019-2022 when France and, later, Bulgaria vetoed the start of accession negotiations with North Macedonia over bilateral disputes despite the positive opinion from other EU institutions (Basheska, 2022: 222).

Secondly, there is a discrepancy in the actions of the different bodies of the EU institutions, which is the case in the North Macedonia accession process. In the concrete case, the Commission recommends opening the negotiating chapters. At the same time, the Council of the EU imposes requirements in the Negotiating framework[8] that contradict the provisions of Article 4 §2 of the Lisbon Treaty, which reads as follows: "The Union shall respect the equality of Member States (analogical application for prospective members?) before the Treaties as well as their national identities, inherent in their fundamental structures, political and constitutional". Quite the opposite, paragraph 4 of the Council conclusions, attached to the Negotiating framework from 2022, expressly prescribes the need for North Macedonia to enact relevant constitutional changes to include "in the Constitution citizens who live within the borders of the state and who are part of other people, such as Bulgarians." [9]. This raises accusations of double standards that have undermined the credibility of the Union's commitments to the norms and values it has advocated vis-vis the applicants. In turn, this has consequently questioned the legitimacy of the Union's conditionality and, ultimately, the effectiveness of its transformation agenda.

The broad scope of conditions and the growing complexity have raised concerns about fairness and equity, unintentionally compromising their credibility as an effective tool for assessing the candidate countries' progress (Kochenov, 2004: 23). To enhance the credibility of accession criteria, scholars suggest a more focused approach of strategically singling out specific conditions instead of the numerous requirements currently in place (Steunenberg, Dimitrova, 2007: 11).

[8] Negotiating framework with North Macedonia, July 2022

[9] Council Conclusions on Enlargement: 11440/22, Council of Europe, Brussels, 18 July 2022

3. HOW TO REFORMULATE THE EU ENLARGEMENT POLICY

3.1. Application Procedure Under Article 49(1) Of The Lisbon Treaty

Since 2006, before Bulgaria and Romania's accession, the Commission has envisaged new principles to govern the EU enlargement policy and methodology, particularly that of 'rigorous and fair conditionality' (Hillion, 2010:18). Accepting the Commission's new approach, the European Council agreed that 'the enlargement strategy based on consolidation, conditionality and communication, combined with the EU's capacity to integrate new members, forms the basis for a renewed consensus on enlargement'.[10] The 'new consensus' attempts to address the concerns related to ill-prepared candidates and public disenchantment. This means that, based on a Commission recommendation,[11] the Council may define 'benchmarks' that the candidate must meet for the EU to open and close a particular negotiating chapter. In addition to introducing benchmarks, changes in the interpretation and implementation of the application procedure contained in Article 49(1) of the Lisbon Treaty have strengthened Member States' control over the enlargement policy.

Given the restrained judicial intervention, the vagueness and scarcity of Treaty rules have left plenty of room for creative interpretation, which has fallen on the Member States and the EU political institutions. Indeed, in the reading and practice of Article 49(1), political considerations and expediency have been as decisive, if not more, as the quest for objectiveness, certainty and effectiveness. The evolving interpretation of Article 49 is particularly evident regarding the role of the different EU institutions. The provision stipulates that the candidate's application will be sent to the Council, which decides unanimously after the Commission has provided its opinion and the European Parliament its consent. The provision's words give the impression that the Council decides only after the other institutions have been consulted.

In practice, however, the Council 'decides' early, determining the application's fate. Thus, the practice has developed according to which the Commission only prepares and gives its Opinion on the application once the Council has requested it. This example has proven that the Council (and thus, each Member State) has acquired the power to assess the admissibility of the application

[10] Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2006 – 2007, COM(2006) 649, pp. 3-4.

[11] Benchmarks are drafted by line DGs of the Commission, following the so-called 'screening process', further see https://neighbourhood-enlargement.ec.europa.eu/enlargement-policy/steps-towards-joining_en.

before the Commission and, indeed, the Parliament, both endowed with the power to give their views and have the chance to express them. Also, this practice is quite suspicious if we read the procedural requirements of Article 49(1), which stipulates that the Council's formal decision on the application is to be made after the Commission has formally presented its Opinion. The introduction of such preliminary Council decisions weakens the role of the other EU political institutions and de facto changes the nature of the procedure of Article 49(1), which is, in principle, inter-institutional and, in practice, intergovernmental.

The Council's interpretation of Article 49(1) of the Lisbon Treaty not only amounts to an institutional and procedural adjustment but also entails substantive changes by establishing new conditionality. Indeed, the Council's preliminary assessment has not been restricted to ascertaining that the essential requirement in the Treaty is fulfilled and that the demand comes from a European State.

The Council has also set country-specific conditions for transmitting the application to the Commission. For example, the request for the Commission's Opinion on the application of Serbia was held back, awaiting the Advisory Opinion of the International Court of Justice (ICJ) on Kosovo's declaration of independence[12] and, importantly, awaiting the Serbian government's reaction to the ICJ's Opinion.

It should be mentioned that Member States continue to exercise influence on the process after having requested an Opinion from the Commission. The latter establishes a questionnaire on the candidate's legal situation in all areas covered by the EU acquis. The answers provided by the candidate state form the basis of the Commission's subsequent Opinion on its application. In principle, the pace at which the Commission processes the answers and produces its Opinion depends on the quality of the candidates' replies. Yet, practice has shown that political considerations may also affect how the Commission operates, as the college is not immune to Member States' pressure.

3.2. Nationalisation of the Enlargement Procedure

The Member States have invoked unilateral measures at the national level that have had a direct impact on the enlargement process and contributed to the creeping nationalisation of the policy. To be sure, the intergovernmental component of the enlargement process has always been prominent. Hence,

[12] Accordance with International Law of the Unilateral Declaration of Independence by the Provisional Institutions of Self-Government of Kosovo (request for advisory opinion).

Article 49(2) of the Lisbon Treaty envisages that the Accession Treaty is, in principle, negotiated and concluded by the Member States and the candidate state(s) before being ratified, following their respective constitutional requirements. Akin to a revision treaty based on Article 48 of the Lisbon Treaty, an accession treaty cannot enter into force without the unanimous approval of every EU Member State. Accession to the EU can thus be stopped if a Member State fails to ratify the Treaty of Accession.

While no such Treaty has ever been blocked in practice, it may be argued that obstruction is unlikely. First, given that all Member States must approve of further enlargement and given their increasing number, there has also been an increase, at least numerically, in possible national stumbling blocks. Secondly, as will be shown below, certain Member States have modified their domestic constitutional rules governing the ratification of the Accession Treaty. These modifications increase these Member States' control over EU enlargement in a way that carries the risk of clogging up the procedure of Article 49, if not making it worthless. Indeed, it has been argued that the notion of 'constitutional requirements' has been instrumentalised to the extent that it risks creating a mockery of the [EU enlargement] process.

Member States have also strengthened their grip on other stages of the enlargement procedure through changes in national laws. Following the German Constitutional Court judgment on the Lisbon Treaty,[13] the amended German ratification law foresees an increased involvement of the Bundestag in EU affairs. In particular, the new rule requires that the German government seek the opinion of the parliament on the opening of accession negotiations. Since then, the consultation requirement has been invoked at various stages of the enlargement procedure, not only for the specific decision to open accession talks. It is illustrate in the 'Albanian application' episode, referred to above, in which the law was brought into play before the decision to request the Commission's opinion. While the opinion of the Bundestag does not bind the government, they are asked to seek a common position in the specific enlargement field. All in all, if the German Parliament were to give a negative opinion on the matter, the start of the EU enlargement procedure could be stalled.

3.3. Legal means to overcome this barrier

The failure of objective conditionality and inconsistency in applying the Copenhagen criteria, especially concerning certain candidate countries like

[13] Judgment of the Court of 22 Nov.1978. Lothar Mattheus v Doego Fruchtimport und Tiefkühlkost eG. Reference for a preliminary ruling: Amtsgericht Essen - Germany. Case 93/78

the Western Balkans, raises broader questions about the normative consistency of the EU's conditionality strategy, positioning EU – EU-candidate relations on a geopolitical axis outside the established accession framework with a tendency to prioritise (geo)political convenience over strict adherence to the Copenhagen norms (Jano, 2024:15).

The case in the Western Balkans has shown the limit of these conflicting objectives in the political conditionality of prioritising geopolitical considerations over stricter demands for liberal democracy (Smith, Khaze, Kovačević, 2023:169). On a more general note, the post-2005 EU lacks a clear consensus on its identity as a political community of liberal democracies and, thus, on the requirements for the type of state eligible for membership. This lack of the core normative consensus on membership norms necessitates re-establishing the core democratic values and standards envisioned by the Copenhagen criteria to render the EU accession process credible and consistent. Adherence to the Copenhagen criteria should be the norm for accession, where candidate countries and the EU (including its member states) should commit to the principle of liberal democracy and deliver membership after plausibly fulfilling this standard.

As shown above, Member States often assert their specific interests and domestic considerations in the context of enlargement, arguably at odds with the Treaty-based procedure. This tendency challenges the discipline fundamental to the EU as a constitutional order (Dashwood, 2001), thus raising the question of how the latter's integrity may be protected against too much encroachment by Member States. The most substantial incentive to discipline within the EU legal order emanates from the European Court of Justice. The final part of this article will explore the Court's jurisdiction in issues related to enlargement. Then, it will evaluate the possible legal remedies available to circumscribe Member States' eagerness to restrict further the application of Article 49 of the Lisbon Treaty, focusing on Member States' non-compliance with procedural and substantive requirements and the infringement of the principle of loyal cooperation.

3.3.1. Could the Court of Justice be used as legal means to remedy this deficiency?

The founding treaties prescribe that the enlargement policy is not immune from judicial control. The establishment of the multi-pillar EU by the Maastricht Treaty did not change this. Under the Lisbon Treaty's formulation, Article 49 is equally subject to the Court's jurisdiction as articulated in Article 19 and Article 275. Therefore, in principle, the Court of Justice is expected to

ensure that the law is observed when interpreting and applying the provisions of Article 49 of the Lisbon Treaty.

Yet, the existence of jurisdiction is a necessary but insufficient condition for the Court's ability to encourage discipline. The exercise of such jurisdiction creates genuine pressure to act together. As indicated in the *Mattheus* judgment,[14] the Court's jurisdiction regarding the enlargement procedure has been exercised with caution. Asked once about the latter, the Court considered that it establishes a precise procedure encompassed within well-defined limits for the admission of new Member States, during which the conditions of accession are to be drawn up by the authorities indicated in the article. Thus, the legal conditions for such accession remain to be defined in the context of that procedure without it being possible to determine the content judicially in advance... Thus, the Court cannot rule on the form or subject matter of the conditions that might be adopted. Nonetheless, the Court of Justice also stated that the enlargement provisions establish a precise procedure for admitting new Member States within well-defined limits. While the Court did not specify these limits, the phrasing of the ruling suggests that they are in the enlargement procedure itself but may also derive from other parts of EU primary law more generally.[15]

If the enlargement procedure is not immune to the application of rules and principles underpinning the EU legal order and from judicial control by the Court of Justice, it may be worth speculating briefly on the possible forms such a control would take. Are there legal and judicial means to address the nationalization of the EU enlargement policy and preserve the integrity of the Treaty procedure? Two avenues could be explored: one based on non-compliance with procedural and substantive requirements of Article 49 of the Lisbon Treaty and another founded on a breach of the general obligation of loyal cooperation.

3.3.2. Non-Compliance with procedural and substantive requirements

In case of a violation of the well-defined limits referred to by the Court in *Mattheus*, the annulment of one of the many Council decisions adopted concerning enlargement could be sought based on Article 263 of the Lisbon Treaty. A Council decision could thus be disputed because one of the essential *procedural* requirements of Article 49 has not been complied with. For instance,

[14] Judgment of the Court of 22 November 1978. Lothar Mattheus v Doego Fruchtimport und Tiefkühlkost eG. Reference for a preliminary ruling: Amtsgericht Essen - Germany. Case 93/78

[15] C 415/05 P *Kadi and Al Barakaat International Foundation v Council and Commission* [2008] ECR I 6351, paras 282 and 304.

the European Parliament could be tempted to challenge the Council's refusal to consider an application from a European state because the Treaty gives it the right to consent before the Council decides. Indeed, delaying tactics in the Council to postpone the invitation to start the procedure indefinitely, as in the Albanian episode referred to above, could be addressed through an action to establish a failure to act based on Article 265 of the Lisbon Treaty.

Equally, an action for annulment could be triggered in case of violating the *substantive* limits of Article 49 or other requirements derived from the Treaty. For instance, if the Draft Conclusions attached to the Negotiating Framework with North Macedonia contain requirements which are contrary to the general provisions of the EU, as provided in Article 4 § 2 of the Lisbon Treaty, it could be argued that this Council decision is unlawful and can be subject to annulment procedure by the Court of Justice.

3.3.3. Breach of duty to cooperate

Another ground for a more active involvement by the Court in preserving the integrity of the Treaty enlargement procedure could be that Member States have violated their obligation of loyal cooperation enshrined in Article 4 (3) of the Lisbon Treaty:

The Member States shall facilitate the achievement of the Union's tasks and refrain from any measure which could jeopardise the attainment of the Union's objectives. More specifically, enlargement may be considered one of the Union objectives. The Preamble of the Treaty on the Functioning of the European Union refers to the founding Member States call upon the other peoples of Europe who share their ideal to join in their efforts. Indeed, the Treaty remains clear as to the right of a European state to apply to become a member (Article 49). The Council's decision to impose requirements in apparent contradiction to Article 4(2), also means that the EU is interfering with areas such as national identity and culture, which are outside their competencies and within the exclusive competence of the Member States, which is the goal of the candidate country.

Thus, the Court might be asked, notably by the Commission, to sanction actions or omissions on the part of Member States or institutions (e.g., the Council, in the case of North Macedonia).[16] This would jeopardise the attainment of the objective of enlarging to a state whose membership prospect has been acknowledged by the European Council and with whom accession negotiations have begun.

[16] Art 13 (1) and (2) TEU.

The rationale of the enforcement approach would thus be that the procedure's effectiveness to achieve that objective (i.e. Article 49) ought to be guaranteed. Using the Court's jurisprudence exposed in its *Kadi* judgment (para. 226),[17] it may be argued that Article 49 expresses an EU's implicit underlying objective of enlargement. Measures at EU or national levels which would make it impossible for those provisions to operate in practice would arguably endanger the attainment of the Union's objectives, in infringement of Article 4(3) of the Lisbon Treaty.

A scenario which appears legally feasible, though politically distant, would be that the Commission, on this basis, starts enforcement proceedings against a state (Bulgaria in our case) that, for instance, has abused its veto power to block North Macedonia's accession process and insisted on the constitutional amends as an accession criterion.

4. CONCLUDING REMARKS

Accession to the European Union primarily involves a choice by (Member) States, thus epitomising the original international law character of the EU legal order. However, a close look at the legal procedures reveals that the freedom Member States enjoy in determining the terms of accession of a candidate state and thus the state composition of the Union as well as the notion of membership, is nevertheless constrained by the rule of EU law, at least on paper. This article has attempted to uncover the degree to which the EU has been de-internationalized.

The accession procedure involves EU institutions and sets in motion the norms of the EU legal order, in which they are included. Indeed, more than simply governing states' entry into the EU, the accession provisions have a specific function which may be explained by the Union's integration goal. As such, they are fully embedded in the system of treaties, and they are an integral part of the evolving EU constitutional structure they underpin. Member States' domestic interests have significantly influenced enlargement. It has been particularly noticeable in the aftermath of the accession of central and eastern European countries to the Union, to such an extent that a policy once hailed as the most successful EU (foreign) policy is arguably being nationalised.

On the one hand, EU Member States' enhanced control over the accession procedure has been motivated by past experiences of some candidates' lack

[17] See Joined Cases C 402/05 P and C 415/05 P Kadi and Al Barakaat International Foundation v Council and Commission [2008] ECR I 6351.

of preparedness for admission, doubts about the systemic sustainability of further enlargement, and increased demands for democratic accountability. On the other hand, nationalising the Union's enlargement policy also reflects a more general trend where promoting national interests over the common interest is frequent.

REFERENCES

Legal literature

Albi, A. (2005). *EU Enlargement and the Constitutions of Central and Eastern Europe* (Cambridge University Press, 2005);

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

Basheska, E. (2022). "EU Enlargement in Disregard of the Rule of Law: A Way Forward Following the Unsuccessful Dispute Settlement between Croatia and Slovenia and the Name Change of Macedonia," *Hague Journal on the Rule of Law*, 2022, 14, pp. 221–256;

Dashwood, A. (2001). "The Elements of a Constitutional Settlement for the European Union," (2001) *Cambridge Yearbook of European Legal Studies*, 4;

Dimitrova, A. (2002). "Enlargement, Institution-Building, and the EU's Administrative Capacity Requirement," *West European Politics*, 2002, 25(4), pp. 171–190;

Hillion, C. (2010). "The creeping nationalisation of the EU enlargement policy", Swedish Institute for European Policy Studies (SIEPS), 2010;

Hillion, C. (2015). "Accession and Withdrawal in the law of the European Union" in A. Arnull and D. Chalmers (eds), Oxford Handbook of European Law, 2015;

Jano, D. (2024). "EU Accession Criteria and Procedures: Up for the Challenge?" *EuZ - Zeitschrift für Europarecht*, 2024;

Kmezić, M. (2015). "The Western Balkans and EU Enlargement: Lessons Learned, Ways Forward, and Prospects Ahead," *Policy Department, Directorate-General for External Policies*, 2015, p. 13;

Kochenov, D. (2008). *EU Enlargement and the Failure of Conditionality,* Kluwer Law International, 2008;

Kochenov, D. (2004). "Behind the Copenhagen Façade: The Meaning and Structure of the Copenhagen Political Criterion of Democracy and the Rule of Law," *European Integration Online Papers*, 2004, 8, p. 23;

Schimmelfennig, F., Trauner, F. (2009). "Introduction: Post-accession Compliance in the EU's New Member States," in: Schimmelfennig, F., Trauner, F. (eds), *Post-Accession Compliance in the EU's New Member States*, *European Integration Online Papers (EIoP)*, Spec. Issue 2, Vol. 13, 2009;

Smith, K. E. (2023). "The Evolution and Application of EU Membership Conditionality," in: Cremona, M. (ed.), *The Enlargement of the European Union*, Oxford University Press, 2003;

Smith, N. R., Khaze, N. M., & Kovačević, M. (2021). "The EU's Stability-Democracy Dilemma in the Context of the Problematic Accession of the Western Balkan States," *Journal of Contemporary European Studies*, 2021, 29(2), pp. 169–189;

Steunenberg, B., Dimitrova, A. L. (2007). "Compliance in the EU Enlargement Process: The Limits of Conditionality," *European Integration Online Papers (EIoP)*, 2007, 11(5), p. 11.

EU primary law

Treaty Establishing the European Economic Community of 25 March 1957;

Treaty on European Union, OJ 92/C 224/01;

Consolidated version of the Treaty on European Union, OJ 97/C 340/02;

Consolidated versions of the Treaty on European Union and of the Treaty establishing the European Community (2002) OJ 2002/C 325/01;

Treaty establishing a Constitution for Europe, OJ 2004/C 310/01;

Treaty of Lisbon, Amending the Treaty on the European Union and the Treaty Establishing the European Community, OJ 2007/C 306/01;

Treaty on European Union, OJ 2008/C 115/01;

Consolidated version of the Treaty on the Functioning of the European Union, OJ 2012/C 326/47.

EU documents

Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships, OJ 1998 L85/1;

Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2006 – 2007, COM (2006)

European Commission, Communication, Agenda 2000. The Challenge of Enlargement, COM(97) 2000, Vol. II;

EUR-Lex: Assession criteria (the Copenhagen criteria), https://eur-lex.europa.eu/EN/legal-content/glossary/accession-criteria-copenhagen-criteria.html

Presidency Conclusions, European Council, Copenhagen, 21–22 June 1993;

Presidency Conclusions, European Council, Essen, 9–10 December 1994;

Negotiating framework with North Macedonia, July 2022;

Council Conclusions on Enlargement: 11440/22, Council of Europe, Brussels, 18 July 2022 https://data.consilium.europa.eu/doc/document/ST-11440-2022-INIT/en/pdf

Judgments of the Court of Justice of the European Union

Joined Cases C 402/05 P and C 415/05 P *Kadi and Al Barakaat*;

International Foundation v Council and Commission [2008] ECR I 6351;

Al Barakaat International Foundation v Council and Commission [2008] ECR I 6351;

Judgment of the Court of 22 Nov.1978. *Lothar Mattheus v Doego Fruchtimport und Tiefkühlkost eG*. Reference for a preliminary ruling: Amtsgericht Essen - Germany. Case 93/78.

Владимир Георгиев,
Студент мастер студија,
Правни факултет, Универзитет Гоце Делчев- Штип,
Република Северна Македонија

ПРОШИРЕЊЕ ЕВРОПСКЕ УНИЈЕ: КРИТИЧКА ОЦЕНА ПРАВНИХ УСЛОВА ЗА ПРИСТУПАЊЕ

Резиме

Овај чланак истражује историјску путању развоја критеријума и процедура за приступање ЕУ, кроз приказ расправа и промена од пре-копенхашке до пост-копенхашке ере. Анализира се порекло и еволуција норми чланства, са нагласком на прелазак са геополитичких разматрања ка политичким критеријумима. Разматра се појава демократских принципа у процесу приступања, и прати њихов развој од првобитних предуслова из 1960-их година до формализације 1993. године кроз Копенхашке критеријуме. Пост-копенхашка фаза се разматра детаљно, кроз објашњење институционализације критеријума за приступање и трансформацију процедура из класичних у вишестепене процедуре за приступање ЕУ. Иако је проширење ЕУ описано као најуспешнија спољнополитичка иницијатива ЕУ, ипак су га обележили недостаци који су ослабили кредибилитет, ефикасност и легитимитет ове политике.

У последње време, државе чланице интензивно инструментализују процес проширења за остваривање унутрашњополитичких циљева. Тако је политика изградње држава чланица ЕУ све више под доминацијом, ако не и талац, националних интереса. Као резултат овог приступа, процес проширења оптерећен је (понекад непредвидивим) правним и политичким препрекама, чиме се постављају нова питања о кредибилитету обавеза ЕУ према земљама аспирантима и о ефикасности прокламоване трансформативне снаге политике проширења. Тврдимо да ово компромитује интегритет одредби Лисабонског споразума и сукобљава се са основним одредбама права ЕУ и циљем унификације дефинисаним Лисабонским споразумом.

Откривајући изазове, аутор анализира комплексности еволуирајућих критеријума, залажући се за поновно разматрање како би се повратила нормативна доследност и дао приоритет демократским вредностима у процесу приступања ЕУ. У том смислу, нуди се преглед неких правних решења за решавање проблема који се односе на процедуре проширења

и тренутну атмосферу непредвидивости која нарушава принципијелни став ЕУ о овој политици.

Кључне речи: *приступање, проширење, институције ЕУ, устав, Копенхашки критеријуми, ЕУ интеграције.*