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## EU Enlargement Demon: Between Bureaucratic Excuses and Political Instrumentalization

*By Mario Schäfer*

### Introduction

“All three countries (Ukraine, Moldova, and Georgia) are part of our European family. We’ve never let any doubt about that” greeted Ursula von der Leyen, President of the European Commission, the granting of candidate status to Ukraine and Moldova at the meeting of the European Council on 23rd of June 2022. On that day, the member states expressed their conviction: Ukraine is a European state, and it fulfills the relevant pre-accession criteria, which require a formal admission process after

a state has submitted the relevant application. The granting of candidate status seems bizarre in the light of the long debates on enlargement over the past twenty years. Georgia, Moldova, and Ukraine are among the states for which the Neighborhood Policy as an instrument was designed that did not include an immediate prospect of accession. The Russian offensive war is shifting the political parameters of Europe, Eurasia, and the entire world. It shows how political the final decisions made in the EU

are. While dealing with the integration of the Western Balkans, for years the EU institutions hid behind the technical process, without including the political dimension. Before the developments of 2022 in particular, the EU's enlargement process must be viewed critically. Only through honest engagement with the enlargement process can the EU achieve its own goals of credibility, reliability, and transparency. The EU must recognize that the EU enlargement process is a political process. Firstly, therefore, the accession criteria are analyzed along with the motivation for their introduction. This will be followed by a consideration of possible challenges as well as problematic issues of the EU enlargement process. Finally, solutions to turn a highly politicized process with uncertain decisions into a more predictable and thus more credible EU policy field should also be proposed.

## **The Accession Process**

The EU enlargement process follows a certain sequence. First, a state applies to the European Council. This is followed by a Commission's opinion on the applicant state. The EU member states then decide unanimously to grant the state candidate status. The EU Commission leads the accession negotiations. Once the negotiation process is opened by the European Council, formal membership negotiations begin.

For this purpose, the Commission proposes a negotiating framework. To close each chapter of the accession criteria, all member states must unanimously decide that the requirements have been met. Once all negotiation chapters have been closed, the Commission issues an opinion on the state's eligibility for accession. This is followed by a unanimous decision of all EU member states and the European Parliament. The final step is the signing of the accession treaty, which must then be ratified by the national parliaments.

### *The European Commission leads the accession negotiations.*

About the development of the accession criteria and pre-accession criteria, it has to be said that the criteria for the admission of new states to the European Community already exist in their basic version since 1973. In Article 49 of the Treaty on European Union it is stated that a state that wishes to apply for membership of the Union must satisfy two conditions: Firstly, it must be a European state; Secondly, it must respect the common values of the Member States and undertake to promote them. These are human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities (Article 2 of the Treaty on European Union).

At the time of application, both the values and the applicant's political order must be compatible with those of the EU. This includes that the new members must fully adopt the legal and political *acquis* of the European Community. What has been achieved to date is not at issue, neither in terms of primary treaty rights nor in terms of secondary legislation. The only subject of negotiation concerns the transitional arrangements, limited in time, by which time the *acquis* will be incorporated into national law. Accordingly, the term accession negotiations is misleading because of the strong asymmetry of power, since the states negotiate only on technical details, not so much on opt-outs or other particular wishes. The adoption of the entire *acquis communautaire* also intended to avoid status differentiation. Thus, the new member states have the same rights of representation in the institutions of the European Community as well as the same voting rights.

With these criteria the Community has had great success with the states in transition in Southern Europe. This serves as justification for the EU to define itself as a normative power. It promotes multilateral, legalized, and regulated solutions to problems in its sphere of influence and around the world, which are represented in negotiations and characterized by compromise. As a result of the experiences in Southern Europe, regularization became particularly

relevant for the new rounds of enlargement to include the states of Central and Eastern Europe, Malta, and Cyprus.

### **The Accession Criteria**

In 1993, the EU enlargement process is transformed into a technical procedure of small steps. The Copenhagen criteria specify the accession criteria. They are first clustered into three criteria: 1) The stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities (political criterion); 2) The existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the European Union (economic criterion); 3) The ability to take on the obligations of membership including adherence to the aims of political, economic, and monetary union (criterion concerning adoption of the Community *acquis*).

Since this overview still deals with rather abstract terms, the EU Commission has designed a total of 35 individual accession chapters. These are grouped into seven categories: 1) Fundamentals; 2) Internal market; 3) Competitiveness & inclusive growth; 4) Green agenda & sustainable connectivity; 5) Resources, agriculture & cohesion; 6) External relations; 7) Institutions and other issues.

## *Post-accession criteria were established specifically for Bulgaria and Romania.*

Each of these chapters starts with a screening of the EU Commission. This means a detailed examination of each policy area, carried out together with the candidate state, to determine whether the state is already ready for the EU. The Commission's screening report is presented to the member states with an assessment of whether negotiations can begin directly or whether certain conditions may need to be met. Before negotiations can begin, the state must send its negotiating position to the EU and the EU must find a common position. The EU Commission will set certain parameters as to when chapters will be closed.

The EU enlargement process presents itself as technical. The individual stages of the process are very precisely defined, the relevant parameters are determined by the Commission and submitted to the European Council, which reaches its decision on the basis of the Commission's reports and opinions. The Council is composed of the heads of state and government, who unanimously decide on the relevant stages of the negotiations.

Depending on the candidate country, additional accession criteria may also be introduced. For Croatia, for example, the cooperation with the

International Criminal Tribunal for the former Yugoslavia was made a condition, and in 2018 the resolution of bilateral disputes prior to EU accession was made a criterion. This demonstrates the highly contextual nature of the EU accession process and the EU's learning capacity. Apart from this element, the EU Commission's proposals for a revised EU enlargement process of 2018 and 2021 represent negligible changes, as they are merely shifts in emphasis.

In addition to the accession criteria, post-accession criteria were established specifically for Bulgaria and Romania due to serious shortcomings remained in the fight against organized crime, the fight against corruption and judicial reform. Despite regular reports and recommendations from the Commission, little has changed since then. Although the two key elements of EU enlargement conditionality, specifically conditionality, and monitoring, have been significantly strengthened, they have contributed to comprehensive Europeanization and democratization in only a few states. The EU enlargement process has faced several challenges that sometimes generate problematic issues.

## **Problems of the Accession Process and the Politicization of the Process from the Outset**

As was already the case in the 1960s, the acceptance or rejection of an application for

accession represents a political decision. Accession to the European Union is also a political process, as it must be driven by the political elites of a candidate state and many hurdles remain to be overcome. In addition, the EU member states are divided into supporters and opponents of accession, who may have to be convinced of EU enlargement with hard coins. The accession of the German Democratic Republic to the Basic Law and, together with the Federal Republic of Germany, to the EU, was bought with the introduction of the euro. Denmark supported politically the admission of the Baltic states, Germany supported Poland and the Czech Republic, Greece the Mediterranean islands Malta and Cyprus. In each case, this involved constellations of interests that were sometimes compensated for by compromises and concessions in other policy areas. The acceptance of Ukraine's application for membership was also a political process rather than a formal-technical one.

*Denmark supported the admission of the Baltic states, Germany supported Poland and the Czech Republic, Greece supported Malta and Cyprus.*

Power position of member states vis-à-vis enlargement states is also an important issue. A fundamental premise for the credibility of

the accession process was the convention not to use a national veto against accession candidates when it came to bilateral disputes. However, immediately after the establishment of the technicalized Copenhagen criteria, a whole series of states used the power of the temporary or permanent veto to push through national interests. The temptation is great to decide one's own bilateral disputes against another state in one's own favor when the power positions are asymmetrically weighted. Northern Macedonia was in conflict with Greece for decades over the historical origins of the Macedonian people. Due to Greek pressure, the sovereign country changed its flag, accepted to operate internationally under the name FYROM (Former Yugoslav Republic of Macedonia) for many years. Finally, the small country even changed its name, only to be blocked again, that time by the Bulgarian veto. However, the veto diminished the credibility of the EU. The EU Commission and many EU states insisted for too long on the purely technical-formal accession process without de facto recognizing its political component.

Lack of democratization and change in values after accession should also be considered. As soon as a state has joined the EU, the corresponding financial resources, which are supposed to democratize and Europeanize the state, dry up. The admission process ends, although the basic political culture has not yet

been internalized to democratic norms. The consequence is a corresponding decline in the efforts of the respective state to continue on the path to democratization. Accordingly, authoritarian tendencies can be seen in many states in the 2004 enlargement round. In addition, the fight against corruption has fallen by the wayside, because the relevant bodies for prosecution have been established, but they have either been marginalized or staffed with few critical personnel.

Lack of will for further adjustment was also visible. Carrot-and-stick negotiations only work if states are willing to join the EU at all costs. This was the case with the Central and Eastern European states, as all political elites worked toward EU accession. However, this bipartisan consensus does not exist in many Western Balkan states. Montenegro and Serbia in particular are divided on this issue. Accordingly, reforms are being approached rather hesitantly. However, a far-reaching restructuring of existing systems remains elusive. Serbia was advanced in the accession negotiations. However, the state appeared to be maneuvering between the EU and Russia without following European foreign policy. Moreover, the repeatedly interrupted talks on the status of Kosovo show no progress. In this regard, German Chancellor Olaf Scholz recently took a very clear position on the need for Serbia to recognize Kosovo. It

is precisely here that it will be decided whether the so-called conditionality of the EU, i.e. buying further integration steps through Serbia's democratic and market-economy adaptation to the European Union, will remain future- and crisis-proof.

*Olaf Scholz recently took a very clear position on the need for Serbia to recognize Kosovo.*

Effects of open disputes on EU policy need to be addressed. Unresolved border and sovereignty disputes affect EU policies. EU rapprochement with Turkey and vice versa remains a challenge due to the unresolved Cyprus issue, which also led to a temporary deadlock in sanctioning Belarus in 2021 as Cyprus pushed for sanctions against Turkey. Until Slovenia's change of government in May 2022, it could not be ruled out that the small Alpine republic would block Croatia's entry into the Schengen zone. Both states have an open dispute over the Bay of Piran. In this way, open disputes hinder the EU's ability to act politically. In order not to Europeanize these disputes, the EU Commission outlined in 2018 that bilateral disputes should be resolved before accession. This clear criterion hardens the asymmetry of negotiations when it comes to disputes between an EU member state and a candidate state and could largely slow down the EU enlargement process.

## Proposed Solutions and Discussion about the Finality of the EU

As crucial elements of a present and future European community, credibility, and reliability play an important role. For this, the EU must develop clear strategies, keep political particular interests of its member states in check and show common prospects for the future. Accordingly, Ukraine's accession perspective might be important, but a clear strategy and possibly a response to the EU's finality are needed to remain credible and prevent disappointment among the accession candidates and to keep the willingness to reform high.

In the forthcoming period, the further development of the EU will be decided. This also raises the question of finality because a reform of the EU and its political processes can only succeed if the goal is clear. Among other things, this involves the question of whether the EU should develop in the direction of a supranational political entity in the sense of a federalist political system or whether it should rather be governed intergovernmentally by the individual states, which would degrade it to an international organization.

*Ukraine's accession perspective might be important, but a strategy and response to the EU's finality are needed.*

Communitarization of enlargement policy could also be a solution. One way to achieve credibility and reliability of the EU in enlargement policy is to communitarize it. On the one hand, there are the supporters of the qualified majority voting (QMV) who advocate that the extension of qualified majority voting would remove the EU's enlargement policy from the nation-state structure of interests. This would have two consequences: First, states would still be decisive in the admission of new members to the EU, but the individual potential veto position would be reduced, and decisions would be depoliticized. The decisive factors in this context would be the accession criteria, the recommendations of the European Commission and a vote by a weighted majority of the member states. Particular interests could thus be thwarted, bilateral disputes and disputes over sovereignty recede into the background, since no single country could bring the accession process to a standstill. This would be beneficial for EU foreign policy as a whole; for the EU enlargement process, however, this change is crucial, since in this way the accession horizon for the applicant state could be foreseen in a relatively reliable and transparent way. However, on the other side there are the opponents of the QMV, primarily smaller member states, and as the QMV procedure would cause a major overhaul of the EU, it is hard to anticipate its adaptation, including its effect on the EU enlargement policy.

## Conclusion

As important as Ukraine's European rapprochement is currently perceived to be, the states of the Western Balkans must ultimately be considered: Albania, Northern Macedonia, Montenegro, and Serbia have long ago set out on the path to the European Union. Bosnia-Herzegovina and Kosovo are also in this queue of waiting. The EU must recognize that the enlargement process is less a formal technical procedure and more a political one. Against this background, as in support to credibility, transparency and reliability, the question of the finality of the EU must be raised and the enlargement process must be communitarized.

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