

## **POLICY BRIEF 2**

### **New EU Enlargement Policy: novelties of accession methodology and global challenges**

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**POLICY RECCOMENDATION: It is essential that EU revise its approach to the region and to intensify its role in promoting the rule of law in the Western Balkans and take responsibility for the delays in the democratization process that have been visible in all countries in the region in recent years .**

## **Evolution of the European Union enlargement policy and global challenges**

European Union's enlargement policy has long been at the forefront of its relations with countries aspiring to become full members of the bloc. This policy has sometimes been labeled as a use of EU's soft power, because, by pushing new democracies to reform and helping them align with EU law, EU enlargement has created a single, united Europe after the fall of the Berlin Wall and the collapse of the Soviet Union, creating prosperity and open, market economies based on liberal values (Malmstrom, 2022).

This paper will try to unriddle the rising importance of all the conditions concerning the EU's enlargement policy in the last decade, all based on a set of straightforward "C" principles.

Enlargement policy's main objectives are:

- foster peace and stability in regions close to the EU's borders;
- help improve the quality of people's lives through integration and cooperation across borders;
- increase prosperity and opportunities for European businesses and citizens and
- guide, support and monitor changes in countries wishing to join the European Union in line with EU values, laws and standards (European Commission, n.d.).

After the big enlargement to the East in 2004, a sense of an "enlargement fatigue" gained pace in the Union, and all successive aspiring members faced additional conditions on their road to becoming a Member State, which is clearly seen in different stance of existing members toward accepting new ones. The enlargement process has definitely stalled since 2013, but Russia's invasion of Ukraine has resuscitated it.

Apart from the well-known Copenhagen criteria, European Council agreed on a 'renewed consensus on enlargement' in December 2006, based on "**consolidation, conditionality and communication**" and on the EU's capacity to integrate new members, which all stem from the „lessons learned“ in the previous waves of enlargement.

Next principle of the Commission's negotiation framework with the Western Balkans was the **credibility** of the process of European integration, which was reiterated in the later Enlargement strategies. Global economic crisis in 2008 added the **crisis** principle that focused on new economic governance, European semester and country specific recommendations.

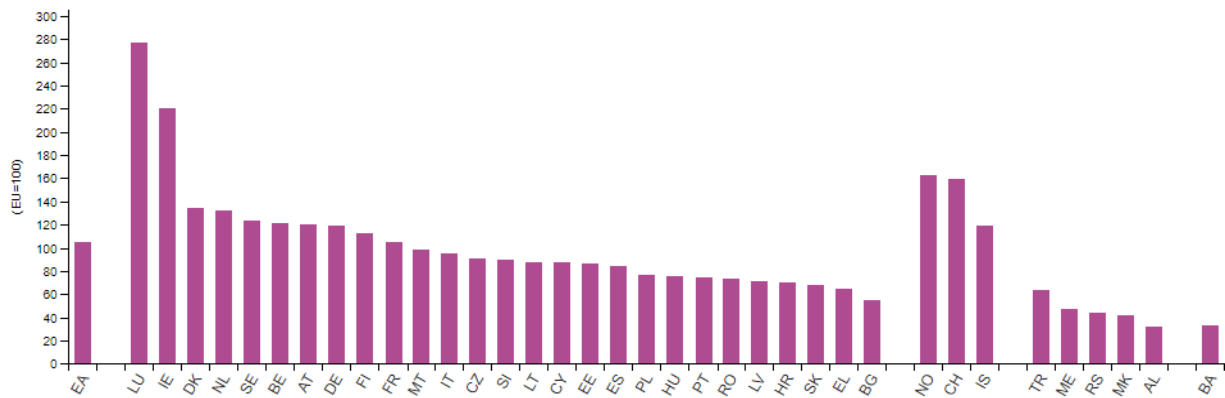
Before the, for now, last wave of enlargement, i.e. full membership of Croatia in July 2013, Commission added the **clause of balance** principle centred on Chapters 23 and 24 for all further enlargements. **Concrete results** were added in 2013 with an obligation for WB countries to present concrete results in the mentioned negotiation chapters, as well as a light European semester form for this region. **Common priorities** (i.e. fundamentals first) and **Connectivity agenda** as a part of the Berlin Process, were added to the framework in 2014, followed by **competitiveness** (of the economy) and **common values** (in terms of solidarity policy) in 2015. (Djurovic, 2016).

From 2014, in order to strengthen the credibility of the enlargement policy, the Commission has put particular emphasis on the three pillars of rule of law, economic governance and public administration reform, along with the new approach to rule of law introduces with the Enlargement Strategy in 2012. The Commission stated that three strategic benefits of enlargement are that (i) it makes Europe a safer place through democratization and fundamental freedoms, (ii) improves the quality of lives through integration and cooperation in different areas and (iii) makes the EU stronger in terms of rising GDP, FDI and its importance on the global scene (European Commission, 2014).

**Capacity** to absorb EU standards in all policy areas was added to the negotiation framework in 2016, and **Common economic zone** (as a further elaboration of CEFTA 2006) in 2017. **Credible enlargement strategy** was published in 2018, to show the enhanced EU engagement with the WB, followed by **credible european perspective** in 2019, connected with delivering palpable results in key issue areas. Before the onset of the COVID-19 pandemic, a new methodology of accession negotiations was published, as well as the plan for a **common regional market** in the Western Balkans, represented through clusters of negotiation chapters. **Conference on the future of Europe** can be added as another principle, as it is aimed to reach every corner of the EU, i.e. also our region (Djurovic, 2021).

Although the enlargement of the Union and gradual policy integration have resulted in an accelerated development of the less developed (new) member states, GDP per capita expressed in purchasing power parity in relation to the EU average remains very different (Djurovic et al. 2013). On the following picture, we can see the data for GDP per capita in the EU, EFTA and candidate countries for 2021:

Volume indices of GDP per capita, 2021



Source: Eurostat (online data code: prc\_ppp\_ind)

eurostat

Source: Eurostat, 2022.

In the last few years, many have called for a reimagined enlargement policy, but many think that the EU only has to improve the existing one. One such opinion states that in the EU, there is a problem of perspective: EU membership (or a path to it) is so valuable, especially to small countries, that too many in Brussels, Paris, Berlin, and elsewhere have come to see it as something they give out rather than something they are building, which in turn delays obvious and urgent priorities, particularly in the Western Balkans, as well as new candidate countries, i.e. Ukraine and Moldova, and diminishes the appeal of EU membership in these countries (Baer, 2022).

Latest Eurobarometer survey on EU's priorities shows that almost six in ten (57%) EU citizens are in favour of a further EU enlargement in future years, representing an increase of ten percentage points since winter 2021-2022. One third (33%, -9 percentagepoints) are against, while 10% (-1 pp) don't know or do not give an answer. Support for further enlargement remains much stronger in countries in the non-euro area, where it has increased six percentage points to 66%. Although support in the euro area has also increased considerably, the overall level remains lower (54%, +9 pp). However, the increase means a majority in the euro area now supports further enlargement. This support remains a minority view in countries like France and Austria.

Observed by socio-demographic status, strongest support comes from 18-24 year olds (68%), students (71%), those who consider they belong to the upper class (69%) and those with a positive image of the EU (71%). In contrast, a majority that is against such an enlargement can be sorted in two groups: those who have difficulties paying bills most of the time (46% vs 40% "for") and those with a negative image of the EU (65% vs 27%).

In conclusion, it is becoming increasingly difficult to ensure that enlargement stays an effective instrument of communication at a time of geopolitical turmoil we are witnessing today while managing the expectations of a growing club of candidate countries. However, it is hard to imagine that such management will be possible with the EU's current internal setup, which requires a consensus between all 27 member states on foreign policy decisions (Morina, 2022).

### **New EU Accession Methodology – political and technical novelties**

As a main condition for opening EU Accession Negotiations with North Macedonia and Albania, there was a need for changing negotiation methodology as to introduce more credible, political and more clear process of accession (Vurmo, 2020). In that respect, document with the title "Enhancing the Accession Process – A credible EU perspective for the Western Balkans" has been endorsed during Zagreb Summit of European Union/Western Balkan leaders, May 2020 (Communication, 2020). On the basis of that document, European Commission give more details of new methodology in General EU position that has been presented during first Intergovernmental Conferences with those two candidate states (Accession Negotiations, 2022). As usually, EU General Position consists of two parts: first being EU opening statement for the accession negotiations and second Negotiating Framework defining procedures for the very negotiations. It should be added that other two negotiating countries, Montenegro and Serbia, accepted the New methodology, without altering its own Negotiation Frameworks.

The purpose of the Negotiation Framework is to establish main principles, methodology and procedures for the negotiation process. This time, EC had to produce document which will also respond to the needs and ideas from the New methodology, and to accommodate them into framework for the negotiations. Therefore, Negotiating Framework although mainly in accordance with the previous used for Montenegro and Serbia, still has a lot of new /rearranged elements which will constitute the basis for negotiating membership to the EU.

Those are the most important elements of Negotiation framework in accordance with the New Methodology:

1. Principles governing the negotiations are the same if compering this Negotiation Framework with existing others, with slight interventions:
  - a. Legal basis for accession – reiterate Article 49 TEU which is the basis for EU Membership, but also other relevant documents for the Western Balkans. For the first time this document is enlarged with New Methodology adopted March 2020.

- b. Principle of own merits – the progress in negotiating EU membership will depend on ability of a candidate to achieve progress in meeting criteria for Membership. European Commission is to monitor and report and Member states to assess the progress, without guaranty of outcome of negotiations, as this is open ended process – there is no promise of EU membership. In the area of CFSP, this document made more precise the titles who is responsible for monitoring and reporting (High Representative), and introducing closing liaison with Member States on that issue.
- c. Opening of negotiations was possible because candidates achieved results in process of European integration.
- d. General conditionality – reiterating importance of Copenhagen criteria as well as Stabilisation and Association Process' conditionality. Here are differences which are added criteria for advancement in negotiations specifically for North Macedonia – bilateral obligations are specified as a political principle of negotiations with the goal to have tangible results and implementation. Added is also reference to relevant Council conclusions, having in mind introduction of Bulgarian opinion in one of them. Relevant Council conclusions is becoming another element of assessing North Macedonia progress, together with Annual/Country/Progress report, which is unusual situation as European Commission is reporting and Council take note of those reports.
- e. Transparency – known principle has been enlarged with the obligation for EU to make Common Positions public upon adoption, which means after they are presented at the relevant IGC. This principle has been practice up to now, but here is for the first time explicitly stated in the Negotiating Framework. On the other hand, the same is expected from candidate country – to make available to the public all documents for negotiation process, but also to conduct its own preparations in full transparency with appropriate stakeholder involvement, which stress principles of inclusiveness. That is why for official document in negotiation process designation LIMITE has to be introduced in administrative procedures in candidate countries.
- f. Not blocking future enlargement – it is usual principle, but for the first time sentence has been added, which addresses future accession of other Western Balkan countries. So, candidate country must accept the results of any other accession negotiations as they stand at the moment of its accession and special arrangements and irrevocable commitments needed to ensure that no future Member State is in a position to block the accession

- of other Western Balkan candidates, if they meet the Union's accession criteria.
- g. EU absorption capacity – in accordance with Copenhagen criteria (1993) the pace of enlargement must take into account the Union's capacity to absorb new members, which is an important consideration in the general interest of both the Union and candidate country.
  - h. Principle of inclusiveness – usual sentence stating that parallel to the accession negotiations, the Union will continue its dialogue with civil society and cultural cooperation with candidate country aiming in bringing people together and ensuring the support of citizens for the accession process.
  - i. Phasing in – closer integration – this is completely new principle in the Negotiation Framework, introduced in accordance with New Methodology. It proposes closer integration of candidate country with the EU and phasing in to policies, market and programmes, as well as increasing funding in investments, if there are significant moves on reform priorities agreed in the negotiations sufficiently. Those possible priorities are defined during bilateral screening on Chapters and will be monitored and assessed by the EC during the process.

But, the biggest novelty in the Negotiating Framework is introduction of most elements from the substance of negotiations with negotiating principles. The substance of those interventions are not problematic, as they exist too in other cases (both for MNE and SER), with some different wording. Problem, or novelty (as it might not be necessarily problem) is that with that shift substance of negotiations is becoming the very (political) principle of negotiations. Again, this is in accordance with New Methodology, and even more – this is copy/past of a big part of New Methodology.

- Organizing negotiations in chapters which are then additionally organized in clusters – Organizing EU law and practice/acquis into Chapters has been introduced for Enlargement Policy since 90's. With grow of acquis as well as EU practice they number has grown from 29 to 35. Here "clustering" of negotiation chapters has been introduced for the first time as part of negotiation organization and procedures. Six clusters are numerated in Annex II of the Negotiating Framework: Fundamentals, Internal Market, Competitiveness and inclusive growth, Green agenda and sustainable connectivity, Recourses agriculture and cohesion and last one, External relations. What is novum is that opening of chapters will be only when all Chapters constituting one cluster are ready to be open. On the other hand, closing chapters for negotiations will remain individual and ready chapters will not have to wait others in the relevant cluster to be closed. Introducing of organizing negotiation chapters into clusters and relevance of clusters to have on the opening of clusters will not change the substance of negotiation process. It will change the fact that



it is not possible to open one chapter per IGC but much more, which will have political importance and public acceptance. On the other hand, if there is no agreement of MS on one of the chapters in cluster, then all other will suffer that fact as they could not be opened. Additionally, no other cluster can be opened until cluster Fundamental is opened, consist of chapters Rule of Law (23/24), public procurement (5), statistics (18) and financial control (32), as well as functioning of democratic institutions, economic criteria and public administration reform.

- Fundamentals First - Negotiating Framework is aiming at even stronger focus on the fundamental reforms in the accession negotiations in order to strengthen its credibility. But, substantially and procedurally it doesn't change much as it was introduced with New Approach to Negotiations first for Montenegro and then Serbia (2012 onwards). It is commendable that concept of the Rule of Law is explained as consist of judicial reforms and the fight against corruption and organised crime, fundamental rights, economic criteria, and additionally the functioning of democratic institutions and public administration reform, and that all that now constitute **cluster Fundamentals**.

There is one opening benchmark for the fundamentals cluster and this is adoption of a roadmap for the rule of law chapters 23 - Judiciary and fundamental rights and 24 - Justice, Freedom and Security). Introduction of the road map is novelty, as in previous cases it was need to adopt separate Action Plan for each of those two Chapters. But, compering the important features, there are no differences in terms of content and role of the road map with previous Action Plans, which had the same role as for Serbia and Montenegro.

Other envisaged obligation in cluster Fundamentals is a roadmap on the functioning of democratic institutions and public administration reform. It is important to stress, this road map on democratic institutions doesn't have the same standing point as road map for rule of law chapters, as it has been separated in terms of status and obligations. Preparation of this document is novelty for the negotiation methodology, at least part on functioning of democratic institutions. Part on public administration reform (PAR) is already very much taken into consideration, having in mind obligations of implementing SAA as well as special group on PAR. This roadmap will set out the general commitments with a clear timetable and the key steps envisaged on which the Commission will provide guidance as there is no *acquis* in that area. Implementation of this roadmap will be constantly monitored and regularly addressed at the Inter-governmental conferences throughout the process. But, nether the content or monitoring mechanism for this road map, being a completely new obligation, is not still defined by the European Commission.



## **Europeanization process in the Western Balkans and New EU Enlargement policy**

Contemporary trends in the Western Balkans are characterized by the processes of globalization, Europeanization and democratization, as three key determinants of the general development of WB societies and numerous political, social and economic changes (Đukanović, 2022:218). In the process of joining the EU, WB countries need to meet very demanding standards and criteria.

Although the literature abounds with different definitions of the concept of Europeanization, it is important to point out the most important ones to explain the impact of Europeanization on internal trends in society. The first significant definition of Europeanization was provided by Robert Ladrech (1994: 69), who defines Europeanization as "an incremental process re-orienting the direction and shape of politics to the degree that EC political and economic dynamics become part of the organizational logic of national politics and policy-making". Claudio Radaelli (2000: 4) saw Europeanization as "processes of construction, diffusion and institutionalization of formal and informal rules, procedures, paradigms, styles, 'ways of doing things' and shared beliefs and norms which are first defined and consolidated in the making of EU decisions and then incorporated in the logic of domestic discourse, identities, political structures and public policies."

Different studies on Europeanization offered different definitions of this concept, and several different research directions can be observed. One direction focused on complementary trends between globalization and Europeanization (Hirst and Thompson, 1996; Schmidt, 1999; Wallace, 2000; Graziano, 2003: 173-194). There was a trend that Europeanization was seen as a set of responses by European actors as a regional reaction to globalization. Others, however, studied Europeanization as a synonym for European integration and emphasized the complexity of its differentiation. The interaction of these two approaches has led to an understanding of "Europeanization as the source of change in relation to the EU level in terms of European integration and the development of supranationality. On the other hand, European integration can be seen as the source of change and Europeanization the outcome of change on member state governmental, legal and regulatory structures" (Howell, 2002:20).

An additional aspect of the study of Europeanization was to link this process with the enlargement process and its impact on countries aspiring to join the EU. These research directions define Europeanization as a conditionality that implies changes in the creation of national policy. Thus, Demetropoulou (2002: 89) explained that this process becomes "a series of operations leading to systemic convergence through the processes of democratisation, marketization, stabilisation and institutional inclusion". Other authors (Featherstone and Kazamias, 2001: 6) described the process of Europeanization as "an

adjustment evident, in similar respects, in states that are not EU members, but which are closely linked to it".

Just as integration has resulted from the establishment of common rules and norms by Member States, the integration process has a reciprocal effect on changing the identities, interests and behaviors of participants in the integration process (Christiansen, Jorgensen and Wiener, 1999: 529; Đukanović, 2022:218). Today this process explains the process of Europeanization itself, which is identified with the impact that the EU has on candidate countries (Sedelmeier, 2011: 5), wherefore in many analyses the concepts „impact of Europe“ and „impact of Europeanization“ are identified (Mair, 2000: 27-51; Đukanović, 2022:218).

In the literature on Europeanization, we can find an explanation of the different mechanisms of the EU`s influence on national policies and political structures (Đukanović, 2022:218). Thus, Knill and Lehmkuhl (1999) emphasize three mechanisms of Europeanization, ie positive integration which prescribes a concrete institutional model to which nation states must adapt with limited institutional freedom of decision, negative integration, which implies integration while eliminating certain existing solutions from national systems, and normative (cognitive) integration that implies a direct change in the beliefs and expectations of national actors. Also, the dominant focus in the literature on Europeanization is placed on domestic responses to top-down adjustment pressures emanating from the EU (Sedelmeier, 2011: 5).

Numerous studies were published providing evidence how much the process of European integration has contributed to the transformation of member states and their citizens. The process of Europeanization, and political, economic and social transformations of Eastern European countries was of the greatest importance for democratization and political stabilization of these countries (Pridham, 2005; Lippertand Umbach, 2005), which is why many authors explain that the processes of Europeanization and democratization are inseparable (Đukanović, 2022:215). However, all Western Balkan countries are characterized by negative and normative integration (Knill and Lehmkuhl (1999). These countries have experienced a delayed, long and painful transition, followed by failed and difficult economic transition, as well as major social differences (Fink-Hafner, 2007: 5). Very poor results in the negotiation process, as well as hesitations in structural and institutional reforms are complicating and delaying the accession process, and prevent the transformation of the countries into a modern democratic states. For many years, EC Progress Reports for WB countries show that these countries have continued to have limited results in the European integration process.

On the other hand, although the EU is seen as „a democratizing factor of the WB region", the reasons for the slow and unsatisfactory processes of reform, democratization and Europeanization are often attributed to the Union itself. The long process of transition and democratization of the Western Balkan countries is often justified by the weak

absorption capacities of the EU, numerous crises that the Union has experienced in recent years, and it is considered that the enlargement fatigue of the EU affects the accession fatigue of the Western Balkans. Some authors have previously written about the problem of "nationalization of EU enlargement policy", ie the tendency of member states to increasingly influence the enlargement policy, putting their national interests in the foreground, and often blocking, complicating or politicizing the process, which prevents the development of EU enlargement policy as a single policy (Hillion, 2010). The Union has been facing many internal difficulties and external challenges for years, such as the aftermath of Brexit, the economic crisis, the migrant crisis, the rise of populism and fear of the growing right-wing populism, the crisis of liberalism, and many other crises. Certainly, these crises affect the loss of trust in the EU and the credibility of its enlargement policy. However, today we can talk neither about the reduced presence of the EU in the region, nor about the marginalization of the enlargement policy and the Union`s focus only on its own problems in a period when, despite all crises, the Union pays great attention to the region. Thus, initiating a new negotiation methodology is an attempt to restore credibility to enlargement policy, and to return enlargement to the list of priorities. On the other hand, failed reforms, modest results of the accession process and lack of political will in the Western Balkans cannot be justified by the crises facing the Union, and the further accession process will depend much more on the candidate countries themselves, their speed and the quality of implementing reforms, rather than consolidating the European Union in relation to the crises it has been facing.

However, the new negotiation methodology did not yield the expected results in intensifying relations between the countries of the region and the EU, nor in implementing reforms and advancing in their accession process until the policy of conditionality itself loses its power to sanction the countries due to the lack of concrete results in their process of implementing reforms (Global competition challenges, 2022). It is essential that EU revise its approach to the region and to intensify its role in promoting the rule of law in the Western Balkans and take responsibility for the delays in the democratization process that have been visible in all countries in the region in recent years (Global competition challenges, 2022).

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# THE EUROPEAN UNION AND ENLARGEMENT

## Conditions, challenges and the case of Montenegro

### Content

1. Introduction
2. The Ukraine War: An Incentive for the Enlargement File
3. Conditions for Accession
  - a. Fundamental EU Values: Article 2 TEU
  - b. The Copenhagen Criteria of 1993
4. The Absorption Capacity of the European Union
  - a. The Functioning of the Institutions
    - i. Composition
    - ii. Decision making in the Council
  - b. The Functioning of the European Union
    - i. Differentiated cooperation
5. State of Play in the Accession Negotiations
  - a. Candidate Member States and Potential Candidate Member States
  - b. State of Play in each Candidate Member State
  - c. Meanwhile: Cooperation in areas of mutual interest
6. Montenegro and the European Union
  - a. The main points of the Commission Report, 12 October 2022
  - b. Montenegro, the first incoming new Member State?
7. Final Remarks

### 1. Introduction

In this contribution the following topics will be discussed, in a global and concise way:

- The conditions which have to be fulfilled in order to become a Candidate Member State of the European Union (EU);
- The significant challenges the Union is confronted with in upcoming accessions; as well as
- The perspectives – more particularly - for Montenegro's EU membership.<sup>1</sup>

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<sup>1</sup> See for the Enlargement subject matter the website of the Council [EU enlargement policy - Consilium \(europa.eu\)](#), the website of the European Commission [Enlargement Policy \(europa.eu\)](#) and the website of the European External Action Service [EU Enlargement and Neighbourhood relations | EEAS Website \(europa.eu\)](#).



Since the outbreak of the war in Ukraine on 24 February 2022, the discussion about enlargement has gained a clear impetus.

## **2. The Ukraine War: An Incentive for the Enlargement File**

Thus far, enlargement has not been a priority subject matter for the European Union. Indeed, since the enlargements of, respectively 2004, 2007 and 2013, the EU has been suffering from a sort of enlargement 'fatigue'. Politicians from the Member States prefer to give priority to the internal stability of the Union, as well as ongoing business, and not enlargement. In fact, they are worried about the consequences of enlargement for the proper working of the institutions as well as, generally speaking, of the Union itself. Moreover, the politicians are concerned about the outcome of debates in their respective national parliaments, once they have to provide an explanation about further enlargements and to submit the relevant treaty texts for approval.

In this complicated political climate, the Ukraine War has created a momentum or, rather, an opportunity. This is because, as peace and stability across the European continent are being seriously disturbed by the Russian aggression, there is a clear need for more cooperation in the security area, between countries guided by values such as democracy, respect for human rights and the rule of law.

In the given circumstances, therefore, one of the effects of the destructive Ukraine War is that basically all EU capitals have taken a more positive and constructive attitude towards further enlargements of the Union.

These positive changes in the political climate concern first of all Ukraine, Moldova and Georgia, countries which applied for membership only recently, as a direct consequence of the Russian aggression.<sup>2</sup> However, in light of the changed geopolitical climate in Europe, the candidates of the Western Balkans<sup>3</sup> must also be able to profit from the new situation, all the more so since the respective applications for EU membership of most of them date back quite a long way.

Be that as it may, the political leaders in the EU, most especially the European Commission, but also heads of state and government of the Member States, are convinced that we now have to speed up the process.

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<sup>2</sup> The European Council decided in its meeting of 23 and 24 June 2022 to qualify Ukraine and Moldova as Candidate Member States. Georgia has not been explicitly qualified as such. The European Council stated that it is ready to grant the status of candidate country to Georgia as well, once the priorities specified in the Commission's opinion on Georgia's membership application have been addressed: [2022-06-2324-euco-conclusions-en.pdf \(europa.eu\)](https://ec.europa.eu/eu-external-press/files/2022-06-2324-euco-conclusions-en.pdf), paragraph III.13.

<sup>3</sup> Respectively Serbia, Montenegro, North Macedonia, Bosnia-Herzegovina, Kosovo and Albania.

### 3. Conditions for Accession

In order to be able to accede to the EU, candidate countries have to fulfil a number of preliminary conditions of a fundamental nature:

- Subscribing to - as well as implementing and enforcing - the fundamental values of the EU, mentioned in Article 2 of the Treaty on the European Union (TEU) and also referred to in Article 49 TEU, the treaty provision describing the enlargement procedure;
- Subscribing to – and fulfilling - the so-called Copenhagen Conditions, developed by the European Council in its session of 21 and 22 June 1993.

#### a. Fundamental EU values: Article 2 TEU

Article 2 TEU reads as follows:

'The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.'

In the context of the enlargement procedure dealt with in Article 49 TEU,<sup>4</sup> in particular the values of democracy, the respect of human rights and the rule of law are of importance. This is because the EU is a rules-based community – a 'community of law' - operating democratically, in an effective and efficient way and guaranteeing access to justice to interested stakeholders, whether they are Member States, institutions or individuals.

In a situation where these values are not respected, serious consequences may follow. The undermining of the EU institutional infrastructure comes to mind, resulting in defective and qualitatively bad decisions and policies with all their - negative - consequences for the implementing texts at the national level. Moreover, the system of judicial protection, at the EU and the national level, may be compromised. Such a situation would create a real and specific threat to the credibility and reputation of the Union as well.

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<sup>4</sup> The first sentence of Article 49 TEU reads: 'Any European state which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union'.

## **b. The Copenhagen Criteria of 1993**

According to the so-called Copenhagen Conditions of 21-22 June 1993, candidate countries must satisfy the following criteria:

- Stable institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
- A functioning market economy and the capacity to cope with competition and market forces in the EU;
- The ability to take on and implement effectively the obligations of membership, including adherence to the aims of political, economic and monetary union.<sup>5</sup>

The first group of – political - criteria (stable institutions) requires the development of an effective and democratic system of government (legislation and policy), at the national, regional and local levels, accompanied by the application of the principle of good and transparent administration, as well as the establishment of a complete and effective system of judicial protection.

In order to fulfil the second group of – economic – criteria (a functioning market economy) a market organisation has to be set up, characterised by the application of principles such as free movement, equal chances for participants on the market, free competition, non-discrimination/equal treatment and mutual recognition.

The third group of – administrative - criteria (the ability to take on and implement EU membership obligations) presupposes the functioning of a responsible administration, practising the principles of transparency and accountability, and applying effective procedures and binding decisions in order to ensure the timely and correct implementation, application and enforcement of EU law and policy.

## **4. The Absorption Capacity of the European Union**

Apart from the three above-mentioned Copenhagen Criteria, there is a fourth element that has to be considered: the Union has to be able to receive and integrate new members; this is the so-called 'Absorption Capacity' of the EU.<sup>6</sup>

Since the Union possesses a solid institutional infrastructure, normally the fulfilment of this criterium should not cause serious problems. However, because the current Union already consists of 27 members and there are more to come in the course of time, the need for structural reforms arises.

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<sup>5</sup> [Conditions for membership \(europa.eu\)](http://europa.eu).

<sup>6</sup> Again, see: [Conditions for membership \(europa.eu\)](http://europa.eu).

In this respect, it is not only the working of the institutions, but also the functioning of the Union itself that have to be discussed.

## **a. The Functioning of the Institutions**

With regard to the working of the institutions, in the first instance the composition of the institutions and the decision making requirements in the Council deserve priority attention.

### **i. The Composition of the Institutions**

It is obvious that, in a further expanding Union, the efficiency and the effectiveness of the institutions must be secured. If not, the whole machinery will become paralysed. Therefore, the question arises as to whether Member States always have to be represented in the management of all the institutions. Here, basically, the function and the nature of the role of the institution in question is at stake.

With regard to the institutions directly involved in the policy and decision making of the EU, and the (legal) control thereof, the following comments can be made:

In their capacity as so-called 'Herren der Verträge' the Member States are responsible for establishing the dividing lines between the competences of the Union as a whole on the one hand, and of those of the Member States on the other. Treaty making is the primary instrument to exercise this responsibility. The implementation of the objectives, set by the Member States in treaties, has been conferred upon the European Council, the Council, the Commission and the European Parliament. All four of these institutions cooperate closely together.

Member States - when meeting (as heads of state or government) in the framework of the European Council and (at ministerial level) in the Council - are directly involved in the policy making of the Union, inter alia by exercising legislative and budgetary functions.<sup>7</sup> It thus is logical that all Member States are represented in both institutions.

By contrast, the Commission is an independent and autonomous institution looking after the general interest of the Union.<sup>8</sup> At present all Member States designate a candidate to become a member of the institution. In light, however, of the role of the Commission as the initiator of EU cooperation - on the basis of objectives set by the Member States - and the supervisor of the way Member States do implement EU decisions at the national

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<sup>7</sup> Articles 15(1) and 16(1) TEU.

<sup>8</sup> See for a description of the Commission's roles: Article 17(1) TEU.

level, it would seem that all Member States do not necessarily have to be represented in that institution.

In fact, this discussion has already taken place. The relevant treaty text - Article 17(5) TEU - reflects that discussion. According to that provision, the Commission - as of 1 November 2014 – 'shall consist of a number of members, including its President and the High Representative of the Union for Foreign Affairs and Security Policy, corresponding to two thirds of the number of Member States, unless the European Council, acting unanimously, decides to alter this number.' However, since the European Council decided on 22 May 2013 not to alter the current practise, at present the Commission is still composed of a number of members that is equal to the number of Member States.<sup>9</sup>

It should be clear that, once – on top of the present 27 Member States - five or more new countries accede, this discussion has to take place once more. Because, indeed, a Commission consisting of 32 members or more is not workable any more. All the more so, because in such a situation the portfolios of Commissioners will have a less than minimal content. So, instead, a rotation system has to be developed in the framework of which Member States can rotate, according to an order reflecting an alternation of big, small and medium sized Member States. At maximum the Commission should be composed of, say, 25 members.

With regard to the – directly elected - European Parliament it is of course evident that the populations of all Member States have to be represented. That said, the total number of parliamentarians deserves special attention. Being composed at present of at maximum of 750 members, plus the President,<sup>10</sup> it is obvious that by extrapolating that number in light of the size of the populations of incoming new Member States, an unworkable number might arise. Therefore, one idea could be to stick to that same total number, 750 plus one, even after further rounds of enlargement. In such a case, the distribution of seats between all Member States – the present and the new ones - has to be re-designed, taking into account their respective population numbers.

Finally, the Court of Justice, the supreme Court of the Union, is responsible for the correct interpretation and application of the law.<sup>11</sup> Of course, all Member States must at least have one judge in that institution. However, in view of the neutral and independent role of the Court, the precise number of judges (and advocates-general) should not matter that much. In that respect, it is important to note that the Court – and the same goes for the General Court – organises its sessions in practice essentially in the format of small and medium-sized chambers, and only (very) rarely in its plenary composition. So, in the majority of cases only a small minority of Member States is 'represented' at any one time.

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<sup>9</sup> [137221.pdf \(europa.eu\)](#). The decision is in force as from 1 November 2014.

<sup>10</sup> Article 14(2) TEU.

<sup>11</sup> Article 19(1) TEU.

Basically, it is the work load that should determine the precise number of judges (and advocates-general).

## ii. Decision making in the Council

According to the treaties - Article 16(3) TEU - the Council acts by a 'qualified majority', except where the Treaties provide otherwise. In Paragraph 4 of that same provision, a qualified majority is defined as 'at least 55 % of the members of the Council, comprising at least fifteen of them and representing Member States comprising at least 65 % of the population of the Union'.<sup>12</sup>

Whereas qualified majority voting is at present thus the general rule for decision making in the Council, there still exist quite a number of exceptions in the context of which unanimity is required.<sup>13</sup> That being so, it must be crystal clear that in a Union composed of more than 30 Member States, unanimity as a requirement for decision making is simply no longer workable. Indeed, the requirement of unanimity or consensus grants every Member State the effective right to veto the proposals under discussion. Such a situation is a recipe for chaos and indecision. It could result in a complete undermining of the functioning of the Union, and has to be avoided at all cost.

Therefore, in anticipation of the accession of new Member States, all references in the policy chapters to unanimity should be deleted. Possibly, for certain very specific policy areas, other variants of majority voting than a 'simple' majority (for procedural matters) or a 'qualified majority' voting (for legislation) - as the situation is now - can be thought of. Such a 'heavier' requirement could take the form of a 'super'-qualified majority.<sup>14</sup> At any rate, situations wherein individual Member States can exercise a right of veto have to be avoided.

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<sup>12</sup> Another important point: according to the second sub-paragraph of Article 16(4) a blocking minority 'must include at least four Council members, failing which the qualified majority shall be deemed attained'.

<sup>13</sup> Examples – the references are to be found in the Treaty on the Functioning of the European Union (TFEU) - are the Area of Freedom, Security and Justice (Articles 77(3), 81(3), 82(3), 83(2 and 3), 86 (1 and 4), 87(3) and 89 TFEU), Taxation (Article 113 TFEU), Approximation of Laws (Articles 115 and 118 TFEU), Economic Policy (Article 126(14) TFEU), Monetary Policy (Article 127(6) TFEU), Social Policy (Article 153(2) TFEU), Environment (Article 192(2) TFEU), Energy (Article 194(3) TFEU), Association of Overseas Countries and Territories (Article 203 TFEU), Common Commercial Policy (Article 207(4) TFEU), International Agreements (Articles 218(8) and 219(1) TFEU), the Solidarity Clause (Article 222(3) TFEU) and Enhanced Cooperation (Article 329(2) TFEU).

<sup>14</sup> In order to fix the precise level of such a majority, it may be decided to increase the minimum number of Member States voting in favour respective to the percentages mentioned in Article 16(4) TEU.

In this discussion, still the question arises as to whether unanimity/consensus should be maintained for issues like treaty amendment (Article 48 TEU) or accession (Article 49 TEU).

With regard to the 'Ordinary revision procedure' of Article 48 TEU, it seems that the time has come to accept that treaty amendments can enter into force once the signature and formal approval of, say, only three quarters of the number of Member States have come in. Those Member States not (as yet) accepting such amendments, can then follow later, once they are ready and prepared to do so.

In order to allow the Union to survive and further develop, this type of flexible approach is of the utmost importance.<sup>15</sup>

However, in view of the crucial importance of the structures and competences of an organisation where you are a member, consensus still seems to be the - politically - correct approach for the admission of new members (Article 49 TEU).

## **b. The Functioning of the European Union**

As regards the functioning of the Union as a whole, the question arises of whether the present system – where all Member States participate simultaneously in all policy issues on an equal footing, and implement decisions taken at the EU level under identical conditions - is still tenable once further enlargements takes place.

### **i. Differentiated cooperation**

If only because of the future number of Member States, this question must be answered negatively, notably in the interest of the newcomers. Instead, forms of differentiated cooperation must be considered.

Indeed, in order to make the EU cooperation process viable and sustainable, such an alternative approach imposes itself. In that context, we must keep in mind that forms of differentiated cooperation have already been introduced in practice. Examples include Schengen Area cooperation<sup>16</sup> and Euro cooperation.<sup>17</sup>

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<sup>15</sup> See for this discussion also: Jaap W. de Zwaan, *Stability and Differentiation in the European Union, Search for a Balance*, Eleven International Publishing, The Hague, 2017, ISBN 978-94-6236-785-2, paragraph 18, pages 27-31.

<sup>16</sup> Article 77 TFEU, in conjunction with Protocols 19 and 20, annexed to the TEU and TFEU.

<sup>17</sup> Part Three, Title VIII, Chapters 2, 4 and 5, notably Article 139, TEU, in conjunction with Protocols 15 and 16, annexed to the TEU and TFEU.



As such, the structure of EU cooperation should be adapted in such a way that as from a certain 'minimum' membership level – say, respect of the fundamental values of Article 2 TEU and participation in the internal market cooperation – opportunities for differentiated cooperation can be developed. Such models of differentiated cooperation can be created in policy areas once, for example, three quarters of the members of the Council - so, three quarters of the Member States – are prepared to move forward.

It is true that such an approach would complicate EU cooperation, and the EU legal order rather difficult to have access to. However, the political reality is not simple either. First and foremost, it is important to ensure peace, security and stability on the European continent. To implement these objectives in the first place the viability of the European Union as an organisation has to be ensured. How to reach that goal, is essentially a question of finding the rights instruments.

For new Member States, it would not necessarily be a problem if they are not immediately involved in all the policy areas at the same level and intensity of cooperation, compared to the other, more established Member States. Quite the opposite, we might be tempted to say. Since EU cooperation is a gradual process, so full membership of the organisation could also be achieved step-by-step.<sup>18</sup>

## 5. The State of Play in the Accession Negotiations

With regard to the state of play in the enlargement file, the most recent information can be found in the documentation of the Commission dated 12 October 2022, including in the '2022 Communication on EU Enlargement Policy'.<sup>19</sup>

### a. Candidate Member States and Potential Candidate Member States

As is well known the, Candidate Member States of the EU are at present respectively Montenegro, Serbia, North Macedonia, Albania, Ukraine, Moldova, and Turkey.<sup>20</sup>

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<sup>18</sup>Again, see for this discussion: Jaap W. de Zwaan, Stability and Differentiation in the European Union, Search for a Balance, already mentioned, notably paragraphs 8-15.

<sup>19</sup> 2022 Communication on EU Enlargement Policy, COM(2022)528 final, Brussels of 12 October 2022, [2022 Enlargement package \(europa.eu\) and 2022 Communication on EU Enlargement Policy-v3 \(3\).pdf](#).

<sup>20</sup> Iceland also applied for EU membership, in July 2009, and the accession negotiations commenced a year later. However, in May 2013, Iceland put the accession negotiations on hold: [Iceland - financial assistance \(europa.eu\)](#). After following a change of leadership, Iceland's government notified in March 2015 that Iceland should no longer be regarded as a candidate country for EU membership: [The European Union and Iceland | EEAS Website \(europa.eu\)](#).

Bosnia Herzegovina and Kosovo are Potential Candidate Member States. On 12 October 2022 the Commission proposed to 'upgrade' the present 'Potential' status of Bosnia Herzegovina to that of 'Candidate' Member State. Most probably the European Council will take a decision on that proposal when meeting on 15 and 16 December 2022. With regard to Kosovo a serious problem arises from the fact that the independence of that country has not as yet been recognised by all Member States.

On 23 June 2022, Georgia was given 'a European perspective' by unanimous agreement between the leaders of all 27 Member States, meeting in the framework of the European Council.<sup>21</sup> As recalled earlier, the European Council stated at that time to be ready to grant the status of candidate country to Georgia 'once the priorities specified in the Commission's opinion on Georgia's membership application have been addressed'.

## **b. The State of Play in each Candidate Member State**

Based on the documentation of the Commission of 12 October 2022, the state of play of the Accession Negotiations in each individual Candidate Member State is as follows:

- Montenegro: the negotiations are ongoing (all 33 policy chapters have been 'opened');<sup>22</sup>
- Serbia: the negotiations are ongoing;<sup>23</sup>
- North Macedonia: the negotiations started in July 2022;<sup>24</sup>
- Albania: the negotiations started in July 2022;<sup>25</sup>
- Ukraine: the negotiations are yet to start;<sup>26</sup>
- Moldova: the negotiations are yet to start;<sup>27</sup>
- Turkey: the negotiations have been suspended (are at a 'standstill') since 2018;<sup>28</sup>

For the moment it is difficult to assess how much time will be needed to finalize the accession negotiations with each of these countries. It is clear though that for most of them it will be a question of years, if not decades.

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<sup>21</sup> [Georgia \(europa.eu\)](#)

<sup>22</sup> [Montenegro \(europa.eu\)](#)

<sup>23</sup> [Serbia \(europa.eu\)](#)

<sup>24</sup> [North Macedonia \(europa.eu\)](#)

<sup>25</sup> [Albania \(europa.eu\)](#)

<sup>26</sup> [Ukraine \(europa.eu\)](#)

<sup>27</sup> [Moldova \(europa.eu\)](#)

<sup>28</sup> [Türkiye \(europa.eu\)](#)

### **c. Meanwhile: Cooperation in Areas of Common Interest**

Having said that, in the meantime a form of structural cooperation could be started (or intensified) in domains where both sides – the European Union and the Candidate Member States - have common interests.

In this respect, we might think of policy domains like foreign policy, defence, justice cooperation, climate change/energy/environment and migration. From this list, one conclusion may be drawn: basically, this is all about security!

To start, or intensify, such cooperation can only serve the interests of all the parties involved. Moreover, starting to develop the structural frameworks of cooperation parallel to the accession negotiations would strengthen the motivation of the Candidate Member States – and their citizens - to aim to achieve full membership of the European Union. Such a psychological side effect is also of the utmost importance in a political sense.

Moreover, in principle, the same is true in the contact with the Potential Candidate Member States and Georgia. To the extent possible, therefore these countries should also be involved in EU discussions, serving to reinforce stability and security on the European continent.

## **6. Montenegro and the European Union**

Montenegro's application for EU membership dates back to December 2008. On 17 December 2010 Montenegro was qualified by the Council as a 'Candidate' Member State. The opening of the accession negotiations started in June 2012.<sup>29</sup>

The Commission's 'Montenegro 2022 Report' of 12 October 2022<sup>30</sup> provides insight in the state of play of the accession negotiations in 2022.

### **a. The Main points of the Commission Report of 12 October 2022**

It follows from the Montenegro 2022 Report that all 33 policy chapters have been 'opened', as it is officially termed. Nonetheless, there still is a lot of work to be done.

As regards the political accession criteria, the Commission signalled the existence of political tensions in Montenegro, polarisation, an absence of constructive engagement

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<sup>29</sup> [Montenegro \(europa.eu\)](https://europa.eu/european-council/story/2022-10-12-montenegro-2022-report)

<sup>30</sup> See for the 'key findings' on Montenegro: [Key Findings of the 2022 Report on Montenegro \(1\).pdf](#) and Montenegro 2022 report of 12 October 2022, the [Montenegro report 2022 \(2\).pdf](#). See also: [Montenegro on its European path, 31.10.2022-factograph\\_montenegro.pdf \(europa.eu\)](#).

between political parties and the failure to build consensus on key matters of national interest.

Here, thus, the wider political climate in the country is at stake. In that context, the need for progress regarding a number of crucial democracy dimensions is underlined:<sup>31</sup>

- The rule of law (the reference here is to the Chapters 23 and 24)
- Freedom of expression
- Media freedom
- The fight against corruption
- The fight against organised crime
- The overall functioning of the judiciary
- Political stability and commitment

Basically, as also stated by the Commission, all these issues are related to the development of an adequate 'rule of law' system.

On the economic accession criteria, the Commission concludes that good progress has been made; however, a functioning market economy has only moderately been prepared.<sup>32</sup>

Finally, as regards the administrative criteria - Montenegro's ability to assume the obligations of EU membership - the Commission mentions continued work, but only limited real progress, on alignment with the EU acquis.<sup>33</sup>

All in all, in comparison with the state of play in other Western Balkan countries, the impression is that Montenegro has made some significant progress since the start of the accession negotiations in June 2012.

Having said that, the most important obstacle to a smooth continuation of the negotiations is related to the political instability of the country. That of course is a serious matter of concern.

## **b. Montenegro, the first incoming new Member State?**

With regard to - more specifically – the perspective of Montenegro becoming an EU member, the following elements are interesting:

- Montenegro is a small country with a population of around 630,000 people.<sup>34</sup> To compare: in 2022, the city of Amsterdam (the capital of the author's home country) counted 850.000 inhabitants, and the city of Rotterdam around 650.000. The point to

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<sup>31</sup> Pages 3-6.

<sup>32</sup> Pages 6-7.

<sup>33</sup> Pages 7-8.

<sup>34</sup> [Montenegro Population \(2022\) - Worldometer \(worldometers.info\)](https://worldometers.info/population/).

make here is that it should not be too difficult a mission to integrate a country like Montenegro into the EU.

- Montenegro is the most advanced candidate when it comes to progress in the accession negotiations with the European Commission. Indeed, as already mentioned, in the course of the negotiations, all 33 policy chapters have been opened.

In light of these elements, it may be argued that Montenegro must be able to qualify relatively easily to accede to the European Union as the first new Member State.

Nonetheless, because of the criticism still existing at the European Union level, it is to be recommended, on the one hand, to radically improve the general political climate in the country and, on the other, to develop a short term - for example a five-year – programme, aiming to achieve a couple of objectives simultaneously:

- The improvement of the economic infrastructure of Montenegro;
- The implementation of the principle of free competition to facilitate the creation of a functioning market economy; and
- The combatting of corruption.

In doing so, the Montenegrin authorities must show both political will and commitment.

Now, in this discussion the, politically rather sensitive, question may arise of whether the accession of Montenegro should be made dependent of the capability and readiness of the other Western Balkan countries currently in the race to become EU member, to accede to the EU.

That question must be answered in the negative.

First of all, also Slovenia and Croatia acceded separately to the Union, as forerunners, each at different times in history.

Moreover, the case of Montenegro is fairly different compared to that of the other Western Balkan countries. Because, as mentioned already several times, Montenegro has already come a long way – actually, is the most advanced - in terms of progress in the negotiations with the Commission.

Be that as it may, it is of course wise and advisable for Montenegro to cooperate intensively with the other Western Balkan states. To that extent, the development of intensive regional cooperation in the Western Balkan region can only but facilitate successful integration, even if only in the long run, of the whole of the Balkans into the European Union.

In addition, the fact that Montenegro - once acceding to the EU as the first of the remaining Balkan Candidate Member States – will find itself in a geographically rather isolated position, should not be considered a major problem. For example, when Greece

accessed to the European Economic Community (EEC) back in 1981, that country, geographically speaking, was also not surrounded by EU Member States.

But, again, as follows from the Commission analyses of 12 October 2022, the main obstacle to the accession of Montenegro is connected to the political unstable climate in the country and, directly connected to that finding, the poor state of the 'rule of law' in Montenegro. It is the responsibility of the Montenegrin leadership to improve that situation.

## 7. Final Remarks

Enlargement is one of the main - if not the most important - achievements of European Union cooperation. The process serves peace and stability on the European continent.

The cruel and horrifying war in Ukraine, initiated by Russia on 24 February 2022, has created momentum, stimulating all the parties involved – most notably the EU and its Member States - to speed up the enlargement process.

The completion of accession of all the present Candidate and Potential Candidate Member States may take years, and in some cases possibly decades. However, what is needed here is political will on all sides, to bring that process to a positive conclusion.

It is in the mutual interest of all involved - the present EU Member States and the candidates, plus the Potential Candidate Member States - to start respectively to intensify, parallel to the accession negotiations, cooperation in a number of security areas: for example, foreign policy, defence, justice cooperation, climate change/energy/environment and migration. Such an approach is beneficial in three ways: it strengthens the mutual relationship between the countries involved; it will contribute to greater stability on the European continent; and the approach will only facilitate a timely alignment of the newcomers with the EU acquis in crucial and sensitive policy areas.

On 6 December 2022, a European Union-Western Balkans Summit will take place in Tirana. Let's hope that during this meeting, the urgency of the enlargement process will be confirmed by the political leaders. Furthermore, it would be welcome if, on top of such an expression of political will, the clear intention is demonstrated to make clear progress in the files of the individual Candidate and Potential Candidate Member States.

2 December 2022

PS. See for the 'Tirana Declaration' adopted on 6 December 2022 by the EU-Western Balkans Summit: [tirana-declaration-en.pdf \(europa.eu\)](https://europa.eu/tirana-declaration-en.pdf)

