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# **Accession Process of the European Union and the Cases of Western Balkan States**

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*The journey of a thousand miles begins with one step.*

*Lao Tzu*

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## ABSTRACT

*This thesis explores the legal dimensions of the European Union's enlargement process, particularly underscoring the pivotal role of the rule of law, within the context of the accession of Western Balkan countries. Our study illustrates a comprehensive evaluation of pre-accession frameworks, accession negotiations, and institutional adaptations, highlighting how the EU systematically employs conditionality and differentiation to uphold legal principles. The findings emphasize the dual challenges and opportunities introduced by the EU's enlargement strategies, underlining the need for a flexible legal structure that accommodates the wide-ranging purposes of both member states and candidate states. The principal importance of the rule of law in promoting democratic governance and safeguarding judicial independence in candidate countries, notably within the Western Balkans, serves as a key tenet for the European integration process. By contributing to the broader academic discourse on EU enlargement, our research offers valuable perspectives and practical recommendations aimed at fostering stability, prosperity, and democratic values across the enlarging Union.*

**Keywords:** *European Union, Western Balkans, EU Enlargement, European Integration, Article 49 TEU, Rule of Law.*

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# GENERAL INTRODUCTION

## *Presentation of Work*

The European Union stands as a testament to the transformative power of legal frameworks and principles in shaping regional integration<sup>1</sup> and promoting a community of shared values.<sup>2</sup> At the heart of the EU's evolution<sup>3</sup> lies the complex and nuanced process of enlargement, which extends far beyond mere territorial expansion,<sup>4</sup> delving deeply into legal intricacies and principles that underpin the Union's very foundation. This thesis dives into a comprehensive exploration of the legal dimensions of EU enlargement,<sup>5</sup> with a particular focus on the crucial element of the rule of law,<sup>6</sup> within the context of the Western Balkan states.<sup>7</sup> Through this lens, the thesis aims to elucidate how the rule of law<sup>8</sup> serves as a cornerstone for the direction of EU enlargement and integration,<sup>9</sup> especially in the accession process<sup>10</sup> of the Balkan countries.<sup>11</sup>

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<sup>1</sup> J. BECKFIELD, *Unequal Europe: Regional Integration and the Rise of European Inequality*, Oxford, 2019.

<sup>2</sup> J. WOUTERS, *Revisiting Art. 2 TEU: A True Union of Values?* in *European Papers - A Journal on Law and Integration*, 2020.

<sup>3</sup> F. FABBRINI, *Review and Reform: Options for Deepening EU-UK Cooperation in a Renewing Europe*, in *Brexit Institute Working Paper Series*, Dublin, 2023.

<sup>4</sup> I. G. LANG, *EU Membership as a Loss or Gain of Sovereignty?* in G. BARRETT, P-C. MÜLLER-GRAFF, V. VADÁSZ and J-P. REGARDÉ (eds.), *European Sovereignty: The Legal Dimension*, 2024.

<sup>5</sup> S. CHERUVU, T. PAVONE, *The End of History in EU Law And Politics?*, *Challenging Founding Narratives with A New Research Agenda* in *Challenging Founding Narratives with A New Research Agenda*, 2023.

<sup>6</sup> J. PEJIĆ NIKIĆ, B. ELEK, D. POKUŠEVSKI, N. MUMIN, L. ŠTERIĆ, *New Impetus for Rule of Law Reforms in the Western Balkans, Reclaiming the Fundamentals*, in *Unleashing Reform Potential of The EU Enlargement Process*, 2022.

<sup>7</sup> A. S. GÖZÜBENLİ, N. TEKESHANOSKA, *Europeanization of the Balkans vs. Balkanization of Europe: A Vision Limited by Realities* in *UBT International Conference*, vol. 390, 2018.

<sup>8</sup> S. KRÖGER, M. DEDE, *Differentiated Integration in the European Union: Its Role for Cooperating with Nonmembers and for the EU's Future as Perceived by Academic Experts* in *Robert Schuman Centre for Advanced Studies Research Paper*, 2022.

<sup>9</sup> N. V. HEUKELINGEN, W. ZWEERS, *The EU Enlargement Package Can One Bad Apple Spoil the Whole Barrel?*, 2020.

<sup>10</sup> S. ARMIN, *The Rocky Road to EU Accession for Western Balkan Countries-Obstacles and Lessons from the Eastern Partnership*, Bruegel, 2024.

<sup>11</sup> A. MUSARAJ, *The Maastricht Treaty and the Accession of the Western Balkans*, in *Academicus International Scientific Journal*, 2023.



The research endeavor develops through an analysis of pre-accession<sup>12</sup> frameworks, accession negotiations,<sup>13</sup> and institutional adaptations,<sup>14</sup> all navigating a complex interplay of legal intricacies. Anchored by treaties<sup>15</sup> and fundamental principles, the EU's regulatory framework strategically deploys conditionality<sup>16</sup> and differentiation,<sup>17</sup> ensuring compliance with legal standards and requirements. Such structure maintains a dynamic equilibrium, ensuring adherence to legal standards,<sup>18</sup> with the overarching objective of upholding the rule of law. Within the complex dynamics of EU expansion and integration,<sup>19</sup> this thesis investigates the impact of widening on deepening<sup>20</sup> and the complexities associated with incorporating flexibility<sup>21</sup> into the legal framework, all while ensuring the primacy of the rule of law. Differentiated integration<sup>22</sup> emerges as a crucial strategy to navigate disparities among member states' objectives, particularly concerning judicial issues such as rule-of-law crises, a focal point of the accession process for the Western Balkan states.<sup>23</sup> The EU's Big Bang enlargement strategy, showcased a balance between rigidity and flexibility<sup>24</sup> regarding the rule of law, revealing rushed accession processes while demonstrating adaptability in accommodating new members despite concerns about democratic standards. Thence, differentiated integration<sup>25</sup> and flexibility<sup>26</sup> are pivotal for the future of the EU, allowing for tailored approaches to member

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<sup>12</sup> G. KONSTANTINA, *Conflict Resolution Between EU Law and Bilateral Investment Treaties of the EU Member States in the Aftermath of Achmea*, in *Yearbook of European Law*, 2022.

<sup>13</sup> D. BECHEV, D. MARUSIC, *The Path Forward: Two Tracks in Parallel*, in *North Macedonia on The Threshold of Europe*, in *Atlantic Council*, 2020.

<sup>14</sup> R. CUPERUS, S. HOLLANDER, *Beyond The Eu Enlargement Paradox, Optimising Opportunities and Minimising Risks*, in *Clingendael Institute*, 2024, p.32-34.

<sup>15</sup> T. KÖNIG, *The Dynamics Of European Integration: Causes And Consequences of Institutional Choices*, Michigan, 2024.

<sup>16</sup> X. GROUSSOT, A. ZEMSKOVA, K. BUNGERFELDT, *Foundational Principles and the Rule of Law in the European Union: How to Adjudicate In A Rule-Of-Law Crisis, and Why Solidarity is Essential*, 2022.

<sup>17</sup> R. UITZ, *The Rule of Law in The Eu: Crisis–Differentiation–Conditionality*, in *European Papers*, 2022.

<sup>18</sup> I. F. H. MOHAMAD, R. R. ROSADI, *Eu Enlargement Process: First-Recent Circumstances*, in *Indonesian Journal of Social and Education*, 2023.

<sup>19</sup> T. SEKULIĆ, *Dimensions and Contradictions of the European Integration: Deepening Versus Widening, The European Union and the Paradox of Enlargement: The Complex Accession of the Western Balkans*, 2020.

<sup>20</sup> F. SCHIMMELFENNIG, *Differentiated EU Integration: Maps and Modes*, in *Robert Schuman Centre for Advanced Studies Research Paper*, 2020.

<sup>21</sup> T. BÖRZEL, *Why There Is No Growing Noncompliance: The Politics of Law in the European Union*, 2021.

<sup>22</sup> S. KRÖGER, T. LOUGHRAN, *The Risks and Benefits of Differentiated Integration in the European Union as Perceived by Academic Experts*, in *Journal of Common Market Studies*, 2022.

<sup>23</sup> G. ILIK, M. GJUROVSKI, N. ILIEVSKI, *Shaping the Future of the Balkans Through Differentiated Integration: The EU Experience*, in *Security Horizons*, 2020.

<sup>24</sup> V. ANGHEL, E. JONES, *Three Lessons from the 2004 “Big Bang” Enlargement, Politics and Governance*, 2024.

<sup>25</sup> M. BONOMI, N. PIROZZI, *Main Drivers and Policy Options for a Differentiated EU: A Scenario-Based Exercise*, in *Istituto Affari Internazionali*, 2023.

<sup>26</sup> M. BRUNAZZO, *Costituzionalismo Multilivello e Integrazione Differenziata*, 2020.

states' diverse needs and ensuring adaptability in the face of evolving challenges. Despite facing difficulties related to cultural diversity,<sup>27</sup> and the jurisdiction of the ECJ, this study highlights the persistent goal of European integration embodied in the notion of the 'ever-closer union'.<sup>28</sup> Ongoing discussions<sup>29</sup> and adaptations seek to delicately balance integration, subsidiarity, and the preservation of member states' identities and autonomy within the EU framework, all while upholding a steadfast dedication to the rule of law.<sup>30</sup> Investigating the multifaceted interplay of laws, treaties,<sup>31</sup> and governance principles within the EU, this comprehensive exploration underscores the pivotal role of the EU values enshrined in Article 2 TEU,<sup>32</sup> guiding the accession process of the Western Balkan states.

### ***Significance and Actuality***

The Accession Process of the EU,<sup>33</sup> with a particular focus on the cases of the Western Balkans, holds immense significance for the EU, Europe as a whole, and the Balkan region.<sup>34</sup> It serves as a means to consolidate European integration, expand the single market, promote stability and security within the EU,<sup>35</sup> reinforce fundamental values, enhance regional cohesion, and expand Europe's soft power globally.<sup>36</sup> For the Western Balkan countries,<sup>37</sup> EU accession represents a path toward democracy, stability, and economic development, fostering reconciliation and promoting investment. Central to this process is the pivotal role of the rule

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<sup>27</sup> I. BELLIER, T. M. WILSON, *An Anthropology of the European Union: Building, Imagining and Experiencing the New Europe*, 2020.

<sup>28</sup> J. COELMONT, *A Brussels Declaration for an "Ever Closer Union"*, in *Egmont Institute*, 2022.

<sup>29</sup> European Commission, *Communication from the Commission to the European Parliament, the European Council and the Council on Pre-Enlargement Reforms and Policy Reviews*, Brussels, Com(2024) 146 Final, 20.3.2024.

<sup>30</sup> T. ASTOLA, L. BESSELINK, S. BLOCKMANS, C. CLOSA, P. CRAIG, I. GOVAERE, X. GROUSSOT, D. HALBERSTAM, J. HELISKOSKI, K. MIKLÓSSY, P. NEMITZ, P. POHJANKOSKI, M. POIARES MADURO, J. RAITIO, A. ROSAS, W. SCHROEDER, M. WYRZYKOWSKI, *A Declaration on the Rule of Law in the European Union*, in *Eu Law Live*, 18 March, 2022.

<sup>31</sup> A. S. SANTA MARÍA PAZ, *The European Union and the Law of Treaties: A Fruitful Relationship*, in *European Journal of International Law*, 2019.  
J. LACROIX, *What Is Left of European Citizenship?*, *Ratio Juris*, in *An International Journal of Jurisprudence and Philosophy of Law*, 2021.

<sup>33</sup> B. HUSZKA, *The Power of Perspective: Why EU Membership Still Matters in the Western Balkans*, in *European Council on Foreign Relations*, 2020.

<sup>34</sup> L. ZHANG, *Advancing European Integration in Central and Eastern Europe: A Comprehensive Examination of Reconciliation and Collaborative Progress in the Western Balkans*, in *Studies in Social Science & Humanities*, 2024.

<sup>35</sup> M. L. ÖBERG, *The Boundaries of the Internal Market In and Outside the EU*, in *The Borders of the European Union in a Conflictual World: Interdisciplinary European Studies*, 2024.

<sup>36</sup> M. KNOTT, C. WIESNER, *The War Against Ukraine and the EU: Facing New Realities*, 2024.

<sup>37</sup> M. BONOMI, A. HACKAJ, D. RELJIĆ, *Avoiding the Trap of Another Paper Exercise: Why the Western Balkans Need a Human Development-Centred EU Enlargement Model*, in *Istituto Affari Internazionali*, 2020.

of law,<sup>38</sup> requiring aspiring member states to harmonize their legal systems with EU law, comply with conditionality mechanisms,<sup>39</sup> and adhere to the legal framework for integration as outlined in relevant accession instruments.

In the contemporary landscape, widening and deepening debate in the context of the rule of law<sup>40</sup> remains as pertinent and pressing as ever, particularly in light of geopolitical challenges.<sup>41</sup> The ongoing Ukrainian conflict<sup>42</sup> serves as a stark reminder of the importance of promoting EU values, including safeguarding judicial independence,<sup>43</sup> and combating corruption,<sup>44</sup> not only within the Union but also among aspiring member states in the Balkans. As the EU navigates ongoing geopolitical shifts<sup>45</sup> and internal dynamics, the accession process for countries in the region gains added significance as a means of fostering stability, security,<sup>46</sup> and prosperity. Amidst challenges such as enlargement fatigue<sup>47</sup> among some member states and the unprecedented disruptions brought about by global crises like the COVID-19 pandemic,<sup>48</sup> the EU's commitment to reinforcing the rule of law in its enlargement strategy remains steadfast.<sup>49</sup> Thence, the integration of the Western Balkans<sup>50</sup> into the EU represents both an opportunity and a challenge, requiring sustained efforts to address complex issues while advancing mutual benefits for all parties involved. As debates on the future of European

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<sup>38</sup> L. ŠTERIĆ, *Remodeling the French Approach in the Western Balkans: Leaving Stabilocracy Behind, Rethinking the French Approach to the Western Balkans*, 2022.

<sup>39</sup> P. BECKER, *Conditionality as an Instrument of European Governance: Cases, Characteristics and Types*, in *Journal of Common Market Studies*, 2024.

<sup>40</sup> P. BÁRD, D. KOCHENOV, *War as a Pretext to Wave the Rule of Law Goodbye? The Case for an EU Constitutional Awakening*, in *European Law Journal*, 2021.

<sup>41</sup> M. ARJAKAS, *No Gain Without Pain: Estonia's Views on EU Enlargement*, in *International Centre for Defence and Security*, 2024.

<sup>42</sup> Z. DARVAS, M. DABROWSKI, H. GRABBE, L. LÉRY MOFFAT, A. SAPIR, G. ZACHMANN, *Ukraine's Path to European Union Membership and Its Long-Term Implications*, Bruegel, 2024.

<sup>43</sup> R. SPANO, *The Rule of Law as the Lodestar of the European Convention on Human Rights: The Strasbourg Court and the Independence of the Judiciary*, in *European Law Journal*, 2021.

<sup>44</sup> M. M. RICHTER, *Victim of Its Own Success (?) – The European Union's Anti-Corruption Policy Advice in Ukraine Between Grand Visions and (Geo) Political Realities*, in *Journal of Common Market Studies*, 2023.

<sup>45</sup> N. ALBUQUERQUE MATOS, *Competitiveness Through Democracy: A Critical Juncture in the European Union*, in *Eu Law Live*, 2024.

<sup>46</sup> H. CONLEY, J. HILLMAN, D. RUY, M. MCCALPIN, *The Western Balkans' Strategic Value: China's "Hub-and-Spoke" Strategy in the Balkans*, in *Center for Strategic and International Studies*, 2020.

<sup>47</sup> M. BRETHOUS, N. KOVALČÍKOVÁ, *Next Level Partnership: Bolstering EU-NATO Cooperation to Counter Hybrid Threats in the Western Balkan*, in *European Union Institute for Security Studies*, 2023.

<sup>48</sup> V. DELHOMME, T. HERVEY, *The European Union's Response to the Covid-19 Crisis and (the Legitimacy of) the Union's Legal Order*, in *Yearbook of European Law*, 2023.

<sup>49</sup> P. R. POLAK, *The Evolving Narrative of the Court on the Rule of Law in the EU and Potential Future Directions*, in *Revista de Derecho Comunitario Europeo*, 2024.

<sup>50</sup> S. BLOCKMANS, *Fast and Furious? A Quick Digest of a Plan for the Accelerated Integration of Candidate Countries into the EU*, in *European Foreign Affairs Review*, 2024.

integration unfold, the significance of the rule of law<sup>51</sup> in shaping the EU's trajectory and identity continues to be a central theme, reflecting the Union's commitment to promoting democracy, stability, and prosperity within its borders and beyond.

## ***Objectives***

This thesis aims to examine the intricacies of the EU accession process with a focus on Balkan states from a legal perspective, particularly emphasizing the role of the rule of law. The primary objectives include EU Law analysing the evolution of the EU's legal architecture in the context of enlargement,<sup>52</sup> exploring the challenges and dynamics of pre-accession strategies and negotiations, scrutinizing the effectiveness of legal instruments such as Article 49 TEU<sup>53</sup> and the Copenhagen Criteria<sup>54</sup> in ensuring adherence to democratic principles and the rule of law, and assessing the impact of EU expansion on institutional reforms within the Union and candidate countries. Furthermore, the research seeks to understand the significance of the rule of law<sup>55</sup> as a fundamental requirement for EU membership and its implications for fostering cohesion, stability, and democratic values<sup>56</sup> across the expanding Union, with a specific focus on the Western Balkans.

## ***Summary of Findings***

The findings of this thesis illuminate the intricate interplay between the EU's accession process<sup>57</sup> and the centrality of the rule of law,<sup>58</sup> particularly focusing on the cases of the Western Balkans. It delineates the intricate legal frameworks, principles, and mechanisms

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<sup>51</sup> L. M. HINOJOSA-MARTÍNEZ, C. PÉREZ-BERNÁRDEZ, *Enhancing the Rule of Law in the European Union's External Action*, in *Edward Elgar Publishing*, 2023.

<sup>52</sup> R. CAMAGNI, *Fighting Gravity: Institutional Changes and Regional Disparities in the EU*, in *Economic Geography*, 2020.

<sup>53</sup> F. PEREIRA COUTINHO, *Independence in the European Union*, in *Perspectives on Federalism*, 2023.

<sup>54</sup> D. DUDLEY, *European Union Membership Conditionality: The Copenhagen Criteria and the Quality of Democracy*, in *Southeast European and Black Sea Studies*, 2020; K. PARANDII, *The Current Accession Process: Eastern Europe Joins the Western Balkans, A New Start for the EU's Enlargement Policy*, in *German Marshall Fund of the United States*, 2023.

<sup>55</sup> R. CUPERUS, S. HOLLANDER, *Beyond the EU*, cit, p.17-23.

<sup>56</sup> L. HELFER, E. VOETEN, *Walking Back Human Rights in Europe?*, in *European Journal of International Law*, 2020.

<sup>57</sup> C. ROSSI, *Le Politiche di Coesione dell'Unione Europea: Un Percorso Storico e l'Azione Propositiva del Regno Unito, L'Europa per i Giovani, i Giovani per l'Europa, Riflessioni sulla Politica di Coesione Europea dal Progetto TRUE-Trusting Europe*, in *Morlacchi Editore UP*, 2024.

<sup>58</sup> G. GIOIA, *La Condizionalità nell'Esperienza dell'Unione Europea: Protezione del Bilancio e Valori Costituzionali*, in *Rivista di Diritti Comparati*, 2021.

underpinning EU enlargement,<sup>59</sup> emphasizing the significant role of Article 2 TEU<sup>60</sup> as a cornerstone of integration. Through meticulous analysis, it elucidates the evolving nature of EU enlargement criteria, the essence of Article 49 TEU<sup>61</sup> and the Copenhagen Criteria,<sup>62</sup> and the institutional reforms<sup>63</sup> necessitated by expansion. The ongoing challenges<sup>64</sup> such as political interference, corruption, and media constraints in Western Balkan<sup>65</sup> states persist despite the EU's commitment<sup>66</sup> to upholding legal norms. The pivotal role of the rule of law<sup>67</sup> in fostering enduring integration within the EU advocates for sustained dialogue-driven strategies to address democratic deficits and institutional vulnerabilities,<sup>68</sup> particularly in candidate countries.

Thus, our findings significantly enrich the existing body of knowledge on EU enlargement,<sup>69</sup> particularly regarding the accession process of candidate states in Balkans and the cruciality of the rule of law. It supports existing theories by emphasizing the rule of law<sup>70</sup> as a steer of European integration and offers nuanced perspectives into the challenges and opportunities inherent in expanding the Union's borders.<sup>71</sup> Our research not only contributes to academic discourse by offering a comprehensive understanding of the legal intricacies surrounding EU enlargement<sup>72</sup> but also provides practical insights for policymakers and

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<sup>59</sup> S. FABBRINI, *L'Europa Apra le Porte Solo Alle Vere Democrazie*, 2021.

<sup>60</sup> A. O. COZZI, F. E. GRIOSOTOLO, *Condizionalità Europea e Identità Costituzionali: Un'Introduzione*, 2023.

<sup>61</sup> D. KOCHENOV, R. JANSE, *Admitting Ukraine to the EU: Article 49 TEU Is the 'Special Procedure'*, in *Eu Law Live*, 2022.

<sup>62</sup> Y. BOUZORAA, *The Value of Democracy in EU Law and Its Enforcement: A Legal Analysis*, in *European Papers*, 2023.

<sup>63</sup> K. JOSIFIDIS, N. SUPIC, S. BODOR, *Institutional Reforms and Income Distribution: Evidence from Post-Transition EU Countries*, in *Panoeconomicus*, 2020.

<sup>64</sup> J. HASIĆ, *The EU's Enlargement Strategy at a Crossroads? Redirecting the Debate Toward Acquisition-Based Integrative Models*, in *Foreign Policy Review*, 2023.

<sup>65</sup> F. E. GRIOSOTOLO, *Le Pubbliche Amministrazioni dei Balcani Occidentali nella Transizione Verso lo Spazio Amministrativo Europeo*, 2022.

<sup>66</sup> B. JOVANOVIĆ, M. HOLZER, *The Berlin Process for the Western Balkans: Four Recommendations to Achieve Progress*, in *Federal Academy for Security Policy*, 2022.

<sup>67</sup> D. KOCHENOV, *EU Rule of Law Today: Limiting, Excusing, or Abusing Power?* In Forthcoming in *'The Rule of Law in the Era of Crises'*, Stockholm, 2023.

<sup>68</sup> A. ADCZYK, G. ILIK, M. TAHIROVIĆ, K. ZAŁĄCKOWSKI, *EU Integration SWOT in a New Enlargement Framework: Poland's Experience in Combating Disinformation: Inspirations for the Western Balkans*, Warsaw, 2023.

<sup>69</sup> F. FABBRINI, *Introduzione al Diritto dell'Unione Europea: Evoluzione Storica e Finalità del Progetto Europeo*, in *Il Mulino*, 2018.

<sup>70</sup> S. PRIEBUS, L. ANDERS, *Fundamental Change Beneath the Surface: The Supranationalisation of Rule of Law Protection in the European Union*, in *Journal of Common Market Studies*, 2024.

<sup>71</sup> N. KAVESHNIKOV, *The Impact of Enlargements on the Duration of Decision-Making in the European Union*, 2023.

<sup>72</sup> K. GEORGAKI, *Conflict Resolution Between EU Law and Bilateral Investment Treaties of the EU Member States in the Aftermath of Achmea*, in *Yearbook of European Law*, 2022.

practitioners involved in the accession process. By emphasizing the essence of the rule of law as a non-negotiable criterion for EU membership,<sup>73</sup> the findings highlight the significance of fostering democratic governance,<sup>74</sup> judicial independence,<sup>75</sup> and institutional integrity within aspiring member states. Moreover, it serves as a guiding beacon for promoting stability, prosperity, and democratic values<sup>76</sup> through the widening process<sup>77</sup> of the Union.

### ***Improvement of the Work***

The thesis showcases a significant improvement in the study of the legal dimensions of EU enlargement compared to previous academic literature,<sup>78</sup> marked notably by its thorough analysis and articulate synthesis of complex legal concepts within the context of the widening process. It demonstrates a refined ability to navigate intricate principles, showcasing a nuanced understanding of the subject matter. The exploration spans from the foundational legal framework to the significance of key instruments, reflecting a comprehensive grasp of the evolving landscape. Particularly notable is the progression in elucidating the complexities surrounding the rule of law<sup>79</sup> within EU enlargement. While the initial chapters established a solid foundation, subsequent sections exhibit a heightened depth and clarity of analysis, notably in the examination of legal instruments and mechanisms, emphasizing their evolution and adaptation over time, especially with the Lisbon Treaty's emphasis<sup>80</sup> on democratic scrutiny, transparency, and the rule of law. This nuanced approach illuminates how legal frameworks

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<sup>73</sup> P. THINUS, *The EU's Transactional Approach to Rule of Law Spending Conditionality in the 2020s*, in *Journal of Common Market Studies*, 2024.

<sup>74</sup> C. VRIES, *How Foundational Narratives Shape European Union Politics*, in *Journal of Common Market Studies*, 2023.

<sup>75</sup> P. CASTILLO-ORTIZ, *Judicial Governance and Democracy in Europe*, 2023.

<sup>76</sup> W. ZWEERS, I. VAN LOON, *The Netherlands as a Champion of EU Enlargement?*, in *Clingendael Institute*, 2020.

<sup>77</sup> E. D. PULUNGAN, *The Widening of European Union to Post-Soviet Countries: Case Study of Bulgaria Acceptance and Ukraine Accession*, in *Sang Pencerah, Jurnal Ilmiah Universitas Muhammadiyah Buton*, 2023.

<sup>78</sup> A. MORAWA, *Constitutional Evolution in Central and Eastern Europe: Expansion and Integration in the EU*, Routledge, 2016; F. SCHIMMELFENNIG, U. SEDELMEIER, *The Politics of European Union Enlargement: Theoretical Approaches*, London/New York, 2005; A. TATHAM, *Enlargement of the European Union*, 2009; J. THOMASSEN, *The Legitimacy of the European Union after Enlargement*, Oxford, 2009; M. SAJDIK, M. SCHWARZINGER, *European Union Enlargement: Background, Developments, Facts*, 2008; L. BUONANNO, N. NUGENT, *Policies and Policy Processes of the European Union*, in *Bloomsbury Publishing*, 2020; F. SAVASTANO, *Trasformazioni Costituzionali nell'Allargamento dell'Unione Europea*, Giappichelli, Torino, 2023; R. COLETTI, D. D'URSO, P. FASSINO, *L'Unione Europea e i Balcani: La Scommessa dell'Allargamento*, Donzelli, 2021; C. AQUINO, *Il Ruolo delle Istituzioni dell'Unione Europea: a Seguito dell'Allargamento Europeo: da 15 a 25 Stati*, Edizioni Accademiche Italiane, 2017; I. POBEDINSKY, *Unione Europea e Turchia: Aspetti Geopolitici dell'Integrazione*, in *Edizioni Sapienza*, 2021.

<sup>79</sup> T. KONSTADINIDES, *The Rule of Law in the European Union*, in *Bloomsbury*, 2020.

<sup>80</sup> S. AGARUNOVA, *Could the Lisbon Treaty Bring the EU and Its Institutions Closer towards Democracy and Reduce the Democratic Deficit?*, in *GRIN Verlag*, 2014.

adjust to incorporate new member states while upholding fundamental values.<sup>81</sup> Additionally, the analysis broadened to include a wider range of legal aspects<sup>82</sup> regarding European integration,<sup>83</sup> exploring beyond enlargement to delve into the evolving role of the ECJ<sup>84</sup> and its jurisprudence in reinforcing the rule of law. Furthermore, the examination of the interplay between EU law and national law, as well as the complexities surrounding the principle of "ever closer union,"<sup>85</sup> demonstrated a more holistic understanding of the legal intricacies shaping European integration. Moreover, the analysis extended beyond theoretical exploration to include practical implications and challenges, such as the EU's rule of law crisis<sup>86</sup> and its enforcement mechanisms.<sup>87</sup> Thus, the emphasis was placed on gaining a deeper comprehension of how legal principles operate within the EU framework, notably addressing judicial capacity. This development culminated in the exploration of the rule of law within the Western Balkans,<sup>88</sup> showcasing an expanded perspective on legal challenges and initiatives in the region, particularly concerning democratic governance and EU integration.

## ***Implications***

Based on the extensive analysis of legal factors surrounding widening and deepening process,<sup>89</sup> a few key aspects warrant further emphasis. Firstly, there's a notable progress towards a deeper understanding of the evolving role of legal instruments and mechanisms, such as Treaties,<sup>90</sup> Accession Partnerships,<sup>91</sup> and the Rule of Law Framework,<sup>92</sup> in shaping the enlargement process. Highlighting the complex interaction between these instruments and the

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<sup>81</sup> A. LAZOWSKI, *The Application of EU Law in the New Member States: Brave New World First Edition*, 2024.

<sup>82</sup> A. PIZARROSO CERUTI, *The European Court of Justice: Legal Interpretation and the Dynamics of European Integration*, in *Columbia Journal of European Law*, 2019.

<sup>83</sup> T. HORSLEY, *Reflections on the Role of the Court of Justice as the "Motor" of European Integration: Legal Limits to Judicial Lawmaking*, in *Common Market Law Review*, 2013.

<sup>84</sup> I. VIANELLO, *Upholding a Principled Approach to the Use of EU Administrative Activities Externally: What Role for the Court of Justice of the European Union?*, in *Yearbook of European Law*, 2018.

<sup>85</sup> P. ANDERSON, *Ever Close Union? Europe in the West*, London, New York, 2021.

<sup>86</sup> A. DI GREGORIO, *Rule of Law Crisis and the Constitutional 'Awareness' of the EU*, in *Rule of Law in Crisis*, 2022, p. 152-173; H. HRISTEV, *Rule of Law in the EU and Its Crisis: Central and Eastern European Experiences*, in *Rule of Law in Crisis*, 2022, p. 174-197.

<sup>87</sup> L. SCHRAMM, *Crises and European Integration*, in *Crises of European Integration: Joining Together or Falling Apart?*, 2024.

<sup>88</sup> M. KMEZIC, *EU Rule of Law Promotion Judiciary Reform in the Western Balkans*, in *Southern European Studies*, 2017.

<sup>89</sup> S. BLOCKMANS, S. PRECHAL, *Reconciling the Deepening and Widening of the European Union*, The Hague, 2007.

<sup>90</sup> F. LAURSEN, *Designing the European Union: From Paris to Lisbon*, 2012.

<sup>91</sup> S. GSTÖHL, D. PHINNEMORE, *The Proliferation of Privileged Partnerships between the European Union and Its Neighbours*, 2019.

<sup>92</sup> U. VILLANI, *Sul Controllo dello Stato di Diritto nell'Unione Europea*, 2020..

evolving dynamics of European integration can provide valuable insights into how the EU navigates its expansion while protecting fundamental values and principles.<sup>93</sup> Additionally, the obstacles arising from successive enlargements bring forth both challenges and opportunities,<sup>94</sup> particularly in addressing democratic deficits, ensuring institutional coherence, and accommodating diverse national interests. By shedding light on these legal intricacies, our understanding of EU enlargement is enriched, underscoring the essence of legal frameworks in promoting cohesion and legitimacy within the Union. Secondly, our discussion adeptly explores the rule of law crisis<sup>95</sup> within the EU and its implications for both internal governance and external relations, particularly in the context of candidate states in the Western Balkans.<sup>96</sup> By elucidating the multifaceted dimensions of the rule of law, including formal legality, substantive legality, judicial capacity, and impartiality,<sup>97</sup> a nuanced perspective is unveiled regarding the challenges and potential solutions to this pressing issue. Furthermore, our analysis extends beyond mere diagnosis to propose actionable recommendations, such as strengthening judicial independence,<sup>98</sup> enhancing transparency, and bolstering citizen<sup>99</sup> trust. Additionally, the examination of the rule of law crisis within the broader geopolitical context,<sup>100</sup> including external influences<sup>101</sup> in Balkans, underscores the urgency of addressing internal governance challenges to safeguard the EU's integrity and credibility<sup>102</sup> on the international stage. Considering the larger picture, by shining a spotlight on these critical

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<sup>93</sup> F. FORET, O. CALLIGARO, *European Values, Challenges and Opportunities for EU Governance*, London, 2018.

<sup>94</sup> T. HEWA, G. GUR, A. KALLA, M. YLIANTTILA, A. BRAEKEN, M. LIYANAGEK, *The Role of Blockchain in 6G: Challenges, Opportunities and Research Directions*, 2020.

<sup>95</sup> M. AVBELJ, *The Rule of Law, Comprehensive Doctrines, Overlapping Consensus, and the Future of Europe*, in *Ratio Juris*, 2023.

<sup>96</sup> N. TZIFAKIS, *The Western Balkans during the Pandemic: Democracy and Rule of Law in Quarantine?*, in *European View*, 2020.

<sup>97</sup> M. MENDELSKI, *The EU's Rule of Law Promotion in Central and Eastern Europe: Where and Why Does It Fail, and What Can Be Done About It?*, 2016.

<sup>98</sup> P. BÁRD, *In Courts We Trust, or Should We? Judicial Independence as the Precondition for the Effectiveness of EU Law*, in *European Law Journal*, 2021.

<sup>99</sup> A. MERDZANOVIC, K. NICOLAIDIS, *Advocacy for a Citizen-Centric Rule of Law Agenda: How Do We Bring the Rule of Law to Life?*, in *European Law Journal*, 2021.

<sup>100</sup> W. ZWEERS, M. ROSSOKHATSKA, *Towards an EU Geopolitical Approach on Transformative Terms in the Western Balkans*, in *Clingendael Institute*, , 2024.

<sup>101</sup> D. FIOTT, V. THEODOSOPOULOS, *Eastern Neighbourhood and the Western Balkans*, in *Yearbook of European Security, European Union Institute for Security Studies*, 2020; W. ZWEERS, V. SHOPOV, F.-P. VAN DER PUTTEN, M. PETKOVA, M. LEMSTRA, *China and the EU in the Western Balkans: Different Strings Attached, China and the EU in the Western Balkans, A Zero-Sum Game?*, in *Clingendael Institute*, 2020; J. J. ANDERSSON, C. S. CRAMER, *Türkiye and the Western Balkans*, in *European Union Institute for Security Studies*, 2023..

<sup>102</sup> P. A. VAN MALLEGHEM, *Legalism and the European Union's Rule of Law Crisis*, in *European Law Open*, 2024.



aspects, our discourse contributes to a more comprehensive understanding of the legal complexities, as well as the essential role of the rule of law<sup>103</sup> in shaping the trajectory of European integration and enlargement policies.

### ***Future Avenues***

Future studies could delve into how differentiated integration<sup>104</sup> evolves within the EU and its implications for enforcing the rule of law across diverse legal systems, illuminating how flexibility in the EU legal structure affects cohesion and the efficacy of legal norms. Moreover, a comparative analysis of the experiences of successful Balkan states in meeting EU accession criteria could provide profound viewpoints into the unique dynamics and best practices for advancing democratic governance and rule of law reforms in different regions. Such inquiries would contribute crucial understandings into enhancing the resilience and adaptability of the EU's legal architecture in the face of ongoing challenges and transformations, ensuring that the path to European integration goes beyond territorial expansion.<sup>105</sup> It aims to cultivate a cohesive community founded on shared values, upheld by the rule of law, where the primacy of law guarantees enduring prosperity, stability, and unity for future generations.<sup>106</sup>

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<sup>103</sup> W. SCHROEDER, *Strengthening the Rule of Law in Europe: From a Common Concept to Mechanisms of Implementation*, in Hart Publishing, Oxford and Portland, Oregon, 2016.

<sup>104</sup> A. RADUNZ, R. RIEDEL, *Differentiated Integration Beyond Brexit, Revisiting Cleavage Perspective in Times of Multiple Crises*, London, New York, 2024.

<sup>105</sup> Z. DARVAS, *Ukraine's Path to European Union Membership and Its Long-Term Implications*, in Bruegel Policy Brief Issue 05/24, March 2024.

<sup>106</sup> W. ZWEERS, *Between Effective Engagement and Damaging Politicisation: Prospects for a Credible EU Enlargement Policy to the Western Balkans*, in Clingendael Institute, 2019.

# CHAPTER 1: MULTIFACETED LEGAL DIMENSIONS AND IMPLICATIONS OF EUROPEAN INTEGRATION

## 1. Background and Context

The enlargement process<sup>107</sup> of the European Union (EU) is a nuanced journey, intricately woven into the fabric of legal frameworks and principles that extend far beyond mere territorial expansion.<sup>108</sup> This chapter delves into the multifaceted dimensions of EU enlargement, highlighting the evolution<sup>109</sup> of its legal architecture, the fundamental challenges encountered, and the ongoing discourse on both widening and deepening.<sup>110</sup> At the core of this exploration lies the pivotal distinction between enlargement and accession, a dichotomy in which enlargement shapes legal entities and expands borders,<sup>111</sup> while accession represents the intricate integration process.<sup>112</sup> The research unfolds through pre-accession strategies,<sup>113</sup> negotiations, and institutional adaptations,<sup>114</sup> all navigating a complex interplay of legal intricacies intertwined with political factors. Anchored by treaties<sup>115</sup> and principles, the legal framework strategically deploys conditionality<sup>116</sup> and differentiation,<sup>117</sup> maintaining a dynamic balance between supranational and intergovernmental aspects.<sup>118</sup>

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<sup>107</sup> R. BÖTTNER, *The Constitutional Framework for Enhanced Cooperation in EU Law*, vol. 17, 2021.

<sup>108</sup> E. BENEDETTI, *La Condizionalità Democratica dell'Unione Europea tra Allargamento e Tutela delle Minoranze nei "Balcini Occidentali"*, in *Rivista della Cooperazione Giuridica Internazionale*, 2015.

<sup>109</sup> P. CRAIG, G. DE BÚRCA, *The Evolution of EU Law*, Oxford, 2021.

<sup>110</sup> F. LA BARBERA, *Framing the EU as Common Project vs. Common Heritage: Effects on Attitudes towards the EU Deepening and Widening*, in *The Journal of Social Psychology*, 2015.

<sup>111</sup> F. M. SAVASTANO, *Allargamento e Confini dell'Unione Europea: Percorsi Costituzionali*, 2015.

<sup>112</sup> A. JIROUDKOVÁ, *EU Accession, Transition and Further Integration for the Countries of Central and Eastern Europe*, in *Economics & Sociology*, 2015.

<sup>113</sup> A. SPENDZHAROVA, M. A. VACHUDOVA, *Strategies for Integration in the EU's Pre-Accession Process: Leveling the Playing Field: Transnational Regulatory Integration and Development*, 2014.

<sup>114</sup> U. SEDELMEIER, *Europe After the Eastern Enlargement of the European Union: 2004-2014*, in *Heinrich Böll Stiftung*, 2014.

<sup>115</sup> F. SCHIMMELFENNIG, T. WINZEN, *Ever Looser Union?: Differentiated European Integration*, Oxford, 2020.

<sup>116</sup> R. UITZ, *The Rule of Law*, cit.

<sup>117</sup> S. POLI, *The European Neighbourhood Policy: Differentiation Without Political Conditionality?*, in *Yearbook of Polish European Studies*, 2015.

<sup>118</sup> C. BICKERTON, D. HODSON, U. PUETTER, *The New Intergovernmentalism: States and Supranational Actors in the Post-Maastricht Era*, Oxford, 2015.

Within the intricate dynamics of EU expansion<sup>119</sup> and integration,<sup>120</sup> this chapter delves into the impact of widening on deepening<sup>121</sup> and the complexities associated with incorporating flexibility into the legal framework. Differentiated integration<sup>122</sup> emerges as a crucial strategy to navigate disparities among member states' integration objectives, particularly concerning judicial issues such as rule-of-law crises.<sup>123</sup> Despite challenges rooted in cultural diversity,<sup>124</sup> national sovereignty,<sup>125</sup> and the role of the ECJ, the chapter underscores the enduring objective of European integration encapsulated in the concept of the 'ever-closer union'.<sup>126</sup> Ongoing debates and adjustments aim to strike a delicate balance between integration, subsidiarity,<sup>127</sup> and the preservation of member states' identities<sup>128</sup> and autonomy<sup>129</sup> within the EU framework. This comprehensive exploration unfolds the complex pattern of laws, treaties, and principles shaping<sup>130</sup> the EU's future trajectory.<sup>131</sup>

## 2. Enlargement Strategy

The evolving global landscape compels the EU to adapt its international role and engagements, notably with associated third countries,<sup>132</sup> where deepened relations cultivate reciprocal influences across legal,<sup>133</sup> political, administrative, economic, and societal

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<sup>119</sup> K. HANF, B. SOETENDORP, *Adapting to European Integration: Small States and the European Union*, 2014.

<sup>120</sup> A. WIENER, *European Integration Theory*, Oxford, 2019.

<sup>121</sup> D. KELEMEN, A. MENON, J. SLAPIN, *Wider and Deeper? Enlargement and Integration in the European Union*, in *Journal of European Public Policy*, 2014.

<sup>122</sup> B. LERUTH, C. LORD, *Differentiated Integration in the European Union: A Concept, a Process, a System or a Theory?*, in *Journal of European Public Policy*, 2015.

<sup>123</sup> F. SCHIMMELFENNIG, T. WINZEN, *Ever Looser Union*, cit.

<sup>124</sup> R. WILSON, *Meeting the Challenge of Cultural Diversity in Europe*, in *Edward Elgar Publishing*, 2018.

<sup>125</sup> G. KOUKOUCHKIS, *European Integration and the Re-Conceptualization of State Sovereignty: A Challenge for Neorealism*, in *Journal of Global Studies*, 2014; T. ORŠOLIĆ DALESSIO, *The Issue of Sovereignty in an Ever-Closer Union*, in *Croatian Yearbook of European Law & Policy*, 2014.

<sup>126</sup> M. M. GÓMEZ, *An Ever-Closer Union? Towards a Comprehensive Approach of the European Disintegration Process*, Madrid, 2022.

<sup>127</sup> T. HORSLEY, *Subsidiarity and the European Court of Justice: Missing Pieces in the Subsidiarity Jigsaw?*, in *Journal of Common Market Studies*, 2012.

<sup>128</sup> N. FLIGSTEIN, A. POLYAKOVA, W. SANDHOLTZ, *European Integration, Nationalism and European Identity*, in *Journal of Common Market Studies*, 2012.

<sup>129</sup> T. RISSE, *Neofunctionalism, European Identity, and the Puzzles of European Integration*, *The Disparity of European Integration*, 2013.

<sup>130</sup> K. ARCHICK, *The European Union: Current Challenges and Future Prospects*, 2016.

<sup>131</sup> J. SUBOTIC, *Europe is a State of Mind: Identity and Europeanization in the Balkans*, in *International Studies Quarterly*, 2011.

<sup>132</sup> S. KEUKELEIRE, T. DELREUX, *The Foreign Policy of the European Union*, in *Bloomsbury Publishing*, 2022.

<sup>133</sup> H. WALLACE, *Policy-Making in the European Union*, Oxford, 2020.

domains,<sup>134</sup> thereby influencing EU law<sup>135</sup> and policy-making<sup>136</sup>. This dynamic extends to legal instruments grounded in mutual trust,<sup>137</sup> a characteristic of EU law, which also find application in the context of relations with third countries,<sup>138</sup> highlighting the continuity of this principle beyond the EU's borders<sup>139</sup>. Such instruments reflect the interconnectedness and shared values<sup>140</sup> that underpin the EU's approach to legal cooperation on a broader international scale.<sup>141</sup>

The EU's dedication to the enlargement process has been evident through successful rounds of expansion,<sup>142</sup> leading to its growth from six to 28 member states,<sup>143</sup> subsequently reduced to 27 following the withdrawal of the UK<sup>144</sup>. The process requires candidate countries to undergo substantial changes,<sup>145</sup> prompting reciprocal adaptations within the EU to manage evolving dynamics<sup>146</sup> and pressures associated with accession procedures<sup>147</sup>. It underscores the necessity for candidate countries to implement crucial reforms<sup>148</sup> and democratic transformations,<sup>149</sup> including upholding the rule of law and protecting political and civil rights, with active EU support throughout the multi-year accession process<sup>150</sup>.

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<sup>134</sup> L. BUONANNO, N. NUGENT, *Policies*, cit.

<sup>135</sup> H. LELIEVELDT, S. PRINCEN, *The Politics of the European Union*, Cambridge, 2023.

<sup>136</sup> M. L. ÖBERG, S. LAVENEX, *Third Country Influence on EU Law and Policy-Making: Setting the Scene*, in *Journal of Common Market Studies*, 2023.

<sup>137</sup> R. JUHA, *The "Thick" Rule of Law and Mutual Trust in the European Union*, in *Baltic Yearbook of International Law Online*, 2020.

<sup>138</sup> S. KEUKELEIRE, T. DELREUX, *The Foreign*, cit.

<sup>139</sup> L. BOHACEK, *Mutual Trust in EU Law: Trust 'in What' and 'between Whom'?*, in *European Journal of Legal Studies*, 2022.

<sup>140</sup> G. TOGGENBURG, J. GRIMHEDEN, *Upholding Shared Values in the EU: What Role for the EU Agency for Fundamental Rights?*, in *Journal of Common Market Studies*, 2016.

<sup>141</sup> E. HERLIN KARNELL, *EU Values and the Shaping of the International Legal Context*, in F. AMTENBRINK, D. KOCHENOV (Eds) *European Union's Shaping of the International Legal Order*, Cambridge, 2013.

<sup>142</sup> D. JANO, *EU Enlargement Rounds and Dilemmas: The Successful, the Reluctant, the Awkward, and the Laggards, Challenges and Barriers to the European Union Expansion to the Balkan Region*, in *IGI Global*, 2022.

<sup>143</sup> S. BULMER, *The Member States of the European Union*, Oxford, 2020.

<sup>144</sup> K. SCHOORS, N. GOBBIN, *Enlargement, Handbook of Public Administration and Policy in the European Union*, 2005.

<sup>145</sup> E. BEST, T. CHRISTIANSEN, P. SETTEMBRINI, *The Institutions of the Enlarged European Union: Continuity and Change*, in *Edward Elgar Publishing*, 2008.

<sup>146</sup> L. TSOUKALIS, *The European Community and its Mediterranean Enlargement*, 2022.

<sup>147</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 2022, *Communication on EU Enlargement Policy*, Brussels, 2022.

<sup>148</sup> M. EMERSON, S. BLOCKMANS, *Next Steps for EU Enlargement—Forwards or Backwards*, in *Center for European Policy Studies*, 2022.

<sup>149</sup> W. ZWEERS, *EU as a Promoter of Democracy or 'Stabilitocracy' in the Western Balkans?*, *Clingendael Institute*, 2022.

<sup>150</sup> M. BRUSIS, *Between EU Requirements, Competitive Politics, and National Traditions: Re-Creating Regions in the Accession Countries of Central and Eastern Europe*, *Governance*, 2002.

The enlargement strategy<sup>151</sup> of 2004 exhibited a greater degree of comprehensiveness compared to subsequent evaluations, stemming from its broader scope<sup>152</sup> and inclusive approach.<sup>153</sup> It already incorporated the prerequisite of the rule of law, as evidenced by the articulated opinions of the Commission.<sup>154</sup> The EU's enlargement legal procedure and institutional roles have undergone minimal changes, prompting the introduction of a 'suspension clause' by the Council to temporarily halt negotiations in cases of serious and persistent breaches of EU principles and values.<sup>155</sup> Big Bang enlargement has led to the introduction of mechanisms such as TEU Article 7, the Rule of Law Mechanism,<sup>156</sup> and the Conditionality Regulation,<sup>157</sup> aiming to address deficiencies and breaches as well as raising concerns about the protection of human rights and liberties.<sup>158</sup> While the assessment process during that period may have been more generalized, the strategy itself was characterized by a nuanced and evolving approach.<sup>159</sup> The Nice Treaty produced rigid and conservative outcomes for EU enlargement and lacked the necessary flexibility to accommodate future rounds of enlargement and the increasing heterogeneity of EU members.<sup>160</sup>

The narratives of "united in diversity" during the 2000-2004 period and "divided in unity" during the 2010-2014 period emerged in the flexible Europe<sup>161</sup> to legitimize EU political unity, with differentiated integration strategies aimed at accommodating diversity and

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<sup>151</sup> G. VAN DER BEEK, L. NEAL, *The Dilemma of Enlargement for the European Union's Regional Policy*, in *World Economy*, 2004.

<sup>152</sup> D. VAUGHAN WHITEHEAD, *Working and Employment Conditions in New EU Member States: Convergence or Diversity?*, in *International Labour Organization*, 2005.

<sup>153</sup> H. HAUKKALA, A. MOSHES, *Beyond Big Bang, The Challenges of the EU's Neighbourhood Policy in the East*, in *Finnish Institute of International Affairs*, Helsinki, 2004.

<sup>154</sup> R. JANSE, *Is the European Commission a Credible Guardian of the Values? A Revisionist Account of the Copenhagen Political Criteria During the Big Bang Enlargement*, in *International Journal of Constitutional Law*, 2019.

<sup>155</sup> J. SARIC, *The Governance of EU Enlargement Policy: The Case of Western Balkans*, 2021.

<sup>156</sup> L. OGNJANOSKA, *Promoting the Rule of Law in the EU Enlargement Policy: A Twofold Challenge*, in *Croatian Yearbook of European Law & Policy*, 2021.

<sup>157</sup> A. K. BOJOVIĆ, V. ĆORIĆ, *Challenges of Rule of Law Conditionality in EU Accession*, in *Bratislava Law Review*, 2023.

<sup>158</sup> A. A. PEJOVIĆ, *Would Money Make a Difference?: How Effective Can the Rule-of-Law-Based Protection of Financial Interests in the EU Structural and Enlargement Policy Be?*, in *EU and Comparative Law Issues and Challenges Series*, 2021.

<sup>159</sup> M. V. ANDERLINI, *A Reaction to the French "Non"? Or a Case of Institutional Bricolage? A Discursive Institutional Approach to the Revised EU Enlargement Methodology*, in *Politique Européenne*, 2022.

<sup>160</sup> J. AHRENS, M. MEURERS, C. RENNERT, *Beyond the Big-Bang Enlargement: Citizens' Preferences and the Problem of EU Decision Making*, in *Journal of European Integration*, 2007.

<sup>161</sup> R. BELLAMY, S. KRÖGER, *Flexible Europe: Differentiated Integration, Fairness, and Democracy*, in *Policy Press*, 2022.

addressing challenges to the rule of law.<sup>162</sup> Differentiation emerged as a strategic tool to address diverse priorities and concerns between the EU and candidate countries during the 2004-2007 'Big Bang' enlargement, subsequently extending to managing EU relations with third countries, particularly in navigating issues surrounding the rule of law.<sup>163</sup> The 2004 enlargement strategy stands as one of the European Union's most significant integration initiatives, prompting a notable rise in the utilization of flexibility mechanisms.<sup>164</sup> Following decades of deepening and widening processes,<sup>165</sup> the primary focus of European integration studies has transitioned from integration to differentiation.<sup>166</sup> Importantly, differentiation has entrenched itself as a prevailing norm within the EU, constituting an established and integral aspect of the process of European integration.<sup>167</sup> European organs have adapted convergence parameters post-2014, defining budget deficit structurally and adopting a moderately expansionary fiscal stance, especially pertinent to the enlargement strategy.<sup>168</sup>

The concept of flexibility in EU integration is exemplified in the Commission's 'White Paper on the Future of Europe,' suggesting a scenario involving the formation of 'coalitions of the willing' as a means of fostering adaptable and cooperative integration among member states.<sup>169</sup> Flexibility provisions within EU directives reveal a tendency for differentiated integration and flexibility in implementation to be employed conjointly as strategies to ensure adherence to the rule of law within the EU framework.<sup>170</sup> Significantly, flexible integration<sup>171</sup> acknowledges and leverages the systemic trend of internal differentiation among member

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<sup>162</sup> F. TEKIN, V. MEISSNER, *Political Differentiation as the End of Political Unity? A Narrative Analysis*, in *The International Spectator*, 2022.

<sup>163</sup> N. PIROZZI, M. BONOMI, *Governing Differentiation and Integration in the European Union: Patterns, Effectiveness and Legitimacy*, in *The International Spectator*, 2022..

<sup>164</sup> B. LERUTH, S. GÄNZLE, J. TRONDAL, *Handbook of Differentiation in the European Union*, 2022.

<sup>165</sup> B. LERUTH, S. GÄNZLE, J. TRONDAL, *Differentiated Integration and Disintegration in the EU after Brexit: Risks Versus Opportunities*, in *Journal of Common Market Studies*, 2019.

<sup>166</sup> B. LERUTH, S. GÄNZLE, J. TRONDAL, *Exploring Differentiated Disintegration in a Post-Brexit European Union*, in *Journal of Common Market Studies*, 2019.

<sup>167</sup> S. LAVENEX, *Concentric Circles of Flexible European Integration: A Typology of EU External Governance Relations*, in *Comparative European Politics*, 2011.

<sup>168</sup> B. DALLAGO, S. ROSEFIELDE, *A Flexible and Concerned European Union—A New Proposal*, in *Acta Oeconomica*, 2021.

<sup>169</sup> S. ECONOMIDES, *From Fatigue to Resistance: EU Enlargement and the Western Balkans*, in *The Dahrendorf Forum*, 2020.

<sup>170</sup> S. PRINCEN, *Different Yet the Same? Differentiated Integration and Flexibility in Implementation in the European Union*, in *West European Politics*, 2024.

<sup>171</sup> E. LESIEWICZ, *The Flexible Integration in the European Integration Process*, in *Zeszyty Naukowe Uniwersytetu Szczecińskiego, Acta Politica*, 2015.

states, identifying essential institutional and legal elements to maintain cohesion while accommodating diverse levels of integration.<sup>172</sup>

In fact, the 2004 enlargement<sup>173</sup> highlighted flexibility's importance due to EU's increasing diversity, including legal, economic, political, social, and cultural aspects, necessitating adaptable integration methods to aid candidate states' progress.<sup>174</sup> Contrary to the perception of rigidity<sup>175</sup>, the Big Bang enlargement<sup>176</sup> strategy paradoxically demonstrated both flexibility and adaptability, reflecting a dynamic response to the evolving needs and circumstances of the enlargement process.<sup>177</sup> The enlargement process of the EU has undergone significant evolution<sup>178</sup> over the years, with distinct approaches evident in different rounds of enlargement.<sup>179</sup> The period from 2004 to 2007 marked a notable shift,<sup>180</sup> particularly with the introduction of a package enlargement strategy.<sup>181</sup>

While the 2004 enlargement demonstrated a more rigid<sup>182</sup> approach, the strategy for the 2007 enlargement appeared to adopt a somewhat more flexible stance.<sup>183</sup> However, the question remains whether the approach in 2007 was as flexible as that of 2004. Flexible integration<sup>184</sup> within the EU, was evident in the 2007 enlargement strategy, highlighting its significance in shaping the Union's approach to expansion.<sup>185</sup> Bulgaria and Romania have been

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<sup>172</sup> J. BARCZ, *Flexible Integration as a Target System of Governance for the European Union*, in *Yearbook of Polish European Studies*, 2015.

<sup>173</sup> C. DETKEN, V. GASPAR, G. NOBLET, *The New EU Member States Convergence and Stability*, in *The Third ECB Banking Conference*, 2004.

<sup>174</sup> C. BRANDI, M. WOHLGEMUTH, *Strategies of Flexible Integration and Enlargement of the European Union: A Club-Theoretical and Constitutional Economics Perspective*, in *Freiburger Diskussionspapiere zur Ordnungsökonomik*, 2006.

<sup>175</sup> A. DIMITROVA, *Driven to Change: The European Union's Enlargement Viewed from the East*, Manchester, 2004.

<sup>176</sup> J. AHRENS, M. MEURERS, C. RENNER, *Beyond the Big-Bang Enlargement of the EU: Preferences and the Need for Flexibility*, in *Public Choice Society and Economic Science Association in Baltimore, Maryland*, 2004.

<sup>177</sup> H. BERGER, T. MOUTOS, *Managing European Union Enlargement*, 2004.

<sup>178</sup> M. MCKEE, *The Process of Enlargement, Health Policy and European Union Enlargement*, 2004.

<sup>179</sup> F. SCHIMMELFENNIG, *The Process of Enlargement, European Union: Power and Policy-Making*, 2006.

<sup>180</sup> K. ARCHICK, J. KIM, *European Union Enlargement*, in *Congressional Research Service*, 2005.

<sup>181</sup> European Commission, *Communication from the Commission to the European Parliament and the Council of 6 November 2007, Enlargement Strategy and Main Challenges 2007-2008* [COM(2007) 663 final], 2008.

<sup>182</sup> A. FOLLESDAL, T. CHRISTIANSEN, S. PIATTONI, *Informal Governance in the European Union: An Introduction*, in *Informal Governance in the European Union*, 2004.

<sup>183</sup> J. MILANESE, *La Costituzione Europea e la Costruzione dell'Unione Europea: Due Facce della Stessa Medaglia?*, *Pensiero e la Forma Europea della Politica*, 2007.

<sup>184</sup> J. AHRENS, M. MEURERS, C. RENNER, *Beyond the Big-Bang Enlargement*, cit.

<sup>185</sup> M. AVBELJ, *Revisiting Flexible Integration in Times of Post-Enlargement and the Lustration of EU Constitutionalism*, in *Croatian Yearbook of European Law & Policy*, 2008.

frequently described as the 'laggards',<sup>186</sup> facing significant challenges in meeting the Copenhagen criteria for EU accession.<sup>187</sup> The 2007 enlargement strategy should not be viewed merely as a procedural conclusion or a belated closure of the 2004 round, but rather as a substantive event reflecting ongoing complexities within EU enlargement dynamics.<sup>188</sup>

The 2004 enlargement strategy demonstrated both strictness and adaptability, enabling Romania and Bulgaria, notwithstanding challenges in their judiciary systems,<sup>189</sup> to join the EU under the accommodating 2007 enlargement process.<sup>190</sup> The post-accession trajectory of Bulgaria and Romania<sup>191</sup> has exhibited similarities to other East-Central European member states joining the EU in 2004.<sup>192</sup> However, notable disparities<sup>193</sup> have emerged in their capacity to address legal,<sup>194</sup> political and social challenges post-accession,<sup>195</sup> alongside their responsiveness to the Europeanization process.<sup>196</sup> Despite maintaining formal compliance with EU law since their accession,<sup>197</sup> both countries have faced challenges<sup>198</sup> at the enforcement level.<sup>199</sup> The experiences of both Bulgaria and Romania<sup>200</sup> have significantly influenced the future trajectory of EU enlargement, particularly in the southern and eastern directions.<sup>201</sup> In

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<sup>186</sup> G. NOUTCHEVA, D. BECHEV, *The Successful Laggards: Bulgaria and Romania's Accession to the EU*, in *East European Politics and Societies*, 2008.

<sup>187</sup> D. PAPADIMITRIOU, D. PHINNEMORE, *Romania and the European Union: From Marginalisation to Membership?*, 2008.

<sup>188</sup> C. CHIVA, D. PHINNEMORE, *The European Union's 2007 Enlargement*, London, 2012.

<sup>189</sup> A. SPENDZHAROVA, M. A. VACHUDOVA, *Catching Up? Consolidating Liberal Democracy in Bulgaria and Romania after EU Accession, From Europeanisation to Diffusion*, 2020.

<sup>190</sup> V. A. GUDJONSDOTTIR, *EU Enlargement 2007: A Full Stop?*, in *EUMA Papers*, 2007.

<sup>191</sup> N. DRITSAKIS, *Exports, Investments and Economic Development of Pre-Accession Countries of the European Union: An Empirical Investigation of Bulgaria and Romania*, in *Applied Economics*, 2004.

<sup>192</sup> S. ANDREEV, *The Unbearable Lightness of Membership: Bulgaria and Romania after the 2007 EU*, in *Communist and Post-Communist Studies*, 2009.

<sup>193</sup> R. RANGULOVA, G. SARIISKI, *Comparing Progress in Bulgaria and Romania*, International Economics Department at BAS, 2019, in *International Scientific Conference Proceedings "Bulgaria and Romania: Country Members of the EU, Part of the Global Economy"–2018*, 2020.

<sup>194</sup> C. TANASOIU, M. RACOVITA, *Post-Accession (Anti-) Corruption Record in Romania and Bulgaria*, in *Europe en Formation*, 2012.

<sup>195</sup> C. TANASOIU, *Europeanization Post-Accession: Rule Adoption and National Political Elites in Romania and Bulgaria*, in *Southeast European and Black Sea Studies*, 2012.

<sup>196</sup> C. NITOIUN, T. L. MOGA, *Change and Continuity in Bulgaria and Romania's Foreign Policies Post-EU Accession*, in *European Politics and Society*, 2021.

<sup>197</sup> F. TRAUNER, *Post-Accession Compliance with EU Law in Bulgaria and Romania: A Comparative Perspective*, in *European Integration Online Papers*, 2009.

<sup>198</sup> K. IVANOV, *The 2007 Accession of Bulgaria and Romania: Ritual and Reality*, *Global Crime*, 2010.

<sup>199</sup> M. MCKEE, D. BALABANOVA, A. STERIU, *A New Year, a New Era: Romania and Bulgaria Join the European Union*, in *The European Journal of Public Health*, 2007.

<sup>200</sup> S. LAWSON, *Bulgaria and Romania Join the Club: Implications of EU Membership*, in *In-House Perspective*, 2007.

<sup>201</sup> S. ANDREEV, *The Post-Accession Crisis in Bulgaria and Romania: Lessons Learned and Perceived Effects upon Future EU Enlargements*, in *International Workshop Otto-Suhr–Institute of Political Science*, Berlin, 2009.



contrast to their East-Central European and Baltic counterparts, these countries have encountered notable challenges<sup>202</sup> in adapting to post-accession realities,<sup>203</sup> notably grappling with issues of corruption<sup>204</sup> that hindered governance and led to disruptions in EU funding and the rise of populist alternatives. The exclusion of Bulgaria and Romania from the 2004 wave of EU accession<sup>205</sup> has led to a situation of double exclusion, whereby their progress in legal, economic and political transition has been detached from that of other candidate states, hindering regional cooperation efforts.<sup>206</sup>

The accession of Romania and Bulgaria to the EU has exemplified failed integration,<sup>207</sup> as both countries have struggled to effectively implement anti-corruption measures,<sup>208</sup> uphold the rule of law, and maintain democratic standards, thus confirming pre-accession concerns.<sup>209</sup> Analyzing transposition data and infringement proceedings from 2007 to 2017 reveals<sup>210</sup> that although the number of infringements from these countries has risen over time, their records do not exhibit exceptional developments when compared to other cohorts of EU member states. Their accession during the fifth enlargement of the EU was facilitated<sup>211</sup> by Article 49 TEU of which strictly required adherence to principles of liberty, democracy, rule of law, and human rights.<sup>212</sup> This process highlighted the significance of pre- and post-accession stages, demonstrating the EU's learning curve in formulating enlargement policies for Central and Eastern European countries.<sup>213</sup>

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<sup>202</sup> K. KALOTAY, *FDI in Bulgaria and Romania in the Wake of EU Accession*, in *Journal of East-West Business*, 2008.

<sup>203</sup> N. C. SURUBARU, C. NITOIU, *One Decade Onwards: Assessing the Impact of European Union Membership on Bulgaria and Romania*, in *European Politics and Society*, 2021.

<sup>204</sup> D. DINCA, *An Assessment of Institutional Improvements in Romania and Bulgaria Following EU Accession*, in *Scientific Annals of Economics and Business*, 2022.

<sup>205</sup> Y. KOYAMA, *EU Accession of Bulgaria and Romania*, 2007.

<sup>206</sup> V. BOJKOV, *Neither Here, Nor There: Bulgaria and Romania in Current European Politics*, in *Communist and Post-Communist Studies*, 2004.

<sup>207</sup> A. B. SPENDZHAROVA, *Bringing Europe in? The Impact of EU Conditionality on Bulgarian and Romanian Politics*, in *Southeast European Politics*, 2003.

<sup>208</sup> D. DIONISIE, F. CHECCHI, *Corruption and Anti-Corruption Agencies in Eastern Europe and the CIS: A Practitioners' Experience*, United Nations Development Programme, Bratislava, 2008.

<sup>209</sup> S. CARRERA, E. GUILD, N. HERNANZ, *The Triangular Relationship between Fundamental Rights, Democracy and the Rule of Law in the EU: Towards an EU Copenhagen Mechanism*, 2013.

<sup>210</sup> A. BUZOGÁNY, *Beyond Balkan Exceptionalism: Assessing Compliance with EU Law in Bulgaria and Romania*, in *European Politics and Society*, 2021.

<sup>211</sup> R. JANSE, D. KOCHENOV, *Admitting Ukraine to the EU: Article 49 TEU is the 'Special Procedure'*, 2022.

<sup>212</sup> C. MĂTUȘESCU, *The Principle of Conditionality in the Context of the New Approach to EU Enlargement*, 2021.

<sup>213</sup> P. NIKOLOVA, *Negotiating for EU Membership? The Case of Bulgaria and Romania*, in *Croatian Yearbook of European Law & Policy*, 2006.

Eastern enlargement of 2004 and 2007, serve as a lens into the broader dynamics of European integration,<sup>214</sup> revealing contrasting visions and priorities regarding the widening and deepening while engaging with candidate states and the EU's internal functioning.<sup>215</sup> It experienced the accession of multiple Central and Eastern European countries,<sup>216</sup> followed by Bulgaria<sup>217</sup> and Romania,<sup>218</sup> respectively. While the expansions demonstrated the EU's commitment to enlargement,<sup>219</sup> they also revealed both rigid and flexible elements in the enlargement policy,<sup>220</sup> particularly concerning the rule of law. The accession of Bulgaria and Romania<sup>221</sup> in 2007 was perceived as rushed,<sup>222</sup> lacking adequate preparation in areas such as justice reform<sup>223</sup> and anti-corruption measures,<sup>224</sup> leading to ongoing scrutiny through mechanisms like the Cooperation and Verification Mechanism (CVM)<sup>225</sup>. This highlighted a rigid adherence<sup>226</sup> to enlargement targets without sufficient consideration<sup>227</sup> of rule of law standards.<sup>228</sup> Conversely, 2004 enlargement process demonstrated flexibility<sup>229</sup> in accommodating new members despite concerns about democratic backsliding in certain

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<sup>214</sup> S. DELALIĆ, D. DELALIĆ, *European Union Enlargement Policy with Special Reference to Bosnia and Herzegovina – Preferences and Downsides*, in *MAP Social Sciences*, 2024.

<sup>215</sup> N. WUNSCH, N. OLSZEWSKA, *From Projection to Introspection: Enlargement Discourses since the 'Big Bang' Accession*, in *Journal of European Integration*, 2022.

<sup>216</sup> B. STEUNENBERG, A. DIMITROVA, *Compliance in the EU Enlargement Process: Institutional Reform and the Limits of Conditionality*, in *Democracy, Freedom and Coercion: A Law and Economics Approach*, 2007.

<sup>217</sup> B. STEUNENBERG, A. DIMITROVA, *Compliance in the EU Enlargement Process*, cit., p. 221-250.

<sup>218</sup> D. PHINMORE, *And We'd Like to Thank... Romania's Integration into the European Union, 1989–2007*, in *European Integration*, 2010.

<sup>219</sup> S. MANTU, E. GUILD, P. MINDERHOUD, *Transforming Migrants into Real Citizens—EU Citizenship and Some Unfulfilled Promises*, in *European Journal of Migration and Law*, 2019.

<sup>220</sup> M. EMERSON, *Democratisation in the European Neighbourhood*, in Centre for European Policy Studies, Brussels, 2005.

<sup>221</sup> A. DIMITROVA, E. KORTENSKA, *Understanding Enlargement: Discourses in Six Countries*, 2015.

<sup>222</sup> S. RICHTER, *Two at One Blow? The EU and its Quest for Security and Democracy by Political Conditionality in the Western Balkans*, in *Conflicting Objectives in Democracy Promotion*, 2017.

<sup>223</sup> D. BOZHILOVA, *Measuring Successes and Failures of EU-Europeanization in the Eastern Enlargement: Judicial Reform in Bulgaria*, in *European Journal of Law Reform*, 2007.

<sup>224</sup> D. SMILOV, *Anti-Corruption Bodies as Discourse-Controlling Instruments: Experiences from South-East Europe*, in *Governments, NGOs and Anti-Corruption*, 2012.

<sup>225</sup> R. BALFOUR, C. STRATULAT, *The Enlargement of the European Union*, European Policy Centre Discussion Paper, 2012.

<sup>226</sup> N. PAPAKOSTAS, *Deconstructing the Notion of EU Conditionality as a Panacea in the Context of Enlargement*, in *Europe en Formation*, 2012.

<sup>227</sup> E. GATEVA, *On Different Tracks: Bulgaria and Romania under the Cooperation and Verification Mechanism*, in *LSE European Politics and Policy*, 2016.

<sup>228</sup> K. SCHMALENBACH, *Defending Democracy and the Rule of Law in the Era of Post-Enlargement*, in *Review of Central and East European Law*, 2020.

<sup>229</sup> F. SCHIMMELFENNIG, U. SEDELMEIER, *The Politics of European Union Enlargement*, cit.

states,<sup>230</sup> showing a willingness to adapt policies to address evolving challenges within the Union.<sup>231</sup>

The enlargement rounds of 2004 and 2007,<sup>232</sup> while successful in geographic expansion, were characterized by partiality and incompleteness, in terms of normative standards and adherence to the rule of law.<sup>233</sup> The EU's emphasis on European integration, involving the assessment and endorsement of the consolidation of democratic regimes and institutions, the rule of law,<sup>234</sup> and the protection of human and minority rights,<sup>235</sup> traces its origins to the initial years of the 2004-2007 enlargement period.<sup>236</sup>

The CVM<sup>237</sup> was established to address concerns regarding the rule of law<sup>238</sup> in Romania and Bulgaria during their accession to the European Union.<sup>239</sup> Initially implemented because these countries failed to meet EU requirements in this regard, the MCV<sup>240</sup> aimed to facilitate their progress in aligning with European standards.<sup>241</sup> The EU's reliance on a "rewards and punishment"<sup>242</sup> approach for post-accession conditionality, notably through the CVM<sup>243</sup> in

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<sup>230</sup> L. CIANETTI, J. DAWSON, S. HANLEY, *Rethinking "Democratic Backsliding" in Central and Eastern Europe – Looking Beyond Hungary and Poland*, in *Rethinking Democratic Backsliding in Central and Eastern Europe*, 2020.

<sup>231</sup> G. PRIDHAM, *Change and Continuity in the European Union's Political Conditionality: Aims, Approach, and Priorities*, *Democratisation*, 2007.

<sup>232</sup> L. LOUWERSE, E. KASSOTI, *Revisiting the European Commission's Approach towards the Rule of Law in Enlargement*, in *Hague Journal on the Rule of Law*, 2019.

<sup>233</sup> J. O'BRENNAN, *EU Enlargement 1989-2009: Actors, Institutions, and Literature*, 2012.

<sup>234</sup> L. LOUWERSE, *The EU's Conceptualisation of the Rule of Law in its Enlargement Practice*, in *The EU's Conceptualisation of the Rule of Law in its External Relations*, in *Brill Nijhoff*, 2023.

<sup>235</sup> T. TAKÁCS, D. JANCIC, *Fundamental Rights and Rule of Law Promotion in EU Enlargement Policy in the Western Balkans*, in *Fundamental Rights in International and European Law: Public and Private Law Perspectives*, 2016.

<sup>236</sup> A. DIMITROVA, *What Can the EU Do to Promote Rule of Law in Members and Neighbours? Lessons from Bulgaria and Romania*, 2015.

<sup>237</sup> D. MARKOV, *The Cooperation and Verification Mechanism Three Years Later: What Has Been Done and What Is Yet to Come*, 2010.

<sup>238</sup> G. L. ISPAS, *The Legal Nature of the Mechanism for Cooperation and Verification*, *Conferința Internațională de Drept*, in *Studii Europene și Relații Internaționale*, 2019.

<sup>239</sup> C. LACATUS, U. SEDELMEIER, *Does Monitoring without Enforcement Make a Difference? The European Union and Anti-Corruption Policies in Bulgaria and Romania after Accession*, in *Journal of European Public Policy*, 2020.

<sup>240</sup> O. KADLEC, D. KOSAR, *Romanian Version of the Rule of Law Crisis Comes to the ECJ: The AFJR Case Is Not Just About the Cooperation and Verification Mechanism*, in *Common Market Law Review*, 2022.

<sup>241</sup> B. BERCEANU, *The Role of the Cooperation and Verification Mechanism in Consolidating the European Values in the Romanian Territorial Collectivities*, in *Curentul Juridic*, 2016.

<sup>242</sup> A. PRIMATAROVA, *On High Stakes, Stakeholders and Bulgaria's EU Membership*, 2010.

<sup>243</sup> S. E. MERRY, K. DAVIS, B. KINGSBURY, *The Quiet Power of Indicators: Measuring Governance, Corruption, and Rule of Law*, Cambridge, 2015.

both states, has proven ineffective<sup>244</sup> in tackling fundamental issues like democracy and the rule of law.<sup>245</sup> Despite years of application, the CVM<sup>246</sup> has demonstrated minimal<sup>247</sup> success in meeting its goals, highlighting the necessity for a paradigm shift<sup>248</sup> towards fostering partnership<sup>249</sup> and enduring structural reforms<sup>250</sup> rather than solely employing reward and sanction mechanisms.<sup>251</sup> This mechanism<sup>252</sup> underwent evolution over time, transitioning from a more rigid to a more flexible approach. In its early stages, it imposed strict criteria and conditions<sup>253</sup> on Romania and Bulgaria to ensure compliance with EU norms.<sup>254</sup> However, as the process continued, there was a shift towards a more adaptable strategy, particularly between 2004 and 2007.<sup>255</sup>

The question arises as to whether the CVM became as flexible in 2007 as it was in 2004.<sup>256</sup> While there was certainly a move towards greater flexibility during this period,<sup>257</sup> it is important to analyze whether this shift fully addressed the underlying issues of the rule of law in both countries.<sup>258</sup> The journey of Bulgaria and Romania's EU membership<sup>259</sup> illustrated the

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<sup>244</sup> A. DIMITROVA, *Understanding Europeanization in Bulgaria and Romania: Following Broader European Trends or Still the Balkan Exceptions?*, in *European Politics and Society*, 2021.

<sup>245</sup> O. G. PROCA, *Key Political Issues in the Reform of Romanian Judiciary under the Cooperation and Verification Mechanism*, in *Eastern Journal of European Studies*, 2023.

<sup>246</sup> E. CIONGARU, *Historic Evolutions of the Effects of the European Union Political Instruments in the Romanian Legal Order – Effects of the Mechanism for Cooperation and Verification*, in *Tribuna Juridică*, 2016.

<sup>247</sup> R. VASSILEVA, *On Coins, Parallel Universes and the Cooperation and Verification Mechanism*, 2020.

<sup>248</sup> L. T. LINKA, *Beyond the Carrots and Sticks Paradigm: Rethinking the Cooperation and Verification Mechanism Experience of Bulgaria and Romania*, in *Perspectives on European Politics and Society*, 2014.

<sup>249</sup> G. DIMITROV, *Ever Closer or Diverging: The Relationship Between EC and the Latecomers (Bulgaria and Romania) Seen Through the Prism of CVM*, *Disintegration and Integration in East-Central Europe*, in *Nomos Verlagsgesellschaft mbH & Co. KG*, 2014.

<sup>250</sup> European Commission, *The Cooperation and Verification Mechanism for Bulgaria and Romania: Second Wave*, in *Flash Eurobarometer*, 2015.

<sup>251</sup> T. CHIUARIU, *The Caducity of the Cooperation and Verification Mechanism after the Entry into Force of the Lisbon Treaty*, 2015.

<sup>252</sup> F. STOICA, *Cooperation and Verification Mechanism (CVM) Report 2018 and the Challenges of the Judicial System*, in *Challenges of the Knowledge Society*, 2019.

<sup>253</sup> G. DIMITROV, *The Cooperation and Verification Mechanism: Shared Political Irresponsibility between the European Commission and the Bulgarian Governments*, 2014.

<sup>254</sup> R. VASSILEVA, *Threats to the Rule of Law: The Pitfalls of the Cooperation and Verification Mechanism*, in *European Public Law*, 2020.

<sup>255</sup> M. ROOS, D. SCHADE, *The EU under Strain?: Current Crises Shaping European Union Politics*, in *Walter de Gruyter GmbH & Co KG*, 2023.

<sup>256</sup> C. HILL, M. SMITH, S. VANHOONACKER, *International Relations and the European Union*, Oxford, 2023.

<sup>257</sup> I. RADIĆ MILOSAVLJEVIĆ, S. DOMARADZKI, *The EU's Raison d'État in the Western Balkans: Can the New Enlargement Methodology Help?*, 2022.

<sup>258</sup> P. LEVITZ, G. POP-ELECHES, *Monitoring, Money and Migrants: Countering Post-Accession Backsliding in Bulgaria and Romania*, in *Europe-Asia Studies*, 2010.

<sup>259</sup> M. RACOVIȚĂ, *Europeanization and Effective Democracy in Romania and Bulgaria*, in *Romanian Journal of Political Sciences*, 2011.

complexities<sup>260</sup> of accession, as both countries,<sup>261</sup> despite joining the EU, have struggled with persistent challenges<sup>262</sup> to the rule of law.<sup>263</sup> It accordingly prompted EU institutions to activate Article 7 of the Treaty on European Union and emphasizing the necessity for a cohesive defense of fundamental values.<sup>264</sup> Recent instances<sup>265</sup> of rule of law crises<sup>266</sup> in Romania<sup>267</sup> and challenges to liberal democracy<sup>268</sup> in Bulgaria<sup>269</sup> exemplified how symbolic compliance strategies concealed underlying objectives, fueling political instability, eroding public trust in democratic institutions and economic struggles.<sup>270</sup> The CVM<sup>271</sup> in these countries evaluated justice reform<sup>272</sup> and anti-corruption efforts,<sup>273</sup> emphasizing the importance of the rule of law<sup>274</sup> and maintaining flexible approach.<sup>275</sup> Such mechanism was deemed valuable in Bulgaria and

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<sup>260</sup> R. BRATU, D. SOTIROPOULOS, M. STOYANOVA, *Through the Lens of Social Constructionism: The Development of Innovative Anti-Corruption Policies and Practices in Bulgaria, Greece and Romania, 2000–2015*, in *Slavonic and East European Review*, 2017.

<sup>261</sup> K. MICHALAK, *The Quality of Governance in Public Administration Reforms in New Democracies: Bulgaria and Romania*, in *Hrvatska i komparativna javna uprava: časopis za teoriju i praksu javne uprave*, 2012.

<sup>262</sup> A. VON BOGDANDY, M. IOANNIDIS, *Systemic Deficiency in the Rule of Law: What It Is, What Has Been Done, What Can Be Done*, in *Common Market Law Review*, 2014.

<sup>263</sup> E. BARACANI, *EU Democratic Rule of Law Promotion*, in *International Actors, Democratization and the Rule of Law*, 2008.

<sup>264</sup> G. DIMITROV, A. PLACHKOVA, *Bulgaria and Romania, Twin Cinderellas in the European Union: How They Contributed in a Peculiar Way to the Change in EU Policy for the Promotion of Democracy and Rule of Law*, in *European Politics and Society*, 2021.

<sup>265</sup> A. DIMITROVS, D. KOCHENOV, *Of Jupiters and Bulls: The Cooperation and Verification Mechanism as a Redundant Special Regime of the Rule of Law*, in *EU Law Live*, 2021.

<sup>266</sup> A. BATORY, *Defying the Commission: Creative Compliance and Respect for the Rule of Law in the EU*, in *Public Administration*, 2016.

<sup>267</sup> M. RISTEI, *The Politics of Corruption: Political Will and the Rule of Law in Post-Communist Romania*, in *Journal of Communist Studies and Transition Politics*, 2010.

<sup>268</sup> D. SMILOV, *Rule of Law and the Rise of Populism: A Case Study of Post-Accession Bulgaria*, in *CAS Sofia Working Paper Series*, 2011.

<sup>269</sup> V. TODOROVA, *The Rule of Law in Bulgaria: State of Play and Trends (After 2010)*, in *Southeastern Europe*, 2020.

<sup>270</sup> A. KLIP, E. VERSLUIS, J. POLAK, *Improving Mutual Trust Amongst European Union Member States in the Areas of Police and Judicial Cooperation in Criminal Matters*, 2009.

<sup>271</sup> P. ALBERS, *Towards a Common Evaluation Framework to Assess Mutual Trust in the Field of EU Judicial Cooperation in Criminal Matters*, in *Ministerie van Veiligheid en Justitie*, 2013.

<sup>272</sup> R. COMAN, *Réformer la Justice dans un Pays Post-Communiste: Le Cas de la Roumanie*, Bruxelles, 2009.

<sup>273</sup> European Commission, *Report From The Commission To The European Parliament And The Council On Progress In Romania Under The Cooperation And Verification Mechanism*, COM (2012) 410 Final, Brussels, 18 July 2012.

<sup>274</sup> European Commission, *Report From The Commission To The European Parliament And The Council On Progress In Romania Under The Cooperation And Verification Mechanism*, COM (2013) 47 Final, Brussels, 30 January 2013.

<sup>275</sup> R. CARP, *The Struggle for the Rule of Law in Romania as an EU Member State: The Role of the Cooperation and Verification Mechanism*, in *Utrecht Law Review*, 2014.

Romania<sup>276</sup> with fluidity, suggesting potential applicability to future accession<sup>277</sup> countries and existing member states with significant rule of law failures.<sup>278</sup>

While the 2004 accession process showcased a predominantly positive pre-accession conditionality approach, the 2007 enlargement<sup>279</sup> introduced a shift towards negative post-accession conditionality,<sup>280</sup> emphasizing the challenges of maintaining integration objectives and the balance between inclusiveness and differentiation within the Union.<sup>281</sup> The fifth wave of integration in 2007 was marked by the implementation of the CVM,<sup>282</sup> diverging from previous integration waves and highlighting the need for ongoing intervention to address systemic challenges and ensure adherence to EU values.<sup>283</sup> Therefore, due to the challenges faced by Romania and Bulgaria in meeting the complex accession requirements,<sup>284</sup> resulting in a prolonged adaptation process in political, economic, and legal domains, the EU opted to ease membership criteria for them.<sup>285</sup> Therefore, we argue that conditionality for EU membership became more rigorous between the 2004 enlargement wave and the 2007 accession process,<sup>286</sup> even though Big Bang enlargement<sup>287</sup> has been perceived as straightforward<sup>287</sup> by Balkan states.

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<sup>276</sup> C. CURT, *Romanian Commitment to Independence of Justice and Anticorruption Reforms under CVM and Rule of Law Incentives*, Some Considerations on Case-Law of the Constitutional Court, in *Transylvanian Review of Administrative Sciences*, 2022.

<sup>277</sup> R. VASSILEVA, *So Why Don't We Just Call the Whole Rule of Law Thing Off, Then? On Tomatoes, Tomahtoes, and Bulgaria's Cooperation and Verification Mechanism*, in *Verfassungsblog*, 2019.

<sup>278</sup> S. ALEGRE, I. IVANOVA, D. DENIS SMITH, *Safeguarding the Rule of Law in an Enlarged EU: The Cases of Bulgaria and Romania*, in *CEPS Special Report*, 2009.

<sup>279</sup> O. TANKOVSKY, V. ENDRÓDI KOVÁCS, *The Economic Integration Maturity of Romania and Bulgaria*, in *Global, Regional and Local Perspectives on the Economies of Southeastern Europe: Proceedings of the 11th International Conference on the Economies of the Balkan and Eastern European Countries in Bucharest, 2019*, in *Springer International Publishing*, 2021.

<sup>280</sup> A. DIMITROVA, *The Effectiveness and Limitations of Political Integration in Central and Eastern European Member States: Lessons from Bulgaria and Romania*, in *MaxCap*, 2015.

<sup>281</sup> M. SPERNBAUER, *Benchmarking, Safeguard Clauses and Verification Mechanisms—What's in a Name? Recent Developments in Pre- and Post-Accession Conditionality and Compliance with EU Law*, in *Croatian Yearbook of European Law & Policy*, 2007.

<sup>282</sup> R. VON BORRIES, *Romania's Accession to the European Union: The Rule of Law Dilemma*, in *Common European Legal Thinking: Essays in Honour of Albrecht Weber*, 2015.

<sup>283</sup> P. DUȚĂ, S. COHEN, *From Mechanism for Cooperation and Verification to EU Anti-Corruption Report*, in *Journal of Economic Literature*, 2012.

<sup>284</sup> H. S. PAVLOVSKA HILAIEL, *The EU's Losing Battle Against Corruption in Bulgaria*, in *Hague Journal on the Rule of Law*, 2015.

<sup>285</sup> E. D. PULUNGAN, *The Interests of the European Union in Providing Cooperation and Verification Mechanism (CVM) Assistance to Bulgaria in the Midst of Euroscepticism*, in *Jurnal Hubungan Internasional*, 2020.

<sup>286</sup> A. MUNGIU PIPPIDI, *A House of Cards? Building the Rule of Law in the Balkans, The Western Balkans and the EU: 'The Hour of Europe'*, in *Chaillot Papers*, 2011.

<sup>287</sup> A. TAYLOR, *The European Union and State Building in the Western Balkans, Politics and Governance*, 2013.

The CVM was officially terminated in 2019<sup>288</sup> for Bulgaria<sup>289</sup> and in 2023<sup>290</sup> for Romania, initially intended to last for three years<sup>291</sup> but extended due to both countries' failure<sup>292</sup> to meet the rule of law requirements.<sup>293</sup> This mechanism, established to aid in the development of the rule of law,<sup>294</sup> evolved from a rigid to a more flexible strategy between 2004 and 2007, likely reflecting the ongoing challenges<sup>295</sup> in meeting accession criteria. In other words, the level of flexibility in 2007 mirrored that of 2004, and the CVM was intended to introduce a more flexible approach,<sup>296</sup> and currently, there appears to be a trend towards greater flexibility<sup>297</sup> alongside with rigidity.<sup>298</sup>

Internal differences within the EU and geopolitical challenges, including Brexit<sup>299</sup> and democratic backsliding among newer member states,<sup>300</sup> have hindered further enlargement efforts since the historic Eastern enlargement of 2004 and 2007.<sup>301</sup> However, there is presently a notable discourse surrounding the trajectory<sup>302</sup> of the EU's approach to enlargement,<sup>303</sup> with

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<sup>288</sup> R. VASSILEVA, *CVM Here, CVM There: The European Commission in Bulgaria's Legal Wonderland*, in *Verfassungsblog: On Matters Constitutional*, 2019; R. VASSILEVA, *Is Bulgaria's Rule of Law about to Die under the European Commission's Nose? The Country's Highest-Ranking Judge Fears So, The Country's Highest-Ranking Judge Fears So* (April 23, 2019), in *Verfassungsblog*, 2019.

<sup>289</sup> J. MILATOVIĆ, M. SZCZUREK, *Bulgaria Diagnostic, European Bank for Reconstruction and Development*, London, 2019.

<sup>290</sup> E. VERESS, *Reform of the Romanian Judiciary and the Cooperation and Verification Mechanism—Considering the Practice of the Romanian Constitutional Court*, in *Central European Journal of Comparative Law*, 2023.

<sup>291</sup> E. GATEVA, *Post-Accession Conditionality—Translating Benchmarks into Political Pressure?*, in *East European Politics*, 2013.

<sup>292</sup> M. MENDELSKI, *The EU's Pathological Power: The Failure of External Rule of Law Promotion in South Eastern Europe, Southeastern Europe*, 2015.

<sup>293</sup> M. M. BOŠKOVIĆ, J. KOSTIĆ, *New EU Enlargement Strategy towards the Western Balkans and Its Impact on Rule of Law*, in *Slovak Yearbook of European Union Law*, 2021.

<sup>294</sup> R. VASSILEVA, *Bulgaria's Mafia State and the Failure of the CVM*, 2023.

<sup>295</sup> E. MUSTAFIĆ, *European Values as Criteria for Accession to the European Union: The Effectiveness of Sanction Mechanisms on Member States and Non-Member States*, 2014.

<sup>296</sup> T. SUMMA, *The European Union's 5th Enlargement—Lessons Learned*, Boston, 2008.

<sup>297</sup> A. OTT, *Enlargement Policy, Specialized Administrative Law of the European Union*, in *A Sectorial Review*, Oxford, 2018.

<sup>298</sup> C. CLOSA, *Constitutional Rigidity and Procedures for Ratifying Constitutional Reforms in EU Member States*, in *Changing Federal Constitutions: Lessons from International Comparison*, 2012.

<sup>299</sup> J. K. LINDSAY, *The United Kingdom and EU Enlargement in the Western Balkans: From Ardent Champion of Expansion to Post-Brexit Irrelevance*, in *The National Politics of EU Enlargement in the Western Balkans*, 2020.

<sup>300</sup> A. MEYERROSE, *Building Strong Executives and Weak Institutions: How European Integration Contributes to Democratic Backsliding*, in *The Review of International Organizations*, 2023.

<sup>301</sup> N. OLSZEWSKA, *Constructing Europe's Borders: Political Discourse and Meaning Creation in EU Enlargement Debates*, Zurich, 2022.

<sup>302</sup> E. GJALDBÆK SVERDRUP, *Method to the Madness: Assessing the Future of EU Enlargement*, 2023.

<sup>303</sup> L. LONARDO, *The European Political Community: A Nebulous Answer to the Strategic Question of How to Unite Europe*, in *European Papers—A Journal on Law and Integration*, 2023.

divergent perspectives<sup>304</sup> on whether it is trending towards increased flexibility or rigidity.<sup>305</sup> European institutions are currently advocating for a swift expansion,<sup>306</sup> notably in the Balkan region, and are open to considering applications<sup>307</sup> from countries like Georgia, Moldova, and Ukraine.<sup>308</sup> However, the continued emphasis on a merit-based enlargement strategy<sup>309</sup> underscores<sup>310</sup> the EU's steadfast dedication<sup>311</sup> to maintaining its standards,<sup>312</sup> particularly concerning the rule of law.<sup>313</sup> Moreover, recent enlargement strategies<sup>314</sup> appear to display a greater degree of flexibility,<sup>315</sup> as evidenced by the approaches taken towards certain states.<sup>316</sup> This juxtaposition highlights the delicate balance between expediency and adherence to fundamental principles<sup>317</sup> as the EU navigates its enlargement process, necessitating careful consideration of the implications of both approaches for the union's integrity and effectiveness.<sup>318</sup>

The new methodology can be best grasped through a comparison<sup>319</sup> with the approach used for candidate countries during the 2004 enlargements and onwards, most notably

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<sup>304</sup> C. VOS, *European Integration Through 'Soft Conditionality': The Contribution of Culture to EU Enlargement in Southeast Europe*, in *Cultural Diplomacy and International Cultural Relations*, 2020.

<sup>305</sup> Z. WANG, J. PAAVOLA, *Resilience of the EU ETS to Contextual Disturbance: The Case of EU Enlargement and Its Impact on ETS Policymaking Dynamics*, in *Environmental Politics*, 2023.

<sup>306</sup> V. ANGHEL, J. DŽANKIĆ, *Wartime EU: Consequences of the Russia–Ukraine War on the Enlargement Process*, in *Journal of European Integration*, 2023.

<sup>307</sup> T. KARJALAINEN, *EU Enlargement in Wartime Europe: Three Dimensions and Scenarios*, in *Contemporary Social Science*, 2023.

<sup>308</sup> T. BÖRZEL, A. DIMITROVA, F. SCHIMMELFENNIG, *European Union Enlargement and Integration Capacity: Concepts, Findings, and Policy Implications*, in *Journal of European Public Policy*, 2017.

<sup>309</sup> S. SAMARDŽIĆ, B. KOVAČEVIĆ, *The Fog of Enlargement and the Agony of Accession: The European Union and Serbia in the Light of a Reform Document*, in *Stosunki Międzynarodowe–International Relations*, 2022.

<sup>310</sup> L. LOUWERSE, *The EU's Conceptualisation*, cit.

<sup>311</sup> A. BAKARDJIEVA ENGELBREKT, *Rule of Law and Judicial Independence in the EU: Lessons from the Union's Eastward Enlargement and Ways Forward*, 2023.

<sup>312</sup> U. SEDELMEIER, *Is There an East–West Divide on Democracy in the European Union? Evidence from Democratic Backsliding and Attitudes Towards Rule of Law Interventions*, in *Journal of European Public Policy*, 2024.

<sup>313</sup> K. ARCHICK, S. GARDING, *European Union Enlargement*, in *Current Politics and Economics of Europe*, 2022.

<sup>314</sup> D. JAĆIMOVIĆ, *New Approach to EU Enlargement*, in *European Liberal Forum*, 2023.

<sup>315</sup> P. CHIOCCHETTI, *Integrating Diversity in the European Union: Report on Scenarios for Differentiation and Other Forms of Flexibility*, in *European University Institute*, 2022.

<sup>316</sup> S. POLI, *La Revisione della Politica Europea di Vicinato e il Controverso Rapporto tra Condizionalità e Geometria Variabile*, in *European Papers—A Journal on Law and Integration*, 2016.

<sup>317</sup> L. PECH, *The Rule of Law as a Well-Established and Well-Defined Principle of EU Law*, in *Hague Journal on the Rule of Law*, 2022.

<sup>318</sup> S. KEIL, *Enlargement Politics Based on Geopolitics? A Proposal for a Geopolitics-Driven Enlargement Policy*, in *A Year Later: War in Ukraine and Western Balkan (Geo) Politics*, 2023.

<sup>319</sup> M. EMERSON, S. BLOCKMANS, *Next Steps for EU Enlargement*, cit.



exemplified in the case of Croatia's<sup>320</sup> accession in 2013. The new enlargement process<sup>321</sup> appears to be streamlined, with a focus on six thematic clusters<sup>322</sup> primarily emphasizing the adherence<sup>323</sup> to the rule of law.<sup>324</sup> There is robust scrutiny and enforcement mechanisms in place to ensure compliance<sup>325</sup> with these principles.<sup>326</sup> While the process is ostensibly more flexible,<sup>327</sup> recent developments suggest a heightened emphasis on adherence to rule of law standards,<sup>328</sup> potentially indicating a shift towards greater rigidity. Thus, the 2020 enlargement strategy<sup>329</sup> appears to prioritize the rule of law,<sup>330</sup> evident in the thorough scrutiny of chapters related to this aspect. While on the surface, this may seem like a more flexible approach,<sup>331</sup> in reality, it signifies a robust control mechanism to ensure that aspiring member states meet the necessary criteria.<sup>332</sup>

The current emphasis on resilience and pragmatism offers an opportunity for a more adaptable and responsive approach, potentially alleviating the inflexibilities associated with the enforcement of EU conditionality in the Balkans.<sup>333</sup> Considering the future, it's essential to weigh the pros and cons of both flexible and rigid approaches to enlargement.<sup>334</sup> A more

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<sup>320</sup> P. MALDINI, *Croatia and the European Union: Changes and Development*, 2016.

<sup>321</sup> D. TILEV, *The New EU Enlargement Methodology: Enhancing the Accession Process*, in *Institute for Democracy Societas Civilis*, 2020.

<sup>322</sup> N. FALLON, *Can EU Enlargement to the Western Balkans be Revitalised?* in *A Report by the Institute of International and European Affairs*, 2020.

<sup>323</sup> S. DE WINTER, *The Use of Distinct Frames by the Netherlands in Relation to EU Foreign Policy Coordination: A Case Study of the Enhanced Accession Methodology of the European Union*, Bergen, 2022.

<sup>324</sup> M. KOVAČEVIĆ, *EU's Revised Enlargement Methodology: Emperor's New Clothes as the New Iron Curtain Falls in Europe*, in *Међународни Проблеми*, 2022.

<sup>325</sup> M. SZCZEPANIK, *Changes to EU Enlargement Policy*, 2020.

<sup>326</sup> M. DABROWSKI, *Towards a New Eastern Enlargement of the EU and Beyond*, in *Intereconomics*, 2022.

<sup>327</sup> M. MIHAJLOVIĆ, *Template 2.0 for Staged Accession to the EU*, in *Centre for European Policy Studies and European Policy Centre*, 2023.

<sup>328</sup> I. DAMJANOVSKI, C. HILLION, D. PRESHOVA, *Uniformity and Differentiation in the Fundamentals of EU Membership: The EU Rule of Law Acquis in the Pre- and Post-Accession Contexts*, 2020.

<sup>329</sup> B. LIPPERT, *Turkey as a Special and (Almost) Dead Case of EU Enlargement Policy, EU-Turkey Relations: Theories, Institutions, and Policies*, 2021.

<sup>330</sup> M. BOŠKOVIĆ, J. KOSTIĆ, *New EU Enlargement Strategy Towards the Western Balkans and Its Impact on Rule of Law*, in *Slovak Yearbook of European Union Law*, 2021.

<sup>331</sup> G. GREVI, *Differentiated Cooperation in European Foreign Policy: The Challenge of Coherence*, in *EU Idea Policy Papers*, 2020.

<sup>332</sup> A. HOXHAIJ, *The EU Rule of Law Initiative Towards the Western Balkans*, in *Hague Journal on the Rule of Law*, 2021.

<sup>333</sup> A. JUNCOS, *Principled Pragmatism and Resilience, Resilience in the Western Balkan*, in *European Union Institute for Security Studies*, 2017.

<sup>334</sup> F. SCHIMMELFENNIG, T. WINZEN, *Ever Looser Union*, cit.

flexible approach<sup>335</sup> could facilitate a quicker accession process and foster closer integration<sup>336</sup> within the EU.<sup>337</sup> However, it may also risk<sup>338</sup> compromising the integrity of EU standards if not implemented carefully.<sup>339</sup> On the other hand, a more rigid approach ensures that aspiring member states fully adhere to EU norms<sup>340</sup> before joining,<sup>341</sup> safeguarding the union's values and stability.<sup>342</sup> Nonetheless, it may lead to slower progress and potential disillusionment among candidate countries.

The EU's promotion of democracy in former communist nations, with varying success, highlights its impact on the Union's future development, emphasizing the crucial role of the enlargement process in preserving peace, security, and democratic values.<sup>343</sup> Thence, the substantial purpose of the expansion of the EU borders focuses on uniting the European countries in diversity and common fundamental values and advance better living standards for its citizens<sup>344</sup>. The practice of enlargement has proven mutually beneficial for both candidate countries and the EU, contributing to conflict resolution, and successful transformation of candidate countries' systems, with the EU welcoming states that meet political, economic, and legal conditions for accession.<sup>345</sup>

Distinguishing between 'enlargement' and 'accession' is crucial, as enlargement refers to expanding the Union's borders and including third countries, shaping their legal entities, while accession specifically signifies the process by which a candidate country participates in integration.<sup>346</sup> Enlargement legislation, rooted in the former Article 237 of the EEC Treaty and

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<sup>335</sup> A. ÁGH, *The European Futures and Cohesive Europe: EU2020 Strategy and Cohesion Policy with Flexible Integration*, in *Journal of Comparative Politics*, 2011.

<sup>336</sup> M. BRUNAZZO, *The Politics of EU Differentiated Integration: Between Crises and Dilemmas*, in *The International Spectator*, 2022.

<sup>337</sup> S. PRINCEN, *Different yet the Same*, cit.

<sup>338</sup> R. BELLAMY, S. KRÖGER, *Flexible Europe*, cit.

<sup>339</sup> M. DERKS, M. PRICE, *EU and Rule of Law Reform in Kosovo*, in *Clingendael Institute*, 2022.

<sup>340</sup> I. ÖHNSTRÖM, *Enlargement of the European Union: An Examination of the Criteria for Accession in Light of the Union's Objectives*, 2021.

<sup>341</sup> C. CHIVA, *Enlargement*, in *The Routledge Handbook of Gender and EU Politics*, 2021.

<sup>342</sup> K. L. SCHEPPELE, D. V. KOCHENOV, B. GRABOWSKA MOROZ, *EU Values Are Law, After All: Enforcing EU Values Through Systemic Infringement Actions by the European Commission and the Member States of the European Union*, in *Yearbook of European Law*, 2020.

<sup>343</sup> L. MATTINA, *La sfida dell'allargamento, l'Unione Europea e la democratizzazione dell'Europa centro-orientale*, in *Il Mulino*, 2004.

<sup>344</sup> U. VON DER LEYEN, *A Union that Strives for More, My Agenda for Europe*, in *Political Guidelines for the Next European Commission 2019-2024*, 2024.

<sup>345</sup> J. BERGMANN, *The European Union as International Mediator: Brokering Stability and Peace in the Neighbourhood*, 2019.

<sup>346</sup> S. VARADI, *Legal Aspects of Enlargement of the European Union*, in *Lexonomica - Journal of Law and Economics*, 2013.

provisions in the Amsterdam Treaty, is now primarily defined by Article 49 TEU, outlining accession requirements and the application process, with no guarantee of admission even if conditions are met.<sup>347</sup> EU membership is generally contingent on meeting the Copenhagen criteria, encompassing political, economic, and legislative conditions, with a specific focus on democracy, the rule of law, human rights, and fundamental freedoms outlined in Article 2 and Article 6 of the TEU<sup>348</sup>. Furthermore, the Madrid (1995) and Helsinki (1999) summits have also played a crucial role in shaping the conditions for enlargement.<sup>349</sup>

The legal dimensions of EU enlargement involve intricate considerations of pre-accession strategies, accession negotiations, membership conditions, and institutional adaptations, inherently intertwined with economic and political factors.<sup>350</sup> Further reforms and amendments introduced by Single European Act (SEA), Treaty of Maastricht, Treaty of Amsterdam, Treaty of Lisbon stimulated evolution of diverse collective policies and organizational structures.<sup>351</sup> The Council initiated to adopt by qualified majority in the specific fields such as internal market and social regulation which previously required unanimous voting. The role of the Parliament in the decision-making has been remarkably increased which transferred it to act as co-legislator with the Council thanks to the innovations brought by the effects of enlargement rounds.<sup>352</sup> Both widening and deepening processes of the Union have been emerged as a menace to the organizational volume of the EU due to the increasing number of member states<sup>353</sup>. The enlargement process changed the composition and structure of the Commission, voting method of the EU Council as well as allocation of voting weights to each member state in the European Council through the necessary reforms<sup>354</sup>. EU enlargement extends beyond territorial expansion, influencing membership rights, commitments, and the legal framework, with each expansion playing a crucial role in the EU's legal evolution. The process necessitates adjustments, considering factors such as preparation for membership,

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<sup>347</sup> C. MĂTUȘESCU, *The Principle of Conditionality*, cit.

<sup>348</sup> D. DUDLEY, *European Union Membership Conditionality*, cit.

<sup>349</sup> A. DIMITROVA, *The Evolution of the EU's Enlargement Policy*, in *Elgar Encyclopedia of European Union Public Policy*, Edward Elgar Publishing, 2022.

<sup>350</sup> M. CREMONA, *The Enlargement of the European Union*, 2003.

<sup>351</sup> R. KEOHANE, *The New European Community: Decision-Making and Institutional Change*, 2018.

<sup>352</sup> R. DEHOUSSE, P. MAGNETTE, *Institutional Change in the EU*, in *Institutions of the European Union*, 2006.

<sup>353</sup> B. STEUNENBERG, *Widening the European Union: Politics of Institutional Change and Reform*, 2003.

<sup>354</sup> J. CARMIN, S. VAN DEVEER, *EU Enlargement and the Environment: Institutional Change and Environmental Policy in Central and Eastern Europe*, 2005.

specific accession demands, 'enlargement fatigue', and the ongoing evolution of EU integration<sup>355</sup>.

Member states asserted control over EU enlargement through enhanced conditionality, increased procedural steps in applying Article 49(1) TEU, and unilateral imposition of new stipulations. The 2006 Enlargement Strategy by the Commission exemplified progress through its implementation of rigorous and fair conditionality, particularly notable due to its embrace of the Big Bang enlargement approach.<sup>356</sup> This adjustment, however, led to growing concerns, termed 'enlargement fatigue',<sup>357</sup> emphasizing the need for careful management of the expansion process. Meanwhile, Council determines benchmarks based on Commission recommendations during the accession negotiations phase that the candidate state must satisfy. Secondly, the lack of clarity and scarcity of Treaty enlargement rules allowed for interpretation and development, with the ECJ imposing well-defined restrictions on the jurisdiction of new member states' accession, as outlined since the origin of integration process, Article 237 EEC<sup>358</sup>.

As a matter of fact, member states and EU political institutions were in charge of interpretation of Treaty provisions on enlargement. Thirdly, member states have heightened control over EU enlargement<sup>359</sup> at the national level by reinforcing constitutional requirements, exemplified by introducing referendums, showcasing the nationalization of the process since the Central and Eastern expansion<sup>360</sup>.

The case of *Mattheus v Doego* clarified the attitude of the Court on the enlargement provisions by elucidating the enlargement is political process by origin, therefore, decision making authorities (EU institutions and member states) have right to stipulate accession conditions.<sup>361</sup> Enlargement is incorporated into the legal framework<sup>362</sup> of the Union and governed by EU norms, evident in the use of the term 'member states' instead of 'High

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<sup>355</sup> C. HILLION, *Evolution of EU Enlargement Policy*, in *EU Enlargement*, 2011.

<sup>356</sup> Commission of the European Communities, *Communication from the Commission to the European Parliament and the Council, Enlargement Strategy and Main Challenges 2006–2007 Including Annexed Special Report on the EU's Capacity to Integrate New Members*, Brussels, 2006.

<sup>357</sup> S. ECONOMIDES, *From Fatigue*, cit.

<sup>358</sup> L. MASSAI, *The EU Enlargement*, in *The Kyoto Protocol in the EU: European Community and Member States under International and European Law*, 2011.

<sup>359</sup> F. SCHIMMELFENNIG, U. SEDELMEIER, *The Politics of European Union Enlargement*, cit.

<sup>360</sup> F. SCHIMMELFENNIG, U. SEDELMEIER, *The Europeanization of Central and Eastern Europe*, 2005.

<sup>361</sup> P. VAN ELSUWEGE, *The Legal Framework of EU Enlargement: From Soviet Republics to EU Member States*, in *Brill Nijhoff*, 2008.

<sup>362</sup> P. CRAIG, G. DE BÚRCA, *EU Law: Text, Cases, and Materials UK Version*, Oxford, 2020.

Contracting Parties' in Article 49 TEU, emphasizing that the 27 states operate within the EU legal order during the enlargement process<sup>363</sup>. This judgment implies collaborative action between institutions and member states within the EU legal order, underscoring the ECJ's perspective on enlargement provisions as defining clear limits for admitting new member states. While the court doesn't explicitly state these restrictions, it suggests they may be inherent in the enlargement procedure or derived from other aspects of EU primary law, emphasizing the court's role in ensuring legal adherence in interpreting and applying Article 49 TEU<sup>364</sup>.

The first norm in the enlargement process, aligned with the Copenhagen criteria, pre-accession strategy, and White Paper, emphasizes the paramount importance of the complete acceptance and adherence to the *acquis communautaire* by applicant states without any exemptions<sup>365</sup>. Second norm refers to the membership negotiations which merely concentrates on the practical details of the countries which undertake the *acquis*<sup>366</sup>. Third, the new policy tools have been formulated to overcome the arising challenges derived from the consequences of grown diversity of an enlarged Union<sup>367</sup>. Fourth, after the enlargement process new member states are assimilated to the EU's<sup>368</sup> organizational contexts and underpinned by a more fundamental review. Fifth, in practice, the EU is more willing to negotiate with group of countries which jointly collaborate and share close ties with each other<sup>369</sup>. Sixth, present member states take advantage of the enlargement process to sustain their respective interests and as a group reflect internal issues<sup>370</sup>.

The enlargement process entails considering methodological characteristics and four key principles—conditionality, asymmetry, complexity, and differentiation—which introduce a systematic control logic with notable distinctions from previous enlargement experiences, impacting applicant states. While the positive perspective highlights the provision of relevant

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<sup>363</sup> E. JONES, A. MENON, *The Oxford Handbook of the European Union*, Oxford, 2012.

<sup>364</sup> J. BRIDGE, *The Curious Case of the Inquisitive Fruit Importer*, in *Bracton Law Journal*, 1978.

<sup>365</sup> E. BEST, S. DUKE, P. NICOLAIDES, *The EU on the Threshold of Enlargement: How Well Prepared are the Participants?*, 2004.

<sup>366</sup> D. DUDLEY, *European Union Membership Conditionality*, cit.

<sup>367</sup> G. CONWAY, *EU Law, Evolution and Development of the EU: From Rome in 1957 to Lisbon in 2009*, 2015.

<sup>368</sup> C. PRESTON, *Enlargement and Integration in the European Union*, London, 1997.

<sup>369</sup> S. GSTOHL, *The European Neighbourhood Policy in a Comparative Perspective: Models, Challenges, Lessons*, 2016.

<sup>370</sup> J. FJELSTUL, *The Evolution of European Union Law: A New Data Set on the Acquis Communautaire*, in *European Union Politics*, 2019.

guidelines for countries aspiring to join the EU, the negative view underscores concerns<sup>371</sup> about a potential delay<sup>372</sup> in the overall enlargement procedure stemming from fears about weakening the EU acquis.

It is paramount to consider the methodological characteristics and four significant principles such as conditionality, asymmetry, complexity and differentiation in the course of the enlargement process<sup>373</sup>. These norms shape a systematic control logic which has significant distinctions in comparison to the former enlargement experiences and indicate noticeable effects on the applicant states. From the positive perspective, one can point out that it supplies the countries wishing to join the EU with relevant guidelines. Whereas negative approach emphasizes that it postpones general enlargement procedure due to the existing fear about the weakening of the EU acquis<sup>374</sup>.

The complexity principle in the enlargement process spans stages from partnership to negotiations, with differentiation allowing adaptability and conditionality<sup>375</sup> serving as a cornerstone through three perspectives. First and foremost, the stipulations were extended through the Copenhagen criteria and exclusively states the immunity of the acquis<sup>376</sup>. Secondly, there was a propensity to set up new and more comprehensive stipulations in Accession Partnership since the conditions were flexible in nature<sup>377</sup>. Finally, the initially flexible and imprecisely defined requirements allowed for continuous adjustment based on specific circumstances, fostering an evolving symmetry in the relationship between the EU and applicant states<sup>378</sup>.

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<sup>371</sup> M. PETROVIC, N. TZIFAKIS, *A Geopolitical Turn to EU Enlargement, or Another Postponement? An Introduction*, in *Journal of Contemporary European Studies*, 2021.

<sup>372</sup> D. PAUKOVIĆ, V. RAOS, *Democratic Deficits, Delayed Democratization and Prolonged EU Accession*, in *Croatia and the European Union*, 2016.

<sup>373</sup> K. MANIOKAS, *Methodology of the EU Enlargement: A Critical Appraisal*, in *Lithuanian Foreign Policy Review*, 2000.

<sup>374</sup> H. GRABBE, *European Union Conditionality and the Acquis Communautaire*, in *International Political Science Review*, 2002.

<sup>375</sup> S. KEIL, B. STAHL, *EU Enlargement in Times of Crisis: Strategic Enlargement, the Conditionality Principle and the Future of the 'Ever-Closer Union'*, in *The EU Under Strain?: Current Crises Shaping European Union Politics*, 2023, p. 154-185.

<sup>376</sup> R. FELDMAN, M. WATSON, *Enlarging the EU: Accession Requirements and the Central European Candidates, Into the EU*, in *International Monetary Fund*, 2002.

<sup>377</sup> H. GRABBE, *A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants*, 1999.

<sup>378</sup> P. LIARGOVAS, C. PAPAGEORGIOU, *From Enlargement to the South to the Single European Act*, in *The European Integration*, 2024.

The EU law governing enlargement,<sup>379</sup> shaped by legal regulations and previous rounds, necessitates a deeper discussion on the significance of the principles, criteria, and procedural instruments involved in the process<sup>380</sup>. The findings<sup>381</sup> demonstrate that the enlargement rounds of the EU have been accompanied by written and customary enlargement law, which make part of dual regulation. Numerous legal instruments including, Treaties of the European Coal and Steel Community (ECSC), the European Atomic Energy Community (Euratom) and EEC<sup>382</sup> had described the enlargement process in general, however, several major components of the enlargement such as principles and some of the criteria have been missing. Evidently, remarkable distinctions have been revealed between the practical and theoretical aspects during the enlargement process. The nature of the modern enlargement law is compound by virtue of the incorporation of numerous legal instruments of the EU, namely, Articles of 6 and 49 of the TEU, essential principles of the EU law, Copenhagen criteria and other such documents.<sup>383</sup> The accession process for candidate states has evolved by incorporating principles from customary law and practical Treaty interpretations into the EU's legal framework for effective regulation<sup>384</sup>. Introduction of the components of the customary law into the primary law of the EU has been witnessed through the introduction of Article 6 TEU<sup>385</sup> underlining the fundamental rights and principles of the rule of law,<sup>386</sup> into Article 49 TEU which codified the enlargement principles for the first time at Amsterdam.<sup>387</sup> Thus, the components derived from customary enlargement law<sup>388</sup> form an integral part of the EU's legal system, as evidenced by the experiences of enlargement rounds. While the evolution of enlargement law introduces new regulations, principles, and stipulations guiding the accession

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<sup>379</sup> C. BARNARD, O. ODUDU, *The Outer Limits of European Union Law*, in Bloomsbury Publishing, 2009.

<sup>380</sup> D. CERNICOVA, T. M. CERNICOVA, *The Associated Trio, Political Conditionality, and the Dynamics of EU Enlargement Policy*, 2024.

<sup>381</sup> D. KOCHENOV, *EU Enlargement Law: History and Recent Developments: Treaty-Custom Concubinage?* in *European Integration Online Papers*, 2005.

<sup>382</sup> D. DINAN, *The European Integration Process*, in *European Politics*, Oxford, 2007, p. 151-165.

<sup>383</sup> F. SCHIMMELFENNIG, *EU Political Accession Conditionality After the 2004 Enlargement: Consistency and Effectiveness*, in *EU Political Conditionality: Conditions of Success, International Influence beyond Conditionality*, 2013.

<sup>384</sup> I. B. BOSOANCĂ, *The EU Eastern Enlargement from Today's Perspective*, in *CES Working Papers*, 2021.

<sup>385</sup> J. CALLEWAERT, *Do We Still Need Article 6(2) TEU? Considerations on the Absence of EU Accession to the ECHR and Its Consequences*, in *Common Market Law Review*, 2018.

<sup>386</sup> A. ALBORS LLORENS, *Changes in the Jurisdiction of the European Court of Justice under the Treaty of Amsterdam*, in *Common Market Law Review*, 1998.

<sup>387</sup> D. MCGOLDRICK, *The European Union After Amsterdam: An Organization with General Human Rights Competence? Membership Requirements*, in O'Keeffe, David, and Patrick Twomey, eds., *Legal Issues of the Amsterdam Treaty*, Hart Publishing, 1999.

<sup>388</sup> S. BESSON, *General Principles and Customary Law in the EU Legal Order*, in *General Principles of EU Law*, 2017.

process, the originality of the instrument remains unchanged since the foundation of the Community, with advancements focused on specific points and criteria.

### **3. Transformative Path of EU Enlargement Framework**

The evolution of the EU's legal framework governing enlargement policies has progressed through different phases, aligning with the development of pertinent provisions in the treaties that guide the integration process. Central to this evolution are key legal instruments, starting from Article 98 of the ECSC Treaty, Article 237 of the EEC Treaty, Article 205 of the Euratom Treaty, to Article 49 of the TEU, all of which have played a pivotal role in shaping the EU's approach to enlargement<sup>389</sup>. The continuous amendments and refinements to such articles over time exemplify the EU's dedication to maintaining a flexible and adaptable framework for enlargement, reflecting its commitment to extending the benefits of integration to new countries while upholding core principles and values<sup>390</sup>.

Article 98 ECSC established that any 'European country' can apply to join the Community, granting the Council exclusive authority to oversee the entire accession process in a supranational manner, while member states play no role in the enlargement process<sup>391</sup>. The Council sets membership terms upon accepting a candidate's application, with the High Authority (Commission) offering an opinion, yet Article 98 ECSC, while detailing accession procedures, isn't the exclusive instrument, allowing other factors to influence the enlargement process<sup>392</sup>.

The establishment of two new communities (EEC and Euratom)<sup>393</sup> in 1957 brought an innovation that any candidate state wishing to join the Community shall accede simultaneously

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<sup>389</sup> F. EMMERT, S. PETROVIC, *The Past, Present, and Future of EU Enlargement*, 2013.

<sup>390</sup> M. DEDMAN, *The Origins and Development of the European Union 1945-1995: A History of European Integration*, 1996.

<sup>391</sup> K. RISTOVA-AASTERUD, *The Legal Aspects of the EU Accession Procedure and Its Implications for the EU Eastern Enlargement (From the EU Founding Treaties to the Treaty of Amsterdam)*, in *Iustinianus Primus Law Review*, 2010.

<sup>392</sup> C. HADJILAMBRINOS, *From ECSC to European Union: An Analysis of the Evolution of the Institutions of European Integration*, in *Iliria International Review*, 2019.

<sup>393</sup> D. WYATT, *Encyclopedia of European Community Law*, 1978.



to ECSC, EEC and Euratom<sup>394</sup>. The legal instruments of three Community Treaties<sup>395</sup> closely connected each other in reference to the enlargement procedure, however, substantial differentiation is visible between three accession articles in terms of their respective principles. Indeed, provisions of the Treaties of EEC and Euratom underlined the significance of intergovernmentalism, where member states had considerable authority to govern the accession process, in contrast, Article 98 ECSC referred to the principle of supranationalism<sup>396</sup>. European integration's fundamental landscape, with similarities in handling membership applications, highlighted a distinction in member states' roles during accession agreement ratification, contrasting the EEC and Euratom treaties with the Council's role in Article 98 ECSC enlargement<sup>397</sup>.

The enlargement law, clarified by the 1986 SEA<sup>398</sup> in Luxembourg through its third revision of relevant provisions, ultimately granted the European Parliament a special role in the accession process. In addition, Maastricht Treaty<sup>399</sup> brought essential amendments to reduce the gaps among the previous accession instruments, namely, Articles 98 ECSC, 237 EEC and 205 Euratom, however supranational and intergovernmental perspectives were still evident. Furthermore, Amsterdam Treaty delivered Article 49 TEU in reference to Article 6 TEU to cope with the accession regulation, so that fundamental values and principle of the rule of law had to be necessarily satisfied by the applicant country<sup>400</sup>.

The accession procedure can be understood through a detailed analysis of Articles 98 ECSC, 237 EEC, and 205 Euratom, serving as the legal basis for future enlargements. While Article 98 ECSC granted the Council the authority to decide membership stipulations, Articles 237 EEC and 205 Euratom allowed member states and candidate states to jointly define accession conditions, with notable distinctions in legal language leading to disparities in the

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<sup>394</sup> T. HARTLEY, *The Foundations of European Community Law: An Introduction to the Constitutional and Administrative Law of the European Community*, Oxford, 2007.

<sup>395</sup> N. MOUSSIS, *Access to European Union: Law Economics, Policies*, 1998.

<sup>396</sup> V. ZAHARIA, V. POZNEACOVA, *Supranationalism vs. Intergovernmentalism in the Actual Organization of EU*, in *Logos Universality Mentality Education Novelty Section*, 2020.

<sup>397</sup> R. JANSE, *The Evolution of the Political Criteria for Accession to the European Community, 1957–1973*, in *European Law Journal*, 2018.

<sup>398</sup> D. CHALMERS, G. DAVIES, G. MONTI, *European Integration and the Treaty on European Union*, in *European Union Law*, Cambridge, in 2019.

<sup>399</sup> A. VON BOGDANDY, *The Legal Case for Unity: The European Union as A Single Organization With A Single Legal System*, in *Common Market Law Review*, 1999.

<sup>400</sup> L. FRENHHOFF LARSEN, *Enlargement, Treaty Reform and Crises (1993-2021)*, in *Bloomsbury Academic*, 2023.

legal spirit of the enlargement instruments<sup>401</sup>. Contrary to Article 98 ECSC<sup>402</sup>, the accession procedure outlined in Articles 237 EEC and 205 Euratom divided the process into two stages — a community phase and interstate phase — leading to potential misunderstandings and confusion, particularly regarding the sequence and timing of stages, as well as the application of the Commission's opinion and Council's decision in relation to accession negotiations.

Upcoming enlargement challenges prompted reforms, with the 1967 Merger Treaty and 1970 Budget Treaty streamlining the process by consolidating executive functions<sup>403</sup> under a single Commission and establishing a unified Council, contributing to a more cohesive European Union. In the context of EU enlargement policies, the 1970 and 1975 budget treaties<sup>404</sup> represented significant milestones in democratic and institutional design. These treaties bestowed the European Parliament with new powers<sup>405</sup> related to the community's budgetary process and established the European Court of Auditors,<sup>406</sup> bolstering the EU's ability to effectively manage its finances and institutions during deliberations on potential enlargements. These treaties revamped European Communities, reflecting the EU's commitment to strengthen internal structures, processes, and expand global influence.

Additionally, Maastricht Treaty<sup>407</sup> streamlined and enhanced the previously mentioned mechanisms for accession, introducing greater clarity and innovative improvements to the legal process. The new instrument comprised EU accession application constituting three pillars, namely, European Communities, the Common Foreign and Security Policy (CFSP)<sup>408</sup> and the collaboration in Justice and Home Affairs (JHA). The Maastricht Treaty<sup>409</sup> innovatively incorporated the accession procedure into the second and third pillars of the EU, introducing a new participant and enhancing the foundation of enlargement law. In other words, the role of

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<sup>401</sup> K. RISTOVA-AASTERUD, *The Legal Aspects*, cit.

<sup>402</sup> B. SCHLOH, *The Accession of Greece to the European Communities*, 1980.

<sup>403</sup> F. LAURSEN, *The 1965 Merger Treaty: The First Reform of the Founding European Community Treaties*, in *Designing the European Union: From Paris to Lisbon*, 2012.

<sup>404</sup> A. C. KNUDSEN, *The 1970 and 1975 Budget Treaties: Enhancing the Democratic Architecture of the Community*, in *Designing the European Union: From Paris to Lisbon*, 2012.

<sup>405</sup> A. DE FEO, *A History of Budgetary Powers and Politics in the Eu: The Role of European Parliament. Part II: The Non-Elected Parliament 1957-1978*, 2016.

<sup>406</sup> G. MOGGIA, *Analysing the Origins of the 'Statement of Assurance': The European Court of Auditors After the Maastricht Treaty*, in *Financial Accountability in the European Union*, 2020, p. 57.

<sup>407</sup> A. MUSARAJ, *The Maastricht Treaty and the Accession of the Western Balkans*, cit.

<sup>408</sup> H. ARIKAN, *The Future of European Union Enlargement Policy, Turkey Is 'In or Out'*, in *Eu/Turkey Relations in the Shadows of Crisis: A Break-Up or Revival?* in Rowman & Littlefield, 2021.

<sup>409</sup> D. DINAN, *From Treaty Revision to Treaty Revision: The Legacy of Maastricht*, in *Journal of European Integration History*, 2013.

European Parliament<sup>410</sup> became significant in the course of accession process where its approval by the absolute majority was considered binding. Accordingly, the reforms modified the equilibrium of power among the Community organs, particularly influencing the leading role of the Council in the membership procedure. In this respect, the key role<sup>411</sup> of the Parliament altered the spirit of the enlargement procedure from intergovernmental process to the involvement of EU citizens.

The Treaty of Nice<sup>412</sup>, the third major revision of the EU treaty within a decade, played a vital role in enabling the EU's enlargement process by addressing the need to adapt its foundational TEU to accommodate the expected accession of twelve candidate states by 2004. The replacement of the European Community (EC) with the Union, coupled with the Treaty of Nice<sup>413</sup> and subsequent enlargements, prompted a comprehensive update. The new volume not only traces the historical evolution of European integration from the Treaties of Paris and Rome but also emphasizes the revision of Treaty rules and considers changes in the European legal framework, influenced in part by the Treaty of Nice and subsequent legislative and jurisprudential developments in all EU competence areas<sup>414</sup>.

Nice Treaty<sup>415</sup> served a noticeable function in adapting EU organs and decision-making procedures to accommodate the anticipated enlargement of the EU. Signed and implemented, it provided the necessary flexibility to address uncertainties regarding the number, order, and timing of new member states joining the EU<sup>416</sup>. While the Treaty of Nice made structural adjustments, such as restructuring judicial organs and adapting procedures, it fell short in resolving the democratic deficit issue within the EU<sup>417</sup>. Consequently, it set the stage for further discussions and initiatives aimed at enhancing democratic legitimacy and transparency,

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<sup>410</sup> D. DINAN, *The Arc of Institutional Reform in Post-Maastricht Treaty Change*, in *The Maastricht Treaty: Second Thoughts After 20 Years*, 2016.

<sup>411</sup> B. M. FARINA, *Le Nuove Competenze Del Parlamento Europeo Nel Trattato Di Maastricht*, in *Il Trattato Di Maastricht, Edizioni Scientifiche Italiane*, 1995.

<sup>412</sup> P. KATZ, *The Treaty of Nice and European Union Enlargement: The Political, Economic, and Social Consequences of Ratifying the Treaty of Nice*, 2003.

<sup>413</sup> E. BEST, *The Treaty of Nice: Not Beautiful But It'll Do*, in *Eipascope*, 2001.

<sup>414</sup> F. POCAR, M. C. BARUFFI, *Commentario Breve Ai Trattati Dell'unione Europea*, in *CEDAM*, 2014.

<sup>415</sup> M. GRAY, A. STUBB, *The Treaty of Nice-Negotiating a Poisoned Chalice*, in *Journal of Common Market Studies*, 2001.

<sup>416</sup> R. BALDWIN, *Nice Try: Should the Treaty of Nice Be Ratified?*, in *Centre for Economic Policy Research*, 2001.

<sup>417</sup> F. HEINEMANN, *The Political Economy of Eu Enlargement and the Treaty of Nice*, in *European Journal of Political Economy*, 2003.

ultimately leading to the establishment of the Convention on the Future of Europe<sup>418</sup> and subsequent treaty revisions<sup>419</sup>.

Amid concerns among EU citizens about the motives and economic implications of enlargement, the EU remained committed to its expansion goals. As the Union expanded to include new members in 2004<sup>420</sup>, it brought to the forefront concerns related to democratic representation, the rule of law, and citizens' comprehension of the ramifications and economic implications of enlargement. Moreover, structural reforms were deemed essential for successful enlargement, while debates on the nature of the Charter of Rights raised questions about protecting fundamental rights in the European legal framework<sup>421</sup>. The treaty's deliberate silence on fundamental rights, following the community tradition of favoring non-codification, posed structural challenges. These challenges underscored the issues confronted by the EU in its efforts to sustain the trust<sup>422</sup> and confidence of its existing citizens. This context of enlargement-related concerns and the democratic deficit issue highlighted by the Nice Treaty's limitations further intensified the need for reforms and revisions in the EU's institutional framework.

The evolution of EU law in the enlargement process has been considerably influenced by key innovations introduced by the Lisbon Treaty<sup>423</sup>. This treaty introduced substantial changes to the EU's legal framework and institutional mechanisms, bolstering the role of the European Parliament and the ECJ while granting binding status to the Charter of Fundamental Rights (CFR)<sup>424</sup>. These innovations have had profound implications for the rule of law within the EU and its enlargement negotiations. The entry into force of the Lisbon Treaty has provided the EU with the means to pursue its enlargement agenda while maintaining the momentum of

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<sup>418</sup> U. DRAETTA, *Elementi di Diritto Dell'unione Europea, Parte Istituzionale, Ordinamento e Struttura dell'unione Europea*, in Giuffr  Editore, 2009.

<sup>419</sup> F. FABBRINI, *Reforming the Eu Outside the Eu? The Conference on the Future of Europe and Its Options*, in *European Papers-A Journal on Law and Integration*, 2020.

<sup>420</sup> V. ANGHIEL, E. JONES, *Failing Forward in Eastern Enlargement: Problem Solving Through Problem Making*, in *Journal of European Public Policy*, 2022.

<sup>421</sup> C. AQUINO, *Il Quinto Allargamento: La Sfida Istituzionale, Il Ruolo delle Istituzioni Comunitarie a Seguito dell'Allargamento Europeo*, 2006.

<sup>422</sup> Z. TAYDAS, C. KENTMEN-CIN, *Who Is Afraid of Eu Enlargement? A Multilevel Comparative Analysis*, in *Political Research Quarterly*, 2017.

<sup>423</sup> E. SPAVENTA, *The Response of the Political Institutions: From the 1977 Declaration to the Lisbon Treaty*, in *Fundamental Rights in the European Union*, in *European Union Law*, Oxford, 2020.

<sup>424</sup> J. ZILLER, *The Lisbon Treaty*, in *Oxford Research Encyclopedia of Politics*, 2019.

EU integration<sup>425</sup>. The renewed consensus on enlargement emphasizes commitment consolidation, rigorous conditionality, improved communication, and the EU's capacity to integrate new members, maintaining credibility and driving reform agendas<sup>426</sup>.

Lisbon Treaty, in contrast to previous attempts, has redefined the dynamics of rule of law considerations<sup>427</sup> and empowered member states to employ its flexibility to influence the conditions imposed on candidate countries seeking EU accession. One of the notable changes was the establishment of a more structured framework for EU enlargement, which included specific criteria that candidate countries needed to meet before joining the EU<sup>428</sup>. Additionally, the Treaty<sup>429</sup> enhanced the role of the European Parliament and the national parliaments in the accession process, fostering greater transparency and democratic scrutiny. As a result, the evolution of EU law<sup>430</sup> in the context of enlargement is marked by these developments, which continue to shape the evolving European Union and its approach to the rule of law. Importantly, the Lisbon Treaty did not adequately address existing challenges, and European citizens commenced feeling increasing insecurity about the present and future of the Union<sup>431</sup>.

#### 4. Legal Impediments to European Integration

Significant political and economic challenges pose a threat to the progression of the ever-closer union. Several years of crisis management<sup>432</sup> and introduction of institutional changes have been applied to address the future shocks. However, the model of the 'ever closer union', that has contributed to the continent through the peace and security interests, encounters numerous difficulties<sup>433</sup>. The founders of the Union consider that the high level of

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<sup>425</sup> P. BILANCIA, *The Dynamics of the Eu Integration and the Impact on the National Constitutional Law: The European Union After the Lisbon Treaties*, 2012.

<sup>426</sup> Council of European Union, *Council Conclusions on Enlargement/Stabilization and Association Process, 3060th General Affairs Council Meeting Brussels, 14 December 2010*.

<sup>427</sup> T. CANETTA, *Le Principali Innovazioni del Trattato di Lisbona tra Allargamento e Approfondimento*, 2008.

<sup>428</sup> P. CRAIG, *The Lisbon Treaty: Law, Politics, and Treaty Reform*, Oxford, 2010.

<sup>429</sup> J. C. PIRIS, *Il Trattato di Lisbona*, in Giuffrè Editore, 2013.

<sup>430</sup> A. BIONDI, P. EECKHOUT, S. RIPLEY, *EU Law After Lisbon*. Oxford, 2012.

<sup>431</sup> A. VILLAFRANCA, *Il Trattato di Lisbona: Fine di una Crisi?* in ISPI Policy Brief, 2007.

<sup>432</sup> J. BRADBURY, *The European Union and the Contested Politics of 'Ever Closer Union': Approaches to Integration, State Interests and Treaty Reform since Maastricht*, in *Perspectives on European Politics and Society*, 2009.

<sup>433</sup> K. SMITH, *An End to Enlargement: The Eu, Its Neighbourhood, and European Order*, in *International Relations and the European Union*, 2023.

unemployment, social confusion and an increasing rift between indebted countries of Southern Europe and wealthier Northern Europe negatively influence the integration process. Thus, to prevent the potential weakening of Europe in the future, member states must prioritize addressing the Eurozone crisis alongside implementing institutional changes<sup>434</sup>.

The Lisbon Treaty has significantly expanded the scope and exercise of EU powers towards the goal of an ever-closer union, but challenges rooted in democratic concerns hinder the establishment of deeper economic, environmental, freedom, security, and justice, as well as human rights unions.<sup>435</sup> Perceptions of the EU often included concerns about the need for increased transparency, citizen engagement, and empowerment of the European Parliament to strengthen the legitimacy and effectiveness of European integration.<sup>436</sup> Despite the arisen challenges the EU by its nature is a dynamic organization that is expected to deepen and widen its areas of responsibility and it comprises an instruction to develop integration.

The pursuit of ever-closer union<sup>437</sup> in the EU prompts inquiries into harmonizing diverse values and traditions, encountering challenges rooted in historical, political, economic, and religious differences. While both possible and desirable, achieving comprehensive harmonization requires dedicated time, open-minded dialogue, and careful consideration of the continent's cultural diversity.<sup>438</sup> Brexit exemplified the complex dynamics of both enlargement and disintegration within the EU framework, influenced by differing interpretations of integration principles.<sup>439</sup> For instance, in the Netherlands, concerns arose from a perceived misalignment between the goals of European integration and their practical implementation, highlighting the need for legal coherence and legitimacy.<sup>440</sup>

While the ECJ effectively navigated the balance between EU integration and member states' interests, occasional instances of imbalance underscore the importance of upholding

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<sup>434</sup> C. LEMKE, *Challenging the "Ever Closer Union": Political Consequences of the Eurozone Crisis*, in *American Foreign Policy Interests*, 2014.

<sup>435</sup> J. SNELL, *European Constitutional Settlement, an Ever-Closer Union, and the Treaty of Lisbon: Democracy or Relevance?*, in *European Law Review*, 2008.

<sup>436</sup> S. HIX, K. GOETZ, *Introduction: European Integration and National Political Systems*, 2000.

<sup>437</sup> P. BOSSACOMA BUSQUETS, *Secession from and Secession within the European Union: Toward a Holistic Theory of Secession*, in *International Journal of Constitutional Law*, 2024.

<sup>438</sup> G. HERMERÉN, *European Values – and Others. Europe's Shared Values: Towards an Ever-Closer Union?*, in *European Review*, 2008.

<sup>439</sup> P. MORILLAS, *Shapes of a Union: From Ever Closer Union to Flexible Differentiation After Brexit*, 2017.

<sup>440</sup> R. CUPERUS, *Why the Dutch Voted No. An Anatomy of the New Euroscepticism in the Old Europe*, in *Progressive Politics*, 2005.

both EU integration and the rule of law.<sup>441</sup> The Omega case,<sup>442</sup> alongside other<sup>443</sup> instances underscored the delicate balance between European integration and national sovereignty<sup>444</sup> within the framework of the rule of law. While the ECJ's rulings in Omega<sup>445</sup> acknowledged the importance of fundamental rights and diversity in member states' norms, cases like Tanja Kreil<sup>446</sup> exemplified the Union's pursuit of its aims sometimes at the expense of national interests. However, these rulings demonstrated a commitment to the rule of law, prioritizing legal interpretations that balanced European integration with fairness and equality across member states, fostering a cohesive legal framework within the EU. The ECJ's ruling<sup>447</sup> against Germany and other countries regarding notary profession nationality conditions reflected a nuanced dynamic in EU integration. While upholding EU principles of non-discrimination, the Court's decision also underscored the ongoing challenge of balancing national interests with the rule of law within the integration process.<sup>448</sup>

Furthermore, Article 7 of the TEU assumed a pivotal role in the context of EU integration, particularly concerning the adherence to the rule of law.<sup>449</sup> Serving as the cornerstone of the EU's enlargement framework, Article 7 empowered the European Council to address serious and persistent breaches of fundamental values by member states, encompassing aspects such as democracy, human rights, and fundamental freedoms.<sup>450</sup> This mechanism underscored the significance of upholding the rule of law within both existing and

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<sup>441</sup> J. SCHWARZE, *Balancing EU Integration and National Interests in the Case-Law of the Court of Justice*, in *The Court of Justice and the Construction of Europe: Analyses and Perspectives on Sixty Years of Case-Law - La Cour de Justice et la Construction de l'Europe: Analyses et Perspectives de Soixante Ans de Jurisprudence*, 2012.

<sup>442</sup> Court of Justice of the European Union, *Omega v Oberbürgermeisterin der Bundesstadt Bonn, Oliver Brüstle v Greenpeace, Apothekerkammer des Saarlandes and Others* (Case C-171/07) and *Helga Neumann-Seiwert* (Case C-172/07) v *Saarland and Ministerium für Justiz, Gesundheit und Soziales*.

<sup>443</sup> Judgment of the Court (Grand Chamber), *Werner Mangold v Rüdiger Helm*, C-22/05, 22 November 2005; Judgment of the Court (Grand Chamber), *Gerardo Ruiz Zambrano v Office National de l'Emploi (ONEM)*, C-34/09, 8 March 2011.

<sup>444</sup> Judgment of the Court, *Apothekerkammer des Saarlandes and Others*, cit; Judgment of the Court (Grand Chamber), *Oliver Brüstle v Greenpeace e.V.*, C-34/10, 18 October 2011.

<sup>445</sup> Judgment of the Court (First Chamber), *Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn*, C-36/02, 14 October 2004.

<sup>446</sup> Judgment of the Court, *Tanja Kreil v Bundesrepublik Deutschland*, C-285/98, 11 January 2000.

<sup>447</sup> Court of Justice of the European Union, Judgments in Cases C-47/08, C-50/08, C-51/08, C-53/08, C-54/08, C-61/08 and C-52/08, *Commission v Belgium, France, Luxembourg, Austria, Germany, Greece and Portugal*, Press Release No 50/11, Luxembourg, 24 May 2011.

<sup>448</sup> L. AVRIL, *Law and the European Union*, in *Elgar Companion to the European Union*, 2023.

<sup>449</sup> D. KOCHENOV, *Busting the Myths Nuclear: A Commentary on Article 7 TEU*, 2017.

<sup>450</sup> W. SADURSKI, *Adding Bite to a Bark: The Story of Article 7*, in *EU Enlargement*, *Columbia Journal of European Law*, 2009.

prospective member states, ensuring their alignment with the core principles of the EU.<sup>451</sup> By establishing a comprehensive framework to tackle challenges and concerns during the enlargement process, Article 7 not only safeguarded the EU's foundational principles but also reinforced the integration trajectory by promoting a community of nations committed to the rule of law and shared values.<sup>452</sup>

Essentially, Treaty of Lisbon<sup>453</sup>, with a focus on the values outlined in the current Article 2 TEU, introduced modifications to Articles 7 and 49 TEU to address serious and persistent breaches by member states in terms of rule of law, thereby shaping the trajectory of the EU integration process.<sup>454</sup> Thus, augmenting the mechanism with broader sanctions and a lower approval majority could enhance its effectiveness.<sup>455</sup> This legal instrument was structured in two stages, analogous to the 'preventive' and 'corrective' phases, offering a means to identify risks or breaches of EU values by member states. This established a mechanism within the EU integration process to address potential violations and uphold fundamental principles.<sup>456</sup> In the context of EU enlargement, Article 7 TEU gained significance as a tool to address non-compliance with the rule of law, underlining the need for robust measures during the integration process.<sup>457</sup> Notably, it exhibits parallels with the EU's new enlargement methodology, emphasizing elaborate sanctions to tackle rule-of-law concerns.<sup>458</sup> Importantly, it has remained largely inactive due to a high threshold for activation and political reluctance, reserved for systematic issues rather than individual breaches.<sup>459</sup> The challenge in enforcing Article 2 TEU values through Article 7 TEU is viewed as a legal hurdle, yet the article

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<sup>451</sup> G. BUDÓ, *EU Common Values at Stake: Is Article 7 TEU an Effective Protection Mechanism?*, in *Documents CIDOB*, 2014.

<sup>452</sup> B. FEKETE, *On Article 7 TEU: Context, History, Doctrine and Shortcomings*, 2017.

<sup>453</sup> S. DOUGLAS-SCOTT, *The European Union and Human Rights after the Treaty of Lisbon*, in *Human Rights Law Review*, 2011.

<sup>454</sup> I. M. LARION, *Protecting EU Values, a Juridical Look at Article 7 TEU*, in *LESIJ-Lex et Scientia International Journal*, 2018.

<sup>455</sup> B. BUGARIC, *Protecting Democracy Inside the EU: on Article 7 TEU and the Hungarian Turn to Authoritarianism*, in *Reinforcing Rule of Law Oversight in the European Union*, Cambridge: Cambridge University Press, 2016.

<sup>456</sup> C. CLOSA, *Institutional Logics and the EU's Limited Sanctioning Capacity under Article 7 TEU*, in *International Political Science Review*, 2021.

<sup>457</sup> D. KOCHENOV, L. PECH, *Upholding the Rule of Law in the EU: on the Commission's 'Pre-Article 7 Procedure' as a Timid Step in the Right Direction*, 2015.

<sup>458</sup> A. PEJOVIĆ, *Rule of Law through the Mirror Glass – Is the New 2020 Enlargement Methodology a Pre-Accession TEU Article 7 Mechanism?*, 2021.

<sup>459</sup> Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament, on Article 7 of the Treaty on European Union: Respect for and Promotion of the Values on which the Union is Based*, COM(2003) 606 Final, Brussels, 15.10.2003.



emphasizes that democracy possesses a distinct legal meaning in EU law<sup>460</sup>. The ongoing rule of law crisis in the EU, partly attributed to institutional inertia regarding Article 7 TEU, underscores dissonance in the EU's understanding of the rule of law, particularly within the EU integration process.<sup>461</sup>

## 5. Dual Dynamics of Widening and Deepening

The discourse on widening (the expansion of the EU by welcoming new member states) and deepening (increasing the extend and solidity of the EU's powers) can be dissected in two significant dimensions: exploring the impact of widening on deepening and evaluating the intricate relationship between these two facets. We argue that the impact of widening on deepening depends on the position of the applicant country parallel to preference distribution of current member states in numerous policy spheres. As a result, widening may either obstruct or stimulate deepening and importantly, it might have various short and long-term effects<sup>462</sup>. Thus, widening might generate standstill and hinder deepening process in the short-term, whereas it may reinforce the role of supranational actors and ensure significant changes in institutions that promote deepening in the long-term. Assessment of relationship between widening and deepening<sup>463</sup> based on EU's own history and data on international organizations showed that there is a little evidence of a trade-off between width and depth.

While there is a prevalent presume that EU expansion impedes its deepening process, it's crucial to acknowledge that enlargement and deepening can progress simultaneously.<sup>464</sup> Prior to 2004, the expansion of EU territory did not impede but rather complemented deepening initiatives.<sup>465</sup> The expansion of the EU to encompass diverse preferences may heighten

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<sup>460</sup> Y. BOUZORAA, *The Value of Democracy*, cit.

<sup>461</sup> R. MAVROULI, *The Dark Relationship between the Rule of Law and Liberalism, the New ECJ Decision on the Conditionality Regulation*, in *European Papers - A Journal on Law and Integration*, 2022.

<sup>462</sup> D. KELEMEN, A. MENON, J. SLAPIN, *Wider and Deeper*, cit.

<sup>463</sup> F. CAMERON, *Widening and Deepening*, in *The Future of Europe: Integration and Enlargement*, 2004.

<sup>464</sup> P. H. LAURENT, M. MARESCEAU, *Deepening and Widening*, 1998.

<sup>465</sup> A. MURPHY, *The May 2004 Enlargement of the European Union: View from Two Years Out*, in *Eurasian Geography and Economics*, 2006.

legislative complexities, potentially risking gridlock<sup>466</sup> or conflict, which could undermine the EU's ability to effectively address significant issues in the future.

Initially, concerns arose about the effective functioning of EU institutions<sup>467</sup> as the Union expanded beyond its original six members, prompting debates on their ability to cope with the existing challenges.<sup>468</sup> However, subsequent reforms, including those outlined in treaties like the Treaty of Amsterdam, Treaty of Nice, the failed Constitutional Treaty, and the Lisbon Treaty, demonstrated adaptability and ensured compliance with enlargement, motivating new member states to implement reforms and maintain democratic principles<sup>469</sup>. Addressing the widening and deepening of the EU in the context of its increasing diversity, we emphasize that while the Union mandates a commitment to democracy and human rights,<sup>470</sup> it doesn't necessitate cultural homogenization and, in fact, supports the preservation of diverse cultures. The coexistence of diversity and enlargement doesn't threaten Europeanization; instead, it indicates that widening and deepening can harmoniously foster a united, culturally diverse European Union.<sup>471</sup>

The increasing number of member states in the EU is likely to undermine domestic order in new members and strain common institutions, politics, and culture, leading to pressures for financial transfers and potential breakdowns in the decision-making process.<sup>472</sup> An adequate respond to avoid the risk of threat is unquestionably emphasized using of qualified majority voting. Enlargement however strengthens EU trends toward slower legislative<sup>473</sup> and reform output, substantial budgetary conflict over structural funding, better administration pillarization, a robust Council vis-à-vis the Commission, concentrating more from deepening to widening. From the outcomes of enlargement, it is noticed that there is a little possibility to

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<sup>466</sup> T. KÖNIG, A. WARNTJEN, *The European Convention: Consensus without Unity?*, in *Policy-Making Processes and the European Constitution*, Routledge, 2006.

<sup>467</sup> T. SEKULIĆ, *The European Union and the Paradox of Enlargement: The Complex Accession of the Western Balkans*, 2020.

<sup>468</sup> T. M. CERNICOVA DRAGOMIR, *The Associated Trio, Political Conditionality, and the Dynamics of EU Enlargement Policy*, 2024.

<sup>469</sup> M. A. POLLACK, *Europe United? The Impact of the EU's Eastern Enlargement, Five Years On*, 2009.

<sup>470</sup> N. NEUWAHL, A. ROSAS, *The European Union and Human Rights*, Vol. 42. Brill, 2021.

<sup>471</sup> J. KOPSTEIN, D. REILLY, *As Europe Gets Larger, Will It Disappear?*, in *International Studies Review*, 2006.

<sup>472</sup> A. MORAVCSIK, M. A. VACHUDOVA, *National Interests, State Power and EU Enlargement*, in *East European Politics and Societies*, 2003.

<sup>473</sup> L. LANDOLFI, *L'Unione Europea e i Balcani Occidentali: Progressi e Strategie per il Prossimo Allargamento*, 2018.

anticipate the paralysis<sup>474</sup> of EU institutions which could remarkably alter the course of European integration.

In the realm of European integration, an ongoing discourse grapples with the challenge of harmonizing the dual imperatives of widening the Union's boundaries<sup>475</sup> and deepening the level of integration. The European Convention played a pivotal role in the EU reform process, emphasizing "widening & deepening"<sup>476</sup> not only in defining the Union's territorial scope but also in elucidating its identity and future trajectory.<sup>477</sup> The examination of the Commission's agenda for the future of the EU during Jean-Claude Juncker's term (2014-2019)<sup>478</sup> and that of the current President of the European Commission, Ursula von der Leyen,<sup>479</sup> revealed an exclusion of the possibility of new memberships, as well as their silent stance<sup>480</sup> on issues related to enlargement and deepening.

The EU's perspective on the dynamics of widening and deepening underwent significant transformation following the Russian aggression against Ukraine in February 2022.<sup>481</sup> President Zelensky's accession application,<sup>482</sup> accompanied by a request to activate a special procedure deviating from Article 49 TEU, aims to establish a de facto accelerated accession process, serving the mutual interests of Ukraine and the EU.<sup>483</sup> Nevertheless, considering an alternative approach to the one stipulated in this article, which is the only provision currently dictating the accession process, appears impractical<sup>484</sup>. The potential accession of Ukraine<sup>485</sup> would have had profound and unprecedented legal implications for the

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<sup>474</sup> M. PARÍZEK, M. HOSLI, B. PLECHANOVÁ, *Avoiding Paralysis: The Eastern Enlargement and the Council of the European Union*, in *Journal of European Integration*, 2015.

<sup>475</sup> F. SCHIMMELFENNIG, *Rebordering Europe: External Boundaries and Integration in the European Union*, in *Journal of European Public Policy*, 2021.

<sup>476</sup> T. SEKULIĆ, *Dimensions*, cit.

<sup>477</sup> C. REH, B. SCHOLL, *The Convention on the Future of Europe: Extended Working Group or Constitutional Assembly?*, in *Research Papers in Law*, 2005.

<sup>478</sup> J. C. CACHIA, *The Future of the EU in Jean-Claude Juncker's State of the Union Speeches*, 2020.

<sup>479</sup> E. GRAD-RUSU, *The Western Balkans within the European Commission, Discourse Analysis of President Ursula von der Leyen*, in P. A. MUREŞAN, *The 2020 Enlargement Package of the European Commission for the Western Balkans. Case Study: Communication on Enlargement*, in *International Relations and Area Studies: Focus on Western Balkans*, 2021.

<sup>480</sup> A. MOLNÁR, É. JAKUSNÉ HARNOS, *The Postmodernity of the European Union: A Discourse Analysis of State of the Union Addresses*, in *The International Spectator*, 2023.

<sup>481</sup> T. CERRUTI, *Ucraina e Unione Europea: Le Ragioni di un Avvicinamento Graduale*, 2022.

<sup>482</sup> M. EMERSON, *Opinion on Ukraine's Application for Membership of the European Union*, in CEPS, 2022.

<sup>483</sup> D. KOCHENOV, R. JANSE, *Admitting Ukraine to the EU*, cit.

<sup>484</sup> A. LIGUSTRO, F. FERRARO, P. DE PASQUALE, *Il Futuro del Mondo e dell'Europa Passa per Kiev*, 2022.

<sup>485</sup> R. PETROV, *The Impact of the Russian Invasion of Ukraine on Its Accession to the EU*, in *Fachinformationsdienst für Internationale und Interdisziplinäre Rechtsforschung Staatsbibliothek zu Berlin-Preußischer Kulturbesitz*, 2023.

European Union, introducing an extraordinary procedure that could disrupt ongoing negotiations and set a risky precedent. Additionally, considering the occupied Ukrainian territory and the mutual assistance clause in Article 42, paragraph 7, accession might have compelled member states to actively participate in the conflict, escalating the crisis with unpredictable outcomes<sup>486</sup>. The 2019 Communication from the Commission on EU Enlargement Policy specifies that Ukraine's application shall undergo evaluation through the traditional procedure, taking into account the Copenhagen criteria, and shall also be assessed based on consolidated criteria, fair and rigorous conditions, and the meritocratic principle.<sup>487</sup> The crucial need to include states that uphold Article 2 TEU, while ensuring no adverse impact on existing Member State relationships, raises the question of not only Ukraine's readiness to join the EU, but also whether the Union is prepared to incorporate Ukraine without jeopardizing existing integration process.<sup>488</sup>

In response to recent political developments, the EU took a significant step by granting candidate state status<sup>489</sup> to Ukraine and Moldova in June 2022, further solidifying its commitment as, on November 8, 2023, the Commission recommended initiating accession negotiations with both nations<sup>490</sup>. Importantly, President Ursula von der Leyen emphasized a strategic shift, indicating that enlargement would now take precedence over institutional deepening within the EU<sup>491</sup>.

It is clear that embracing the European perspective for the Western Balkans represents a genuine strategic decision, as it would enhance regional stability and prove crucial for the Union's credibility, success, and influence within the region and beyond its borders<sup>492</sup>. The

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<sup>486</sup> F. CASOLARI, *L'Ucraina e la (Difficile) Prospettiva Europea*, in *Quaderni di AISDUE*, Editoriale Scientifica, 2022.

<sup>487</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, *2019 Communication on EU Enlargement Policy*, COM(2019) 260 Final, Brussels, 29.5.2019.

<sup>488</sup> R. TORRESAN, *Una Seconda Vita per il Criterio di Copenhagen "Perduto"? La c.d. Capacità di Assorbimento e l'Identità dell'Unione Europea davanti all'Eventuale Adesione dell'Ucraina*, in *BlogDUE*, 11 May 2022.

<sup>489</sup> European Council, *European Council Meeting (23 and 24 June 2022) – Conclusions*, EUCO 24/22, CO EUR 21 CONCL 5, Brussels, 24 June 2022.

<sup>490</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2023 Communication on EU Enlargement Policy*, COM(2023) 690 Final, Brussels, 8.11.2023.

<sup>491</sup> E. BARACANI, *Ideational Agenda-Setting Leadership: President von der Leyen and the EU Response to the Invasion of Ukraine*, in *West European Politics*, 2023.

<sup>492</sup> J. ZIELONKA, *Europe as Empire: The Nature of the Enlarged European Union*, Oxford, 2006.

Council's approval of the Commission's communication<sup>493</sup> on reinforcing the accession process for the Western Balkans (5 February 2020) marked a new direction, prioritizing fundamental reforms in areas such as the rule of law, democratic institutions, public administration, and candidate countries' economies. On May 4, 2022, the European Parliament adopted a resolution emphasizing the importance of boosting European integration in response to recent war events, highlighting the need for treaty changes to simplify institutions, enhance transparency and accountability in decision-making<sup>494</sup>. During the informal meeting<sup>495</sup> of the European Council in Prague on 7 October 2022, a comprehensive agenda was set to broaden political cooperation, aligning with the European Political Community, with a primary focus on fostering dialogue and collaboration to effectively address common issues, thereby reinforcing the security, stability, and prosperity of the European continent<sup>496</sup>.

The Lisbon Treaty introduced a simplified revision procedure for internal Union policies, however, the requirement for unanimity and national ratification has created challenging and inflexible conditions for treaty reform, hindering the EU's ability to adapt easily<sup>497</sup>. Thence, the EU Parliament proposed amendments focusing on electoral reform, future treaty methodology, qualified majority voting, affiliate membership, and enhanced health competence, underlining the necessity for a more flexible and democratic EU decision-making process without pursuing a full-scale Convention<sup>498</sup>. The September 2023 Franco-German working group report on EU institutional reform advocated for significant alterations, including strengthening rule of law and democracy requirements and enhancing the effectiveness of decision-making processes<sup>499</sup>. Failure to reform the EU or integrate committed candidate countries would impose a high cost on the EU, its member states, and citizens, posing

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<sup>493</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Region, *Enhancing the Accession Process - A Credible EU Perspective for the Western Balkans*, COM(2020) 57 Final, Brussels, 5.2.2020.

<sup>494</sup> European Parliament, *Resolution on the Follow-Up to the Conclusions of the Conference on the Future of Europe*, 2022/2648(RSP), 4.5.2022.

<sup>495</sup> European Council, *Informal Meeting of the European Council Prague*, Brussels, 5 October 2022.

<sup>496</sup> R. PETROV, *Search for the European Political Community's Identity – A Pan European Political 'Bazaar' or a Quiet Room for Peace-Making?*, in *EU Law Live*, 2022.

<sup>497</sup> A. DUFF, *Constitutional Change in the European Union, Towards a Federal Europe*, Cambridge, 2022.

<sup>498</sup> A. DUFF, *Five Surgical Strikes on the Treaties of the European Union*, in *European Papers - A Journal on Law and Integration*, 2023.

<sup>499</sup> O. COSTA, D. SCHWARZER, P. BERÈS, G. GRESSANI, G. MARTI, F. MAYER, T. NGUYEN, N. VON ONDARZA, S. RUSSACK, F. TEKIN, S. VALLÉE, C. VERGER, *Report of the Franco-German working group on EU institutional reform, sailing on high seas: reforming and enlarging the EU for the 21st century*, Paris-Berlin, 2023.

a significant risk to the EU's future without adequate preparations<sup>500</sup>. The October 2023 Granada declaration on enlargement ambiguously underscored the necessity for the Union to engage in internal groundwork and reforms, establishing long-term aspirations and confronting critical issues related to priorities, policies, and the capacity to take action<sup>501</sup>. On October 25, 2023, the European Parliament Committee on Constitutional Affairs endorsed a draft report<sup>502</sup> proposing significant amendments to EU treaties, emphasizing enhanced EU authority in foreign affairs, security, defense, and migration. The report advocates for shared responsibilities in health and education, exclusive EU jurisdiction in environment and biodiversity, implementation of EU-wide referendums, emphasizing a strengthened political role for the Commission and granting more legislative powers to the Parliament with co-legislative budgetary authority, and reversing the Council and Parliament's roles in selecting the Commission President. Finally, on November 22, 2023, the Parliament adopted a proposal to revise treaties, emphasizing the need for profound reform before any enlargements, asserting that the current institutional framework is adequate for a Union of 27. The outlined treaty changes aim to shift to qualified majority voting, improve monitoring of foundational values, empower the European Parliament, and broaden Union competencies in strategic domains<sup>503</sup>. In fact, The European Council, in its December 2023 conclusions, stressed the strategic importance of enlargement for peace and prosperity, urging accelerated Western Balkans accession, and emphasized the need for sustainable financing, future-fit policies, and effective EU institutional functioning as the Union expands<sup>504</sup>. Thus, the Treaty reform debate addresses challenges in EU democracy, adapts crisis response mechanisms, and updates provisions in areas such as EMU, highlighting the difficulties with unanimity voting in CFSP, as demonstrated in the Ukraine crisis<sup>505</sup>.

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<sup>500</sup> F. MAYER, T. NGUYEN, *The Franco-German Report on EU Institutional Reform: Origins, Recommendations and the Role of Lawyers*, in *EU Law Live*, 2023.

<sup>501</sup> S. DOMARADZKI, *EU Enlargement and Geopolitics: Is It Relevant Today?*, in *Identities: Journal for Politics, Gender and Culture*, 2023.

<sup>502</sup> European Parliament, Committee on Constitutional Affairs, *Draft Report on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL))*, 22.08.2023.

<sup>503</sup> European Parliament, *Proposals of the European Parliament for the Amendment of the Treaties*, European Parliament Resolution of 22 November 2023 on Proposals of the European Parliament for the Amendment of the Treaties (2022/2051(INL)), 22.11.2023.

<sup>504</sup> European Council, *European Council Meeting (14 and 15 December 2023) – Conclusions*, EUCO 20/23 CO EUR 16 CONCL 6, Brussels, 15 December 2023.

<sup>505</sup> G. BARRETT, *Reforming the Treaties*, in *EU Law Live*, 2023.

Despite the historical setbacks and the anticipation of limited primary law revisions after the failures of the constitution and Lisbon Treaty<sup>506</sup>, the debate on Union reforms has recently intensified<sup>507</sup>, engaging important institutional actors. Since the Maastricht Treaty, the concept of variable geometries<sup>508</sup> has played a significant role in the European integration process, becoming a formalized aspect of legal institutions<sup>509</sup>. Following the 2016 British referendum<sup>510</sup>, the EU initially stressed the unity of the Union but subsequently acknowledged the necessity for increased differentiation in the rights and obligations<sup>511</sup> among its member states. With the recent withdrawal of the United Kingdom, the theme seemed to be marginalized<sup>512</sup> and the Next Generation EU plan was chosen to be implemented across the entire union instead of exclusively within the euro area in favor of uniform integration<sup>513</sup>. In addition, enhanced cooperation, which establish differentiation<sup>514</sup> on specific measures, outlined in articles 20 TEU and 326-344 TFEU, allowed for the adoption of more advanced legislation applicable to certain states alongside common rules that remain applicable for non-participating Member States.<sup>515</sup> Enhanced cooperation, as a practical tool for differentiated integration, has evolved from a conceptual idea to a reality, allowing member states to pursue policy objectives lacking unanimous consensus.<sup>516</sup> However, it is acknowledged that due to constitutional limits, it cannot serve as a universal solution for all cases requiring flexibility.<sup>517</sup> As it seen, the necessity to prepare for a new enlargement has redirected focus to differentiated

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<sup>506</sup> S. PEERS, *The Future of EU Treaty Amendments*, in *Yearbook of European Law*, 2012.

<sup>507</sup> G. TESAURO, *Una Nuova Revisione dei Trattati dell'Unione per Conservare i Valori del Passato*, in *I post di Aisdue*, 2021.

<sup>508</sup> B. LERUTH, S. GÄNZLE, J. TRONDAL, *The Routledge Handbook of Differentiation*, cit.

<sup>509</sup> B. DE WITTE, *The Elusive Unity of the EU Legal Order after Maastricht*, in *The Treaty on European Union 1993-2013: Reflections from Maastricht*, Intersentia, 2013.

<sup>510</sup> B. DE WITTE, *An Undivided Union? Differentiated Integration in Post-Brexit Times*, in *Common Market Law Review*, 2018.

<sup>511</sup> A. OTT, *A Flexible Future for the European Union: The Way Forward or a Way Out*, in *Reconciling the Deepening and Widening of the EU*, 2007.

<sup>512</sup> B. MARTILL, *Unity over Diversity? The Politics of Differentiated Integration after Brexit*, in *Journal of European Integration*, 2021.

<sup>513</sup> B. DE WITTE, *The European Union's COVID-19 Recovery Plan: The Legal Engineering of an Economic Policy Shift*, in *Common Market Law Review*, 2021.

<sup>514</sup> J. J. KUIPERS, *The Law Applicable to Divorce as Test Ground for Enhanced Cooperation*, in *European Law Journal*, 2012.

<sup>515</sup> P. DE PASQUALE, *L'Unione Europea e le Nuove Forme di Integrazione*, in *Diritto Pubblico Comparato ed Europeo*, 2017.

<sup>516</sup> D. THYM, *Competing Models for Understanding Differentiated Integration*, in *Between Flexibility and Disintegration, The Trajectory of Differentiation in EU Law*, 2017.

<sup>517</sup> R. BÖTTNER, *The Instrument of Enhanced Cooperation: Pitfalls and Possibilities for Differentiated Integration*, in *European Papers-A Journal on Law and Integration*, 2023.

integration as a potential solution, prompting a reconsideration of flexible constitutional frameworks.<sup>518</sup>

Differentiated integration has played a key role in reconciling divergences among member states with respect to integration objectives or methods<sup>519</sup>. For instance, exemptions for the United Kingdom and Denmark are established in the areas of the single currency adoption, participation in the Schengen acquis, the Area of Freedom, Security, and Justice, as well as actions in the field of defense, reflecting their specific interests<sup>520</sup>. Such agreements have often been employed within a select group of member states, notably in the Schengen and European Stability Mechanism treaties, to pursue objectives closely tied to the European integration process, functioning as instruments of differentiated integration<sup>521</sup>.

Differentiation in the context of external integration arises from international agreements, exemplified by the EEA Agreement, as well as internal EU acts such as the General Data Protection Regulation<sup>522</sup>. International agreements serve as a mechanism to expand the implementation of specific aspects of the Union's acquis to certain third countries, resulting in modes of 'integration without membership'<sup>523</sup>. This phenomenon is commonly associated with the concept of differentiated integration, widely discussed in a significant portion of academic discourse<sup>524</sup>.

Differentiated integration has evolved into a political imperative to navigate disparities among member states in their integration objectives and the challenges posed by potential substantial enlargements. The proposition of temporary or permanent mechanisms, such as the theory of *avant-garde* or the "hard core," serves as a strategic solution to prevent excessive fragmentation within the EU, allowing certain member states to advance at distinct paces while

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<sup>518</sup> A. MIGLIO, *Riforma dell'Unione e Integrazione Differenziata: L'Eterno Ritorno di un Binomio Classico*, in *Quaderni Aisdue*, 2023.

<sup>519</sup> F. SCHIMMELFENNIG, T. WINZEN, *Instrumental and Constitutional Differentiation in the European Union*, in *Journal of Common Market Studies*, 2014.

<sup>520</sup> E. FAHEY, *Swimming in a Sea of Law: Reflections on Water Borders, Irish (-British)-Euro Relations and Opting-Out and Opting-In after the Treaty of Lisbon*, in *Common Market Law Review*, 2010.

<sup>521</sup> E. PISTOIA, *Limiti all'Integrazione Differenziata dell'Unione Europea*, in *Colonna di Studi sull'Integrazione Europea*, Cacucci, 2018.

<sup>522</sup> L. PEDRESCHI, J. SCOTT, *External Differentiated Integration: Legal Feasibility and Constitutional Acceptability*, in *Robert Schuman Centre for Advanced Studies Research Paper*, 2020.

<sup>523</sup> F. MAIANI, R. PETROV, E. MOULIAROVA, *European Integration Without EU Membership: Models, Experiences, Perspectives*, 2009.

<sup>524</sup> M. RABINOVYCH, A. PINTSCH, *EU External Differentiated Integration and Compliance: Theoretical and Legal Aspects*, in *The Routledge Handbook of Differentiation in the European Union*, 2022.



maintaining an effective integration process.<sup>525</sup> It serves as a "Plan B" in case the revision of the Treaties fails, suggesting the possibility of accession agreements or inter se treaties as alternatives, but acknowledges that these options would pose institutional challenges and would not fully address the veto power of the member states.<sup>526</sup>

The vertical (deepening) and horizontal (widening) integration of the Union have gone hand in hand during the process of European integration. EU can be properly comprehended as a system of differentiated integration<sup>527</sup> which has become increasingly relevant aspect of enlargement. Differentiation originates from a higher heterogeneity of state preferences and capabilities during the process of enlargement and growing policy scope of EU integration. The more the state preferences increase in terms of policy sectors, the more likely it provokes serious conflicts and tackling the challenges becomes extremely complicated which in turn evokes nationalist backlash.<sup>528</sup> Differentiated integration is viewed more as a reflection of the EU's challenges than a definitive solution, posing complications for relations between member states and potentially undermining citizens' understanding of the EU's democratic essence<sup>529</sup>. In addition, it diminishes popular sovereignty and exposes member states to market influences, potentially compromising their autonomy.<sup>530</sup>

However, it is noteworthy to note that differentiated integration is a strategy aimed at mitigating tensions among member states, yet, rather than promoting genuine diversity, it primarily serves to pre-determine objectives and timelines as well as safeguard the Union's structure.<sup>531</sup> It is initially seen as a remedy for decision-making challenges, has taken on renewed significance amid economic crises. In the context of protecting the internal market, it

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<sup>525</sup> P. PONZANO, *L'Integrazione Differenziata nell'Ambito dell'Unione Europea e la "Costituzionalizzazione" dell'Eurozona*, 2015, p. 42-53.

<sup>526</sup> A. MIGLIO, *Riforme e Allargamento dell'Unione Europea: Verso una Integrazione Differenziata?*, in *Centro Studi sul Federalismo*, 2023.

<sup>527</sup> F. SCHIMMELFENNIG, B. RITTBERGER, *The EU as a System of Differentiated Integration: A Challenge for Theories of European Integration?*, *European Union*, 2015.

<sup>528</sup> F. SCHIMMELFENNIG, D. LEUFFEN, B. RITTBERGER, *Ever Looser Union? Towards a Theory of Differentiated Integration in the EU*, 2011.

<sup>529</sup> M. BRUNAZZO, *Costituzionalismo*, cit.

<sup>530</sup> A. SOMMA, *Europa a Due Velocità: Postpolitica dell'Unione Europea*, Imprimatur Editore, 2017.

<sup>531</sup> F. SALVI, *L'Italia e l'Unione Europea: Il Dibattito Parlamentare che Accompagnò il Processo di Integrazione Europea*, 2022.

is deemed advantageous for the entire Union, is characterized by a time-based differentiation devoid of quality concerns.<sup>532</sup>

Differentiation, characterized by non-identical application and enforcement of EU law across member states, appears to be the norm rather than the exception<sup>533</sup>. Brexit has prompted a reevaluation of differentiated integration, exposing the advantages and risks of uniform integration pace, emphasizing the need for increased acceptance of differentiated integration across various policy areas<sup>534</sup>. The prevalent presence of broadly interpreted 'differentiation' is a key aspect of the EU legal system, offering a vital balance to the uniform legal claims and principles that underpin the foundation of the EU legal order<sup>535</sup>.

From a structural-constitutional standpoint, various forms of differentiation are limited in flexibility, constraining the choices available to both member states and their citizens concerning their EU membership<sup>536</sup>. The Brexit negotiations revealed a notable increase in the flexibility of EU law compared to the initial legal doctrines that stressed the unity and indivisibility of the *acquis*<sup>537</sup>. In addition, Brexit<sup>538</sup> underscored the presence of inflexible structures in the EU, where sources of rigidity consist of legal rules and principles that, either independently or collectively, limit substantial differentiation within the legal and constitutional framework of the EU.<sup>539</sup> These sources of rigidity are not confined to individual rules or principles but may arise from the intricate interplay and amalgamation of diverse legal components and factual considerations.<sup>540</sup> Withdrawal of UK underscores the desire for increased differentiation in European integration, yet, exposes the formidable challenge of

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<sup>532</sup> E. PISTOIA, *Lo Stato di Salute dell'Integrazione Differenziata nell'Unione Economica e Monetaria in Epoca Post-Pandemica*, in *Quaderno AISDue Serie Speciale-Atti del Convegno "Ambiente, Digitale, Economia: L'Unione Europea Verso il 2030"*, 2023.

<sup>533</sup> A. DIMITROVA, B. STEUNENBERG, *The Power of Implementers: A Three-Level Game Model of Compliance with EU Policy and Its Application to Cultural Heritage*, in *Journal of European Public Policy*, 2017.

<sup>534</sup> J.S. VARA, R.A. WESSEL, *New Options for Differentiated Integration in the European Union: Introduction to the Special Section*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>535</sup> Review Among Numerous Other Instances: C-399/11 *Melloni*, C-402/05 And C-415/05 *Kadi And Al Barakaat International Foundation V Council And Commission*, C-284/16 *Achmea*, C-896/19 *Repubblika*, C-156/21 *Hungary V Parliament And Council*, C-157/21 *Poland V Parliament And Council*.

<sup>536</sup> A. CUYVERS, *The Confederal Comeback: Rediscovering the Confederal Form for a Transnational World*, in *European Law Journal*, 2013.

<sup>537</sup> C. HILLION, *Withdrawal under Article 50 TEU: An Integration-Friendly Process*, in *Common Market Law Review*, 2018.

<sup>538</sup> T. CHOPIN, C. LEQUESNE, *Differentiation as a Double-Edged Sword: Member States' Practices and Brexit*, in *International Affairs*, 2016.

<sup>539</sup> B. DE WITTE, *Near-Membership, Partial-Membership and the EU Constitution*, in *European Law Review*, 2016.

<sup>540</sup> J. WOUTERS, B. DE WITTE, *Constitutional Limits of Differentiation: The Principle of Equality*, 2001.

introducing flexibility within the current rigidities of the EU legal and constitutional framework.<sup>541</sup>

Rooted in the EU's historical pursuit of widening and deepening through the addition of member countries, Brexit represents a deviation from the assumed inevitable trajectory of deeper uniform integration. It highlights the enduring and crucial role of differentiated integration in confronting complex challenges within the Union, even amid conceptual confusion and a reluctance to openly embrace it<sup>542</sup>. The Permanent Structured Cooperation (PESCO), as a catalyst for differentiated integration in defense post-Brexit, has emerged as a flexible and successful mechanism, fostering collaboration among member states and overcoming challenges<sup>543</sup>. Such integration model within the PESCO in the Common Security and Defence Policy appears to align with EU principles of consistency and sincere cooperation.<sup>544</sup>

Brexit also reduced the EU's reliance on differentiated law to manage internal conflicts over financial regulations, allowing for greater convergence, but poses a risk of the EU becoming a rule-taker from the UK through potential regime complexity<sup>545</sup>. The period from the Brexit referendum to the recent Ukraine crisis reveals that concerns about setting a precedent and perceived "cherry-picking" by the UK hindered the possibility of a differentiated outcome<sup>546</sup>. The persistent differences among the remaining 27 EU Member States shows that the traditional trajectory of uniform integration may no longer be inevitable, emphasizing the necessity for a more open acceptance and application of differentiated integration mechanisms to address evolving complexities.<sup>547</sup>

Legislative differentiation is a flexible alternative, emphasizing its advantages in maintaining equality among member states while acknowledging its multifaceted nature and

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<sup>541</sup> A. CUYVERS, *The Legal Space for Structural Differentiation in the EU: Reciprocity, Interconnectedness and Effectiveness as Sources of Constitutional Rigidity*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>542</sup> M. KENDRICK, *Brexit the Ultimate Opt-Out: Learning the Lessons on Differentiated Integration*, in *European Papers*, 2023.

<sup>543</sup> B. CÓZAR MURILLO, *PESCO as a Game-Changer for Differentiated Integration in CSDP after Brexit*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>544</sup> A. HOUDÉ, R. WESSEL, *A Common Security and Defence Policy: Limits to Differentiated Integration in PESCO?*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>545</sup> S. DONNELLY, *Brexit, EU Financial Markets and Differentiated Integration*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>546</sup> B. MARTILL, M. SUS, *With or Without EU: Differentiated Integration and the Politics of Post-Brexit EU-UK Security Collaboration*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>547</sup> M. KENDRICK, *Brexit*, cit.

potential as a mechanism for managing diversity within EU legislation<sup>548</sup>. The intricate relationship between soft law and integration through law in the EU suggests that, while soft law can serve as a temporary solution for integration during crises, its persistent use leading to greater differentiation may pose challenges<sup>549</sup>. The historical context of differentiated integration in the EU legal order emphasizes the complexities in decision-making and intergovernmental cooperation and plays a prominent role in migration policies, allowing certain Member States to opt in or out of specific measures.<sup>550</sup>

The horizontal clauses (Articles 8-13 TFEU), serving as integration principles in EU law, lacked clarity in their legal nature and effects, creating uncertainty due to vague wording and overlapping with other provisions.<sup>551</sup> This consequently raised questions about differentiated integration, combining various Union objectives, mainstreaming pressure, competition, and the normative quality of these clauses. The need for effective and accountable governance within the EU, particularly in the context of accession negotiations with the Western Balkans, emphasizes the significance of legal mechanisms for differentiation. This underscores the importance of implementing reforms that align with democratic principles and ensure loyal cooperation.<sup>552</sup>

The EU operates with a system of differentiated governance, marked by internal variations,<sup>553</sup> and crisis-driven creation of institutions and mechanisms,<sup>554</sup> raising debates about potential compromises to shared values and illustrating both integration and fragmentation within its governance framework.<sup>555</sup> Temporary differentiated governance, rooted in theories of differentiated integration, could act as a catalyst for long-term integrated governance by

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<sup>548</sup> T. VAN DEN BRINK, M. HÜBNER, *Accommodating Diversity through Legislative Differentiation: An Untapped Potential and an Overlooked Reality?*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>549</sup> F. TERPAN, S. SAURUGGER, *Does Soft Law Trigger Differentiation and Disintegration?*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>550</sup> J.S. VARA, *Flexible Solidarity in the New Pact on Migration and Asylum: A New Form of Differentiated Integration?*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>551</sup> E. PSYCHOGIOPOULOU, *The Horizontal Clauses of Arts 8-13 TFEU through the Lens of the Court of Justice*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>552</sup> S. BARONCELLI, *Differentiated Governance in European Economic and Monetary Union: From Maastricht to Next Generation EU*, 2022.

<sup>553</sup> H. KRUNKE, H. PETERSEN, I. MANNERS, *Transnational Solidarity: Concept, Challenges and Opportunities*, 2020.

<sup>554</sup> F. FABBRINI, *Economic Governance in Europe: Comparative Paradoxes and Constitutional Challenges*, Oxford, 2016.

<sup>555</sup> S. BARONCELLI, *Introduction to the Special Section: Differentiated Governance in a Europe in Crises*, in *European Papers-A Journal on Law and Integration*, 2022.

addressing diverse interests. Despite the existence of differentiated governance, there is a recognized need for achieving common ground in supervision and resolution, with the temporary nature of such differentiation seen as a means to avoid creating entry barriers.<sup>556</sup>

EU's differentiated integration in migration policy, seen as a compromise for deeper integration, reveals a growing member states' disagreement on core values.<sup>557</sup> This fracture, highlighted in CJEU's divergent approach to rule of law and migration crises, emphasizes the urgency of examining widening gaps, particularly in the context of EU enlargement.<sup>558</sup> The rule of law crisis, analyzed through the framework of differentiated governance and its legal dynamics, underscores the critical importance of upholding the foundational values outlined in Article 2 TEU for shaping the future of the Union.<sup>559</sup> Meanwhile, EU Bottom-Up Regional Groups as a form of differentiated governance, involve geographically proximate member states in active, institutionally separate cooperation outside the EU framework.<sup>560</sup>

Adjustments to the justice system are essential for a fair and open legal order as the EU faces significant challenges such as climate change, rule of law, and post-pandemic economic recovery.<sup>561</sup> The renewed push for EU enlargement, amid heightened geopolitical challenges, underscores the imperative of a stronger EU in a polarized world, emphasizing the importance of collective action at the EU level, particularly through technical reforms addressing the rule of law, decision-making efficiency, and financial resources.<sup>562</sup> Proposing adjustments to the EU legal framework, institutions, and procedures is crucial to accommodate new realities and address the 'cost of non-action,' as failure to reform or integrate committed candidate countries could pose a significant threat to the EU's future.<sup>563</sup>

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<sup>556</sup> C. A. PETIT, *Differentiated Governance in the European Banking Union: Single Mechanisms, Joint Teams, and Opting-Ins*, 2022.

<sup>557</sup> J. SILGA, *Differentiation in the EU Migration Policy: The 'Fractured' Values of the EU*, in *European Papers-A Journal on Law and Integration*, 2022.

<sup>558</sup> J. SILGA, C. WARIN, *The EU's New Pact on Migration and Asylum: Efficiency at the Expense of Rights?*, in *EU Law Live*, 5 December 2020.

<sup>559</sup> R. UITZ, *The Rule of Law*, cit.

<sup>560</sup> I. COOPER, F. FABBRINI, *Regional Groups in the European Union: Mapping an Unexplored Form of Differentiation*, in *European Papers-A Journal on Law and Integration*, 2022.

<sup>561</sup> M. BRKAN, R. REPASI, M. LAMANDINI and other members of the editorial board, *Access to Justice in the EU Legal Order: Fit for Purpose?*, in *EU Law Live*, 20 December 2021.

<sup>562</sup> D. SARMIENTO, S. IGLESIAS, *Insight: Back Into Reform Mode – Widening With Little Deepening in Existential Times*, in *EU Law Live*, October 2023.

<sup>563</sup> F. MAYER, T. NGUYEN, *The Franco-German*, cit.

The Russian aggression<sup>564</sup> on Ukraine in 2022 has significantly impacted the European Union, prompting internal and external changes in its dynamics.<sup>565</sup> The prospect of enlargement, with Ukraine and Moldova as new candidates, and potentially Georgia, has implications for both the Western Balkans and internal EU reforms.<sup>566</sup> The EU's response to the war<sup>567</sup> demonstrated effective foreign policy action, but internal challenges, such as the use of veto power,<sup>568</sup> highlight the need for reform. In the midst of multiple crises, public concerns over the cost of living, poverty, social exclusion, and climate change underscore the importance of preserving European unity<sup>569</sup> against national responses to navigate geopolitical risks and uphold the resilience of the European pact. Importantly, aligning the political and legal goals of EU leaders with EU's legal order within the existing constraints would enhance overall EU integration<sup>570</sup>. Thus, striking a balance between widening, deepening, and rebalancing is essential for the EU to address internal and external challenges and maintain its democratic aspirations.<sup>571</sup>

The EU's integration process, characterized by both widening membership and deepening policy competencies, raises concerns about the potential risks associated with an ever-expanding legislative framework.<sup>572</sup> In navigating the current challenges faced by the EU, a dual approach of "widening and deepening" must be pursued in tandem within a project that garners strong popular consensus and is embraced by all member states and institutions.<sup>573</sup> It is imperative that this initiative clearly delineates the direction in which the integration process should evolve and how the EU shall undergo transformative changes. Adhering to the wisdom

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<sup>564</sup> *European Council Outlines Measures on Ukraine, Enlargement, and Reforms*, in *EU Law Live*, 2023.

<sup>565</sup> D. FIOTT, *In Every Crisis an Opportunity? European Union Integration in Defence and the War on Ukraine*, in *Journal of European Integration*, 2023.

<sup>566</sup> *Conclusions On Enlargement For The Six Western Balkans Partners, Türkiye, Ukraine, Moldova, And Georgia, Approved By The Council*, in *Eu Law Live*, 2023.

<sup>567</sup> B. LOBINA, *Between a Rock and a Hard Place: The Impact of Rule of Law Backsliding on the EU's Response to the Russo-Ukrainian War*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>568</sup> For Instance: the use of veto power, particularly by Hungary, has consistently hindered and diluted the EU's initiatives, underscoring the challenges in ensuring the internal adherence to fundamental values. See: G. GULÁCSII, Á. KERÉNYI, *Hungary and the European Union: The Drift Towards Disintegration*, in *Perspectives on Federalism*, 2023.

<sup>569</sup> J. SCHULTE-CLOOS, L. DRAŽANOVÁ, *Shared Identity in Crisis: A Comparative Study of Support for the EU in the Face of the Russian Threat*, 2023.

<sup>570</sup> N. SCICLUNA, S. AUER, *Europe's Constitutional Unsettling: Testing the Political Limits of Legal Integration*, in *International Affairs*, 2023.

<sup>571</sup> N. PIROZZI, *The EU After One Year of War: Widening, Deepening, Rebalancing*, 2023.

<sup>572</sup> G. J. BRANDSMA, J. POLLEX, P. TOBIN, *Overlooked Yet Ongoing: Policy Termination in the European Union*, in *Journal of Common Market Studies*, 2023.

<sup>573</sup> F. BATTAGLIA, G. PASSARELLI, *Riforme o Allargamento? Il Dilemma dell'Unione Europea*, in *HuffPost*, 2023.

of Jean Monnet,<sup>574</sup> who posited that the Union thrives in response to crises, the present complex situation should be viewed as an opportune moment to propel the integration process forward. Caution must be exercised to avoid decisions that could irreversibly jeopardize the Union, emphasizing the need for a carefully calibrated and well-thought-out strategy. By leveraging the challenges at hand as a catalyst for progress, the EU can emerge stronger and more resilient. Consequently, we advocate for a simultaneous pursuit of widening and deepening within the EU, with a recognition that, when necessary, differentiated integration<sup>575</sup> can serve as the optimal solution to address specific circumstances.

## 6. The Journey Towards an Ever-Closer Union

The objective of European integration is framed as achieving ever-greater unity among diverse populations, emphasizing a deepening sense of integration over expanding collaboration between states.<sup>576</sup> The term 'people' is normatively defined, encompassing various dimensions, and is politically associated with individuals forming a self-governing community.<sup>577</sup> The phrase of 'ever closer union' has been expressed in Article 2 of the Treaty of Rome (1957)<sup>578</sup> with a reference to closer ties between the states that make part of the Union. Afterwards, Lisbon Treaty enhanced the sense of European integration by adding the principle of subsidiarity, so that the European citizens are closely taking part in the decisions making process. The term slightly has been changed and a similar phrase, namely 'a more united union' has been used by Commission President Jean Claude Juncker.<sup>579</sup> However, it is essential to stress that the change of the term does not reduce the importance of the European integration or its evolving process towards a general purpose. A new term rather may be associated with 'United States of Europe'<sup>580</sup> in a stronger sense.

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<sup>574</sup> S. GOLUBOVIĆ, M. DIMITRIJEVIĆ, *Jean Monnet International Scientific Conference, The Influence of European Integration on the Development of Monetary Law*, 2023.

<sup>575</sup> F. SCHIMMELFENNIG, D. LEUFFEN, C. DE VRIES, *Differentiated Integration in the European Union: Institutional Effects, Public Opinion, and Alternative Flexibility Arrangements*, in *European Union Politics*, 2023.

<sup>576</sup> A. WIENER, *European Integration Theory*, cit.

<sup>577</sup> R. BELLAMY, 'An Ever-Closer Union Among the Peoples of Europe': *Republican Intergovernmentalism and Democratic Representation within the EU*, in *Journal of European Integration*, 2013.

<sup>578</sup> R. SCHÜTZE, *Organized Change Towards an 'Ever Closer Union': Article 308 EC and the Limits to the Community's Legislative Competence*, in *Yearbook of European Law*, 2003.

<sup>579</sup> European Commission, *Speech President Jean-Claude Juncker's State of the Union Address 2018*, in *Journal of European Studies* – 35/1, 2019, Strasbourg, 12.09.2018.

<sup>580</sup> G. PITTELLA, E. FAZI, *Breve Storia del Futuro degli Stati Uniti d'Europa*, in *Fazi Editore*, 2013.

It is relevant to refer to the expressions of some political statements to clearly comprehend the definition of European integration. European Commission in its White Paper on the Future of Europe stated the significance of ‘unity in diversity’<sup>581</sup> which is considered as unique strengths and richness of their nations to realize unparalleled advancement and prosperity. The EU's efforts to unite Europe through enlargement and closer cooperation have led to both advantages and disadvantages, including the potential threat to cultural diversity<sup>582</sup> and the rise of nationalist sentiments, with concerns about cultural degradation and loss of sovereignty undermining integration and the role of the ECJ in decision-making regarding cultural matters. Article 151 TEU,<sup>583</sup> while allowing EU support for cultural diversity,<sup>584</sup> has been seen as insufficient, prompting the need for a reevaluation of the ECJ's role in cultural matters and the establishment of an impartial review norm.

The core purposes of the EU's 60<sup>th</sup> anniversary of the EU in 2017 highlighted significance of establishing a safe, secure, prosperous, sustainable, social, and stronger Europe<sup>585</sup> on the global scene through ‘even greater unity and solidarity’. Unity is free choice of member states, and it is necessity to make the Union stronger and more resilient as well as to safeguard the common goals, interests and values. The French President Emmanuel Macron<sup>586</sup> has stated the significance of collective collaboration for rebuilding Europe in his speech for Europe in Athens in 2017. Above-mentioned statements apparently demonstrate the existence of intentions and initiatives to foster the amplification of integration process.

Denmark's EU engagement revealed the intricate dynamics of European integration, balancing between unity and divergence.<sup>587</sup> Challenges persist in maintaining rule of law amidst diverse concerns like social policy and legal interactions, emphasizing the importance

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<sup>581</sup> European Commission, *White Paper on the Future of Europe, Reflections and the Scenarios for the EU 27 by 2025*, Brussels, 1.3.2017.

<sup>582</sup> N. HORST, *Creating an Ever Closer Union: The European Court of Justice and the Threat to Cultural Diversity*, in *Dorsey & Whitney Student Writing Prize in Comparative and International Law Outstanding Note Award Winner*, 2008.

<sup>583</sup> L. M. CRACIUNEAN, *Implementing Cultural Diversity within and outside the European Union: A Test for the Delineation of Competences in Cultural Matters?*, 2015.

<sup>584</sup> T. MC GONAGLE, *The Promotion of Cultural Diversity via New Media Technologies: An Introduction to the Challenges of Operationalization*, in *Iris Plus (Supplement to IRIS-Legal Observations of the European Audiovisual Observatory)*, 2008.

<sup>585</sup> S. PANEBIANCO, *The 60th Anniversary of the EU: A New Élan for the EU... or Maybe Not*, in *Global Affairs*, 2017.

<sup>586</sup> *Discours du Président de la République, Emmanuel Macron, à la Pnyx*, Athens, 2017.

<sup>587</sup> A. WIVEL, *Denmark and the European Union*, in *Oxford Research Encyclopedia of Politics*, 2019.



of unity in diversity<sup>588</sup> for effective EU governance. Thence, the evolution of European law underscores a shift towards establishing a common legal space driven by shared values and aims, while maintaining the foundational concept of "ever closer union,"<sup>589</sup> acknowledging European integration as one of several key considerations in contemporary European law.<sup>590</sup> While the motto of the Constitutional Treaty of 2004 so called 'united in diversity' can be considered as a relevant tool to overcome the rising reluctance to the European integration project<sup>591</sup>. Thence, the competences of the Union should be accomplished referring to the diversity which is politically sound and economically profitable.

The 2016 European Council decision,<sup>592</sup> which marked a departure from the accelerating integration trend, underscored a renewed emphasis on national sovereignty in interpreting the "ever closer Union" clause.<sup>593</sup> This shift in focus was further exemplified by the Constitutional Tribunal's decision in case K 3/21, where the declaration of the primacy of EU law as unconstitutional represented a significant setback in the trajectory of European integration<sup>594</sup>. Moreover, the Court highlighted the intricate connection between the dispute in the main proceeding and the core value of the European Union, emphasizing the pursuit of an "ever closer union" among member states<sup>595</sup>. The acknowledgment that a Member State's unilateral withdrawal impacts the entire Union and its citizens revealed the potential disruption to the ever closer union principle, prompting the Court to emphasize the necessity of a revocation power as a backstop to mitigate unwarranted consequences and safeguard European integration<sup>596</sup>. Notably, the Court's transition from a theoretical trust dogma to a decentralized

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<sup>588</sup> S. PARKES, *The Future of Europe: Political and Legal Integration beyond Brexit*, in A. BAKARDJIEVA ENGELBREKT, X. GROUSSOT, (edited by) 'A More United Union' and the Danish Conundrum, Oxford, in Hart Publishing, 2021, p.249-273.

<sup>589</sup> M. RHINARD, N. NUGENT, W. PATERSON, *Crises and Challenges for the European Union*, in Bloomsbury Publishing, 2023.

<sup>590</sup> A. VON BOGDANDY, *European Law beyond 'Ever Closer Union': Repositioning the Concept, its Thrust and the ECJ's Comparative Methodology*, in *European Law Journal*, 2016.

<sup>591</sup> C. JOERGES, *How Is a Closer Union Conceivable under Conditions of Ever More Socio-Economic and Political Diversity? Constitutionalising Europe's Unitas in Pluralitate*, in *European Law Journal*, 2018.

<sup>592</sup> G. D'AGNONE, *Interpretazione dei Trattati Istitutivi dell'UE: Quale Ruolo per le Decisioni Assunte in Sede di Consiglio Europeo?*, in *European Papers-A Journal on Law and Integration*, 2016.

<sup>593</sup> H. HOFMEISTER, *The End of the Ever Closer Union*, Nomos Verlag, 2018.

<sup>594</sup> E. CANNIZZARO, *Sovereign Within the Union? The Polish Constitutional Tribunal and the Struggle for European Values*, in *European Papers*, 2021.

<sup>595</sup> E. GUALCO, *Is Toufik Lounes Another Brick in the Wall? The CJEU and the On-Going Shaping of the EU Citizenship*, in *European Papers-A Journal on Law and Integration*, 2018.

<sup>596</sup> E. CANNIZZARO, *Extra Unionem Nulla Salus? The UK Withdrawal and the European Constitutional Moment*, in *European Papers*, 2018.

review of individual rights at the national level, grounded in Article 7(3) TEU, reaffirmed a commitment to preserving the Union's foundational values and fostering ever closer union<sup>597</sup>.

The objective of the closer union among the European peoples is interpreted by the Court of Justice in the preamble and opening articles of the TEU and TFEU. As regards, the Court explicitly refers *Pupino* case<sup>598</sup> where national law is applied in pursuant with directives in the areas of judicial and police cooperation in criminal matters under the principle of coherent interpretation and loyal collaboration. The Court's cases on the 'closer union' objective, dating back to the 1980s, can be categorized into two interpretations. The first category emphasizes the integrationist objectives and principles found in the Treaties, such as non-discrimination, free movement, internal market access, judicial cooperation, and the superiority of EU law over national law, providing a broad definition that strengthens the objective<sup>599</sup>. The second category of the Court's interpretation involves referencing the 'spirit' of a provision to justify a legal solution, with the ECJ invoking the 'spirit' of the Treaties, particularly in the *van Gend en Loos* case,<sup>600</sup> to emphasize the general objectives of the Treaty, such as creating a common market and limiting sovereign rights<sup>601</sup> of member states.<sup>602</sup> In the *Costa v ENEL* case, the ECJ explicitly asserted the precedence of EU law over national law based on the 'terms and spirit of the Treaty',<sup>603</sup> setting a precedent for subsequent cases. Over the period from 1997 to 2012, the Court expanded the term 'ever closer union' in ten cases, incorporating expressions like 'spirit of' and 'spirit and', aligning them with the objective of integrationist 'closer union' in the context of the Treaties. Intergovernmental councils, spanning from the Maastricht Treaty to the Lisbon Treaty, have undertaken persistent efforts to balance

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<sup>597</sup> A. ROSANÒ, *Staatsanwaltschaft Aachen, Ovvero la Tutela dei Diritti Fondamentali sulla Base del Test LM nelle Procedure di Trasferimento Interstatale di Detenuti*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>598</sup> E. SPAVENTA, *Opening Pandora's Box: Some Reflections on the Constitutional Effects of the Decision in Pupino*, in *European Constitutional Law Review*, 2007.

<sup>599</sup> G. BECK, *The Legal Reasoning of the Court of Justice of the EU: The In-Built Communautaire Tendency of the Cumulative Approach*, in *Hart Publishing*, 2014, p.318-322.

<sup>600</sup> D. CHALMERS, L. BARROSO, *What Van Gend en Loos Stands For*, in *International Journal of Constitutional Law*, 2014.

<sup>601</sup> J. WEILER, *Van Gend en Loos: The Individual as Subject and Object and the Dilemma of European Legitimacy*, in *International Journal of Constitutional Law*, 2014.

<sup>602</sup> Judgment of the Court, *N.V. Algemene Transport— en Expeditie Onderneming Van Gend & Loos and Nederlandse Administratie der Belastingen (Netherlands Inland Revenue Administration)*, Case 26/62, 5 February 1963.

<sup>603</sup> Judgement Of The Court, *Flaminio Costa And Enel (Ente Nazionale Energia Elettrica (National Electricity Board), Formerly The Edison Volta Undertaking)*, Case 6/64, 15 July 1964.

the objectives of deeper integration and wider cooperation<sup>604</sup>, forming integration strategies that address European challenges while accommodating diverse national interests and interpretations of the concept of 'ever closer union'.<sup>605</sup>

The EU's policy-building, conceived as a project of peace and prosperity, has deliberately avoided coercion, progressing without a formal constitution, guided by the vague goal of 'an ever-closer union'.<sup>606</sup> Understanding the evolving objective of the European people's ever-closer union, and policy domains of member states are crucial for a deeper comprehension of European unification amidst contemporary challenges.<sup>607</sup> The idea of appealing to peoples, rather than just states,<sup>608</sup> was already present in the preamble of the ECSC Treaty. This preamble echoed the concept of a "broader and deeper community" outlined in the Schuman Declaration<sup>609</sup>. The concept of "ever closer union" originated in the preamble of the EEC Treaty, but challenges arise due to red lines in some member states' constitutions, influenced by their constitutional courts, and various political, social, religious obstacles. Furthermore, the consideration of member states as constituent units in the EU's quasi-federal system, rather than a unitary European country, adds complexity to the issue.<sup>610</sup>

The primary obstacle to achieving an ever-closer union lies in member states' reluctance to transfer specific powers to the EU, particularly in economic, financial, and budgetary policies. Additionally, concerns over the Euro crisis have led some states to view monetary union as a threat to their national economies, fostering nationalist policies that undermine the vision of closer European unity.<sup>611</sup> However, actual crisis also can be considered as a tool that reinforces the concept of deeper integration through reformed but still incomplete structures, potentially eroding popular support and legitimacy for the European project.<sup>612</sup>

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<sup>604</sup> D. DINAN, *Ever Closer Union: An Introduction to European Integration*, in Lynne Rienner Publishers, 2005.

<sup>605</sup> J. BRADBURY, *The European Union and the Contested Politics*, cit.

<sup>606</sup> M. FERRERA, *The European Union and Cross-National Solidarity: Safeguarding 'Togetherness' in Hard Times*, in *Review of Social Economy*, 2023.

<sup>607</sup> F. CROCI, *I Rapporti tra il Recesso dall'Unione Europea e l'Obiettivo della 'Ever Closer Union'*, 2020.

<sup>608</sup> Council of Europe, Statute of the Council of Europe, *European Treaty Series – No 1*, London, 1949.

<sup>609</sup> R. SCHUMAN, *The Schuman Declaration*, 1950.

<sup>610</sup> T. GIEGERICH, O.J. GSTREIN, S. ZEITZMANN, *The EU between 'An Ever Closer-Union' and Inalienable Policy Domains of Member States*, in *Nomos*, Baden-Baden, 2014, p.17-41.

<sup>611</sup> M. KAEDING, J. POLLAK, P. SCHMIDT, *Euro-scepticism and the Future of Europe: Views from the Capitals*, 2020.

<sup>612</sup> E. JONES, D. KELEMEN, S. MEUNIER, *Failing Forward? Crises and Patterns of European Integration*, in *Journal of European Public Policy*, 2021.

The EU Treaty's preamble emphasizes the foundational principle of "an ever-closer union among the peoples of Europe," highlighting the ongoing pursuit of unity, cooperation, shared values, and mutual respect among diverse nations while preserving national identities and sovereignty<sup>613</sup>. The principle of integration includes transferring the competences of member states to the Union, however, it cannot be understood as a loser-winner situation. Nevertheless, the findings suggest that the 'winners' of integration high-skilled individuals tend to favor deeper integration but resist further enlargement out of fear that an ever-wider union might be costly.<sup>614</sup> Conferred competences in the EU involve collaborative implementation by member states, with the Union serving as a supra-national instrument to carry them out, and the principle of subsidiarity, integrated into EU law, seeks to balance authority, enhance democracy, and induce positive changes in national legal systems.<sup>615</sup> Thus, the "ever-closer union" goal is not to erode national sovereignty but to foster mutual respect, preserving member states' identities and self-government within the EU framework.

EU policies and institutions gained importance after the ratification of the Maastricht Treaty, increasing the EU authority in the domains of social, immigration and foreign policy, where European integration impacted their role.<sup>616</sup> A proposed solution to current challenges involves defining an 'ever-closer union', emphasizing the need for a balanced equilibrium between EU and member states' powers to effectively implement goals and reserved competences through sincere cooperation.<sup>617</sup>

Such goal as enshrined in the Maastricht Treaty, is qualified by the principle of subsidiarity, emphasizing decisions taken close to citizens and limiting EU action to areas where it is more effective than member states, thus promoting integration while respecting national autonomy.<sup>618</sup> The Treaty of Rome aimed for an ever-closer union among diverse European peoples, fostering a border-transcending solidarity centered on recognizing

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<sup>613</sup> R. BELLAMY, *An Ever-Closer*, cit.

<sup>614</sup> S. HOBOLT, *Ever Closer or Ever Wider? Public Attitudes towards Further Enlargement and Integration in the European Union*, in *Journal of European Public Policy*, 2014.

<sup>615</sup> A. KUMAR, *Analysis of the Principle of Subsidiarity as a Principle of EU Law: Future Perspectives*, in *Futurity Economics & Law*, 2021.

<sup>616</sup> S. BULMER, *The Member*, cit.

<sup>617</sup> A. CUYVERS, *The Road to European Integration*, in *East African Community Law*, 2017.

<sup>618</sup> S. VAN HECKE, *The Principle of Subsidiarity: Ten Years of Application in the European Union*, in *Regional & Federal Studies*, 2003.

individuals' rights.<sup>619</sup> The Lisbon Treaty<sup>620</sup> lacks clarity in balancing competences between the EU and its member states, but it allows for amendments that may extend or decrease Union competences, emphasizing the need to fulfill competences while adhering to the principle of subsidiarity for a more effective union.

The European Communities evolved towards greater unity by integrating economies and pursuing common objectives, in accordance with the vision of "an ever-closer union among the peoples of Europe."<sup>621</sup> The legitimacy of EU institutions and regulatory tools derives directly from the EU's founding document and European citizens, emphasizing a mission to strengthen union among European peoples, surpassing the importance of national constitutions and sovereignty<sup>622</sup>. The EU showed a shift from "ever closer union" to a differentiated approach and enhanced cooperation offering a flexible tool for future initiatives.<sup>623</sup> Challenges to the "ever closer union" in European integration have given rise to a persistent trend of differentiation among member states, suggesting it should be the norm as long as it upholds the EU's core values, including the rule of law.<sup>624</sup>

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<sup>619</sup> M. CALLANAN, *Foundations of an Ever-Closer Union, An Irish Perspective on the Fifty Years Since the Treaty of Rome*, in *Institute of Public Administration*, 2007.

<sup>620</sup> S. CONSTANTIN, *Rethinking Subsidiarity and the Balance of Powers in the EU in Light of the Lisbon Treaty and Beyond*, in *Croatian Yearbook of European Law & Policy*, 2008.

<sup>621</sup> A. ZANELLI, G. ROMEO, *Profili di Diritto dell'Unione Europea: Storia, Istituzioni, Aspetti Giuridici dell'Integrazione Europea*, in *Rubbettino Editore*, 2002.

<sup>622</sup> G. BIZIOLI, *Un Passo Ulteriore Verso un Sistema Federale: un Tributo per l'Unione Europea, Pago, Dunque Sono (Cittadino Europeo), il Futuro dell'UE Tra Responsabilità Fiscale, Solidarietà e Nuova Cittadinanza Europea*, 2022.

<sup>623</sup> B. LERUTH, S. GÄNZLE, J. TRONDAL, *Differentiated Integration And Disintegration In The Eu After Brexit: Risks Versus Opportunities*, *Journal Of Common Market Studies*, 2019.

<sup>624</sup> B. LERUTH, *What Happened To The Idea Of 'Ever Closer Union'? Differentiation As A Persistent Feature Of European Integration, The Eu Under Strain?: Current Crises Shaping European Union Politics*, 2023.

# CHAPTER 2: LEGAL FRAMEWORKS AND PRINCIPAL CONDITIONS OF THE EUROPEAN UNION MEMBERSHIP

## 1. Background and Context

The enlargement conditions<sup>625</sup> of the EU serve as pivotal benchmarks ensuring the alignment of aspiring member states with the values and principles of European integration.<sup>626</sup> At its core, the EU expansion<sup>627</sup> process emphasizes the adherence to democratic governance,<sup>628</sup> respect for human rights, and the establishment of a robust rule of law framework<sup>629</sup> within candidate countries. This linkage between enlargement<sup>630</sup> and the rule of law underscores the significance of legal harmony and institutional integrity in fostering a cohesive European community.<sup>631</sup> By prioritizing the consolidation of democratic institutions and legal systems, the EU not only enhances its own resilience but also strengthens the foundation for sustainable integration.<sup>632</sup> Consequently, the enlargement criteria<sup>633</sup> not only evaluate the economic<sup>634</sup> and political readiness<sup>635</sup> of aspiring members but also serve as a mechanism to safeguard the Union's fundamental values,<sup>636</sup> promoting stability, prosperity, and solidarity across its expanding borders.<sup>637</sup>

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<sup>625</sup> M. GÓRA, N. STYCZYŃSKA, M. ZUBEK, *Contestation of EU Enlargement and European Neighbourhood Policy*, in *Djøf Forlag*, 2020.

<sup>626</sup> P. VAN HAM, *European Integration and the Postmodern Condition: Governance, Democracy, Identity*, 2013.

<sup>627</sup> V. VUČKOVIĆ, *Europeanizing Montenegro: The European Union, the Rule of Law, and Regional Cooperation*, Rowman & Littlefield, 2021.

<sup>628</sup> R. ROSE, *Evaluating Democratic Governance: A Bottom-Up Approach to European Union Enlargement, Democratisation*, 2008.

<sup>629</sup> F. MARCIACQ, T. ŻORNACZUK, *Towards More Cohesion in EU Enlargement Policy-Tapping the Potential of the Weimar Triangle*, in *Genshagen Foundation*, 2021.

<sup>630</sup> I. DAMJANOVSKI, C. HILLION, D. PRESHOVA, *Uniformity and Differentiation*, cit.

<sup>631</sup> V. VUČKOVIĆ, *La Política de Ampliación de la Unión Europea hacia los Balcanes Occidentales: ¿Movimiento sin Objeto o Adhesión con una Perspectiva de Membresía Creíble?*, in *Revista de Historia Contemporánea*, 2023.

<sup>632</sup> P. MARTÍN RODRÍGUEZ, *El Estado de Derecho en la Unión Europea*, in *Marcial Pons*, 2021.

<sup>633</sup> D. TILEV, *The European Union New Methodology and its Long-Term Impact on Accession Negotiations*, in *Institute for Democracy, Societas Civilis*, 2021.

<sup>634</sup> C. FOSTER, J. FRIEDEN, *Economic Determinants of Public Support for European Integration, 1995–2018*, in *European Union Politics*, 2021.

<sup>635</sup> M.A. APOSTOLACHE, *The Enlargement of the European Union: A Necessity? From the Status of a Potential Candidate to That of a Candidate State for Accession*, in *Journal of Law and Public Administration*, 2023.

<sup>636</sup> P. AKALIYSKI, C. WELZEL, J. HIEN, *A Community of Shared Values? Dimensions and Dynamics of Cultural Integration in the European Union*, in *Journal of European Integration*, 2022.

<sup>637</sup> D. NAUMENKO, O. BULANA, S. DIACHENKO, *Western Balkans Accession to EU*, 2022.

Article 49 TEU<sup>638</sup> plays a pivotal role in the EU enlargement process, particularly concerning the rule of law.<sup>639</sup> It serves as a foundational instrument,<sup>640</sup> outlining the criteria and procedures for candidate countries seeking EU membership, with emphasis on democracy, human rights, and the rule of law.<sup>641</sup> Such legal instrument emphasizes the significance of the rule of law as a fundamental requirement for EU accession,<sup>642</sup> reflecting the Union's commitment to upholding legal principles.<sup>643</sup> It guides the thorough evaluation of candidate countries, ensuring alignment with EU standards and fostering<sup>644</sup> a commitment to the rule of law throughout the enlargement process.<sup>645</sup> In addition, Copenhagen Criteria<sup>646</sup> constitute a vital nexus linking the rule of law, European integration, and eligibility for EU membership.<sup>647</sup> These criteria<sup>648</sup> highlight the essential promotion of democracy, rule of law, human rights, minority protection,<sup>649</sup> and the need for a robust market economy<sup>650</sup> capable of withstanding competitive pressures,<sup>651</sup> all crucial aspects for the functioning and integration of the EU.<sup>652</sup> Its evolving<sup>653</sup> nature mirrors the dynamic understanding of the rule of law<sup>654</sup> within the EU framework, offering valuable insights into its intersection with European integration and accession eligibility.<sup>655</sup>

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<sup>638</sup> G. VAN DER LOO, P. VAN ELSUWEGE, *The EU-Ukraine Association Agreement After Ukraine's EU Membership Application: Still Fit for Purpose*, 2022.

<sup>639</sup> R. MAVROULI, *The Dark Relationship*, cit.

<sup>640</sup> A.M. MARÍN ANA MARÍA GONZÁLEZ, *La Adhesión a la Unión Europea y la Obligación Permanente de Cumplimiento de los Valores Democráticos*, in *Revista de Ciencias Jurídicas y Sociales*, 2021.

<sup>641</sup> S. LABAYLE, *Respect des valeurs de l'Union européenne en Pologne: Première application du nouveau cadre pour renforcer l'état de droit*, in *European Papers*, 2016.

<sup>642</sup> S.S. CABALLERO, *La Unión Europea y el Reto del Estado de Derecho*, in *Aranzadi/Civitas*, 2022.

<sup>643</sup> J.F. BARROSO MÁRQUEZ, *Guía Práctica de Derecho e Instituciones de la Unión Europea: Los Principios Básicos de la Unión Europea, Principio Democrático*, 2024.

<sup>644</sup> I. GAMBARDRELLA, *Betting on Funding Conditionality to Strengthen Protection of the Rule of Law and Fundamental Rights: Potential and Challenges*, 2024.

<sup>645</sup> T. HASA, *The Mirage of European Governance: How to Resolve the "Puzzle" of EU Enlargement*, 2021.

<sup>646</sup> H. GABRISCH, *The EU's Capacity for Enlargement: Does It Matter?*, in *Qeios*, 2024.

<sup>647</sup> G. MOSCA, *Il Processo D'integrazione Europea dell'Albania*, 2023.

<sup>648</sup> D. DUDLEY, *European Union Membership Conditionality*, cit.

<sup>649</sup> P. VAN ELSUWEGE, *The External Dimension of Joining and Leaving the EU, EU External Relations Law: Texts, Cases and Materials*, in *Hart*, 2020.

<sup>650</sup> J. DIMOVSKI, V. RADIVOJEVIĆ, G. MITIĆ, *Trade Openness Functioning to Promote Economic Prospects: An Analysis of the New EU Member States*, 2023.

<sup>651</sup> B. LIPPERT, *EU Enlargement: Geopolitics Meets Integration Policy. The EU is Set to Add Gradualist Elements to Its Enlargement Doctrine*, in *SWP Comment*, 2024.

<sup>652</sup> S. BIANCHINI, *Stati Successori della Jugoslavia e Dilemmi dell'Integrazione Europea: Si Può Emulare l'Esempio della UE?*, *International Relations and Area Studies: Focus on Western Balkans*, 2021.

<sup>653</sup> J.B. BAZERKOSKA, *EU Enlargement and Anti-Corruption Standards: From Candidacy to Accession, Cooperation and Enlargement: Two Challenges to be Addressed in the European Projects—2022*, 2023.

<sup>654</sup> L. HERȚA, A. CORPĂDEAN, *The European Union, International Relations and Area Studies: Focus on Western Balkans*, 2021.

<sup>655</sup> D. DUDLEY, *European Union Membership Conditionality*, cit.

Significantly, the rule of law stands as a non-negotiable membership condition<sup>656</sup> for aspiring countries seeking to join the Union, representing a fundamental pillar<sup>657</sup> of the EU's values and principles.<sup>658</sup> It serves as a cornerstone for advancing the integration process,<sup>659</sup> ensuring that member states adhere to legal norms, respect for human rights, and the independence of the judiciary.<sup>660</sup> Upholding the rule of law is essential<sup>661</sup> for maintaining the integrity of the EU's legal framework and fostering trust among member states, promoting stability, predictability, and accountability within the EU.<sup>662</sup> As such, the rule of law<sup>663</sup> not only serves as a prerequisite for EU membership but also underpins the Union's commitment to upholding democratic principles and fundamental rights across its territory.<sup>664</sup> Moreover, the *acquis communautaire*<sup>665</sup> serves as a fundamental requirement for EU membership, embodying the accumulated body of EU laws, regulations, and directives that candidate countries must adopt and implement.<sup>666</sup> Its flexible<sup>667</sup> scope allows for accommodating diverse levels and scopes of integration among member states, leading to the emergence of differentiated integration<sup>668</sup> within the EU framework. By mandating adherence to the *acquis*,<sup>669</sup> the EU reinforces its commitment to upholding the rule of law, fostering trust<sup>670</sup> and solidarity<sup>671</sup> among its member states while advancing common objectives and values.

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<sup>656</sup> M. PETROVIC, G. WILSON, *Bilateral Relations in the Western Balkans as a Challenge for EU Accession*, in *Journal of Contemporary European Studies*, 2021.

<sup>657</sup> L. MONTANARI, *Il Rispetto del Principio di Rule of Law come Sfida per il Futuro dell'Unione Europea*, in *Comunità Internazionale: Rivista Trimestrale della Società Italiana per l'Organizzazione Internazionale*, 2020.

<sup>658</sup> L. MOKRÁ, *European Union's Value-Based Approach to Sustainability of Accession Process: (In Western Balkan)*, in *Slovak Yearbook of European Union Law*, 2022.

<sup>659</sup> L. ZHANG, *Advancing European Integration*, cit.

<sup>660</sup> B. DE WITTE, *Judicial Control of the Politics of Differentiated Integration*, in *Revisiting Judicial Politics in the European Union*, Edward Elgar Publishing, 2024.

<sup>661</sup> B. LOBINA, *Between a Rock and a Hard Place*, cit.

<sup>662</sup> J.Z. LOBANOVA, M. MAKSIMOVIĆ, V. KELIĆ, *Institutional Setting Development in SEE Countries in the Condition of European Integration*, in *Towards a Better Future: Peace, Justice, and Strong Institutions*, 2023.

<sup>663</sup> M. KMEZIC, F. BIEBER, *Protecting the Rule of Law in EU Member States and Candidate Countries*, 2020.

<sup>664</sup> J. PICOLO, *Accession v Membership-Is the European Union Equally Demanding Concerning Compliance with its Fundamental Values?*, Vienna, 2021.

<sup>665</sup> G. QORRAJ, A. HAJRULLAHU, D. QEHAJA, *Absorption Capacity and the European Integration of the Western Balkans*, in *Regional Science Policy & Practice*, 2024.

<sup>666</sup> A. SLIM, *L'Instrument d'Aide de Préadhésion (2007-2013) de l'UE aux Balkans Occidentaux est-il un Instrument d'Intégration?*, in *Revue d'Études Comparatives Est-Ouest*, 2011.

<sup>667</sup> L. LONARDO, *The European Political Community*, cit.

<sup>668</sup> A. SAPIR, *Ukraine and the EU: Enlargement at a New Crossroads*, in *Intereconomics*, 2022.

<sup>669</sup> R. PETROV, *The External Dimension of the Acquis Communautaire*, 2007.

<sup>670</sup> M. DOROCIÁK, *A Check Move for the Principle of Mutual Trust from Dublin: The Celmer Case*, in *European Papers-A Journal on Law and Integration*, 2018.

<sup>671</sup> T. CERRUTI, *Ucraina*, cit.



Thus, the enlargement process<sup>672</sup> for candidate states entails compliance<sup>673</sup> with rigorous standards encompassing democratic governance principles,<sup>674</sup> legal frameworks, human rights norms, and economic sustainability, as stipulated by relevant legal instruments and agreements. In other words, it anchored in the principles of democracy, human rights, and the rule of law, exemplifies the Union's dedication<sup>675</sup> to fostering cohesion, security, and shared values among its member states and aspiring candidates.<sup>676</sup>

## 2. Legal Instrument of EU Membership

Article 49 of the TEU serves as a cornerstone for EU enlargement, particularly with regard the rule of law,<sup>677</sup> embodying the Union's commitment to the expansion of its membership.<sup>678</sup> It outlines the accession process, emphasizing democracy, human rights, and the rule of law as essential criteria, while promoting stability, prosperity, and cooperation among nations.<sup>679</sup> The enlargement process involves thorough evaluation of candidate countries' readiness to adhere to EU standards and obligations, fostering alignment with the *acquis communautaire* and encouraging socio-economic reforms.<sup>680</sup> This instrument provides a flexible procedure for EU accession, acknowledging the significant impact new member states can have on the Union and its members' economic and political dynamics.<sup>681</sup> Furthermore, Article 49<sup>682</sup> symbolizes the EU's inclusivity and its vision for a continent united in diversity, facilitating the integration of diverse cultures, economies, and political systems into the European project<sup>683</sup>.

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<sup>672</sup> A. MIGLIO, *Riforma dell'Unione e Integrazione Differenziata*, cit.

<sup>673</sup> T. MONTINI, *Deficit Democratico e Integrazione Europea: Una Prospettiva di Analisi*, 2023.

<sup>674</sup> A. GAFURI, M. MUFTULER BAC, *Caught Between Stability and Democracy in the Western Balkans: A Comparative Analysis of Paths of Accession to the European Union*, in *East European Politics*, 2021.

<sup>675</sup> E. FIERRO, *The EU's Approach to Human Rights Conditionality in Practice*, in Brill, 2021.

<sup>676</sup> T. SEKULIĆ, *The European Union*, cit.

<sup>677</sup> W. SCHROEDER, *The Rule of Law as a Value in the Sense of Article 2 TEU: What Does it Mean and Imply? Defending Checks and Balances in EU Member States*, 2021.

<sup>678</sup> E. SKREBO, *Stato di Diritto e Balcani Occidentali: Un Percorso di Adesione all'Unione Europea in Salita*, 2024.

<sup>679</sup> W. SCHROEDER, *The Rule of Law as*, cit.

<sup>680</sup> C. BARNARD, S. PEERS, *European Union Law*, Oxford, 2023.

<sup>681</sup> M.C. SOLACOLU, *Enlargement of the European Union in the Context of Ukraine, Moldova and Georgia's Membership Applications*, in *Challenges of the Knowledge Society*, 2023.

<sup>682</sup> D. KOCHENOV, R. JANSE, *Admitting Ukraine to the EU*, cit.

<sup>683</sup> D. CHALMERS, G. DAVIES, G. MONTI, *European Union Law*, Cambridge, 2019.

The provisions of Article 49 TEU express entire management of the accession process, emphasizing the role and competences of principal players in the course of the procedure.<sup>684</sup> Its interpretation can be confused due to its two significant aspects: the sequential division of the enlargement procedure into supranational and intergovernmental phases, and the lack of a chronological sequence within the article's paragraphs, potentially leading to varied interpretations of the accession process.<sup>685</sup> The non-chronological interpretation is supported by the Rules of Procedure of the EU Parliament, which require Parliament's approval after negotiations but before the accord's signature, yet the Article remains imperfect as it fails to fully delineate the EU enlargement process, notably omitting the role of the European Council.<sup>686</sup>

While the European Council's primary role in the enlargement process isn't explicitly stated in Article 49 TEU, its authority to make crucial decisions and shape the procedure, including the establishment of conditionality principles and pre-accession strategies, underscores its significant impact on EU enlargement.<sup>687</sup> This institution, despite not being explicitly mentioned in Article 49 TEU, plays a crucial role in initiating negotiations based on political criteria, supporting Commission opinions during accession, and overseeing candidate states' policies, highlighting a gap in the treaty's coverage.<sup>688</sup> The Commission's role<sup>689</sup> in the accession process extends beyond issuing opinions, encompassing actions based on mandates from the European Council and EU Council, formulation of instruments, evaluation of candidates' progress, and arrangement of Accession Partnerships. Furthermore, the Commission's involvement in negotiation processes to establish general positions for member states, despite not being binding, is often considered crucial, as member states frequently take its observations into account.<sup>690</sup>

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<sup>684</sup> G. DE BÚRCA, P. CRAIG, *Br(Exit) from the European Union – Control, Autonomy, and the Evolution of EU Law*, in *The Evolution of EU Law*, Oxford, 2021.

<sup>685</sup> R. SCHÜTZE, *Association, Accession, European Union Law*, Oxford, 2021.

<sup>686</sup> A. ARNULL, D. CHALMERS, *Accession, Withdrawal, and the EU Legal Order*, in *The Oxford Handbook of European Union Law*, Oxford, 2015.

<sup>687</sup> L. MONTANARI, *Condizionalità e Allargamento, Tra Valori e Politica*, in *Diritto Pubblico Comparato ed Europeo*, 2023.

<sup>688</sup> Council of the European Union, Presidency Conclusions, *Copenhagen European Council 12 and 13 December 2002*, 15917/02, Brussels, 29.1.2003.

<sup>689</sup> G. AVERY, *Uses of Time in the EU's Enlargement Process, The EU Timescape*, 2013.

<sup>690</sup> U. SEDELMEIER, *Enlargement, From Rules for Accession to a Policy towards Europe*, in *Policy-Making in the European Union*, Oxford, 2010.

Article 49 TEU<sup>691</sup> outlines three key criteria for an applicant state's membership, including international recognition, geographical location in Europe, and adherence to fundamental freedoms and the rule of law.<sup>692</sup> First of all, none of the country situated in the European continent encounter a challenge to satisfy the criterion of statehood while the Vatican City<sup>693</sup> may be considered as a sole exception. Secondly, the definition of 'Europeanness'<sup>694</sup> in the framework of enlargement identifies its complex content in terms of geographical and socio-cultural approaches. The problem arises in this criterion since the clear definition of the continent of Europe does not exist.<sup>695</sup> Therefore, legal perspective reacts the question of Europe with respect to the enlargement law, underlining the membership<sup>696</sup> to the Council of Europe<sup>697</sup> is a key issue to be regarded as a 'European state'.<sup>698</sup> Thirdly, the political criterion, particularly, democracy and the rule of law always played a crucial role in the functioning of enlargement law from its beginning.<sup>699</sup> The remarkable evident can be shown with the fact that application of Spanish government to the Union was not accepted due to the dictatorial regime in Spain.<sup>700</sup> Furthermore, the significance of protection of human rights, democracy and the rule of law has been pointed out on a great number of circumstances and pivotal events of the Community, in the preambles of Treaties, opinions of the organs, several declarations of the European Council, Commission, Parliament and judgements of the Court. Finally, requirement of country's membership in the Council of Europe is regarded as one of the most significant criteria<sup>701</sup> for the accession which has not been mentioned in this Article. The practice showed that this stipulation has been used in the part of customary law from the onset of enlargement

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<sup>691</sup> J. WOUTERS, *Revisiting Art. 2 TEU*, cit.

<sup>692</sup> S. CARRERA, E. GUILD, N. HERNANZ, *The Triangular Relationship*, cit.

<sup>693</sup> G. BUTLER, *The Legal Relations of the European Union with the Vatican City State and Holy See*, in *European Foreign Affairs Review*, 2022.

<sup>694</sup> N. PÄUN, G. CICEO, *The Limits of Europeanness: Can Europeanness Stand Alone as the Only Guiding Criterion for Deciding Turkey's EU Membership?*, 2010.

<sup>695</sup> B. BUSCH, M. KRZYŻANOWSKI, *Inside/Outside the European Union, Enlargement, Migration Policy and the Search for Europe's Identity*, in *Geopolitics of European Union Enlargement: The Fortress Empire*, 2007.

<sup>696</sup> S. SCHMAHL, M. BREUER, *The Council of Europe: Its Law and Policies*, Oxford, 2017.

<sup>697</sup> M. BOND, *The Council of Europe: Structure, History and Issues in European Politics*, 2012.

<sup>698</sup> M. LUCAS, A. KREIKEMEYER, *Pan-European Integration and European Institutions: The New Role of the Council of Europe*, in *Journal of European Integration*, 2007.

<sup>699</sup> European Commission, *Progress towards Meeting the Economic Criteria for EU Accession*, The EU Commission's 2022 Assessments, Institutional Paper 186, 2022.

<sup>700</sup> S. ROYO, P.C. MANUEL, *Some Lessons from the Fifteenth Anniversary of the Accession of Portugal and Spain to the European Union*, in *South European Society and Politics*, 2003.

<sup>701</sup> C. GEBHARD, D. GALBREATH, *Cooperation or Conflict?: Problematizing Organizational Overlap in Europe*, in *Ashgate Publishing*, 2013, p. 69.

rounds. In addition, the Commission<sup>702</sup> clearly expressed the significance of this criterion on the way towards the membership of the EU which must be considered and successfully implemented by the applicant countries.

The important instruments concerning the human rights, particularly, European Convention on Human Rights (ECHR)<sup>703</sup> adopted by the Council of Europe, also constitute the part of criterion for the accession process.<sup>704</sup> There are following major principles that guide the accession process of the EU and play a significant role from the perspective of enlargement law. First, enlargement must be comprehended as bringing new actors inside the actual community, it does not mean the establishment of a new entity.<sup>705</sup> Second, all the chapters laid down in the *acquis Communautaire*<sup>706</sup> must be adequately implemented by the candidate countries in order to accede to the Union. Third, the conditions of the membership<sup>707</sup> cannot be detracted from the Treaty text as well as the concept in which the Community is founded. After several enlargement rounds those three above-mentioned principles have been merged under the principle of conditionality,<sup>708</sup> which is considered as the major element of the Community method. Conditionality is enforced in the course of the entire admission process and promotes equitable assessment of the applicants' efforts towards the membership.<sup>709</sup> Despite the fact that the originating roots of this principle derive from the nature of the Treaties, interestingly, it is not mentioned in Article 49 TEU which is the main judicial instrument to assist the accession procedure.<sup>710</sup> The second paragraph<sup>711</sup> of Article 49 TEU clarifies that the enlargement process does not preclude further treaty modifications beyond the conditions of admission, particularly addressing technical matters such as adjustments to the allocation of seats within EU bodies.

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<sup>702</sup> European Commission, Commission Staff Working Document, Report from the Commission to the European Parliament, the Council and the European Economic and Social Committee, *Annual Report on Financial Assistance for Enlargement in 2014*, Brussels, 30.10.2015.

<sup>703</sup> J. CALLEWAERT, *The European Convention on Human Rights and European Union Law: A Long Way to Harmony*, in *European Human Rights Law Review*, 2009.

<sup>704</sup> G. DE BURCA, *Beyond the Charter: How Enlargement Has Enlarged the Human Rights Policy of the European Union*, in *Fordham International Law Journal*, 2003.

<sup>705</sup> R. BALFOUR, C. STRATULAT, *The Enlargement*, cit.

<sup>706</sup> L.M. MYCHKA, *Acquis EU, for a Candidate Country to Join the European Union*, 2021.

<sup>707</sup> D. PHINNEMORE, *Beyond 25 - The Changing Face of EU Enlargement: Commitment, Conditionality and the Constitutional Treaty*, *Journal of Southern Europe and the Balkans*, 2006.

<sup>708</sup> N. PAPAKOSTAS, *Deconstructing*, cit.

<sup>709</sup> D. KOCHENOV, *Overestimating Conditionality*, *The European Union in the World*, in Brill Nijhoff, 2014.

<sup>710</sup> A. ARNULL, D. CHALMERS, *The Oxford Handbook of European Union Law*, Oxford, 2015.

<sup>711</sup> C. HILLION, *Enlargement of the European Union - The Discrepancy between Membership Obligations and Accession Conditions as Regards the Protection of Minorities*, 2003.

The influence of the Article 49 TEU on the Treaty establishing a Constitution for Europe<sup>712</sup> signed in 2004 is remarkable for developing its provisions with respect to the enlargement law. In spite of the fact that the draft of the Constitutional Treaty<sup>713</sup> provided Article I-58 by replacing the overall text of Article 49 TEU, it made crucial amendments on the framework of the instrument. This Treaty enhanced Article 49 TEU, clarifying procedural aspects of enlargement and incorporating unwritten norms, while also granting national parliaments a formal role in the process.<sup>714</sup> Article 49 TEU offers a foundational framework for the enlargement process, focusing on the formal application and the signing of the accession treaty, while omitting other essential steps required for candidate states' membership.<sup>715</sup>

Numerous treaty reforms also enhanced the instrument on the accession provisions closely connecting it with the fundamental values of the EU which has been established under the Article 2 TEU.<sup>716</sup> Besides this, the Lisbon Treaty contributed to the existing instrument by granting principles of 'eligibility', adopted by European Council. Conditions of eligibility<sup>717</sup> referred to primary EU law and Copenhagen criteria and are regarded as one of the mandatory standards for membership under the political context. The other legal basis of the enlargement process leading the relations among candidate countries and member states is organized by Article 217 of the Treaty on the Functioning of the European Union (TFEU)<sup>718</sup> which included intercourse of association based on mutual rights and obligations, common actions and particular procedures. In addition, Article 8 TEU<sup>719</sup> comprising the particular links with neighboring states with the purpose of creating a safe space under the principles of prosperity and good neighborliness, is closely connected with the enlargement law.

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<sup>712</sup> J. C. PIRIS, *The Constitution for Europe: A Legal Analysis*, Cambridge, 2006.

<sup>713</sup> J. BAST, *The Constitutional Treaty as a Reflexive Constitution*, in *German Law Journal*, 2005.

<sup>714</sup> W. SADURSKI, *Constitutionalism and the Enlargement of Europe*, Oxford, 2012.

<sup>715</sup> A. OTT, *Enlargement Policy*, cit.

<sup>716</sup> J. WOUTERS, *Revisiting Art. 2 TEU*, cit.

<sup>717</sup> K. INGLIS, *Evolving Practice in EU Enlargement with Case Studies in Agri-Food and Environment Law*, 2010.

<sup>718</sup> N. IDRIZ, *Association as a Stepping-Stone to Membership, Legal Constraints on EU Member States in Drafting Accession Agreements: The Case of Turkey*, 2022.

<sup>719</sup> R. PETROV, P. VAN ELSUWEGE, *Article 8 TEU: Towards a New Generation of Agreements with the Neighbouring Countries of the European Union?*, in *European Law Review*, 2011.

The Lisbon Treaty<sup>720</sup> brought substantial changes to enlargement law, strengthening the legal basis<sup>721</sup> of Article 49 TEU by reinforcing obligations, enhancing citizen engagement, implementing stricter conditionality, and considering the Union's capacity to integrate new countries.<sup>722</sup> The procedural innovations in Article 49 TEU, which ensure adherence to EU values, implement European Council conditions, and notify national parliaments and the European Parliament, stem from the failed Constitutional Treaty.<sup>723</sup> In addition, the instrument preserved the fundamental values including respect for human dignity, freedom, equality, human rights (comprising minority rights), democracy and the rule of law<sup>724</sup> mentioned in Article 2. The widespread presence and protection of values such as pluralism, non-discrimination, tolerance, solidarity, justice, and sexual equality in member states serve as crucial examples for candidate countries, compelling them to not only respect but also ensure these values in order to be considered eligible for membership application<sup>725</sup> through innovation. The European Council formulated the admission conditions in the course of the intergovernmental negotiations<sup>726</sup> which took place in 2007 introduced a remarkable novelty to the enlargement law of the EU. It eliminated the article of the Constitutional Treaty underlying that the EU is open to the European countries which implement and ensure the defined common values.<sup>727</sup>

The Lisbon Treaty introduced innovations<sup>728</sup> to the EU enlargement procedure, including requiring countries adhering to Article 2 TEU<sup>729</sup> to apply for membership, with the EU having the ultimate decision, and mandating applicant countries to notify both the European Parliament and national parliaments upon submitting their requests to join the Union. Under

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<sup>720</sup> P. VAN CLEYNENBREUGEL, K. A. JANCEWICZ, J. BOIS, *Inconsistent Administrative Enforcement of EU Law at Member State Level: The Lisbon Treaty's Hidden Constitutional Challenge?*, 2024.

<sup>721</sup> A. MANGAS, *The European Union's Response to the Catalan Secessionist Process*, in *Hague Journal on the Rule of Law*, 2024.

<sup>722</sup> S. PIEDRAFITA, *The Treaty of Lisbon: New Signals for Future Enlargements?*, in *Eipascope*, 2008.

<sup>723</sup> R. STREINZ, *The European Constitution after the Failure of the Constitutional Treaty*, in *Zeitschrift für Öffentliches Recht*, 2008.

<sup>724</sup> F. BRUNET, *The European Economic Constitution: An Analysis of the Constitutional Treaty*, in *The Rise and Fall of the EU's Constitutional Treaty*, in *Martinus Nijhoff Publishers*, 2008.

<sup>725</sup> FIDE 2021: *Panel Discussion on Article 2 TEU*, in *EU Law Live*, 2021.

<sup>726</sup> Conseil de l'Union européenne, *Conclusions de la Présidence*, 16616/07, Bruxelles, 14.12.2007.

<sup>727</sup> Council of the European Union, *Reforming Europe for the 21st Century - Opinion of the European Commission on the Conference of Representatives of the Governments of the Member States Convened to Revise the Treaties*, 11218/07, Brussels, 26.6.2007.

<sup>728</sup> J. ZILLER, *The Lisbon Treaty*, cit.

<sup>729</sup> I. GAMBARDELLA, *Betting on Funding Conditionality to Strengthen Protection of the Rule of Law and Fundamental Rights: Potential and Challenges*, 2024.

the former procedure, national parliaments were notified of third-state applications post-European Parliament decision, with the Council<sup>730</sup> of the EU accepting requests, seeking Commission opinions, and requiring unanimous action alongside majority parliamentary approval<sup>731</sup>. The SEA (1987)<sup>732</sup> provided the EU parliament with the right of veto power with regard to any accession by absolute majority. While, if fundamental rights and freedoms are consistently violated in a candidate country seeking EU accession, the Commission can recommend halting accession negotiations<sup>733</sup> and proposing additional conditions to resume them. The Council then consults the candidate country and decides by a qualified majority whether to adopt the recommendation<sup>734</sup>.

Article 49 TEU serves as a general framework for guiding candidate countries through the accession process, dividing it into supranational and intergovernmental stages, despite criticisms of its inadequacy and the need for additional modifications.<sup>735</sup> However, it lacks clarity<sup>736</sup> on EU organs' actions, notification to parliaments, and accession negotiation norms, causing confusion in roles and processes during enlargement. To remedy these deficiencies, enhancing the legal framework governing enlargement requires the supplementation of this legal instrument with clear procedural guidelines and rules.<sup>737</sup>

### 3. The Blueprint for European Integration

The European Council's adoption of the three principal criteria during the 1993 Copenhagen conference,<sup>738</sup> equally recognized as vital elements<sup>739</sup> fulfilling the Treaties, underscores the fundamental connection between the rule of law, EU integration, and

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<sup>730</sup> R. GOEBEL, *The European Council after the Treaty of Lisbon*, in *Fordham International Law Journal*, 2010.

<sup>731</sup> A. MAURER, *The European Parliament, the National Parliaments and the EU Conventions*, in *Politique Européenne*, 2003.

<sup>732</sup> R. SCULLY, *The European Parliament and the Co-Decision Procedure: A Reassessment*, in *The Journal of Legislative Studies*, 1997.

<sup>733</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Enhancing the Accession Process - A Credible EU Perspective for the Western Balkans*, Brussels, 5.2.2020.

<sup>734</sup> E. BEST, P. SETTEMBRI, *Surviving Enlargement: How has the Council Managed*, in *The Institutions of the Enlarged European Union, Continuity and Change*, in Edward Elgar, 2008.

<sup>735</sup> A. TATHAM, *Enlargement of the European Union*, cit.

<sup>736</sup> I. ÖHNSTRÖM, *Enlargement of the European Union*, cit.

<sup>737</sup> S. VARADI, *Legal Aspects of Enlargement of the European Union*, 2013.

<sup>738</sup> G. LUFTA, E. MEKA, *Banking System on the Albanian Path to European Union Integration*, 2023.

<sup>739</sup> European Council in Copenhagen, *Conclusions of the Presidency*, Copenhagen, 21-22 June 1993.

membership eligibility.<sup>740</sup> The first criterion requires the applicant countries to foster the stability of national organs promoting democracy,<sup>741</sup> the rule of law, human rights, and protection of minorities.<sup>742</sup> The second element includes the importance of proficient operation of market economy and the ability to overcome the competitive pressure in the Union.<sup>743</sup> Finally, the candidate state must possess the capacity to undertake the commitments of accession process such as complying with the objectives of political,<sup>744</sup> economic,<sup>745</sup> and monetary union.<sup>746</sup> It is significant factor to point out that the establishment of Accession Partnerships<sup>747</sup> enhanced the wide character of the Copenhagen criteria and altered its overall nature. Certain Regulations<sup>748</sup> brought the Copenhagen criterions, which previously used to have political feature,<sup>749</sup> into the legal field of enlargement law.

The evolution of political criteria for Community membership, primarily influenced by the Commission's interpretation of Articles 237 EEC and 238 EEC, has transitioned from a geographical benchmark outlined in the TEC, notably Articles 98 ECSC, 237 EEC, and 205 Euratom.<sup>750</sup> During the initial enlargement phase, emerging political criteria, notably minority rights,<sup>751</sup> gained prominence in reaction to the expanded Community, originating from decisions by the European Commission, Council, Parliament, and national parliaments, despite the foundational milestone of the entity in 1973 lacking a focus on minority protection.<sup>752</sup> The political standards of the enlargement process further have been inserted into the primary law with the 1997 Amsterdam Treaty.<sup>753</sup> Enhancement of political accession conditions is

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<sup>740</sup> D. DUDLEY, *European Union Membership Conditionality*, cit.

<sup>741</sup> D. DUDLEY, *European Union Membership Conditionality*, cit.

<sup>742</sup> E.M. PALICI DI SUNI, *Diritto Costituzionale dei Paesi dell'Unione Europea*, seconda edizione, in *CEDAM*, 2011.

<sup>743</sup> E. FAUCOMPRET, J. KONINGS, *The Copenhagen Economic Criteria*, in *Turkish Accession to the EU: Satisfying the Copenhagen Criteria*, 2008.

<sup>744</sup> A. DÜR, C. MOSER, G. SPILKER, *The Political Economy of the European Union*, in *The Review of International Organizations*, 2020.

<sup>745</sup> F. AMTENBRINK, C. HERRMANN, R. REPASI, *The EU Law of Economic and Monetary Union*, Oxford, 2020.

<sup>746</sup> C.M. NESTLER, *The Architecture of EMU*, in *The EU Law of Economic and Monetary Union*, Oxford, 2020.

<sup>747</sup> E. IANKOVA, *Business, Government, and EU Accession: Strategic Partnership and Conflict*, in *Lexington Books*, 2009.

<sup>748</sup> *Council Regulation (EC) on Assistance to the Applicant States in the Framework of the Pre-Accession Strategy, and in particular on the Establishment of Accession Partnerships*, No 622/98, 16 March 1998.

<sup>749</sup> C. KOLLIAS, P. MESSIS, *Are Candidate Countries Converging with the EU in Terms of the Copenhagen Political Criteria?*, in *European Politics and Society*, 2022.

<sup>750</sup> R. JANSE, *The Evolution of the Political Criteria*, cit.

<sup>751</sup> E. PALICI DI SUNI, *The European Union Between Official and Minority Languages*, in *Europäisches Minderheitenrecht, Festschrift für Professor Gilbert Gornig*, *Facultas Nomos*, 2023.

<sup>752</sup> G. SASSE, *EU Conditionality and Minority Rights: Translating the Copenhagen Criterion into Policy*, 2005.

<sup>753</sup> P. NIKOLOVA, *Negotiating for EU Membership*, cit.



exclusively analyzed from various perspectives on the bases of legal instruments. Article 21 TEU<sup>754</sup> emphasizes that the foundation, evolution and, particularly, enlargement of the Union have been stimulated and ensured under the principles of human rights, the rule of law and democracy. In addition, it is evident that the requirements of the political admission process shall be in line with the Article 2 TEU<sup>755</sup> which demands the respect for fundamental values such as democracy, the rule of law, human rights.

The current Copenhagen criteria for accession to the European Union are compared to past enlargement requirements, revealing that they have been strengthened and consolidated based on the Union's previous experiences with enlargement.<sup>756</sup> The economic status of applicant countries has historically been evaluated during enlargement rounds, exemplified by France's veto<sup>757</sup> of the UK's entry into the Community due to concerns about the compatibility of its economic situation with the standards of the common market. Likewise, economic situation of Greece, Portugal and Spain<sup>758</sup> has been broadly negotiated during the admission process for membership. In addition, the *acquis communautaire*<sup>759</sup> has been applied for the first time in the Hague Conference of the Heads of State which take place in 1969 while tackling the application of the UK, Denmark, Ireland and Norway.

The innovation<sup>760</sup> of the Copenhagen benchmarks in the EU enlargement process arose from moderate constitutionalization<sup>761</sup> and the introduction of new dimensions, providing specific measures to prepare candidate states for membership, in contrast to the broader principles outlined in Article 49 TEU. The EU's legal order has advanced through ongoing regulation of enlargement commitments, including additional rules from the 1995 Madrid

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<sup>754</sup> C. HILLION, V. DELHOMME, *EU Enlargement, Extra-Territorial Application of EU Law and the International Dimension*, in *The Interface Between EU and International Law: Contemporary Reflections*, 2019.

<sup>755</sup> P. ATHANASSIOU, S. LAULHÉ SHAELOU, *EU Accession from Within? An Introduction*, in *Yearbook of European Law*, 2014.

<sup>756</sup> C. HILLION, *The Copenhagen Criteria and Their Progeny, EU Enlargement*, Oxford, in *Hart Publishing*, 2004.

<sup>757</sup> D.E. FURBY, *The Revival and Success of Britain's Second Application for Membership of the European Community, 1968-71*, London, 2010.

<sup>758</sup> W. KICKERT, *Distinctiveness of Administrative Reform in Greece, Italy, Portugal and Spain, Common Characteristics of Context, Administrations and Reforms*, in *Public Administration*, 2011.

<sup>759</sup> R. ALLERS, *Attacking the Sacred Cow, The Norwegian Challenge to the EC's Acquis Communautaire in the Enlargement Negotiations of 1970-72*, 2010.

<sup>760</sup> L. HERȚA, A. CORPĂDEAN, *Why the Western Balkans Should Matter for the European Union*, in *The European Union, International Relations and Area Studies: Focus on Western Balkans*, 2021.

<sup>761</sup> M. TELÒ, *The EU from a Constitutional Project to a Process of Constitutionalization*, in *European Politics and Society*, 2017.

European Council emphasizing the need for candidate states to reform governmental and judicial frameworks for successful integration.<sup>762</sup> The European Council in Helsinki in 1999 underscored the significance of a 'good neighbor'<sup>763</sup> benchmark in accession requirements to prevent disputes within the EU's territory, highlighting the involvement of applicant states in collaboration and good neighborliness as a crucial factor for membership. The Copenhagen criteria, pivotal in the European integration process, with references to democratic frameworks and human rights evident in the Treaty establishing the ECSC, yet despite numerous related instruments, the explicit scope and function remain challenging to elucidate.<sup>764</sup>

The Commission<sup>765</sup> evaluates democracy, rule of law, human rights, minority protection, civil, political, economic, and social rights, as well as compliance with international agreements, human trafficking, and freedom of speech under the political Copenhagen criteria.<sup>766</sup> It employs economic criteria, including GDP progress, inflation, government budget balance, unemployment, and foreign debt, to evaluate applicant countries' economic status for EU membership. Additionally, assessments<sup>767</sup> consider the capability of overcoming competitive pressures and market forces,<sup>768</sup> focusing on infrastructural aspects and telecommunications networks to ensure alignment with EU standards. The Copenhagen principles, foundational to EU enlargement and integration, are deemed ineffective due to the EU's lack of response to candidate states' inadequate implementation of accession conditions and the unclear definition of key terms such as 'functioning market economy'<sup>769</sup> and 'democracy'.<sup>770</sup> Despite efforts through treaties, legislation, and measures to enhance various

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<sup>762</sup>An Extract of The Presidency Conclusions: Madrid European Council, *Presidency Conclusions*, 15 And 16 December 1995.

<sup>763</sup> E. SEVEN, *The European Union Enlargement Criteria: The Prominence of the Principle of Good Neighbourliness*, 2017.

<sup>764</sup> T. MARKTLER, *The Power of the Copenhagen Criteria*, in *Croatian Yearbook of European Law & Policy*, 2006.

<sup>765</sup> European Commission, *Progress Towards Meeting the Economic Criteria for EU Accession*, The EU Commission's 2021 Assessments, Institutional Paper 161, November 2021.

<sup>766</sup> R. JANSE, *Is the European Commission*, cit.

<sup>767</sup> M. GEJUA, K. TSIMINTIA, *Georgia and the Capacity to Cope with Competition and Market Forces in the European Union: Evolution in the Prism of "Copenhagen Criteria"*, in *European Journal of Economics and Management Sciences*, 2023.

<sup>768</sup> L. NILSSON, *Trade Integration and the EU Economic Membership Criteria*, in *European Journal of Political Economy*, 2000.

<sup>769</sup> K. TSIMINTIA, M. GEJUA, *Georgia and the Functioning Market Economy: Evolution in the Prism of "Copenhagen Criteria"*, in *European Journal of Economics and Management Sciences*, 2022.

<sup>770</sup> M. NAKASHIDZE, *Transformations of Georgia, Moldova, and Ukraine towards EU Membership*, in *Polarization, Shifting Borders and Liquid Governance: Studies on Transformation and Development in the OSCE Region*, 2023.

aspects of the *acquis*, the criteria remain inexplicable and cover wide-ranging spheres, leading to incoherence in assessing candidate progress towards meeting membership conditions.<sup>771</sup> Understanding the broad and nuanced significance of the Copenhagen criteria is crucial, as their fuzziness<sup>772</sup> complicates the accession process for applicant countries. Clear and precise definition of terms within the criteria, particularly regarding economic and political stipulations such as democracy and the rule of law, is essential to streamline the accession process and eliminate confusion for both applicant states and the EU.

The European Commission<sup>773</sup> initially invoked Article 2 TEU in assessing Serbia's EU accession eligibility, although it primarily relied on the Copenhagen criteria and the Stabilization and Association Process in its evaluation. Notably, in its evaluations,<sup>774</sup> democracy and the rule of law have been accentuated, with less explicit reference to fundamental rights, a trend highlighted in the 2016 report on Turkey's potential accession.<sup>775</sup> This approach<sup>776</sup> underscores the interconnectedness between the Copenhagen criteria and Article 2 TEU, both centered on evaluating a state's adherence to democratic principles.<sup>777</sup> According to the Copenhagen criteria, democratic governance entails a distinct separation of powers, inclusive legislative processes, stakeholder engagement, and parliamentary oversight.

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<sup>771</sup> P. REZLER, *The Copenhagen Criteria: Are They Helping Or Hurting The European Union*, in *Touro International Law Review*, 2010.

<sup>772</sup> G. STAJAJ, *From Rags to Riches: Croatia and Albania's EU Accession Process through the Copenhagen Criteria and Conditionality*, 2013.

<sup>773</sup> European Commission, Communication from the Commission to the European Parliament and the Council, *Commission Opinion on Serbia's Application for Membership of the European Union*, Com(2011) 668 final, Brussels, 12 October 2011.

<sup>774</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2016 Communication on EU Enlargement Policy*, COM(2016) 715 final, Brussels, 9 November 2016.

<sup>775</sup> European Commission, Commission Staff Working Document, *Turkey 2016 Report*, Accompanying the Document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2016 Communication on EU Enlargement Policy*, SWD(2016) 366 final, Brussels, 9 November 2016.

<sup>776</sup> Note: the Commission assesses human rights adherence and minority protection in Montenegro's accession, highlighting discrimination against certain ethnic groups, persons with disabilities, and LGBT individuals. See: European Commission, Commission Staff Working Document, Analytical Report, Accompanying the Communication from the Commission to the European Parliament and the Council, *Commission Opinion on Montenegro's Application for Membership of the European Union*, SEC(2010) 1334 Final, Brussels, 9 November 2010.

<sup>777</sup> Note: the Commission acknowledges Albania's legal framework prohibiting discrimination against the LGBTI community, yet underscores the imperative for enhanced measures to ensure the protection of LGBTI individuals from discriminatory acts. See: European Commission, Commission Staff Working Document, *Albania 2020 Report*, Accompanying the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2020 Communication on EU Enlargement Policy*, SWD(2020) 354 Final, Brussels, 6 October 2020.

Recent rulings<sup>778</sup> from the ECJ further support this correlation, suggesting that the Copenhagen criteria offer valuable insights into interpreting the principles enshrined in Article 2 TEU.

The Copenhagen criteria, demonstrated by various Commission Opinions<sup>779</sup> and Communications,<sup>780</sup> provide substantive benchmarks that candidate countries have actively pursued to align their institutions with EU standards and secure membership<sup>781</sup>. While rigorously applied during the accession process, their enforcement tends to wane once a country becomes a member<sup>782</sup>. Pre-accession democracy conditionality does not eliminate the possibility of post-accession backlash, as the Copenhagen criteria are only applicable during accession and cease to have relevance once a country becomes a member of the Union<sup>783</sup>. Interestingly, the Copenhagen criteria, while not directly enforceable against Member States post-accession, serve to concretize the principles of democracy outlined in Article 2 TEU and can potentially be imposed on Member States through this provision, particularly focusing on parliamentary democracy, checks and balances, and electoral integrity.<sup>784</sup>

#### 4. The Rule of Law as a Pillar of EU Enlargement

The rule of law<sup>785</sup> stands as a fundamental pillar within the Union,<sup>786</sup> constituting a non-negotiable membership condition<sup>787</sup> for aspiring countries.<sup>788</sup> Central to the EU's ethos, the rule of law ensures that all member states adhere to a set of principles<sup>789</sup> aimed at guaranteeing

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<sup>778</sup> European Court of Justice, Judgment of the Court (Grand Chamber), C-896/19, *Repubblika v Il-Prim Ministru*, IMFO-Curia Case-Law, 20 April 2021.

<sup>779</sup> European Commission, Communication from the Commission, *Opinion on Croatia's Application for Membership of the European Union*, COM(2004) 257 final, Brussels, 20 April 2004.

<sup>780</sup> European Commission, Commission Staff Working Paper, *Croatia 2011 Progress Report*, Accompanying the Document, Communication from the Commission to the European Parliament and the Council, *Enlargement Strategy and Main Challenges 2011-2012*, Brussels, SEC(2011) 1200 final, 12 October 2011.

<sup>781</sup> European Commission, Communication from the Commission to the European Parliament and the Council, *Enlargement Strategy and Main Challenges 2011-2012*, COM(2011) 666 final, Brussels, 12 October 2011.

<sup>782</sup> L. PECH, K. L. SCHEPPELE, *Illiberalism Within: Rule of Law Backsliding in the EU*, in *Cambridge Yearbook of European Legal Studies*, 2017.

<sup>783</sup> P. LEVITZ, G. POP-ELECHES, *Why No Backsliding? The European Union's Impact on Democracy and Governance before and after Accession*, in *Comparative Political Studies*, 2010.

<sup>784</sup> Y. BOUZORAA, *The Value of Democracy*, cit.

<sup>785</sup> J. GROGAN, *The Crystallisation of a Core EU Meaning of the Rule of Law and Its (Limited) Normative Influence Beyond the EU*, 2022.

<sup>786</sup> K. LENAERTS, *New Horizons for the Rule of Law within the EU*, in *German Law Journal*, 2020.

<sup>787</sup> L. PECH, *The Rule of Law as a Constitutional Principle of the European Union*, 2009.

<sup>788</sup> E. BASHESKA, D. KOCHENOV, *Thanking the Greeks: The Crisis of the Rule of Law in EU Enlargement Regulation*, in *Southeastern Europe*, 2015.

<sup>789</sup> L. ZHANG, *Advancing European Integration*, cit.

justice, fairness, and accountability within their legal systems.<sup>790</sup> This commitment is integral to fostering trust<sup>791</sup> and cohesion among member states, as it creates a level playing field for economic cooperation, trade, and political collaboration. By upholding the rule of law,<sup>792</sup> the EU ensures that its members maintain democratic governance,<sup>793</sup> respect human rights,<sup>794</sup> and operate transparently, thus safeguarding the values upon which the Union was founded.<sup>795</sup>

Moreover, the rule of law plays a crucial role<sup>796</sup> in advancing the process of EU integration,<sup>797</sup> providing a framework for resolving disputes and conflicts, promoting stability, and enhancing the effectiveness of EU institutions. By ensuring that member states abide by common legal standards,<sup>798</sup> the rule of law<sup>799</sup> fosters mutual understanding and solidarity among diverse nations, facilitating deeper integration<sup>800</sup> and cooperation in the crucial areas. Furthermore, adherence to the rule of law strengthens the EU's credibility on the global stage, reinforcing its position as a beacon of democracy, human rights, and the rule of law.<sup>801</sup> As the EU continues to expand and evolve, the rule of law remains indispensable<sup>802</sup> in preserving the Union's unity, legitimacy, and ability to address shared challenges collectively.<sup>803</sup>

The general view to the history of the rule of law under the framework of the establishing Treaties describe the fact that the principle has not been protected in terms of

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<sup>790</sup> A. JAKAB, L. KIRCHMAIR, *How to Develop the EU Justice Scoreboard into a Rule of Law Index: Using an Existing Tool in the EU Rule of Law Crisis in a More Efficient Way*, in *German Law Journal*, 2021.

<sup>791</sup> L. PECH, P. WACHOWIEC, D. MAZUR, *Poland's Rule of Law Breakdown: A Five-Year Assessment of EU's (In) Action*, in *Hague Journal on the Rule of Law*, 2021.

<sup>792</sup> J. W. MÜLLER, *Should the EU Protect Democracy and the Rule of Law Inside Member States?*, in *European Law Journal*, 2015.

<sup>793</sup> W. SADURSKI, A. CZARNOTA, M. KRYGIER, *Spreading Democracy and the Rule of Law?: The Impact of EU Enlargement for the Rule of Law, Democracy and Constitutionalism in Post-Communist Legal Orders*, in *Springer Science & Business Media*, 2006.

<sup>794</sup> T. BÖRZEL, T. RISSE, *One Size Fits All! EU Policies for the Promotion of Human Rights, Democracy and the Rule of Law*, Workshop on Democracy Promotion, 2004.

<sup>795</sup> D. KOCHENOV, L. PECH, *Upholding the Rule of Law*, cit.

<sup>796</sup> I. GAMBARDILLA, *Betting on Funding Conditionality*, cit.

<sup>797</sup> R. COMAN, *The Politics of the Rule of Law in the EU Polity: Actors, Tools and Challenges*, Palgrave Macmillan, 2022.

<sup>798</sup> C. HILLION, *The EU External Action as Mandate to Uphold the Rule of Law Outside and Inside the Union*, in *Columbia Journal of European Law*, 2023.

<sup>799</sup> A. ČAKAL, L.R. MESIHOVIC, *Bosnia and Herzegovina in the European Union Integration Process: Systemic Limitations to Progress in the Rule of Law*, in *Map Social Sciences*, 2024.

<sup>800</sup> S. PRIEBUS, L. ANDERS, *Fundamental Change*, cit.

<sup>801</sup> M.M. MANRIQUEZ, T. PAVONE, *Follow the Leader: The European Commission, the European Court of Justice, and the EU's Rule of Law Revolution*, 2024.

<sup>802</sup> Z. DARVAS, *Ukraine's Path*, cit.

<sup>803</sup> T. DRINÓCZI, A. B. KACAŁA, *Rule of Law, Common Values, and Illiberal Constitutionalism: Poland and Hungary within the European Union*, 2020.

supranationalism and independence of the court.<sup>804</sup> After 1986, the ECJ recognized the EU as a "community based on the rule of law," highlighting the court's role in upholding this principle while interpreting and applying the Treaty and related regulations.<sup>805</sup> The Treaties include fundamental values<sup>806</sup> in membership requirements to prevent undermining the legitimacy of EU decision-making, as disrespect for the rule of law<sup>807</sup> can distort the EU legal order and erode mutual trust<sup>808</sup> among member states.<sup>809</sup>

Its essence guides member states and shapes eligibility criteria for applicants<sup>810</sup> under Article 2 TEU,<sup>811</sup> prompting detailed examination by the Commission to reinforce these foundational values within EU customary law. It has evolved within the framework of a continuously developing pre-accession strategy and is underscored as a founding principle of the EU in the preamble of the EUCFR.<sup>812</sup> Meanwhile, Article 21 TEU<sup>813</sup> states that this principle encourages the respective establishment, enhancement, and enlargement of the EU.<sup>814</sup> Article 3 TEU<sup>815</sup> provides that candidate states must adhere to the rule of law as well as actively promote and ensure its presence. Whereas Article 13 TEU<sup>816</sup> restates the necessity of protecting and promoting the widely determined EU values among the EU organs, reiterating their main tasks and objectives to ensure the rule of law. Article 4 TEU<sup>817</sup> emphasizes the necessity of

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<sup>804</sup> L. PECH, *The Rule of Law in the EU: The Evolution of the Treaty Framework and Rule of Law Toolbox*, 2020.

<sup>805</sup> T. VON DANWITZ, *The Rule of Law in the Recent Jurisprudence of the ECJ*, in *Fordham International Law Journal*, 2013.

<sup>806</sup> S. WEATHERILL, *How Does the EU Do It? Law and Values in the European Union*, Oxford, 2016.

<sup>807</sup> T. WISCHMEYER, *Generating Trust through Law? Judicial Cooperation in the European Union and the Principle of Mutual Trust*, in *German Law Journal*, 2016.

<sup>808</sup> S. PRECHAL, *Mutual Trust Before the Court of Justice of the European Union*, in *European Papers-A Journal on Law and Integration*, 2017.

<sup>809</sup> A. EFRAT, *Assessing Mutual Trust among EU Members: Evidence from the European Arrest Warrant*, in *Journal of European Public Policy*, 2019.

<sup>810</sup> C. HILLION, *Overseeing the Rule of Law in the European Union*, in *SIEPS European Policy Analysis*, 2016.

<sup>811</sup> W. SCHROEDER, *The Rule of Law as*, cit.

<sup>812</sup> A. JAKAB, *The EU Charter of Fundamental Rights as the Most Promising Way of Enforcing the Rule of Law against EU Member States*, 2016.

<sup>813</sup> V. KUBE, *The European Union's External Human Rights Commitment: What Is the Legal Value of Article 21 TEU?*, in *EUI Department of Law Research Paper*, 2016.

<sup>814</sup> M. HERTOIGH, *Your Rule of Law Is Not Mine: Rethinking Empirical Approaches to EU Rule of Law Promotion*, in *Asia Europe Journal*, 2016.

<sup>815</sup> L. BARTELS, *The EU's Human Rights Obligations in Relation to Policies with Extraterritorial Effects*, in *European Journal of International Law*, 2014.

<sup>816</sup> D. YURATICH, *Article 13 (2) TEU: Institutional Balance, Sincere Co-Operation, and Non-Domination During Lawmaking?*, in *German Law Journal*, 2017.

<sup>817</sup> N. MURPHY, *Article 4 (2) TEU: A Blow to the Supremacy of Union Law*, in *Trinity College Law Review*, 2017.

sincere cooperation<sup>818</sup> among member states to achieve the EU's objectives, requiring not only constitutional efforts but also support for the effective promotion of EU values.

A three-phase dialogue has been introduced to protect the rule of law within the EU, starting with an opinion, followed by a recommendation, and potentially culminating in Article 7 TEU mechanisms<sup>819</sup> if necessary, notably shaping EU values, especially within the enlargement policy framework.<sup>820</sup> The principle of the rule of law, as outlined within the TEU, serves as both an establishing value of the EU and a criterion for membership, guiding the objectives of EU organs and delineating specific parameters for applicant countries.<sup>821</sup> Member states urged the Commission to elaborate on the content of Article 2 TEU,<sup>822</sup> which outlines fundamental values integral to EU membership and has evolved within the context of the pre-accession strategy, further emphasized as a founding principle in the Preamble of the CFREU.<sup>823</sup> Meanwhile, Article 21 TEU<sup>824</sup> states that this principle encourages the respective establishment, enhancement, and enlargement of the EU. Treaties include fundamental values in membership requirements to safeguard the legitimacy of EU decision-making and prevent disruptions to the EU legal order, which could erode trust among member states. Article 3 TEU<sup>825</sup> provides that candidate states must adhere to the rule of law as well as actively promote and ensure its presence. Whereas Article 13 TEU<sup>826</sup> restates the necessity of protecting and promoting the widely determined EU values among the EU organs, reiterating their main tasks and objectives to ensure the rule of law.<sup>827</sup> Article 4 TEU emphasizes sincere cooperation<sup>828</sup> among member states to effectively implement EU tasks and prevent measures that could

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<sup>818</sup> C. MOLINARI, *Sincere Cooperation Between EU and Member States in the Field of Readmission: The More the Merrier?*, in *Cambridge Yearbook of European Legal Studies*, 2021.

<sup>819</sup> G. HERNÁNDEZ, *The Powers of the Presidency of the Council of the EU to Shape the Rule of Law Enforcement Agenda: The Article 7 Case*, in *Journal of Common Market Studies*, 2023.

<sup>820</sup> L. LOUWERSE, *EU's Conceptualisation of the Rule of Law in Its External Relations: Case Studies on Development Cooperation and Enlargement*, in *Brill Nijhoff*, 2023.

<sup>821</sup> C. HILLION, *Overseeing the Rule of Law*, cit.

<sup>822</sup> M. KLAMERT, D. KOCHENOV, *Article 2 TEU*, 2019.

<sup>823</sup> M. KELLERBAUER, M. KLAMERT, J. TOMKIN, *The EU Treaties and the Charter of Fundamental Rights: A Commentary*, Oxford, 2019.

<sup>824</sup> W. SCHROEDER, *The Rule of Law as*, cit.

<sup>825</sup> R. DUNBAR, *Article 3 (5) TEU a Decade On*, in *Maastricht Journal of European and Comparative Law*, 2021.

<sup>826</sup> I. SOLANKE, *The Advocate General: Assisting the CJEU of Article 13 TEU to Secure Trust and Democracy*, in *Cambridge Yearbook of European Legal Studies*, 2012.

<sup>827</sup> E. PERILLO, *Le Decisioni Collettive Dei Governi Degli Stati Membri E Il Rispetto Dello Stato di Diritto Europeo: Una Competenza Esclusiva Della Corte di Giustizia?*, in *Il Diritto dell'Unione Europea*, 2021.

<sup>828</sup> H.J. BLANKE, S. MANGIAMELI, *Article 4 [The Relations Between the EU and the Member States] (Ex-Article 6.3, 33 TEU, Ex-Article 10 EC)*, in *The Treaty on European Union (TEU) A Commentary*, Berlin, Heidelberg, 2013.

undermine EU objectives, requiring both constitutional efforts and support for the EU's promotion of its values.

The link between EU pre-accession conditionality and accession commitments, as outlined in Article 49 TEU and its association with Article 2 TEU, is crucial for upholding the rule of law in candidate states and shaping EU foreign relations and enlargement policy.<sup>829</sup> The EU has gradually outlined specific requirements for the rule of law, especially concerning judicial institutions, incorporating internal references like Articles 2, 7, and 10 of the TEU and Articles 47-50 of the CFREU, as well as external references such as the United Nations and the Council of Europe.<sup>830</sup> Chapter 23 of the *acquis communautaire* outlines requirements for the rule of law, focusing on judicial independence, professionalism, impartiality, and efficiency, with the EU and its member states overseeing implementation and addressing gaps through mechanisms like those established by the ECJ to safeguard EU interests<sup>831</sup>. The EU utilizes ECJ case law to support rule of law observance, define accession standards, and establish collective principles for domestic judicial systems, with specific judgments on judicial independence<sup>832</sup> and fairness playing a significant role in accession negotiations.<sup>833</sup>

The rule of law's evolution within the Copenhagen criteria and EU enlargement policy<sup>834</sup> underscores its growing significance in candidate states' attainment of membership, promoting reforms across various domains to align with EU standards and transpose the EU *acquis* into national systems. The EU's enlargement policy emphasizes the centrality of the rule of law, shaping membership conditions<sup>835</sup> and influencing areas such as judiciary, corruption, and fundamental freedoms for candidate states. EU membership mandates adherence to the rule of law, fostering economic prosperity and democracy in candidate countries, yet reforms for accession may inadvertently undermine the establishment of legitimate law in transitional

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<sup>829</sup> I. DAMJANOVSKI, C. HILLION, D. PRESHOVA, *Uniformity and Differentiation*, cit.

<sup>830</sup> T. JORIS, J. VANDENBERGHE, *The Council of Europe and the European Union: Natural Partners or Uneasy Bedfellows?*, 2008.

<sup>831</sup> A.A. PEJOVIĆ, *The New Approach of the European Union in Accession Negotiations—The Focus on Chapters 23 “Judiciary and Fundamental Rights” and 24—“Justice, Freedom and Security”*, Универзитет за Национално и Световно Стопанство (УНСС), 2018.

<sup>832</sup> A. LORENZ, M. WENDEL, *Rule of Law Challenges as Integration Booster, Learning from Resilient Actors and Ambiguities of Rule of Law by Design, Rule of Law and the Judiciary*, in *Nomos Verlagsgesellschaft*, 2023.

<sup>833</sup> K. LENAERTS, *Rule of Law and the Coherence of the Judicial System of the European Union*, in *The Common Market Law Review*, 2007.

<sup>834</sup> L. OGNJANOSKA, *Promoting the Rule of Law*, cit.

<sup>835</sup> J. MARTÍN JOSÉ, PÉREZ DE NANCLARES, *La Unión Europea Como Comunidad De Valores: A Vueltas Con La Crisis De La Democracia Y Del Estado De Derecho, Teoría y Realidad Constitucional*, 2019.



democracies<sup>836</sup>. Compliance with EU values, especially the rule of law, is crucial both pre- and post-accession, as highlighted by the Conditionality Regulation of December 2020, enabling the withholding of funds from Member States in violation.<sup>837</sup>

The EU's identity<sup>838</sup> is deeply intertwined with upholding the rule of law, which serves as a fundamental condition for membership, alongside other democratic values and standards. Ensuring compliance with this principle among member states necessitates robust enforcement mechanisms, highlighting its critical importance within the EU framework.<sup>839</sup> However, challenges arise in enforcing rule of law breaches, often due to political considerations within the Commission regarding national governments' positions, casting doubt on the conditions for membership<sup>840</sup>. Suggestions for a more significant role for the ECJ have surfaced, as the Council's reliance on collective action sometimes undermines the benefits for individual governments, leading to proposals such as the systemic infringement procedure<sup>841</sup>. Nevertheless, the EU faces difficulties in securing compliance with Court rulings from resistant governments, raising pertinent questions about enforcement mechanisms in the absence of coercion instruments.<sup>842</sup>

The efficacy of ensuring compliance with the rule of law hinges significantly on the fear of punishment,<sup>843</sup> which is contingent upon both the tangible capacity for enforcement and the willingness of authorities to take action. This establishes a dynamic equilibrium wherein enforcement mechanisms autonomously uphold the foundational principles of democracy and the rule of law<sup>844</sup>. The EU's new rule of law spending<sup>845</sup> conditionality, linked to mechanisms

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<sup>836</sup> J. SLAPIN, *How European Union Membership Can Undermine The Rule Of Law In Emerging Democracies*, in *West European Politics*, 2015.

<sup>837</sup> K.L. SCHEPPELE, *The Treaties Without A Guardian: The European Commission And The Rule Of Law*, in *Columbia Journal Of European Law*, 2023.

<sup>838</sup> D. TOSHKOV, *Enforcement And Public Opinion: The Perceived Legitimacy Of Rule Of Law Sanctions*, in *Journal Of European Public Policy*, 2024.

<sup>839</sup> C. CLOSA, *The Quagmire Of EU Rule Of Law Enforcement: Limits To Jurisdictional Enforcement, Limited Deterrence Capacity And Asymmetry*, in *EU Law Live*, 2024.

<sup>840</sup> C. CLOSA, *The Politics of Guarding The Treaties: Commission Scrutiny Of Rule Of Law Compliance*, in *Journal Of European Public Policy*, 2019.

<sup>841</sup> K.L. SCHEPPELE, *Enforcing The Basic Principles Of EU Law Through Systemic Infringement Procedures*, 2016.

<sup>842</sup> A. BATORY, *Defying The Commission*, cit.

<sup>843</sup> G. BECKER, *Crime And Punishment: An Economic Approach*, in *Journal Of Political Economy*, 1968.

<sup>844</sup> B. WEINGAST, *The Political Foundations Of Democracy And The Rule Of The Law*, in *American Political Science Review*, 1997.

<sup>845</sup> Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a *General Regime of Conditionality for the Protection of the Union Budget*, *Official Journal of the European Union*, (Legislative Acts), Regulations, 22 December 2020.

such as the Rule of Law Conditionality Mechanism, offers potent deterrence through financial sanctions and fund withholding, subject to proactive EU engagement and member states' conditions<sup>846</sup>. Financially driven enforcement mechanisms, like sanctions and fund withholding, have shown effectiveness, but their credibility may differ based on member states' reliance on EU funds and their willingness to comply.<sup>847</sup>

The EU considers the rule of law a core value, prioritizing its reinforcement in external actions, as delineated in the Treaty of Lisbon.<sup>848</sup> In greater detail, both Article 21 (within Title V, Chapter 1 on the Union's External Action)<sup>849</sup> as well as the principles including the rule of law which stimulated the foundation of the Union and targeted to promote its values on a global scale, ruled the EU's international obligation. Moreover, under Article 21, 2 (b), the Union is devoted to actively cooperating in the areas of integration and underpinning democracy, the rule of law, human rights,<sup>850</sup> and the principles of international law<sup>851</sup>. The rule of law significantly shapes legal development in the EU and is a crucial aspect of assessing the progress of Western Balkan countries towards EU accession, as highlighted in the 2020 Communication on EU enlargement policy.<sup>852</sup> The rule of law's inclusion in the political criterion raises questions about its adequacy in recent enlargement phases with assessments indicating its function faces excessively limited interpretation alongside democracy, human rights, and minority protection.<sup>853</sup> It significantly influences the Copenhagen criteria<sup>854</sup> and the EU's absorption capacity<sup>855</sup> for new member states, emphasizing the importance of structural

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<sup>846</sup> G. HERNÁNDEZ, C. CLOSA, *Turning Assertive? EU Rule of Law Enforcement in the Aftermath of the War in Ukraine*, in *West European Politics*, 2023.

<sup>847</sup> D. KELEMEN, *The European Union's Authoritarian Equilibrium, Strategic Responses to Domestic Contestation*, 2021.

<sup>848</sup> A. HERRERO DE LA FUENTE, *Las Relaciones Exteriores De La Unión Europea En El Tratado De Lisboa*, 2010.

<sup>849</sup> L. LONARDO, *Common Foreign And Security Policy And The EU's External Action Objectives: An Analysis of Article 21 of the Treaty on the European Union*, in *European Constitutional Law Review*, 2018.

<sup>850</sup> E. HERLIN KARNELL, *The EU as a Promoter of Values and the European Global Project*, in *German Law Journal*, 2012.

<sup>851</sup> E. HERLIN KARNELL, *EU Values*, cit.

<sup>852</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2020 Communication on EU Enlargement Policy*, Brussels, 6 October 2020.

<sup>853</sup> G. ÍÑIGUEZ, *El Estado de Derecho y la Condicionabilidad del Fondo de Recuperación: ¿Bloqueo Institucional o Falta de Voluntad Política?*, in *Araucaria*, 2020.

<sup>854</sup> V. REDING, *Safeguarding the Rule of Law and Solving the 'Copenhagen Dilemma': Towards a New EU-Mechanism*, in *European Commission Press Release*, 2013.

<sup>855</sup> M. EMERSON, *Just What Is This 'Absorption Capacity' of the European Union?*, 2006.

reforms to enhance decision-making effectiveness and optimize administrative and judicial capabilities for efficient functioning.

Recent ECJ rulings<sup>856</sup> emphasized the importance of the rule of law principle within the Copenhagen criteria, notably seen in the rejection of Hungary and Poland's appeals against Regulation No. 2020/20922, reaffirming by the judges in Kirchberg that the requirement for member states to adhere to Article 2 of the TEU. Respecting the rule of law requirements<sup>857</sup> throughout European integration, is essential for endorsing rights derived from EU instruments and plays a significant role in implementing the Copenhagen criteria. The EU Court's decisions on Regulation No. 2020/20922 underscore the strong correlation between the rule of law and economic considerations, particularly in safeguarding the Union's budget when rule of law principles are violated.<sup>858</sup> In its rulings regarding the conditionality regulation, The Court affirmed that the rule of law serves as the basis for a conditionality mechanism under Article 322(1)(a) of the TFEU.<sup>859</sup> The Court's rulings establish the extensive scope of the rule of law, fostering confidence and promoting mutual recognition and cooperation across various EU areas, including the AFSJ and interactions between the Commission, national competition authorities, and national judges regarding the enforcement of Articles 101 and 102 of the TFEU.<sup>860</sup>

Similarly, in the case of Asociația 'Forumul Judecătorilor din România',<sup>861</sup> the judgment issued on the 18<sup>th</sup> of May 2021, highlighted the diminished significance of differentiating between the economic criterion and the *acquis communautaire* in relation to the rule of law.<sup>862</sup> Reciprocal trust among member states ensures that decisions and practices uphold the rule of law, aligning the functioning of the internal market and the area of freedom,

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<sup>856</sup> Court of Justice of the European Union, Judgments in Cases C-156/21 Hungary v Parliament and Council and C-157/21 Poland v Parliament and Council, Press Release No 28/22, Luxembourg, 16 February 2022.

<sup>857</sup> D. KOCHENOV, P. BÁRD, *Kirchberg Salami Lost in Bosphorus: The Multiplication of Judicial Independence Standards and the Future of the Rule of Law in Europe*, 2022.

<sup>858</sup> C. FASONE, *Le Sentenze della Corte di Giustizia sul Regolamento UE sulla Condizionalità Relativa alla Rule of Law: Gli Elementi di Novità e le (Numerose) Questioni Aperte*, *Democrazia e Sicurezza*, 2022.

<sup>859</sup> I. STAUDINGER, *The Rise and Fall of Rule of Law Conditionality*, in *European Papers-A Journal on Law and Integration*, 2022.

<sup>860</sup> M. BERNATT, *The Double Helix of Rule of Law and EU Competition Law: An Appraisal*, *European Law Journal*, 2021.

<sup>861</sup> Judgment of the Court (Grand Chamber), *Asociația "Forumul Judecătorilor Din România"*, C-83/19, 18 May 2021.

<sup>862</sup> M. MORARU, R. BERCEA, *The First Episode in the Romanian Rule of Law Saga: Joined Cases C-83/19, C-127/19, C-195/19, C-291/19, C-355/19 and C-397/19, Asociația 'Forumul Judecătorilor Din România', and Their Follow-Up at the National Level*, in *European Constitutional Law Review*, 2022.

security, and justice,<sup>863</sup> which also impacts candidate countries seeking accession. Thus, it has become a distinct benchmark alongside democracy and, added novel chapters to the acquis, increasing the total from 31 to 35, focusing on judiciary and fundamental rights (Chapter 23) and justice, freedom, and security (Chapter 24).<sup>864</sup>

The question of Ukraine's candidacy<sup>865</sup> for EU membership highlights dilemmas in the enlargement framework, particularly in comparison to the challenges faced by Western Balkan states aspiring for accession for over two decades. Interestingly, the acknowledgment of candidate status for Ukraine and Moldova<sup>866</sup> appears to indicate a shift back to a more traditional approach, where a thorough assessment of the rule of law and conditionality is not necessarily mandatory during the pre-candidate phase. In the case of Ukraine, this phase, known as the fast-track procedure,<sup>867</sup> was essentially skipped, leading to a relatively soft evaluation of the rule of law principles prior to accession, in contrast to the process followed for the Western Balkans. Emphasis on maintaining equilibrium amidst Ukraine's swift process highlights the need for measures like sanctions or negotiation suspensions if rule of law is disregarded.<sup>868</sup>

The EU's goal-centered approach to rule of law reform in candidate countries, prioritizing specific outcomes over abstract principles, poses challenges for EU accession decisions.<sup>869</sup> Rule of law evaluations<sup>870</sup> often focusses on short-term factors and official reforms, overlooking deeper and long-term effects. To comprehensively assess rule of law, it's crucial to consider both effectiveness and impact, including unplanned changes and citizen trust-building<sup>871</sup> in transitioning countries, especially those recovering from conflicts such as

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<sup>863</sup> A. MIGLIONICO, F. MAIANI, *One Principle to Rule Them All? Anatomy of Mutual Trust in the Law of the Area of Freedom, Security and Justice*, in *Common Market Law Review*, 2020.

<sup>864</sup> A. A. PEJOVIĆ, *Would Money Make a Difference*, cit.

<sup>865</sup> E. BERNARD, *Geopolitics of the European Rule of Law—Lessons from Ukraine and the Western Balkans*, in *Intereconomics*, 2022.

<sup>866</sup> A. SAPIR, *Ukraine and the EU: Enlargement*, cit.

<sup>867</sup> S. IONESCU, *The EU Enlargement Process, Can There Be a Fast Track Procedure to Obtain Membership*, in *Legal and Administrative Studies*, 2022.

<sup>868</sup> M. CARTA, *Lo Stato di Diritto alla Prova dell'Allargamento dell'UE (o l'allargamento della UE alla Prova dello Stato di Diritto)*, in *Eurojus*, 2022.

<sup>869</sup> K. NICOLAIDIS, R. KLEINFELD, *Rethinking Europe's Rule of Law and Enlargement Agenda: The Fundamental Dilemma*, 2012.

<sup>870</sup> R. BARATTA, *Rule of Law 'Dialogues' Within the EU: A Legal Assessment*, in *Hague Journal on the Rule of Law*, 2016.

<sup>871</sup> N. RASHITI, *Ten Years After EULEX, Key Principles for Future EU Flagship Initiatives on the Rule of Law*, 2019.

the Western Balkans. Rule of law assessments should not only examine legal aspects but also delve into sociological and political elements,<sup>872</sup> recognizing the multifaceted nature of the issues and the potential for change from various sources, including policy updates and other influential factors.

A comprehensive approach, embracing interdisciplinary collaboration and a broader perspective, is essential for effectively upholding the rule of law, addressing practical challenges, non-state norms' interaction with the law, and redefining legal supremacy.<sup>873</sup> Legal and judicial reforms often overshadow broader societal connections in enforcing the rule of law in fragile regions, with international donors similarly prioritizing legal aspects over comprehensive approaches.<sup>874</sup> Experts' frustration grows when traditional rule of law efforts fail against authoritarian leaders exploiting legal systems, detaining dissidents, prompting skepticism among political leaders and emphasizing the need for a deeper commitment and understanding for true effectiveness.<sup>875</sup> Rule of law reformers often adopt a mechanistic approach, aiming to construct the rule of law in deficient regions by replicating structures from established countries, despite its limitations.<sup>876</sup> Critics prompt reformers to adopt a flexible approach, viewing the rule of law as an adaptable objective rather than a rigid blueprint, emphasizing its role as a check on authority to prevent arbitrary power.<sup>877</sup>

The EU's annual Progress Reports on political criteria and acquis divisions have been instrumental in guiding judicial reform<sup>878</sup> in Eastern European countries, leading to the implementation of vital regulations for modern state governance. Differentiating between genuine judicial reform and superficial changes is challenging, with newly adopted laws often requiring further revisions due to initial drafting deficiencies<sup>879</sup>. Managing the impact of

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<sup>872</sup> P. BLOKKER, *EU Democratic Oversight and Domestic Deviation from the Rule of Law: Sociological Reflections*, 2015.

<sup>873</sup> M. KRYGIER, *The Rule of Law and the Three Integrations*, in *Hague Journal on the Rule of Law*, 2009.

<sup>874</sup> E.G. JENSEN, T.C. HELLER (Eds.), *Beyond Common Knowledge. Empirical Approaches to the Rule of Law*, 2003.

<sup>875</sup> F.K. UPHAM, *The Illusory Promise of the Rule of Law*, in *Human Rights with Modesty: The Problem of Universalism*, in Brill Nijhoff, 2004.

<sup>876</sup> T. CAROTHERS, *Promoting the Rule of Law Abroad: In Search of Knowledge*, in Brookings Institution Press, 2010.

<sup>877</sup> A. SAJO, *False Dichotomies, Real Perplexities and the Rule of Law*, in *Human Rights with Modesty: The Problem of Universalism*, in Martinus Nijhoff Publishers, 2004.

<sup>878</sup> C. DALLARA, *Democracy and Judicial Reforms in South-East Europe: Between the EU and the Legacies of the Past*, 2014.

<sup>879</sup> W. CHANNELL, *Lessons Not Learned: Problems with Western Aid for Law Reform in Post-Communist Countries*, in *Journal of Comparative Law*, 2006.

foreign actors is crucial for upholding the rule of law in new member states across five key areas of legal accountability, ensuring an autonomous and effective justice system. Legal accountability in new member states relies on five vital areas - institutional, managerial, legal, societal, and professional - necessitating management of foreign actors to maintain an effective justice system that safeguards legal standards, individual rights, societal demands, and judicial professionals' integrity.<sup>880</sup> The example of Latin America shows that despite notable institutional reforms in legal administration, achieving true justice and upholding the rule of law remain challenging, highlighting significant shortcomings even with improved court systems and case distribution.<sup>881</sup> Assessment of candidate states' accession overlooks rule of law challenges, necessitating equal attention to managerial structures and courts, linking evaluations to corruption, and examining practices like "telephone justice" for a more precise evaluation.<sup>882</sup>

The significance of the rule of law in the conditionality policy has steadily evolved<sup>883</sup> since its introduction into the EU enlargement policy, ultimately assuming a pivotal role in the accession process. The analysis on the Europeanization process of the CEE<sup>884</sup> countries assist to comprehend various approaches regarding the promotion of the rule of law withing the Copenhagen political accession criteria. The findings show that that when it comes to the accession process of the Western Balkans, the Union has moved beyond accepting mere symbolic reforms and now aims to exert more proactive influence to bring about tangible change.<sup>885</sup>

The EU accession process faces internal challenges such as the rule of law and absorption capacity criteria, with conditionality shifting towards meeting specific requirements, weakening conditions for aspiring countries and raising EU credibility concerns<sup>886</sup>. Clear obligations for both candidate countries and the EU are crucial for a fair European integration process, with the rule of law principle in enlargement policy gaining

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<sup>880</sup> D. PIANA, *Judicial Accountabilities in New Europe: From Rule of Law to Quality of Justice*, 2016.

<sup>881</sup> L. HAMMERGREN, *Uses of Empirical Research in Refocusing Judicial Reforms: Lessons from Five Countries*, in *World Bank*, Washington, 2003.

<sup>882</sup> R. SANNERHOLM, *In Search of a User Manual: Promoting the Rule of Law in Unruly Lands*, 2007.

<sup>883</sup> J. BRAND, *La Evolución del Concepto Europeo de Estado de Derecho*, in *Tomo I*, 2006.

<sup>884</sup> F. SCHIMMELFENNIG, U. SEDELMEIER, *The Europeanization of Eastern Europe: The External Incentives Model Revisited*, in *Journal of European Public Policy*, 2020.

<sup>885</sup> L. OGNJANOSKA, *Promoting the Rule of Law*, cit.

<sup>886</sup> G. FALKNER, *The JCMS Annual Review Lecture Is the European Union Losing Its Credibility?*, in *Journal of Common Market Studies*, 2013.

importance, demonstrated through the Copenhagen criteria and accession instruments. Candidate states' membership progress now relies heavily on their fulfilment of reforms in areas such as the economy, democracy, human rights, good governance, and the rule of law, as they work to align with EU standards and legislation.<sup>887</sup>

The enlargement process demands evolving membership conditions, emphasizing the need for enhanced EU cooperation, particularly in criminal justice and financial affairs.<sup>888</sup> The EU's credibility in upholding the rule of law is crucial in both pre-accession and post-accession phases, requiring stronger mechanisms and addressing deficiencies within EU institutions in terms of the rule of law perspective.<sup>889</sup> The process also requires internalization of norms, however, internal rule of law challenges have hindered effective promotion in the Western Balkans, raising doubts about EU credibility<sup>890</sup> in driving transformation. In addition, EU dynamics, member states' roles, domestic complexities, and national interests play significant roles in decision-making during the enlargement process, going beyond rule of law conditionality.

The European perspective on Western Balkans enlargement faces triple challenges: weakened conditionality, loss of credibility, and increased costs for domestic political actors, compounded by enduring nationalist divisions, unmet EU accession expectations, and a perception of the EU as bureaucratic.<sup>891</sup> The Western Balkans<sup>892</sup> face higher adaptation costs amid an uncertain path to EU membership, highlighting the need for the EU to prioritize rule of law conditionality, mitigate bilateral issues, and bolster internal credibility. Rule of law reforms should be ongoing processes, and both EU and Western Balkan countries need to commit to upholding these values for successful integration.<sup>893</sup> The interconnection between internal and external rule of law is crucial, with the EU's credibility impacting its global

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<sup>887</sup> E. GIANCIECCHI, *Il Processo di Adesione all'Unione Europea: Una Prospettiva Credibile per i Balcani Occidentali*, 2020.

<sup>888</sup> F. GENTILE, *La Procura Europea, Potenzialità e Limiti del Nuovo Organismo di Integrazione Europea*, Udine, 2017.

<sup>889</sup> I. CENEVSKA, *Safeguarding the Rule of Law in the European Union: Pre-Accession Conditionality and Post-Accession Reality*, in *TEPSA Policy Briefs*, 2020.

<sup>890</sup> J. O'BRENNAN, *On the Slow Train to Nowhere? The European Union, 'Enlargement Fatigue' and the Western Balkans*, in *European Foreign Affairs Review*, 2014.

<sup>891</sup> M. MILOSEVICH JUARISTI, *El Futuro de la Ampliación de la UE en los Balcanes Occidentales*, in *Real Instituto Elcano*, 2021.

<sup>892</sup> S. ROSSI, R. PANE BIANCO, *L'Unione Europea come Attore Esterno delle Transizioni Democratiche, Una Comparazione tra Balcani Occidentali, Medio Oriente e Nord Africa*, in *L'Unione Europea e il "Cerchio di Amici": Sicurezza Europea e Politica di Vicinato*, 2008.

<sup>893</sup> K. BÖTTGER, D. MAUGEIAS, *Contre le Recul de l'Etat de Droit dans les Balkans Occidentaux*, 2021.

leadership role, underscoring the need to comprehensively address rule of law issues for European integration and global influence.<sup>894</sup>

## 5. The Role of Acquis Communautaire in EU Accession Negotiations

The *acquis communautaire*,<sup>895</sup> often regarded<sup>896</sup> as the accumulated body of EU laws and regulations, represents a cornerstone of the membership conditions<sup>897</sup> for aspiring countries seeking to join the EU.<sup>898</sup> Within this comprehensive framework,<sup>899</sup> the rule of law<sup>900</sup> stands as a linchpin, embodying principles<sup>901</sup> that are essential for the functioning of a democratic society and ensuring the integrity of the EU integration process.<sup>902</sup> While the *acquis*<sup>903</sup> is applied, upholding the rule of law entails adherence<sup>904</sup> to fundamental values<sup>905</sup> such as legality, accountability, and the independence of the judiciary.<sup>906</sup> Furthermore, the rule of law within the *acquis communautaire* necessitates the establishment of robust legal frameworks<sup>907</sup> and institutions capable of safeguarding citizens' rights and freedoms,<sup>908</sup> as well as ensuring

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<sup>894</sup> L. PECH, D. KOCHENOV, *Renforcer le Respect de l'État de Droit dans l'UE: Regards Critiques sur les Nouveaux Mécanismes Proposés par la Commission et le Conseil*, 2015.

<sup>895</sup> A. N. GREERE NEAGU, *Accession to the European Union and the Translation of the Acquis Communautaire, Impact and Legacy for Language Professions, The Translator, The Interpreter and the Dialogue of Languages in the Digital Age*, 2020.

<sup>896</sup> P. R. POLAK, *Brexit: Theresa May's Red Lines Get Tangled Up in Her Red Tape. A Commentary on the White Paper*, in *European Papers-A Journal on Law and Integration*, 2017.

<sup>897</sup> H. GRABBE, *European Union Conditionality*, cit.

<sup>898</sup> M. STAACK, *The Integration and Security Dilemma in Europe, Staack Michael, Russia, the European Union and NATO: Is a "New Normal" Possible?*, 2018.

<sup>899</sup> M. EVOLA, *Comparing the Practice of Accession to and Withdrawal from the European Union: Commonalities in Principles and Procedures?*, in *European Papers-A Journal on Law and Integration*, 2022.

<sup>900</sup> T. VERELLEN, *H v. Council: Strengthening the Rule of Law in the Sphere of the CFSP, One Step at a Time*, in *European Papers-A Journal on Law and Integration*, 2016.

<sup>901</sup> R. PETROV, *Bumpy Road of Ukraine towards the EU Membership in Time of War: "Accession through War" v "Gradual Integration"*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>902</sup> M. THOUVENOT, *La Diversification dans l'Union Européenne, un Véritable Défi pour l'Intégration*, in *Revue Québécoise de Droit International*, 2018.

<sup>903</sup> J. P. NIKIĆ, *Executive Summary, Reclaiming the Fundamentals: Unleashing Reform Potential of the EU Enlargement Process*, in L. ŠTERIĆ (edited by), in *Belgrade Centre for Security Policy*, 2022, p. 4.

<sup>904</sup> A. CANAVERO, *La Roumanie et l'Union Européenne: Le Chemin d'Adhésion et Après*, in *Synergies Roumanie*, 2021.

<sup>905</sup> J. F. DREVET, *L'Union Européenne et les Droits Fondamentaux*, in *Futuribles*, 2019.

<sup>906</sup> J. P. NIKIĆ, *Recommendations: Reclaiming the Fundamentals: Unleashing Reform Potential of the EU Enlargement Process*, in L. ŠTERIĆ (edited by), in *Belgrade Centre for Security Policy*, 2022, p.5-6.

<sup>907</sup> B. MADLOVICS, B. MAGYAR, *Ukraine's Patronal Democracy and the Russian Invasion: The Russia-Ukraine War*, 2023.

<sup>908</sup> D. FIOTT, *Eastern Neighbourhood*, in *Yearbook of European Security*, European Union Institute for Security Studies, 2019, p. 43–54.



effective enforcement mechanisms.<sup>909</sup> Compliance with these standards<sup>910</sup> not only fosters democratic governance within the applicant states<sup>911</sup> but also serves as a catalyst for promoting trust, solidarity, and mutual respect among EU members. By promoting the rule of law<sup>912</sup> as a core tenet of the *acquis communautaire*, the EU not only reinforces its commitment<sup>913</sup> to democratic principles<sup>914</sup> but also strengthens the foundations upon which further integration<sup>915</sup> and cooperation among member states can thrive, ultimately advancing the collective prosperity and stability of the Union as a whole.<sup>916</sup>

The EU's *acquis communautaire*<sup>917</sup> has adapted to accommodate diverse levels and scopes of integration among member states,<sup>918</sup> leading to the emergence of differentiated integration as a vital strategy to prevent impasses in the integration process.<sup>919</sup> During accession negotiations, the EU requires candidate countries to adopt the *acquis* but allows for transitional arrangements granting exemptions from certain obligations or rights of membership for a specified period.<sup>920</sup> Flexibility in EU integration typically involves opt-outs from new treaty provisions rather than from the existing *acquis*, effectively blocking pathways for flexible disintegration.<sup>921</sup> Significantly, integration model within the EU must adhere to the principles of openness, transparency, and compliance with the *acquis communautaire*, ensuring

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<sup>909</sup> J. FJELSTUL, *The Evolution of European Union Law*, cit.

<sup>910</sup> J. GILLINGHAM, B. MARTILL, U. STAIGER, *A Speculation on the Future of Europe*, in *Brexit and Beyond: Rethinking the Futures of Europe*, 2018.

<sup>911</sup> C. RAPOPORT, *Setting Norms and Promoting a Rules-Based International Legal Order: Enhancing Strategic Autonomy through the Autonomy of the EU Order*, in *European Papers-A Journal on Law and Integration*, 2023.

<sup>912</sup> M. CINI, A. VERDUN, *The Implications of Brexit for the Future of Europe*, in *Brexit and Beyond: Rethinking the Futures of Europe*, in B. MARTILL and U. STAIGER (edited by), 2018, p. 63–71.

<sup>913</sup> *Conclusions and Suggestions*, in *Ukraine – EU: Path to Political Association*, in *Razumkov Centre*, 2021, p. 58–68.

<sup>914</sup> J. P. NIKIĆ, *New Impetus for Rule of Law Reforms in the Western Balkans*, in *Reclaiming the Fundamentals: Unleashing Reform Potential of the EU Enlargement Process*, in L. ŠTERIĆ (edited by), in *Belgrade Centre for Security Policy*, 2022, p. 11–19.

<sup>915</sup> M. DĄBROWSKI, G. ZACHMANN, *To the Commissioner Responsible for Enlargement and Neighbourhood Policy*, in *Braver, Greener, Fairer: Memos to the EU Leadership 2019-2024*, in M. DEMERTZIS and G. WOLFF (edited by), Bruegel, 2019, p. 254–64.

<sup>916</sup> M. IGNJATIJEVIĆ, *Parliamentary Oversight of the Police and the EU Accession Process A Missing Link in the Fundamentals – First Approach*, in L. ŠTERIĆ (edited by), in *Belgrade Centre for Security Policy*, 2022.

<sup>917</sup> I. BELLIER, *L'Europe et les Droits des Peuples Autochtones*, in *Ethnologie Française*, 2020.

<sup>918</sup> A. WILSON, *Reformation Nation: Wartime Politics in Ukraine*, European Council on Foreign Relations, 2023.

<sup>919</sup> R. SCZEPANSKI, T. BÖRZEL, *Two Sides of the Same Coin? The Effect of Differentiation on Noncompliance with European Union Law*, in *European Union Politics*, 2023.

<sup>920</sup> F. SCHIMMELFENNIG, T. WINZEN, *Patterns of Differentiated Integration in the European Union*, in *Journal of Common Market Studies*, 2014.

<sup>921</sup> A. KÖLLIKER, *Flexibility and European Unification: The Logic of Differentiated Integration*, in *Rowman & Littlefield*, 2006.

that it maintains alignment with EU policy objectives.<sup>922</sup> Full adoption of the *acquis* at accession, especially in non-consolidated democracies, may result in shallow institutionalization and post-accession gaps without effective use of temporal differentiation strategies.<sup>923</sup>

*Acquis Communautaire*<sup>924</sup> serves as a comprehensive compilation<sup>925</sup> of EU laws, treaties, directives, regulations, decisions, declarations, resolutions, international agreements,<sup>926</sup> and European Court judgments dating back to 1958.<sup>927</sup> It further comprises the governments' actions in the field of justice and home affairs,<sup>928</sup> particularly, freedom, justice and security as well as the CFSP<sup>929</sup> exempting decisions of enhanced cooperation regulations. The changes in the new treaties do not appear to negatively impact the *acquis communautaire*, preserving the competences already acquired and exercised by the EU, thereby consolidating the common heritage of European integration.<sup>930</sup> Importantly, Lisbon Treaty abolished the differentiation between the *acquis* of the EC and that of the EU, with the former encompassing the original EU pillar and the latter extending to the areas of JHA and CFSP.<sup>931</sup>

The judicial definition of the *acquis* encompasses treaties, secondary legislation, judicial decisions, non-binding acts, and fundamental constitutional norms, including direct and indirect effect, supremacy, identical interpretation, equality, non-discrimination, efficient national measures, and fundamental freedoms established by the EU Court.<sup>932</sup> The term 'acquis' commonly denotes the entirety of EU law, reflecting the legal heritage of the

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<sup>922</sup> R. BASEDOW, *The WTO and the Rise of Plurilateralism—What Lessons Can We Learn from the European Union's Experience with Differentiated Integration?*, in *Journal of International Economic Law*, 2018.

<sup>923</sup> K. GOETZ, *Time and Differentiated Integration*, 2009.

<sup>924</sup> M. EMERSON, *A Template for Staged Accession to the EU*, Policy Paper, EPC-CEPS, 2021.

<sup>925</sup> O. MAZZOLENI, *National Populism and Borders: The Politicisation of Cross-Border Mobilisations in Europe*, in *Edward Elgar Publishing*, 2023.

<sup>926</sup> G. FERNÁNDEZ ARRIBAS, *The EU-Turkey Statement, the Treaty-Making Process and Competent Organs, Is the Statement an International Agreement?*, in *European Papers-A Journal on Law and Integration*, 2017.

<sup>927</sup> L. MARINHO, *El Acta Única y la Unión Europea: Una Nueva Soberanía*, in *Studia Histórica, Historia Contemporánea*, 1991.

<sup>928</sup> G. VERMEULEN, W. DE BONDT, *EU Justice and Home Affairs: Institutional and Policy Development*, Maklu, 2014.

<sup>929</sup> M.G. GARBAGNATI KETVEL, *The Jurisdiction of the European Court of Justice in Respect of the Common Foreign and Security Policy*, in *International & Comparative Law Quarterly*, 2006.

<sup>930</sup> M. FRAGOLA, *Il Trattato di Lisbona: Che Modifica il Trattato sull'Unione Europea e il Trattato della Comunità Europea; Versione Ragionata e Sistematica per una Consultazione Coordinata degli Articoli alla Luce dei Protocolli e delle Dichiarazioni*, in *Giuffrè Editore*, 2010.

<sup>931</sup> G. BUTLER, *EU Agencies Within the Common Foreign, Security, and Defence Policies*, in *EU Law Live*, 2023.

<sup>932</sup> A.F. TATHAM, *Enlargement of the European Union*, in *Kluwer Law International B.V.*, 2009.

Community and encompassing general instruments,<sup>933</sup> judicial precedents, and legal foundations, emphasizing the significance of precise definitions for a thorough understanding of objectives, characteristics, and responsibilities. *Acquis communautaire* derives from French language, 'acquis' signifies 'reached', 'that has been obtained/achieved' and 'communautaire' means 'of the community'.<sup>934</sup> Interestingly, the term of *acquis* when translated to the different languages reveals various semantic meanings.<sup>935</sup> Meanwhile, the notion of *acquis communautaire* stands for 'Community Patrimony' which is arduous to translate since it may not have the precise expression in other languages. The term used to describe the legal and social achievements of the Community, is a paramount example of a lexical borrowing in various European languages.<sup>936</sup> Therefore, the legal instruments refer its term as '*acquis communautaire*' even in English leaving it remaining as untranslated phrase.<sup>937</sup> Distinctive definitions uncover a remarkable broadness of judicial determination which create a crucial obstacle<sup>938</sup> to deal with the elementary issue associated with *acquis Communautaire*.

The concept of the *acquis* is recognized as dynamic and evolving alongside the Union's progress, while the term '*communautaire*', inherently linked to 'Community', prompts consideration regarding its relevance due to the absence of the former European communities.<sup>939</sup> The term's primary significance lies in emphasizing legal methods, system, and historical essence<sup>940</sup> rather than symbolizing the Community itself, as defined by the European Commission as integral to EU membership.<sup>941</sup> The dynamic evolution of the *acquis*, impacting legal, social, historical, and political domains, underscores its essential role in

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<sup>933</sup> A. NEUHODNIKOV, D. HREBENIUK, *The Influence of the Administrative Space on the Legal Systems of the Member States of the European Union*, 2023.

<sup>934</sup> V. MILLER, *The EU's Acquis Communautaire*, International Affairs and Defence Section, House of Common Library, 2011.

<sup>935</sup> P. GRILC, *Several Meanings of Acquis Communautaire*, in *Zbornik Znanstvenih Razprav*, 1999.

<sup>936</sup> D. COSMAI, *Il Linguaggio delle Istituzioni Comunitarie Tra Creazione Terminologica e Resa Traduttiva*, 2000.

<sup>937</sup> C.E. CIOBACA, *Traduction du Droit Communautaire*, in *Analele Stiintifice Ale Universitatii Alexandru Ioan Cuza Din Iasi Stiinte Juridice*, 2017.

<sup>938</sup> P. AGIUS, *Aspects of Interpretation of Multilingual Acquis Communautaire*, 2006.

<sup>939</sup> C. DELCOURT, *The Acquis Communautaire: Has the Concept Had Its Day?*, in *Common Market Law Review*, 2001.

<sup>940</sup> H. LINDAHL, *Acquiring a Community: The Acquis and the Institution of European Legal Order*, in *European Law Journal*, 2003.

<sup>941</sup> V. MURAVIOV, *The Acquis Communautaire as a Basis for the Community Legal Order*, in *Miskolc Journal of International Law*, 2007.

upholding the rule of law<sup>942</sup> by continuously adapting its objectives and enforcement mechanisms internally and externally.

Its dynamic character necessitates that all models of integration with third-party countries, must incorporate mechanisms for adapting to future amendments of EU law.<sup>943</sup> The *acquis* functions as a powerful tool externally, encouraging third countries<sup>944</sup> to adopt EU values and norms while enhancing political and economic ties through measures like candidate state status, customs union establishment and access to the internal market. Its concept, closely tied to the EU legal order, is simultaneously considered one of the least well-defined and most rigorously enforced aspects of European integration,<sup>945</sup> strategically utilized by the EU to bolster internal legal and political cohesion while furthering external policy objectives. Additionally, rulings in Opinions<sup>946</sup> 1/91, 1/92, and 1/09 set criteria for agreements extending the EU *acquis* to third countries, ensuring safeguards were included to maintain the EU's autonomy and prevent dilution of its political project.<sup>947</sup>

The EU legal order<sup>948</sup> is constantly evolving due to internal and external constraints, such as the need for economic growth within the EU and the promotion of security and political stability along its borders. This drives the EU to adapt its legal framework and actively promote the rule of law,<sup>949</sup> leading to ambiguity surrounding the concept of the *acquis*. The changing nature of the *acquis*<sup>950</sup> is crucial for EU external actions, including the accession process, partnerships, and collaborations. Applying the *acquis* during the accession process signifies the

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<sup>942</sup> S. LIGHTFOOT, *The Europeanisation of International Development Policies: The Case of Central and Eastern European States*, in *Europe-Asia Studies*, 2010, p. 329–50.

<sup>943</sup> P. R. POLAK, *Brexit*, cit.

<sup>944</sup> R. PETROV, *The Dynamic Nature of the Acquis Communautaire in European Union External Relations*, 2006.

<sup>945</sup> M. POLLACK, *The New Institutionalisms and European Integration*, Hamburg, 2007.

<sup>946</sup> See: Opinion 1/91 of the Court, *Opinion delivered pursuant to the second subparagraph of Article 228(1) of the Treaty - Draft Agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area*, 14 December 1991; Opinion 1/92 of the Court, *Opinion pursuant to the second subparagraph of Article 228(1) of the EEC Treaty – Draft Agreement between the Community, on the one hand, and the countries of the European Free Trade Association, on the other, relating to the creation of the European Economic Area*, 10 April 1992; Opinion 1/00 of the Court, *Opinion pursuant to Article 300(6) EC, Opinion pursuant to Article 300(6) EC - Proposed Agreement between the European Community and Non-Member States on the Establishment of a European Common Aviation Area*, 18 April 2002.

<sup>947</sup> C. RAPOPORT, *Setting Norms and Promoting*, cit.

<sup>948</sup> V. MURAVIOV, *The Acquis*, cit.

<sup>949</sup> J. PEJIĆ NIKIĆ, *Reform is Not Something that Goes Without Saying*, in L. ŠTERIĆ (Ed.), *Reclaiming the Fundamentals: Unleashing Reform Potential of the EU Enlargement Process*, in *Belgrade Centre for Security Policy*, 2022, p. 20–24.

<sup>950</sup> I. Y. DIR, *Main Characteristics of the 'Acquis Communautaire' of the European Union*, 2023, in Д. Ю. ДІР, *Основні Характеристики «Acquis Communautaire» Європейського Союзу*, 2023.

incorporation of the entire EU legal heritage, encompassing sectoral *acquis*, common principles, and ECJ rulings. In addition, European Neighborhood Policy (ENP)<sup>951</sup> stimulates the countries to respect the fundamental values of the EU while adopting the broad extent of the *acquis communautaire*<sup>952</sup> for achieving the access to the markets of goods, services and capital. Thus, the ambiguity of the *acquis* is characterized due to the vigorous activity and the progress of the whole EU legal order.<sup>953</sup>

The primary aim of the *acquis*<sup>954</sup> is to prompt applicant countries<sup>955</sup> to attain the necessary levels of legal, economic, and political alignment with the EU, both internally and externally, by fostering democratic principles and rule of law<sup>956</sup> as well as aiding in the mitigation of competitive economic pressures within the Union.<sup>957</sup> The *acquis* in EU external agreements comprises two distinct categories:<sup>958</sup> one involving shared values, international norms, and non-discrimination principles aimed at fostering reciprocal relations, and the other encompassing specific areas like competition law, customs, intellectual property, and standards mentioned directly in the texts of these agreements. The third countries are obliged to adopt these elements to obtain targets of the agreements such as access to the EU internal market, foundation of customs union, establishing an enhanced sectorial cooperation with the EU.<sup>959</sup>

It is still regarded as a vague and undefined concept in the EU legal order since the establishing treaties and secondary legislation of the EU as well as case law of the ECJ fail to interpret comprehensible and lucid description of the *acquis Communautaire*.<sup>960</sup> The legal analytical perspective indicates that Article 2 TEU acknowledges the *acquis* as a goal of the EU, while Article 3 TEU underscores its significance as a foundation of the EU and its

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<sup>951</sup> D. KOCHENOV, *The European Neighbourhood Policy: Pre-Accession Mistakes Repeated*, in *Pioneer Europe*, 2008.

<sup>952</sup> T. BÖRZEL, *Infringement Data and Noncompliance, Why Noncompliance: The Politics of Law in the European Union*, Cornell University Press, 2021, p.13–34.

<sup>953</sup> N. MUSHAK, *Role of Acquis in the EU Legal Order*, in *Evropský Politický a Právní Siskurz*, 2016.

<sup>954</sup> E. DWIPAYANA PULUNGAN, *The Widening of European Union to Post Soviet Countries: Case Study of Bulgaria Acceptance and Ukraine Accession*, in *Sang Pencerah: Jurnal Ilmiah Universitas Muhammadiyah Buton*, 2023.

<sup>955</sup> Commissione Delle Comunità Europee, *Comunicazione Della Commissione, Adattarsi Alle Trasformazioni Del Lavoro e Dalla Società: Una Nuova Strategia Comunitaria per la Salute e la Sicurezza 2002-2006*, 2002.

<sup>956</sup> W. ZWEERS, M. ROSSOKHATSKA, *Towards*, cit.

<sup>957</sup> H. GRABBE, *European Union Conditionality*, cit, p. 249–68.

<sup>958</sup> R. PETROV, *The Dynamic Nature*, cit.

<sup>959</sup> A. MAGEN, *Transformative Engagement Through Law: The Acquis Communautaire as an Instrument of EU External Influence*, 2007.

<sup>960</sup> M. TYMOSHENKO, *The Role of Constitutional Acquis in the European Union's Legal Order*, 2021.

organizational structure, with Article 43 TEU emphasizing that enhanced cooperation provisions do not impact the concept of the *acquis*.<sup>961</sup> Protocol N7 on the application of the principles of subsidiary and proportionality annexed to the TEC by Amsterdam Treaty, being clearer and more precise than all previous texts in this vague field,<sup>962</sup> empathizes that the common provisions of the objectives of the Treaty must be respected by preserving entire *acquis communautaire*. Meanwhile, Declaration No. 51<sup>963</sup> regarding Article 10 TEU points out that Amsterdam Treaty liquidates no longer valid provisions of the TEC and those actions do not impact the *acquis*. In the EU Glossary, the *acquis* is described as the legal framework comprising shared rights and obligations that unite all member states within the EU, representing common rights and duties for EU members.<sup>964</sup>

Article 49 TEU neglects to emphasize the necessity of fully meeting *acquis* criteria for accession, reflecting the EU's overall vagueness and silence regarding its general notion, which is more adequately addressed in documents associated with enlargement processes.<sup>965</sup> The 2002 Strategy on Accession<sup>966</sup> and the EU Constitutional Treaty equate the *acquis communautaire* with the EU legal order, however scholars conclude that it represents a broader concept extending beyond mere legislation, encompassing political, social, and historical dimensions.

The European Commission's Opinion<sup>967</sup> on Greece's admission in 1979 underscored the importance of a candidate country's absolute implementation of agreements and political targets to strengthen institutions, highlighting the association of the notion of *acquis*. Amid the EU constitutional reform and Eastern enlargement round, the *acquis* has been noted to represent homogeneity, with the Laeken Declaration<sup>968</sup> underscoring its pivotal role<sup>969</sup> in reshaping the

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<sup>961</sup> C. DELCOURT, *The Acquis Communautaire*, cit.

<sup>962</sup> P. MANIN, *Subsidiarity and Proportionality, the Treaty of Amsterdam*, 1998.

<sup>963</sup> European Communities, *Declaration No. 51 on Article 10 of the Treaty of Amsterdam*, 1997.

<sup>964</sup> A. CHEBOTARYOVA, *On Translating the Term Acquis Communautaire*, Kyiv, Ukraine, 2018.

<sup>965</sup> R. PETROV, *The External*, cit.

<sup>966</sup> Commission of the European Communities, *Towards the Enlarged Union, Strategy Paper and Report of the European Commission on the Progress towards Accession by Each of the Candidate Countries*, Brussels, 9.10.2002.

<sup>967</sup> Commission of the European Communities, *Commission Communication to the Council, Accession Negotiations with Greece, First Commission Communication on Drawing up the Instruments of Greece's Accession to the Communities*, 6 March 1979.

<sup>968</sup> European Council, Presidency Conclusions, *The Future of the Union, The Laeken Declaration, European Council Meeting in Laeken*, 14 and 15 September 2001.

<sup>969</sup> M. CREMONA, *Coherence Through Law: What Difference Will the Treaty of Lisbon Make?*, in *Hamburg Review of Social Sciences*, 2008.

division of competences between EU institutions and member states. Meanwhile, the EU Constitutional Treaty<sup>970</sup> acknowledged the necessity to promote the persistence and durability of the Community acquis.

Acquis of the Community encompassed the contents, norms, standards, political goals of the Treaties, certain adopted legislations and jurisprudence of the ECJ and international accords among member states concerning to the activities in the EU.<sup>971</sup> One can also encounter with the term of acquis in the area of international accords of the EU, especially, in certain stabilization agreements<sup>972</sup> made with Balkan countries. The European Court<sup>973</sup> expanded the scope of the acquis through its rulings in joined cases 80 and 81/77 *Commissionaires et Ramel*,<sup>974</sup> highlighting its role as a tool of the EU in promoting market integration. Moreover, European law doctrine interprets the acquis as a frame of legal rules, court decisions, doctrinal notions, recommendations, regulations<sup>975</sup> etc. adopted by the EU institutions, which must be unconditionally recognized by candidates for admission. Thus, the EU organs have not explicitly defined the scope of the acquis, which must be fully adhered to by both member states and applicant countries, with its concept continuously evolving and encompassing more than just EU law during accession negotiations.

The ambiguous nature<sup>976</sup> and flexible<sup>977</sup> scope of the acquis, influenced by both EU member states and third countries as well as the intended application, present challenges in its enforcement, which can be attributed to two primary dimensions. The enforcement of the variable characteristics of the acquis involves two dimensions: internal application by existing member states to ensure consistent advancement and adherence to the EU's legal foundation,<sup>978</sup> and external enforcement through agreements between the EU and applicant states or third

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<sup>970</sup> Conference of the Representatives of the Governments of the Member States, *Provisional Consolidated Version of the Draft Treaty Establishing a Constitution for Europe*, CIG 86/04, Brussels, 25 June 2004.

<sup>971</sup> M.A. ALCOCEBA GALLEGO, *Del Acervo Comunitario y Otras Pizzas: Contribución de la Integración Diferenciada a la Transformación del Acervo*, 2003.

<sup>972</sup> S. GRIMM, O. L. MATHIS, *Stability First, Development Second, Democracy Third: The European Union's Policy towards the Post-Conflict Western Balkans, 1991–2010*, in *Europe-Asia Studies*, 2015.

<sup>973</sup> N. MUSHAK, *Role of Acquis*, cit.

<sup>974</sup> Joined Cases of 80 and 81/77, *Commissionaires Reunis et Ramel*, Judgment of the Court of 20 April 1978.

<sup>975</sup> V. GRAVEY, A. JORDAN, *New Policy Dynamics in More Uncertain Times? Environmental Policy in the EU*, 2021.

<sup>976</sup> R. PETROV, *The Dynamic Nature*, cit.

<sup>977</sup> N. VUKADINOVIC, *Territorialisation et Spatialisation du Développement Économique à la Périphérie de l'Union Européenne: Les Macro-Régions dans les Balkans Occidentaux*, in *Serbian Political Thought*, 2022.

<sup>978</sup> V. PRASSLSBERGER, *Economic Analysis of the Severity of Financial Penalties Imposed on Member States for Infringements of the EU Acquis Communautaire*, 2019.

countries.<sup>979</sup> The application of the *acquis communautaire* varies internally and externally,<sup>980</sup> with the external dimension aiming to achieve EU external policy objectives towards third countries and facilitate economic, political, and legal reforms in aspiring partner nations. The concept of accession *acquis* constitutes essential part of legal and political classification with its various character and extent.<sup>981</sup> It is one of the inherent components of the Copenhagen criteria which stipulates the capacity to undertake the commitments of accession process such as fulfilling the objectives of political, economic, and monetary union.<sup>982</sup>

The accession *acquis*, also known as the 'Union *acquis*', encompasses the EU's three pillars, comprising current and potential rights, political aims, and reflecting the status of the accession process, including norms, judicial decisions, and external policy objectives.<sup>983</sup> Pursuantly, the applicant states<sup>984</sup> are obliged to promote efficient enforcement of the accession *acquis* by implementing adequate reforms on their respective institutional and judicial organs. In addition, Article 49 TEU is now considered an essential component of the EU *acquis*, while the legal basis prioritizes political considerations over the recognition of the entire *acquis* by applicant states.<sup>985</sup>

The accession criterion encompasses current and future EU obligations outlined in Acts of Accession, evolving with each enlargement round, and differing between pre-accession<sup>986</sup> and full accession stages, with the former aimed at preparing applicant countries gradually for meeting the Copenhagen criteria.<sup>987</sup> The required stipulations, priorities and objectives have been pointed out in each applicant country's Accession Partnership<sup>988</sup>. Implementation of the *acquis communautaire* in candidate countries prior to accession has been a question of

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<sup>979</sup> C. KOLLIAS, P. MESSIS, *Are Candidate Countries*, cit.

<sup>980</sup> D. LEUFFEN, B. RITTBERGER, F. SCHIMMELFENNIG, *Picking Up Speed: Maastricht, Amsterdam, and the CFSP*, in *Integration and Differentiation in the European Union: Theory and Policies*, 2022.

<sup>981</sup> R. PETROV, *The External*, cit.

<sup>982</sup> V. MURAVIOV, N. MUSHAK, T. TARAKHONYCH, *International Agreements of the European Union and Acquis of the Union*, 2020.

<sup>983</sup> R. PETROV, *The EU–Ukraine Association Agreement as a General Framework of Contemporary EU–Ukraine Relations, in Competition and Intellectual Property Law in Ukraine*, Berlin, Heidelberg, 2023.

<sup>984</sup> F. GRANELL TRIÁS, *La Sexta Ampliación de la Unión Europea*, 2007.

<sup>985</sup> N. DAMINOVA, *The 'Due Process' Rights as a Part of the EU's Acquis Communautaire: A Challenge for the EU (Potential) Candidate States?*, in *Austrian Review of International and European Law Online*, 2019.

<sup>986</sup> D. KOCHENOV, *The Acquis and Its Principles, The Enforcement of EU Law and Values*, Oxford, 2017.

<sup>987</sup> G. VASSILIOU, *The Accession Story: The EU from 15 to 25 Countries*, OUP Oxford, 2007.

<sup>988</sup> M. KAEDING, M. MILENKOVIĆ, *Candidate Countries' Engagement with European Union Agencies—Alternative Modes of EU Integration?* in *Journal of Balkan and Near Eastern Studies*, 2023.



bureaucratic problems rather than of political veto maneuvers.<sup>989</sup> In the pre-accession phase, the general scope of the accession *acquis* may vary among aspiring countries due to differences in their capacity and preparedness to adopt the *acquis Communautaire*.<sup>990</sup>

The consideration of economic, political, and legal readiness in the adoption of the *acquis*, with the mandatory inclusion of fundamental and full judicial *acquis*, reflects a commitment to upholding the rule of law within candidate states' integration processes into the EU.<sup>991</sup> In addition, new member states must join the conventions and instruments as well as endorse the objectives of two intergovernmental pillars<sup>992</sup> and actively take part in the fields of the CFSP and the JHA.<sup>993</sup> New member states<sup>994</sup> must adhere to all EU agreements and adopt political goals for closer union among citizens, while also abiding by decisions made by member states' representatives. During the accession process, countries are required to formally accept the entire *acquis communautaire*,<sup>995</sup> including EU soft law, although exceptions may be granted by the EU during negotiations provided, they do not compromise fundamental treaty principles.

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<sup>989</sup> P. HILLE, C. KNILL, 'It's the Bureaucracy, Stupid' *The Implementation of the Acquis Communautaire in EU Candidate Countries, 1999-2003*, in *European Union Politics*, 2006.

<sup>990</sup> I. DAMJANOVSKI, C. HILLION, D. PRESHOVA, *Uniformity and Differentiation*, cit.

<sup>991</sup> B. JOVANOVIĆ, M. HOLZER, *The Berlin Process*, cit.

<sup>992</sup> *Joint Declaration on Common Foreign and Security Policy Annexed to the Final Act of the Meeting at Corfu on 24 June 1994* (O.J. 1994, C241/381), in *Official Journal of the European Communities*, 1994.

<sup>993</sup> *Declaration by the New Member States on Articles 3 and 4 of the Act of Accession* (O.J. 1994, C 241/398), in *Official Journal of the European Communities*, 1994.

<sup>994</sup> K. GOETZ, *The New Member States and the EU*, in *Member States and the European Union*, 2005.

<sup>995</sup> N. STANKOVIĆ, *Constitutional Implications of the Negotiations on Serbia's Membership in the European Union*, in *Institute of International Politics and Economics*, 2022.

# CHAPTER 3: EU INSTITUTIONS IN A CHANGING LANDSCAPE AS A CONSEQUENCE OF ENLARGEMENT PROCESS

## 1. Background and Context

The EU enlargement process<sup>996</sup> has catalysed substantial reforms within the political and judicial frameworks of the Union, aimed at addressing the challenges accompanying its expansion and enhancing the efficacy of existing and prospective member states.<sup>997</sup> These reforms<sup>998</sup> have been driven by the imperative to uphold the rule of law and EU values delineated in Article 2 of the TEU,<sup>999</sup> facilitating the EU's ability to operate effectively amidst both widening and deepening dynamics. The accession of new member states has spurred institutional evolution within the EU, prompting a series of reforms aimed at accommodating growing political diversity and complexity while upholding democracy, rule of law, and respect for human rights.<sup>1000</sup> Treaties such as the Treaty of Amsterdam, Treaty of Nice, and the Constitutional Treaty emphasized the necessity of adapting institutions to maintain coherence and legitimacy amidst the Union's expansion.<sup>1001</sup> Meanwhile, the Lisbon Treaty marked a pivotal moment in EU institutional evolution, introducing measures aimed at enhancing decision-making processes and reinforcing the rule of law.<sup>1002</sup> Through mechanisms such as the ordinary legislative procedure and qualified majority voting, it sought to rebalance power dynamics and elevate the role of the European Parliament,<sup>1003</sup> fostering a more equitable and legally robust framework aligned with fundamental EU values and principles.

The EU's steadfast commitment to upholding the rule of law<sup>1004</sup> within its institutional framework was exemplified by its rigorous scrutiny and monitoring mechanisms, particularly

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<sup>996</sup> A. MIGLIO, *Riforme e allargamento*, cit.

<sup>997</sup> L. MONTANARI, *Condizionalità e allargamento*, cit.

<sup>998</sup> N. PERŠAK, *Rule of law and institutional legitimacy: challenges of transition*, in *Challenges of Europe, Southeastern Europe*, 2015.

<sup>999</sup> M. BELL, *The principle of equal treatment: widening and deepening*, in *The evolution of EU law*, 2011.

<sup>1000</sup> A. TIMMER, *EU human rights, democracy and rule of law: from concepts to practice*, in *Frame*, 2014.

<sup>1001</sup> M. KELLERBAUER, M. KLAMERT, J. TOMKIN, *The EU treaties*, cit.

<sup>1002</sup> P. BILANCIA, M. D'AMICO, eds., *La nuova Europa dopo il Trattato di Lisbona*, in *Giuffrè Editore*, 2009.

<sup>1003</sup> C. FASONE, N. LUPO, *Il Parlamento europeo alla luce delle novità introdotte nel Trattato di Lisbona e nel suo regolamento interno*, in *Studi sull'integrazione europea*, 2012.

<sup>1004</sup> P. BÁRD, *An EU mechanism on democracy, the rule of law and fundamental rights*, in *Ceps Paper in Liberty and Security in Europe*, 2016.

in the context of enlargement. Candidate and newly admitted member states were subjected to thorough examination to ensure adherence to democratic principles and judicial independence.<sup>1005</sup> Concurrently, significant reforms<sup>1006</sup> were implemented within key EU institutions, including the Council, European Commission, European Parliament, and the European Court of Justice,<sup>1007</sup> aimed at accommodating the challenges of enlargement while reinforcing accountability, representation, and efficiency. These concerted efforts bolstered the foundation of the rule of law and promoted legal coherence and democratic values<sup>1008</sup> throughout the expanding Union, thereby enhancing its unity and resilience on the global stage.

## 2. Enlargement Adaptations on the EU Institutional Dynamics

The necessity for substantial changes<sup>1009</sup> in the institutional structure of the EU, as highlighted during intergovernmental conferences,<sup>1010</sup> underscored the importance of the rule of law in European integration. The Treaty of Amsterdam,<sup>1011</sup> Treaty of Nice,<sup>1012</sup> and the failed Constitutional Treaty<sup>1013</sup> demonstrated a recognition that effective governance within the EU requires a robust adherence to legal principles.<sup>1014</sup> It required a substantial change in the institutional structure<sup>1015</sup> of the EU since the system entirely was poorly equipped to tackle with the increased number of players<sup>1016</sup> and the more various range of interests. Therefore,

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<sup>1005</sup> J. GUTMANN, S. VOIGT, *Judicial independence in the EU: a puzzle*, in *European Journal of Law and Economics*, 2020.

<sup>1006</sup> R. TARGETTI LENTI, *L'unione europea a un bivio: riuscirà a diventare un'unione sovranazionale? Una nota a proposito di un recente volume*, in *Il Politico*, 2023.

<sup>1007</sup> M. M. BOŠKOVIĆ, *Role of Court of Justice of the European Union in establishment of EU standards on independence of judiciary*, in *EU and Comparative Law Issues and Challenges Series*, 2020.

<sup>1008</sup> C. PINELLI, *Respect for the rule of law as embedded in Article 2 TEU and protection of the Union's financial interests*, in *Nuovi autoritarismi e democrazie: diritto, istituzioni, società*, 2021.

<sup>1009</sup> C. NILSSON, *Narratives in European Union enlargement-the impact of experience on continuity and change*, 2020.

<sup>1010</sup> F. LAURSEN, S. VANHOONACKER, *The Intergovernmental Conference on Political Union: institutional reforms, new policies and international identity of the European Community*, in Brill, 2023.

<sup>1011</sup> P. LIARGOVAS, C. PAPAGEORGIOU, *From the inception of the EU to the Treaty of Amsterdam (1993–1999)*, in *The European integration*, 2024.

<sup>1012</sup> A. FUEREA, *The role of the Nice Treaty in the evolution of the European Union-analysed 20 years after its entry into force*, in *Lex et Scientia International Journal*, 2023.

<sup>1013</sup> A. KREIDMAN, *Correcting past mistakes: the failure of the European Constitution and its resurrection as the Lisbon Treaty*, in *Lisbon Fado: The European Union under reform*, 2009.

<sup>1014</sup> J. L. ERAZO, *La ampliación de la Unión Europea/The expansion of the European Union*, in *Estudios Internacionales*, 2007.

<sup>1015</sup> J. AHRENS, M. MEURERS, C. RENNER, *Beyond the Big-Bang*, cit.

<sup>1016</sup> N. CAMPOS, F. Coricelli, L. Moretti, *Institutional Integration and Economic Growth in Europe*, in *Journal of Monetary Economics*, 2019.

enlargement is not merely a procedural matter but a complex process necessitating adherence to the *acquis communautaire*<sup>1017</sup> and development of management capacities, both of which are underpinned by the rule of law.<sup>1018</sup> Upholding the rule of law<sup>1019</sup> ensures that the EU's decision-making rules and organizational practices remain coherent and effective in the face of increasing diversity and complexity among member states.<sup>1020</sup>

The assessment of the EU's legislation production<sup>1021</sup> before and after 2004-2007 enlargements reflected the Union's commitment to upholding the rule of law, demonstrating its flexibility to accommodate increasing political diversity and member states.<sup>1022</sup> Despite the influx of new actors, the EU's decision-making process<sup>1023</sup> remained robust, ensuring the continuity of its legal framework and integration efforts. Enlargement has not significantly altered the quantity or quality of legislative output,<sup>1024</sup> underscoring the Union's dedication to maintaining legal coherence and adherence to established norms. Furthermore, the emergence of short-term coalitions<sup>1025</sup> following enlargement highlights the Commission's pivotal role in upholding the rule of law<sup>1026</sup> and facilitating effective governance amidst evolving political dynamics.

The enlargement process has necessitated adaptations<sup>1027</sup> to accommodate new member states while maintaining the integrity of the Union's legal framework. This has involved ensuring adherence to the rule of law both within candidate states during accession

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<sup>1017</sup> K. L. SCHEPPELE, D. V. KOCHENOV, B. GRABOWSKA-MOROZ, *EU Values Are Law*, cit.

<sup>1018</sup> K. NICOLAIDIS, R. KLEINFELD, *Rethinking Europe's*, cit.

<sup>1019</sup> R. ARNOLD, *L'état de droit comme fondement du constitutionnalisme européen*, in *Revue Française de Droit Constitutionnel*, 2014.

<sup>1020</sup> V. PULIGNANO, *Governing Complexity, Diversity and Uncertainty in the Changing European Space*, in *The Transformation of Employment Relations in Europe*, 2013.

<sup>1021</sup> R. THOMSON, *Resolving Controversy in the European Union: Legislative Decision-Making Before and After Enlargement*, Cambridge, 2011.

<sup>1022</sup> T. SEKULIĆ, *The European Union*, cit.

<sup>1023</sup> R. THOMSON, *A New Dataset on Decision-Making in the European Union Before and After the 2004 and 2007 Enlargements*, in *Journal of European Public Policy*, 2012.

<sup>1024</sup> V. SCHMIDT, *Democracy and Legitimacy in the European Union Revisited: Input, Output and 'Throughput'*, in *Political Studies*, 2013.

<sup>1025</sup> O. ELGSTRÖM, *Coalitions in European Union Negotiations*, in *Scandinavian Political Studies*, 2001.

<sup>1026</sup> C. CLOSA, *The Politics of Guarding the Treaties*, cit.

<sup>1027</sup> A. SILKE, *Domestic Adaptations of Europe: A Comparative Study of the Debates on EU Enlargement and a Common Constitution in the German and French Quality Press*, in *International Journal of Public Opinion Research*, 2007.

negotiations<sup>1028</sup> and within the EU institutions themselves.<sup>1029</sup> While enlargement has spurred reforms aimed at enhancing institutional effectiveness, concerns persist regarding the preservation of democratic accountability and the rule of law throughout the integration process.<sup>1030</sup> The effect of enlargement<sup>1031</sup> is crucial on the functioning of the EU's political system and decision-making process from the perspective of rationalist and constructivist theory. Undoubtedly, enlargement can be comprehended as a success story<sup>1032</sup> of European integration which simultaneously defines apparent challenges for European governance.<sup>1033</sup> The rationalist and constructivist approaches expect a breakdown in the EU's decision-making capacity after enlargement as well as highlight deceleration in the production of legislation.<sup>1034</sup> In fact, the total legislative production has experienced a significant decline over the period of 1994 and 2006.<sup>1035</sup> In addition, the rejection of the European Constitution by French and Dutch referenda hindered progress on EU enlargement efforts and institutional reforms.<sup>1036</sup> However, significance of institutional reform of the Union was considered as relevant issue since Eastern enlargement caused the reduction of EU's legislative output.<sup>1037</sup>

In the context of the EU enlargement,<sup>1038</sup> the reactions of EU institutions reflected a nuanced consideration of the implications for the rule of law.<sup>1039</sup> The Commission's observation of continued institutional operation and decision-making post-enlargement underscored the adaptability<sup>1040</sup> of the EU's legal framework to accommodate increased

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<sup>1028</sup> A. MEMETI, *Rule of Law Through Judicial Reform: A Key to the EU Accession of the Western Balkans*, in *Contemporary Southeastern Europe*, 2014.

<sup>1029</sup> D. HEGEDÜS, *What Role for EU Institutions in Confronting Europe's Democracy and Rule of Law Crisis*, in *Policy Paper*, 2019.

<sup>1030</sup> G. AVERY, *Enlarging the European Union: Effects on the New Member States and the EU*, in *TEPSA*, 2009.

<sup>1031</sup> L. K. LASS, A. WERNER, *Policies, Institutions and Time: How the European Commission Managed the Temporal Challenge of Eastern Enlargement*, in *Journal of European Public Policy*, 2009.

<sup>1032</sup> M. GILBERT, *Narrating the Process: Questioning the Progressive Story of European Integration*, in *Journal of Common Market Studies*, 2008.

<sup>1033</sup> E. JONES, D. KELEMEN, S. MEUNIER, *Failing Forward*, cit.

<sup>1034</sup> D. LEUFFEN, *Breaking the Camel's Back? Eastern Enlargement and EU Governance*, ECPR Paper Number 853, 2006.

<sup>1035</sup> J. MAES, C. BELPAIRE, G. GOEMANS, *Spatial Variations and Temporal Trends Between 1994 and 2005 in Polychlorinated Biphenyls, Organochlorine Pesticides and Heavy Metals in European Eel (*Anguilla anguilla* L.) in Flanders, Belgium*, in *Environmental Pollution*, 2008.

<sup>1036</sup> S. B. HOBOLT, S. BROUARD, *Contesting the European Union? Why the Dutch and the French Rejected the European Constitution*, in *Political Research Quarterly*, 2011.

<sup>1037</sup> D. TOSHKOV, *The Impact of the Eastern Enlargement on the Decision-Making Capacity of the European Union*, in *European Union Enlargement and Integration Capacity*, 2017.

<sup>1038</sup> P. SETTEMBRI, *The Surgery Succeeded. Has the Patient Died? The Impact of Enlargement on the European Union*, in *Jean Monnet Working Paper*, 2007.

<sup>1039</sup> C. CLOSA, D. KOCHENOV, *Reinforcing Rule of Law Oversight in the European Union*, Cambridge, 2016.

<sup>1040</sup> N. NUGENT, *Enlargements and Their Impact on EU Governance and Decision-Making*, in *Governance and Regulation in the European Union*, in *Nomos Verlagsgesellschaft mbH & Co. KG*, 2017.

political diversity. However, the European Parliament's assertion regarding the necessity for institutional reforms<sup>1041</sup> to ensure proper functioning acknowledged the potential challenges posed by enlargement to the rule of law.<sup>1042</sup> While the EU demonstrated flexibility<sup>1043</sup> in adapting to the enlarged political landscape, disparities emerged between the decision-making patterns and legislative output of the pre-enlargement EU-15 and the post-enlargement EU-25.<sup>1044</sup> Furthermore, the co-decision<sup>1045</sup> process introduced by the Lisbon Treaty<sup>1046</sup> raised concerns about its impact on the effectiveness of the EU system and the quality of interinstitutional relations,<sup>1047</sup> potentially straining adherence to the rule of law in the enlarged Union.

Throughout five rounds of enlargement, the comprehensive dataset encompassing all binding EU legislation from 1967 to 2007 facilitated a nuanced understanding of the effects of EU expansion.<sup>1048</sup> The arrival of new member states in the EU may affect the timing of legislative decisions,<sup>1049</sup> yet enlargement serves as a motivating factor for legislative preparation.<sup>1050</sup> However, caution is warranted in attributing decreased legislative output solely to the behavior of new members, as reductions may also stem from disruptions in legislative flows,<sup>1051</sup> potentially impacting the rule of law within the Union.

The EU's internal transformation and expansion into CEE highlighted the critical role of upholding the rule of law to maintain coherence and legitimacy within its evolving structure.<sup>1052</sup> The Commission's positive evaluation of the enlargement process underscored its

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<sup>1041</sup> C. WIESNER, *The Micro-Politics of Parliamentary Powers: European Parliament Strategies for Expanding Its Influence in the EU Institutional System*, in *Journal of European Integration*, 2018.

<sup>1042</sup> K. SCHMALENBACH, *Defending Democracy*, cit.

<sup>1043</sup> C. BURNS, N. CARTER, N. WORSFOLD, *Enlargement and the Environment: The Changing Behaviour of the European Parliament*, in *Journal of Common Market Studies*, 2012.

<sup>1044</sup> D. LEUFFEN, R. HERTZ, *If Things Can Only Get Worse: Anticipation of Enlargement in European Union Legislative Politics*, in *European Journal of Political Research*, 2010.

<sup>1045</sup> G.J. BRANDSMA, *Co-Decision After Lisbon: The Politics of Informal Trilogues in European Union Lawmaking*, in *European Union Politics*, 2015.

<sup>1046</sup> R. DE RUITER, C. NEUHOLD, *The Winner Takes It All? The Implications of The Lisbon Treaty For The EP's Legislative Role In Co-Decision*, in *The EU's Lisbon Treaty*, 2016.

<sup>1047</sup> F. HÄGE, *The Efficiency of Legislative Decision-Making In The Council Of The EU Before And After Lisbon*, 2012.

<sup>1048</sup> D. LEUFFEN, R. HERTZ, *If Things Can Only Get Worse*, cit.

<sup>1049</sup> T. KÖNIG, *Why Do Member States Waste Their Time? Legislative Oversight in the EU Decision Making Process*, in *Political Science and Political Economy Conference on "Designing Democratic Institutions"*, 2008.

<sup>1050</sup> D. PHINNEMOR, *Preparing for Enlargement*, in *The European Union Handbook*, 2013.

<sup>1051</sup> U. SEDELMEIER, *Europe*, cit.

<sup>1052</sup> U. SEDELMEIER, *Europe*, cit.

commitment to promoting EU values,<sup>1053</sup> as integral to extending Europe's influence globally and fostering unity and stability within the region. The significance of institutional reform, particularly in relation to the rule of law,<sup>1054</sup> has been emphasized in light of enlargement, as the arrival of new countries may pose risks of bureaucratic overload and potential paralysis within the EU system.<sup>1055</sup> In fact, The Copenhagen Council stressed out the necessity of internal reform within the EU to effectively prepare for widening, in other words, enhancing EU's capacity to absorb new members.<sup>1056</sup> Besides this, firm democratic basis<sup>1057</sup> is considered as a prior condition for the efficient operating of an expanded Union with more citizens and greater diversity.<sup>1058</sup> Empowering the role of the European Parliament can mitigate democratic deficits and rule of law crises within the EU.<sup>1059</sup> The enlargement of the EU substantially improved representation of its citizens in the European Parliament,<sup>1060</sup> addressing democratic deficits arising from successful expansions. The Parliament exercises its right of approval for major international agreements within co-decision areas and Accession Treaties with new Member States, establishing conditions for accession.<sup>1061</sup>

Widening of the Union from 15 to 27 member states<sup>1062</sup> brought a remarkable amount of variety to its political system which caused a concern on the capacity of EU to act. With the accession of new members, the number of actors increased, and the decision-making process<sup>1063</sup> became more complicated than before. Interestingly, substantial diversity in actor alignments has been detected both before and after the enlargement<sup>1064</sup> which displayed poor

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<sup>1053</sup> L. PECH, J. GROGAN, *Meaning and Scope of the EU Rule of Law*, Reconnect, 2020.

<sup>1054</sup> A. BRADFORD, *The Brussels Effect: How the European Union Rules the World*, Oxford, 2020.

<sup>1055</sup> B. SZEWCZYK, *Enlargement and Legitimacy of the European Union*, in *Polish Yearbook of International Law*, 2010.

<sup>1056</sup> D. DOBROVOLJEC, K.N. METCALF, *Enlargement of the European Union*, in *A Regatta with Moving Goal Posts*, 2001.

<sup>1057</sup> M. EMERSON, *EU Accession Prospects of Ukraine, Moldova and Georgia*, in *Center for European Policy Studies*, 2023.

<sup>1058</sup> A. GIDDENS, *Europe in the Global Age*, in *John Wiley & Sons*, 2013.

<sup>1059</sup> G. PASTUSZKO, *The European Parliament Against the Background of the Rule of Law and the Standards of a Parliamentary System: Selected Issues*, in *Central European Journal of Comparative Law*, 2023.

<sup>1060</sup> S. KANIOVSKI, D. MUELLER, *How Representative Is the European Union Parliament?*, in *European Journal of Political Economy*, 2011.

<sup>1061</sup> D.M. VIOLA, *The Role of the European Parliament in the Process of the EU Enlargement in Central and Eastern Europe*, in *The Role of the Central European Parliaments in the Process of European Integration*, in *Academy of Sciences of the Czech Republic*, Prague, 1998.

<sup>1062</sup> G. FALKNER, O. TREIB, *Three Worlds of Compliance or Four? The EU-15 Compared to New Member States*, in *Journal of Common Market Studies*, 2008.

<sup>1063</sup> R.F. HERTZ, *Still Pedaling? The Impact of Eastern Enlargement on European Union Decision-Making*, Zurich, 2010.

<sup>1064</sup> U. SEDELMEIER, *Europe*, cit.

structures. Political contestation in the Council clarifies that Southern member states demonstrate different positions compared to their Northern counterparts.<sup>1065</sup> Existing disagreement between old and new member states<sup>1066</sup> has been observed on matters such as quantity of financial subsidies as well as choices about the level of harmonization. Southern member states and new members show strong tendency to support higher level of regulations and higher subsidies, while their Northern counterparts underpin lower levels of regulation and lower subsidies.<sup>1067</sup> It is also obvious that new member states expressed reluctance in favoring harmonization contrary to old members.<sup>1068</sup> Another significant change since the 2004 enlargement can be considered European Parliament's role<sup>1069</sup> that was independent from Commission compared to the past experiences.

The evolution of EU institutional frameworks, notably following the Lisbon Treaty,<sup>1070</sup> has brought about profound changes in member states' interactions with the EU's fundamental organs. These alterations<sup>1071</sup> in institutional settings have crucial implications for the rule of law, influencing the strategic behavior of member states' political parties and national governments within EU institutions.<sup>1072</sup> Enduring patterns of member state relations, shaped by geographical location, financial contributions, and historical membership status, impact the legal frameworks guiding EU governance and decision-making.<sup>1073</sup>

Lisbon Treaty brought institutional changes<sup>1074</sup> which modified the equilibrium of power between member states and the institutions of the EU. It was the response to the

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<sup>1065</sup> S. HAGEMANN, D. CLERCK-SACHSSE, *Decision-Making in the Enlarged Council of Ministers: Evaluating the Facts*, 2007.

<sup>1066</sup> T. MAKKONEN, T. MITZE, *Scientific Collaboration Between Old and New Member States: Did Joining the European Union Make a Difference?*, in *Scientometrics*, 2016.

<sup>1067</sup> R. THOMSON, *Actor Alignments in the European Union Before and After Enlargement*, in *European Journal of Political Research*, 2009.

<sup>1068</sup> J. GERHARDS, *Cultural Overstretch?: Differences Between Old and New Member States of the EU and Turkey*, 2007.

<sup>1069</sup> C. FASONE, N. LUPO, *Il Parlamento Europeo*, cit.

<sup>1070</sup> A.S. DUMITRU, *Does the European Governance Strengthen as a Result of the Reform Process Adopted by the Treaty of Lisbon?*, in *Europolicy - Continuity and Change in European Governance*, 2020.

<sup>1071</sup> B. PLECHANOVÁ, *National Actors in the Post-Lisbon EU: Should We Expect a Change of National Strategies?*, in *West European Politics*, 2013.

<sup>1072</sup> O.H. MAICAN, *Treaty of Lisbon - An European Constitution?* in *Perspectives of Law and Public Administration*, 2023.

<sup>1073</sup> H. WALLACE, *Policy-Making*, cit.

<sup>1074</sup> F.E. GARCÍA, *Alcance de las Competencias Externas de la Unión Europea en el Tratado de Lisboa*, in *Revista General de Derecho Europeo*, 2008.



unsuccessful Constitution<sup>1075</sup> which aimed to strengthen the powers of EU Commission, Council and Parliament while concurrently bolstering the role of member states in specific areas.<sup>1076</sup> Some innovations<sup>1077</sup> include initiating of the ordinary legislative procedure, expressly, co-decision of the EU Parliament and qualified majority voting in the Council. Such alterations enhanced the role<sup>1078</sup> of the Parliament and reduce the dominance of individual member states, fostering a more equitable and legally sound decision-making process in line with the rule of law. The post-Lisbon period,<sup>1079</sup> amid the global financial crisis, emphasized the need for EU institutions to adapt legal frameworks to maintain the rule of law in addressing economic challenges.

### 3. Reshaping EU Political Institutions

EU institutional reforms<sup>1080</sup> aimed at bolstering the rule of law<sup>1081</sup> underwent a transformative trajectory, integrating both formal structures and substantive components, particularly in alignment with EU treaties.<sup>1082</sup> This evolution underscored the imperative of cultivating a robust framework of legal norms and institutional mechanisms dedicated to safeguarding fundamental rights.<sup>1083</sup> Emphasizing principles such as the separation of powers and judicial independence, both political and judicial institutions<sup>1084</sup> assumed pivotal roles in interpreting and enforcing the rule of law within the EU. This reform agenda gained added significance during the enlargement process,<sup>1085</sup> where ensuring adherence to democratic

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<sup>1075</sup> R. PODOJNIAK, *Explaining the Failure of the European Constitution: A Constitution-Making Perspective*, 2007.

<sup>1076</sup> M.D. BLÁZQUEZ PEINADO, *Algunas Consideraciones en torno a la Regulación del Consejo, el Consejo Europeo y la Comisión en el Tratado de Lisboa*, 2008.

<sup>1077</sup> C.R. FERNÁNDEZ LIESA, *Relevancia del Tratado de Lisboa en la Construcción Europea*, 2008.

<sup>1078</sup> P. MELLADO PRADO, *La Reforma Institucional en el Tratado de Lisboa: Cambiar Algo para que nada Cambie*, 2010.

<sup>1079</sup> F. ALDECOA LUZÁRRAGA, *La Europa que Viene: El Tratado de Lisboa*, in *Marcial Pons*, 2010.

<sup>1080</sup> S. SMEETS, D. BEACH, *Intergovernmentalism and Its Implications – New Institutional Leadership in Major EU Reforms*, in *Journal of European Public Policy*, 2020.

<sup>1081</sup> J. MALISZEWSKA NIENARTOWICZ, M. KLEINOWSKI, *What Rule of Law for the European Union? Tracing the Approaches of the EU Institutions*, in *Polish Political Science Yearbook*, 2021.

<sup>1082</sup> F. LAURSEN, S. VANHOONACKER, *The Intergovernmental Conference*, cit.

<sup>1083</sup> M. KUIJER, *The Challenging Relationship Between the European Convention on Human Rights and the EU Legal Order: Consequences of a Delayed Accession*, in *The International Journal of Human Rights*, 2020.

<sup>1084</sup> D. HODSON, *The Institutions of the European Union*, Oxford, 2022.

<sup>1085</sup> R. COMAN, C. LECONTE, *Contesting EU Authority in the Name of European Identity: The New Clothes of the Sovereignty Discourse in Central Europe*, in *Understanding Conflicts of Sovereignty in the EU*, 2021.

principles and the rule of law became paramount.<sup>1086</sup> By aligning institutional reforms with EU treaties,<sup>1087</sup> the Union sought to fortify its capacity to promote and uphold the EU values across its expanding membership, thus fostering a more cohesive and resilient European legal framework.<sup>1088</sup>

In the aftermath of the Big Bang expansion,<sup>1089</sup> the EU political institutions undertook several measures to safeguard and advance the rule of law within the newly incorporated member states.<sup>1090</sup> These actions were vital to ensure that the legal frameworks of the enlarging and evolving EU were robust and adhered to the principles of democracy, human rights, and the rule of law.<sup>1091</sup> One significant aspect of the efforts to bolster the rule of law following the enlargement rounds was the implementation of comprehensive monitoring mechanisms.<sup>1092</sup> These mechanisms<sup>1093</sup> involved regular assessments of the adherence to democratic principles and the rule of law in the candidate countries and newly admitted member states.<sup>1094</sup> Through this process, the EU institutions<sup>1095</sup> aimed to identify any shortcomings and address them promptly through appropriate measures. Moreover, the EU imposed conditionalities<sup>1096</sup> and benchmarks on aspiring member states, typically focusing on aspects such as judicial independence, legal system effectiveness, and protection of fundamental rights, as part of the accession process in order to facilitate both widening and deepening process.<sup>1097</sup>

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<sup>1086</sup> D. HEGEDŰS, *What Role for EU Institutions*, cit.

<sup>1087</sup> H. HAHM, D. HILPERT, T. KÖNIG, *Institutional Reform and Public Attitudes toward EU Decision Making*, in *European Journal of Political Research*, 2020.

<sup>1088</sup> A. JAKAB, D. KOCHENOV, *The Enforcement of EU Law and Values: Ensuring Member States' Compliance*, Oxford, 2017.

<sup>1089</sup> J. NOTHNAGEL, *Upholding the Rule of Law in the EU – Enlargement Policy as a Credible Guardian?*, 2020.

<sup>1090</sup> N. GHAZARYAN, *The European Neighbourhood Policy and the Democratic Values of the EU: A Legal Analysis*, in *Bloomsbury Publishing*, 2014.

<sup>1091</sup> A. WILLIAMS, *Taking Values Seriously: Towards a Philosophy of EU Law*, in *Oxford Journal of Legal Studies*, 2009.

<sup>1092</sup> P. BÁRD, *An EU Mechanism on Democracy, the Rule of Law and Fundamental Rights*, in *CEPS Paper in Liberty and Security in Europe*, 2016.

<sup>1093</sup> U. VILLANI, *Sul Controllo*, cit.

<sup>1094</sup> A. VON BOGDANDY, A. ANTPÖHLER, M. IOANNIDIS, *Protecting EU Values – Reverse Solange and the Rule of Law Framework*, in *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper*, 2016.

<sup>1095</sup> D. BEACH, *The Dynamics of European Integration: Why and When EU Institutions Matter*, in *Bloomsbury Publishing*, 2017.

<sup>1096</sup> G. HALMAI, *The Possibility and Desirability of Rule of Law Conditionality*, in *Hague Journal on the Rule of Law*, 2019.

<sup>1097</sup> A. WILLIAMS, *The Ethos of Europe: Values, Law and Justice in the EU*, Cambridge, 2010.

The EU has undertaken measures to strengthen its own institutional framework,<sup>1098</sup> enhancing transparency, accountability, and checks and balances within its organs to maintain high standards of governance and legal integrity. Additionally, the enlargement process<sup>1099</sup> has prompted efforts to reinforce the independence and efficiency of EU political and judicial bodies, ensuring they can effectively uphold the rule of law within the expanded Union. Measures such as clearer criteria for accession<sup>1100</sup> and ongoing monitoring mechanisms<sup>1101</sup> have been implemented to safeguard the rule of law standards within both candidate countries and existing member states. Moreover, the expansion has encouraged the EU to further develop mechanisms for addressing rule of law challenges collectively, promoting cooperation and mutual support<sup>1102</sup> among member states to uphold shared democratic values and legal principles. Through Treaty reforms,<sup>1103</sup> the EU aimed to consolidate its commitment to the rule of law and reinforce the integrity of its institutional framework amidst expansion.<sup>1104</sup> Besides this, the EU institutions actively engaged in dialogue and cooperation with national authorities, civil society organizations,<sup>1105</sup> and other stakeholders to address rule of law challenges effectively.<sup>1106</sup> Such collaborative approach enabled the exchange of best practices within the Union, the sharing of expertise, and the identification of areas requiring further attention or intervention.

Successive enlargement rounds have significantly impacted the decision-making speed of the EU, introducing complexities due to the inclusion of new member states.<sup>1107</sup> This has led to a need for consensus among a larger and more diverse group of stakeholders,

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<sup>1098</sup> L. PECH, D. KOCHENOV, *Strengthening the Rule of Law within the European Union: Diagnoses, Recommendations, and What to Avoid*, in *Reconnect Policy Brief*, 2019.

<sup>1099</sup> U. VILLANI, *Istituzioni di Diritto dell'Unione Europea*, Cacucci, 2013, p.14.

<sup>1100</sup> H. APPEL, *Minority Rights, the Roma, and Neoliberal Reform in EU Accession*, in *East European Politics*, 2024.

<sup>1101</sup> K. L. SCHEPPELE, *The Treaties Without a Guardian: The European Commission and the Rule of Law*, in *Columbia Journal of European Law*, 2023.

<sup>1102</sup> A. DI STASI, A. FESTA, *Breaches of the Rule of Law in the EU: What Implications for the Principle of Mutual Trust in the Area of Freedom, Security and Justice?* in *Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

<sup>1103</sup> L. DANIELE, *Diritto dell'Unione Europea: Sistema Istituzionale, Ordinamento, Tutela Giurisdizionale, Competenze*, Giuffrè Editore, 2010.

<sup>1104</sup> A. MIGLIO, *Riforme e Allargamento*, cit.

<sup>1105</sup> J. GREENWOOD, *The European Citizens' Initiative and EU Civil Society Organisations*, in *Perspectives on European Politics and Society*, 2012.

<sup>1106</sup> J. H. PICHLER, P. PICHLER, *Civil Dialogue and Participatory Democracy in the Practice of the European Union Institutions*, in *Neuer Wissenschaftlicher Verlag*, 2016.

<sup>1107</sup> P. DOSTÁL, *Multi-Speed European Union*, in *Edice Geographica Publisher*, Prague, 2010.

complicating the decision-making process.<sup>1108</sup> Additionally, the requirement to uphold the rule of law further added to this complexity, as decisions must align with legal frameworks and obligations.<sup>1109</sup> While adherence to the rule of law may sometimes slow down decision-making,<sup>1110</sup> it is crucial for maintaining the integrity and legitimacy of the Union's actions. Ultimately, the commitment to the rule of law remains a fundamental aspect of the EU's governance framework,<sup>1111</sup> reinforcing trust and solidarity among member states despite the challenges introduced by enlargement rounds.<sup>1112</sup>

The efficiency of decision-making within the EU is influenced by factors such as institutional characteristics and actor preferences, particularly regarding the speed and duration of policy formulation.<sup>1113</sup> Key institutions of the EU, including the Commission, Parliament, and Council, play pivotal roles in this process, with qualified majority voting<sup>1114</sup> in the Council speeding up decision-making. However, collaboration with the European Parliament<sup>1115</sup> may slow down the process, especially when ideological diversity exists among member states.<sup>1116</sup> These dynamics highlight the intricate relationship between decision-making speed,<sup>1117</sup> institutional structures, and the rule of law within the context of European integration, underscoring the complexities inherent in harmonizing diverse preferences and ideologies while upholding legal frameworks.

Enlargement rounds within the EU have frequently hindered the decision-making process,<sup>1118</sup> as the inclusion of new member states introduces diverse viewpoints that

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<sup>1108</sup> A. ZHELYAZKOVA, *Differentiated Policy Implementation in the European Union*, in *West European Politics*, 2024.

<sup>1109</sup> A. MAGEN, L. PECH, *The Rule of Law and the European Union*, in *Handbook on the Rule of Law*, in Edward Elgar Publishing, 2018.

<sup>1110</sup> J. MENDES, *Rule of Law and Participation: A Normative Analysis of Internationalized Rulemaking as Composite Procedures*, in *International Journal of Constitutional Law*, 2014.

<sup>1111</sup> D. KOCHENOV, L. PECH, *Monitoring and Enforcement of the Rule of Law in the EU: Rhetoric and Reality*, in *European Constitutional Law Review*, 2015.

<sup>1112</sup> V. ANGHEL, E. JONES, *Failing Forward*, cit.

<sup>1113</sup> J. GOLUB, *Survival Analysis and European Union Decision-Making*, in *European Union Politics*, 2007.

<sup>1114</sup> D. DRÜNER, *The Core or the Winset? Explaining Decision-Making Duration and Policy Change in the European Union*, in *Comparative European Politics*, 2018.

<sup>1115</sup> J. GOLUB, *Survival Analysis and European Union Decision-Making*, cit.

<sup>1116</sup> G. ROSÉN, *Differentiation in the European Parliament: United About Diversity?* in *The Routledge Handbook of Differentiation in the European Union*, 2022.

<sup>1117</sup> H. KLÜVER, I. SAGARZAZU, *Ideological Congruency and Decision-Making Speed: The Effect of Partisanship Across European Union Institutions*, in *European Union Politics*, 2013.

<sup>1118</sup> H. WALLACE, *Policy-Making*, cit.

complicate legislative procedures.<sup>1119</sup> While expansion can foster coalition dynamics that sometimes expedite decision-making, the reality is that a larger number of actors often leads to policy instability and increased legislative complexity.<sup>1120</sup> Although qualified majority voting aims to streamline EU decision-making,<sup>1121</sup> the involvement of the European Parliament often introduces delays.<sup>1122</sup> Consequently, despite attempts to address these challenges through institutional modifications, the heightened transaction costs and delays<sup>1123</sup> associated with reaching agreements among a growing number of actors undermine<sup>1124</sup> the efficacy of upholding the rule of law within the EU.

The European Commission proposed various solutions in the previous enlargement rounds to improve EU legislative decision-making, but despite the introduction of qualified EU majority voting in the Council to streamline the process, enlargement has caused a slowdown.<sup>1125</sup> Qualified majority voting effectively expedited decision-making,<sup>1126</sup> with the duration heavily influenced by the divergence of member states' positions, particularly evident in crucial policy areas<sup>1127</sup> indicating that institutional reform of the Council's decision-making threshold may be essential to address challenges. The institutional reforms initiated by the 1987 Single European Act,<sup>1128</sup> 1993 Maastricht Treaty,<sup>1129</sup> and 1997 Treaty of Amsterdam<sup>1130</sup> aimed to facilitate decision-making and promote integration in the EU.<sup>1131</sup> However, challenges

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<sup>1119</sup> R. HERTZ, D. LEUFFEN, *Too Big to Run? Analysing the Impact of Enlargement on the Speed of EU Decision-Making*, in *European Union Politics*, 2011.

<sup>1120</sup> C. CLOSA, *Constitutional Rigidity*, cit.

<sup>1121</sup> M.M. ARACELI, *¿A dónde nos lleva el Tratado de Lisboa?*, 2010.

<sup>1122</sup> A. KREPPEL, M. WEBB, *European Parliament Resolutions—Effective Agenda Setting or Whistling into the Wind? The European Parliament in the Contested Union*, 2020.

<sup>1123</sup> D. DRÜNER, *Between Chaos and Sclerosis: Decision-Making in the Old, the Enlarged and a Reformed European Union*, 2007.

<sup>1124</sup> H. FARRELL, A. HÉRITIER, *Codecision and Institutional Change, West European Politics*, 2007.

<sup>1125</sup> T. KÖNIG, *Divergence or Convergence? From Ever-Growing to Ever-Slowing European Legislative Decision Making*, *European Journal of Political Research*, 2007.

<sup>1126</sup> J. GOLUB, *Survival Analysis and European Union Decision-Making*, cit.

<sup>1127</sup> F. HAYES RENSHAW, W. VAN AKEN, H. WALLACE, *When and Why the EU Council of Ministers Votes Explicitly*, in *Journal of Common Market Studies*, 2006.

<sup>1128</sup> M. KANIEL, *The Exclusive Treaty-Making Power of the European Community up to the Period of the Single European Act*, in *Brill*, 2023.

<sup>1129</sup> F. LAURSEN, S. VANHOONACKER, *The Ratification of the Maastricht Treaty: Issues, Debates and Future Implications*, in *Martinus Nijhoff Publishers*, 2023.

<sup>1130</sup> S. FELLA, *New Labour and the European Union: Political Strategy, Policy Transition and the Amsterdam Treaty Negotiation*, 2018.

<sup>1131</sup> F. LARAT, *Presenting the Past: Political Narratives on European History and the Justification of EU Integration*, in *German Law Journal*, 2005.

persisted, fueled by the influence of parliamentary power and the diverse composition of the Union,<sup>1132</sup> raising questions about the efficiency of the process.

Within the intricate and evolving context of EU enlargement,<sup>1133</sup> two fundamental and pivotal questions inevitably come to the forefront in relation to the rule of law. Firstly, how did the Council manage to successfully adapt to new terms of operation, ensuring stability and efficiency, as it expanded from 12 to 27 member states while upholding the principles of the rule of law? Secondly, has this transformative process led to significant qualitative changes within the Council itself and potentially within the broader EU system in terms of adherence to the rule of law? EU Commission has pointed out that the integral capability of the EU must be shaped in a way that possesses the capacity to absorb<sup>1134</sup> new member states without harming the effectiveness, functioning and objectives of its bodies.<sup>1135</sup> In fact, the Berlin Declaration of March 2007<sup>1136</sup> underlined the significance of further institutional reforms for the expanded Union in order to operate properly.

The expansion of the EU, driven by growing diversity, has prompted adaptations in its institutional framework, leading to more flexible norms and changes in agenda priorities within the Council.<sup>1137</sup> However, institutional reforms<sup>1138</sup> necessary for enlargement preparations have been slow, spanning almost a decade, highlighting challenges in maintaining the rule of law amid evolving complexities.<sup>1139</sup> The evolving legislative process underscored the importance of adherence to the rule of law, as decisions by the Council<sup>1140</sup> now require collaborative input from multiple EU institutions, emphasizing the necessity for legal integrity and coherence in decision-making. The Big Bang enlargement of the EU prompted the Council to adapt its internal functioning techniques to accommodate new member states while ensuring adherence to the rule of law amidst anticipated impacts on EU policy effectiveness and

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<sup>1132</sup> E. PRÜGL, M. THIEL, *Diversity in the European Union*, 2009.

<sup>1133</sup> E. GATEVA, *The Evolution of EU Enlargement Conditionality: Overview and Key Findings*, *European Union Enlargement Conditionality*, 2015.

<sup>1134</sup> M. EMERSON, S. AYDIN, J. DE CLERCK-SACHSSE, G. NOUTCHEVA, *Just What Is This 'Absorption Capacity' of the European Union?*, 2006.

<sup>1135</sup> V. NEDIĆ, *Institutional Reforms for Economic Growth in the Western Balkan Countries*, in *Journal of Policy Modeling*, 2020.

<sup>1136</sup> F. GRANELL TRÍAS, *La Declaración de Berlín a los Cincuenta Años de los Tratados de Roma*, in *Revista de Derecho Comunitario Europeo*, 2007.

<sup>1137</sup> E. BEST, P. SETTEMBRI, *Surviving Enlargement*, cit.

<sup>1138</sup> N. CAMPOS, F. CORICELLI, E. FRANCESCHI, *Institutional Integration and Productivity Growth: Evidence from the 1995 Enlargement of the European Union*, in *European Economic Review*, 2022.

<sup>1139</sup> P. CRAIG, G. DE BÚRCA, *The Evolution*, cit.

<sup>1140</sup> F. HÄGE, *The Scheduling Power of the EU Council Presidency*, in *Journal of European Public Policy*, 2017.

scope.<sup>1141</sup> The Council continued to operate in a regular manner following the 'Big Bang' expansion, with reports from the Commission highlighting the fifth enlargement as successful despite prevalent debates on EU institution operation during the expansion's outcomes.<sup>1142</sup>

The arduous responsibility of obtaining consensus among member states<sup>1143</sup> has led to significant changes in the general work and functioning of the Council, impacting the nature and framework of EU policy-making, as evidenced by longer meeting times and shifts in voting attitudes and coalition structures<sup>1144</sup> post-enlargement. The successful integration<sup>1145</sup> of new member states into EU bodies post-2004 expansion advocated for extending qualified majority voting to areas currently reliant on unanimity to ensure smooth integration and decision-making processes and uphold the rule of law and efficiency within the EU framework.<sup>1146</sup>

#### 4. Council of the European Union

The relationship between the decision-making process<sup>1147</sup> of the EU Council and the rule of law is crucial,<sup>1148</sup> as it forms the bedrock of the EU's democratic legitimacy and effectiveness.<sup>1149</sup> Treaty revisions,<sup>1150</sup> enlargement rounds, and changes in the voting system within the Council all influenced this dynamic.<sup>1151</sup> Treaty revisions<sup>1152</sup> established legal frameworks and mechanisms for upholding the rule of law, while enlargement rounds integrated diverse legal traditions, requiring careful calibration of decision-making

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<sup>1141</sup> S. HAGEMANN, J. DE CLERCK-SACHSSE, *Decision-Making*, cit.

<sup>1142</sup> A. POLKOWSKI, *The Fifth EU Enlargement Round: Two Years On*, in *Intereconomics*, 2006..

<sup>1143</sup> S. NOVAK, O. ROZENBERG, S. BENDJABALLAH, *Enduring Consensus: Why the EU Legislative Process Stays the Same*, in *Journal of European Integration*, 2021.

<sup>1144</sup> R. SANDELL, *Parámetros de Referencia para Maximizar el Poder Potencial de España en el Consejo de la UE: Las Consecuencias de Asignar el Poder de Voto en Función del Tamaño Real de la Población*, 2004..

<sup>1145</sup> D. DENTI, *The Europeanisation of Candidate Countries: The Case for a Shift to the Concept of EU Member-State Building*, in *Contemporary Southeastern Europe*, 2014.

<sup>1146</sup> S. SIEBERSON, *Inching Toward EU Supranationalism-Qualified Majority Voting and Unanimity under the Treaty of Lisbon*, 2009.

<sup>1147</sup> A. WARNTJEN, *Between Bargaining and Deliberation: Decision-Making in the Council of the European Union*, in *Journal of European Public Policy*, 2010.

<sup>1148</sup> U. PUETTER, *The European Council, the New Intergovernmentalism*, 2015.

<sup>1149</sup> F. HÅGE, *Bureaucrats as Law-Makers: Committee Decision-Making in the EU Council of Ministers*, 2012.

<sup>1150</sup> C. CLOSA, *Between a Rock and a Hard Place: The Future of EU Treaty Revisions*, in *SIEPS European Policy Analysis*, 2014.

<sup>1151</sup> A. KIRGIOS, *Treaty Revision in the EU: An Analysis of Potential Issues Facing the Revision Procedures in Article 48 TEU*, 2015.

<sup>1152</sup> L. HERTOOG, *The Rule of Law in the EU: Understandings, Development and Challenges*, in *Acta Juridica Hungarica*, 2012.

processes.<sup>1153</sup> Significantly, establishing a political dialogue, approved by both the Council and member states, suggests that addressing potential threats to the rule of law in member states may not entirely fall under the Council's current jurisdiction.<sup>1154</sup> However, upholding the rule of law<sup>1155</sup> within the Council's decision-making process is vital for safeguarding democracy, human rights, economic prosperity, and citizens' trust. A separate mechanism<sup>1156</sup> to address ongoing threats to the rule of law within the EU enhances accountability, transparency, and legal certainty in decision-making, safeguarding the integrity and credibility of the European project.

The inclusion of new member states through enlargement into the EU Council's decision-making<sup>1157</sup> process introduced a spectrum of perspectives, legal traditions, and practices, thereby influencing the dynamics of decision-making.<sup>1158</sup> This diversity impacted the robustness of legal scrutiny and adherence to rule of law principles as member states with varying levels of adherence to such principles participated in legislative processes.<sup>1159</sup> Ensuring consistent application and enforcement of EU law across the Union became challenging due to the presence of different legal systems and levels of rule of law adherence among member states.<sup>1160</sup> Moreover, enlargement necessitated adjustments in the functioning of mechanisms for upholding the rule of law within the EU,<sup>1161</sup> as increased diversity and complexity demanded enhanced vigilance and adaptability to maintain the integrity of decision-making processes and promote fundamental principles across the Union.<sup>1162</sup>

The concerns surrounding the impact of widening integration, such as the 2004 expansion, on the EU system also intersected with considerations of upholding the rule of law.

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<sup>1153</sup> A. HÄRTEL, *Ukraine and the EU: Enlargement Without Alternative?*, in *Ukrainian Analytical Digest*, 2024.

<sup>1154</sup> R. BARATTA, *Rule of Law Dialogues*, cit.

<sup>1155</sup> I. RÜSE, *The Ethereal Plane of EU Decision-Making: The Relationship Between the European Council and the Rule of Law During the Eurozone and Refugee Crises*, 2018.

<sup>1156</sup> D. KOCHENOV, L. PECH, *Upholding the Rule of Law*, cit.

<sup>1157</sup> Z. DUBSKÝ, K. KOČÍ, M. VOTOUPALOVÁ, *Enlargement of the EU Towards the East: A Pivotal Change in EU's External Policy?*, in *Politics and Governance*, 2024.

<sup>1158</sup> A. GRIFFIN, S. GSTÖHL, *Déjà Vu? Concepts of Differentiation for the European Union's Future Enlargement*, 2024.

<sup>1159</sup> C. CLOSA, *The Politics of Guarding the Treaties*, cit.

<sup>1160</sup> J. SLAPIN, *How European Union Membership*, cit.

<sup>1161</sup> G. HERNÁNDEZ, C. CLOSA, *Turning Assertive? EU Rule of Law Enforcement in the Aftermath of the War in Ukraine*, in *West European Politics*, 2024.

<sup>1162</sup> A. MAGEN, L. PECH, *The Rule of Law and the European Union*, cit.



Questions about institutional effectiveness,<sup>1163</sup> potential gridlock, and voting behavior in the Council<sup>1164</sup> highlighted the importance of ensuring equitable application of legal principles to uphold the rule of law across the Union amidst socioeconomic disparities. The emergence of geographical and socioeconomic coalition models such as North/South<sup>1165</sup> or North/South/East divisions, along with left/right cleavages<sup>1166</sup> and integration/independence dynamics, underscores the complexities of upholding the rule of law within the EU. Countries' positions were often delineated between contributors and receivers from the EU budget,<sup>1167</sup> reflecting varying levels of assistance for aligning with EU policies. In the Council, voting behavior<sup>1168</sup> was influenced by a spectrum of factors, encompassing both national and EU-level considerations,<sup>1169</sup> with decisions reflecting adherence to or deviation from the rule of law principles. Traditionally, left-wing parties and pro-rule of law governments tend to align with the majority, while right-wing governments or those skeptical of legal frameworks may diverge, highlighting the ongoing tension between upholding the rule of law and political ideologies.<sup>1170</sup>

Usually, big countries<sup>1171</sup> often vote against the majority compared to smaller countries due to their prioritization of national interests over constructive cooperation, whereas smaller countries are more inclined to focus on the most crucial efforts for the benefit of their nations, reflecting differences in political culture and national pride.<sup>1172</sup> The voting behavior<sup>1173</sup> in the

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<sup>1163</sup> B. PLECHANOVOVA, *The EU Council Enlarged: North-South-East or Core-Periphery?*, in *European Union Politics*, 2011.

<sup>1164</sup> M. MATTILA, *Roll Call Analysis of Voting in the European Union Council of Ministers After the 2004 Enlargement*, in *European Journal of Political Research*, 2009.

<sup>1165</sup> H. CEBOLLA BOADO, C. FINOTELLI, *Is There a North-South Divide in Integration Outcomes? A Comparison of the Integration Outcomes of Immigrants in Southern and Northern Europe*, in *European Journal of Population*, 2015.

<sup>1166</sup> B. PLECHANOVOVÁ, *The EU Council Enlarged*, cit.

<sup>1167</sup> D. LEUFFEN, J. SCHUESSLER, J. GÓMEZ DÍAZ, *Public Support for Differentiated Integration: Individual Liberal Values and Concerns About Member State Discrimination*, in *Journal of European Public Policy*, 2022.

<sup>1168</sup> M. MATTILA, *Contested Decisions: Empirical Analysis of Voting in the European Union Council of Ministers*, in *European Journal of Political Research*, 2004.

<sup>1169</sup> S. HUTTER, I. SCHÄFER, *Cleavage Politics and European Integration*, in *Theorising the Crises of the European Union*, 2020.

<sup>1170</sup> M. V. ÁLVAREZ, *El Euroescepticismo en el Parlamento Europeo. Análisis del Comportamiento Legislativo y Político de los Diputados Euroescépticos de la Cuarta a la Séptima Legislaturas (1994-2014), ¿Cambio o Continuidad en la Octava Legislatura (2014-2019)?*, in *Cuadernos Europeos de Deusto*, 2015..

<sup>1171</sup> D. PANKE, *Small States in Multilateral Negotiations. What Have We Learned?*, in *Cambridge Review of International Affairs*, 2012.

<sup>1172</sup> M. LUBBERS, M. COENDERS, *Nationalistic Attitudes and Voting for the Radical Right in Europe*, in *European Union Politics*, 2017.

<sup>1173</sup> P. VAN GRUISEN, P. VANGERVEN, C. CROMBEZ, *Voting Behavior in the Council of the European Union: The Effect of the Trio Presidency*, in *Political Science Research and Methods*, 2019.

EU Council reflects a divide between subsidy-receiving countries,<sup>1174</sup> which typically support the majority, and net contributors,<sup>1175</sup> who are more prone to vote against it, highlighting the influence of economic incentives on European integration. This dynamic underscore concerns about the rule of law within EU decision-making, as economic considerations may overshadow principles of fairness and equity.

The period from 1998 to 2007 saw political disputes in the EU Council stemming from member states' behaviors and socio-economic preferences, with new member states' inclusion not significantly altering the conflict dynamics.<sup>1176</sup> Geographical divisions,<sup>1177</sup> particularly the shift from North-South to East-West cleavages after Eastern expansion,<sup>1178</sup> have emerged as a primary source of conflict, potentially impacting the rule of law within EU integration by emphasizing regional interests over universal legal principles. The legislative process within the Council is significantly influenced by ideological alignments, as politicians' voting attitudes and coalition formations are driven by their affirmed political goals and shared interests.<sup>1179</sup> The EU enlargement rounds<sup>1180</sup> have led to modifications in the voting methods within the Council from the 1957 Rome Treaty to the 2007 Lisbon Treaty,<sup>1181</sup> primarily due to concerns over the growing number of member states impeding decision-making processes. A key contention arose over the distribution of voting power, with large states advocating for rules favoring their interests while small countries sought to maintain the status quo.<sup>1182</sup> Voting rule reform discussions<sup>1183</sup> initiated in 1996 culminated in the implementation of changes in the

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<sup>1174</sup> L. HORNKOHL, *The EU Foreign Subsidy Regulation: Why, What and How?*, 2023.

<sup>1175</sup> F. HAYES RENSHAW, W. VAN AKEN, H. WALLACE, *When and Why the EU Council*, cit.

<sup>1176</sup> T. VEEN, *The Dimensionality and Nature of Conflict in European Union Politics: On the Characteristics of Intergovernmental Decision-Making*, in *European Union Politics*, 2011.

<sup>1177</sup> L. BRUSZT, V. VUKOV, *Core-Periphery Divisions in the EU? East-West and North-South Tensions Compared*, in *Journal of European Public Policy*, 2024.

<sup>1178</sup> C. CARTA, S. BRAGHIROLI, *Measuring Russia's Snag on the Fabric of the EU's International Society: The Impact of the East-West Cleavage upon the Cohesion Amongst the EU Member States Vis-à-Vis Russia*, in *Journal of Contemporary European Research*, 2011.

<sup>1179</sup> S. HAGEMANN, B. HØYLAND, *Parties in the Council?*, in *Journal of European Public Policy*, 2008.

<sup>1180</sup> A. BEZHASHVILI, *Legal and Institutional Foundations of the EU Enlargement Policy: Is the Existing Framework Adequate for the Achievement of Objectives of This EU Policy?*, 2024.

<sup>1181</sup> O. DOLEŽEL, *Decision-Making in the Council of the European Union During the Covid-19 Pandemic*, in *European Politics and Society*, 2024.

<sup>1182</sup> H. KAUPPI, M. WIDGREN, *Voting Rules and Budget Allocation in the Enlarged EU*, in HECER, 2006.

<sup>1183</sup> S. NOVAK, O. ROZENBERG, S. BENDJABALLAH, *Enduring Consensus*, cit.

Nice Treaty in 2000,<sup>1184</sup> which involved re-weighting votes from the smallest to the largest member states following the failure of the Amsterdam meeting in 1997.<sup>1185</sup>

The 2004 Eastward expansion<sup>1186</sup> of the Union led to tough negotiations over profit distribution from 2007 to 2013, exposing a trend of self-interested influence on budget allocation within the Council's legislative process. The voting rules outlined in the Nice and Constitutional Treaties, following the Eastern expansion to 27 member states, significantly impacted budget outcomes, resulting in varying allocations<sup>1187</sup> among countries. In the Council voting process, coalition formation is unpredictable and driven by temporary alliances based on common interests or individual concerns, leading to conflicts such as those within the North/South coalition over EU budget matters.<sup>1188</sup> Enlargement's impact on North/South/East<sup>1189</sup> dynamics and left-right conflicts complicates EU decision-making, highlighted the need for enforcing the EU constitution due to the insufficiency of the Nice Treaty to address growing tensions and gridlocks. Thus, the enlargement exacerbated conflicts, and the enforcement of the EU constitution has been seen as a crucial solution to address the resulting complexities and gridlocks<sup>1190</sup> inadequately handled by the Nice Treaty.

Alliance-building<sup>1191</sup> among member states is influenced by geographical patterns, cultural norms, trust, and adherence to the rule of law, often resulting in economically disadvantaged Eastern European countries aligning with environmentally conscious North countries rather than polluting South countries.<sup>1192</sup> The Council's expanded role<sup>1193</sup> in the EU framework emphasized the importance of adhering to the rule of law in setting key initiatives

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<sup>1184</sup> D. PETROVA, *Transversal Policy of the EU, Mechanisms of the Union's Foreign Policy, the Young Generation and Next Europe*, Bulgarian Academy of Sciences, Sofia, 2023.

<sup>1185</sup> S. VANHOONACKER, *The Amsterdam Treaty*, in *Oxford Research Encyclopedia of Politics*, 2020.

<sup>1186</sup> H. GRABBE, K. HUGHES, *Enlarging the EU Eastward*, in A&C Black, 1998.

<sup>1187</sup> M. L. SEQUITI, *The Role of the European Union Budget in View of EU Enlargement*, in *Public Budgeting & Finance*, 2003.

<sup>1188</sup> C. ZIMMER, G. SCHNEIDER, M. DOBBINS, *The Contested Council: Conflict Dimensions of an Intergovernmental EU Institution*, 2005.

<sup>1189</sup> D. NAURIN, R. LINDAHL, *East-North-South: Coalition-Building in the Council Before and After Enlargement*, in *Unveiling the Council of the European Union: Games Governments Play in Brussels*, London, 2008.

<sup>1190</sup> R. HERTZ, D. LEUFFEN, *Gridlock After Enlargement? An Analysis of Legislative Output in the European Union*, 2009.

<sup>1191</sup> C. BICKERTON, D. HODSON, U. PUETTER, *The New Intergovernmentalism: European Integration in the Post-Maastricht Era*, in *Journal of Common Market Studies*, 2015.

<sup>1192</sup> D. NAURIN, R. LINDAHL, *East-North-South*, cit.

<sup>1193</sup> E. VÍRGALA FORURIA, *El Poder Ejecutivo en la UE: Consejo y Comisión*, in *Revista de Estudios Políticos*, 2003.

and harmonizing Union objectives in international affairs. Such evolution underscored the Council's transformation<sup>1194</sup> into a crucial international actor defining norms and procedures, facilitating constitutional developments, treaty modifications, and accessions, all guided by principles of legality and the rule of law. Thus, EU expansion heightened national interests, potentially obstructing the EU's institutional structure and impacting the Council's functioning, with varying levels of enthusiasm for integration reflecting concerns about upholding the rule of law uniformly.<sup>1195</sup>

## 5. European Commission

Following EU enlargement rounds, significant changes have been observed in the composition, structures, functions, and role of the Commission.<sup>1196</sup> These transformations reflect the evolving landscape of the EU,<sup>1197</sup> accommodating the inclusion of new member states and ensuring effective governance. The Commission's composition<sup>1198</sup> has diversified to better represent the interests and perspectives of a broader array of member states, fostering inclusivity and cooperation.<sup>1199</sup> Structural adjustments have been made to streamline decision-making processes and enhance the Commission's responsiveness to the challenges posed by enlargement.<sup>1200</sup> Furthermore, its functions have expanded to encompass the coordination of policies and resources across a more extensive and diverse union.<sup>1201</sup> Throughout these changes, the Commission's role as a guardian<sup>1202</sup> of the rule of law has remained paramount. It plays a crucial role in upholding the principles<sup>1203</sup> of democracy, human rights, and legal

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<sup>1194</sup> W. WESSELS, *The European Council: A Bigger Cub, A Similar Role*, in *The Institutions of the Enlarged European Union: Continuity and Change*, in Edward Elgar, Cheltenham, 2008, p.16-33.

<sup>1195</sup> J. PETERSON, *The Commission and the New Intergovernmentalism*, in *The New Intergovernmentalism, States and Supranational Actors in the Post-Maastricht Era*, 2015.

<sup>1196</sup> S. ANDERSEN, *The Enforcement of EU Law: The Role of the European Commission*, Oxford University Press, 2012.

<sup>1197</sup> D. DOLABERIDZE, M. MASLÍKOVÁ, *The Changing Landscape of EU Enlargement: What Does Slovakia's New Government Mean for Georgia?*, 2024.

<sup>1198</sup> N. NUGENT, M. RHINARD, *The European Commission*, in Bloomsbury Publishing, 2015.

<sup>1199</sup> D. TOSHKOV, *The European Union Could Be Simple, Inclusive, or Effective, Pick Two*, in *Eurogrowth Initiative*, 2017.

<sup>1200</sup> A. SZOLUCHA, *The EU and 'Enlargement Fatigue': Why Has the European Union Not Been Able to Counter 'Enlargement Fatigue'?*, in *Journal of Contemporary European Research*, 2010.

<sup>1201</sup> P. LUDLOW, *The European Commission*, in *The New European Community*, 2018.

<sup>1202</sup> K. L. SCHEPPELE, *The Treaties Without a Guardian*, cit.

<sup>1203</sup> A. AZMANOVA, B. HOWARD, *Binding the Guardian: On the European Commission's Failure to Safeguard the Rule of Law*, 2021.

certainty, thereby reinforcing the foundation of the EU's legal order. The Commission's commitment<sup>1204</sup> to the rule of law ensures that all member states adhere to shared standards and obligations, promoting stability, fairness, and trust within the Union.<sup>1205</sup>

The need for changes in the functioning of the European Commission<sup>1206</sup> has been highlighted due to challenges stemming from enlargement, impacting its operational methods, output quality, and interdependence with other EU bodies. The Commission's ability to act independently, crucial for upholding the rule of law, faced complexity in aligning with the consent of a significant number of member states, particularly with the EU-27's expanded size.<sup>1207</sup> The widening process necessitated significant changes in the composition of the Commission,<sup>1208</sup> aiming to ensure equal representation among member states by appointing one commissioner from each state.<sup>1209</sup> Additionally, for the first time, it adopted a structure resembling a Council working group, featuring one representative from each member state, thereby aligning its appearance and qualities with greater parity.<sup>1210</sup> Despite claims of significant differences in the Commission's functioning before and after 2004 due to EU enlargement, the Commission emphasized that the disparity in EU legislation was not primarily linked to enlargement, instead acknowledging a notable shift in its intermediary and mediator role.<sup>1211</sup> Assessing the EU Commission's change due to enlargement is challenging, with complexities in isolating enlargement effects from other factors. Commission officials noted a close link between enlargement and reforms,<sup>1212</sup> with the 2004 enlargement bringing new perspectives and rejuvenation to the institution, rather than drastically altering its role.

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<sup>1204</sup> D. KOCHENOV, L. PECH, *Better Late Than Never? On the European Commission's Rule of Law Framework and Its First Activation*, in *Journal of Common Market Studies*, 2016.

<sup>1205</sup> J. NOTHNAGEL, *Upholding the Rule of Law in the EU*, cit.

<sup>1206</sup> S. ALOISIO, *La Centralità della Riforma della Commissione Europea nel Quadro Istituzionale dell'UE*, in *Il Federalista*, 2021.

<sup>1207</sup> J. PETERSON, A. BIRDSALL, *The European Commission: Enlargement as Reinvention?*, in *The Institutions of the Enlarged European Union: Continuity and Change*, in Edward Elgar, Cheltenham, 2008.

<sup>1208</sup> M. BRUNAZZO, *Come funziona l'Unione Europea? Le istituzioni, i processi decisionali, le politiche*, Laterza, 2009.

<sup>1209</sup> G. CASTELLANI PASTORIS, *L'Europa alla vigilia dell'allargamento*, L'Europa alla vigilia dell'allargamento, 2003.

<sup>1210</sup> U. PUETTER, *The European Council and the Council: New Intergovernmentalism and Institutional Change*, Oxford, 2014.

<sup>1211</sup> Commission Of European Communities (2006), *Enlargement Strategy and Main Challenges 2006 – 2007*, cit.

<sup>1212</sup> A. SÁENZ DE SANTA MARÍA PAZ, *La reforma de las instituciones de la Unión Europea en la perspectiva de las ampliaciones*, 2003.

European Commission has experienced significant alterations<sup>1213</sup> as a result of enlargement rounds of 2004 and 2007, highlighting the importance of internal reforms for the institutions and forcing it to transform for better regulation. There is a general judgement on the impact of enlargement on the role, functioning and status of this institution. Obviously, challenges deriving from the EU-27 politics are substantially diversified and restricted than prior to 2004.<sup>1214</sup> However, this reason can be associated with the outcomes of swift speed of economic change which is quite common to globalization as well as the rule of law requirements.<sup>1215</sup> The main effect of enlargement was considered the change in the composition of the Commission<sup>1216</sup> which resembled to the Council, that consequently removed the uniqueness of the organ.<sup>1217</sup>

## 6. European Parliament

The EU integration process have necessitated significant reforms<sup>1218</sup> within the European Parliament, particularly from a legal perspective,<sup>1219</sup> to accommodate the increasing number of member states and ensure the effective functioning of the EU institutions.<sup>1220</sup> Each enlargement round, whether it involved a few or several new member states,<sup>1221</sup> has posed unique challenges<sup>1222</sup> to the EU's legal framework, necessitating treaty reforms and adjustments<sup>1223</sup> to the functioning of the European Parliament.<sup>1224</sup> These reforms<sup>1225</sup> have been crucial in upholding EU values, particularly the rule of law, which is enshrined in the EU's

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<sup>1213</sup> M. Á. ORBAÑANOS, *La reforma institucional preparatoria de la ampliación de la Unión Europea*, in *Revista Española de Control Externo*, 2003.

<sup>1214</sup> J. PETERSON, *Enlargement, Reform and the European Commission. Weathering a Perfect Storm?*, in *Journal of European Public Policy*, 2008.

<sup>1215</sup> I. GOLDNER LANG, *The Rule of Law, the Force of Law and the Power of Money in the EU*, in *Croatian Yearbook of European Law & Policy*, 2019.

<sup>1216</sup> M. EGEBERG, *The European Commission*, in *European Union Politics*, 2010.

<sup>1217</sup> N. NUGENT, M. RHINARD, *The European Commission*, cit.

<sup>1218</sup> M. PETROVIC, N. TZIFAKIS, *A Geopolitical Turn*, cit.

<sup>1219</sup> D. HODSON, *The Institutions*, cit.

<sup>1220</sup> T. BÖRZEL, *Why Noncompliance: The Politics of Law in the European Union*, 2022.

<sup>1221</sup> S. BULMER, *The Member*, cit.

<sup>1222</sup> M. BONOMI, *From EU Enlargement Fatigue to Ambiguity*, Foundation for European Progressive Studies (FEPS), the Friedrich Ebert-Stiftung (FES), and the Fondation Jean Jaurès, 2020.

<sup>1223</sup> J. MAYORAL, *Democratic Improvements in the European Union under the Lisbon Treaty: Institutional Changes Regarding Democratic Government in the EU*, European Union Democracy Observatory, Robert Schuman Centre for Advanced Studies, in *European University Institute*, 2011.

<sup>1224</sup> D. KIETZ, A. MAURER, *The European Parliament in Treaty Reform: Predefining IGCs through Interinstitutional Agreements*, in *European Law Journal*, 2007.

<sup>1225</sup> D. HODSON, *The Institutions*, cit.

founding treaties and forms the cornerstone of its legal order.<sup>1226</sup> In response to expansion of the Union, treaty reforms have often focused on enhancing the representation and decision-making processes within the European Parliament.<sup>1227</sup> This has involved adjustments to the distribution of seats among member states, ensuring a fair and proportional representation of citizens across the EU.<sup>1228</sup> Additionally, treaty reforms have sought to streamline decision-making processes within the European Parliament to facilitate efficient legislative procedures,<sup>1229</sup> while also upholding principles of transparency and accountability.<sup>1230</sup> These reforms are essential for maintaining the rule of law within the EU,<sup>1231</sup> as they contribute to the legitimacy and effectiveness of the EU's institutions.<sup>1232</sup> Furthermore, the reforms initiated as a consequence of widening process have been particularly significant within the European Parliament,<sup>1233</sup> where the representation of member states and the legislative process play pivotal roles in upholding the rule of law.<sup>1234</sup> The establishment of monitoring mechanisms and enforcement procedures within the European Parliament has bolstered its capacity to ensure compliance with EU law and fundamental values.<sup>1235</sup> Through enhanced oversight and enforcement, the EU Parliament<sup>1236</sup> reinforced the principles of legal certainty, equality before the law, and effective judicial protection within the EU legal order.<sup>1237</sup> By actively engaging in these reforms, it demonstrated respective commitment<sup>1238</sup> to preserving the rule of law within its functioning, underscoring the centrality of EU values in its legislative endeavors.<sup>1239</sup>

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<sup>1226</sup> M. CINI, N. PÉREZ-SOLÓRZANO BORRAGÁN, *European Union Politics*, Oxford, 2022.

<sup>1227</sup> R. SCHÜTZE, *European Union Law*, Oxford University Press, 2021.

<sup>1228</sup> N. NEUWAHL, A. ROSAS, *The European Union and Human Rights*, cit.

<sup>1229</sup> H. WALLACE, *Policy-Making*, cit.

<sup>1230</sup> T. CHRISTIANSEN, E. GRIGLIO, N. LUPO, *Making Representative Democracy Work: The Role of Parliamentary Administrations in the European Union*, in *The Journal of Legislative Studies*, 2021.

<sup>1231</sup> F. FABBRINI, *Brexit and the Future of the European Union: The Case for Constitutional Reforms*, Oxford, 2020.

<sup>1232</sup> D. CHALMERS, *European Union Law: Text and Materials*, Cambridge University Press, 2024.

<sup>1233</sup> A. KREPPPEL, M. WEBB, *European Parliament Resolutions*, cit.

<sup>1234</sup> B. CSILLA BAKÓ, *Hungary's Latest Experiences with Article 2 TEU: The Need for 'Informed' EU Sanctions*, 2021.

<sup>1235</sup> S. BARBOU DES PLACES, *Enforcing the Rule of Law in the EU, In the Name of Whom?*, in *European Papers*, 2016.

<sup>1236</sup> A. R. SERVENT, *The European Parliament*, in *Bloomsbury Publishing*, 2017.

<sup>1237</sup> V. BERTHET, *United in Crisis: Abortion Politics in the European Parliament and Political Groups' Disputes over EU Values*, in *Journal of Common Market Studies*, 2022.

<sup>1238</sup> S. G. SZILÁGYI, *Transparency, Investment Protection and the Role of the European Parliament*, in *European Investment Law and Arbitration Review*, 2017.

<sup>1239</sup> D. FARRELL, R. SCULLY, *The European Parliament: One Parliament, Several Modes of Political Representation on the Ground?*, in *Political Representation and European Union Governance*, 2013.

The European Parliament's pivotal role in the Eastern Enlargement rounds<sup>1240</sup> underscored its significance in promoting the rule of law and democratic values within the expanding EU framework.<sup>1241</sup> Its function in representing citizens and fostering institutional development served as a crucial mechanism for ensuring the adherence to legal principles and democratic norms across the Union.<sup>1242</sup> The Amsterdam Treaty<sup>1243</sup> of 1997 significantly expanded the powers of the European Parliament<sup>1244</sup> by extending the co-decision procedure to a wider range of policy areas, streamlining the legislative process, and making the vote on the appointment of the Commission President mandatory. However, the transformation of the Parliament into its current form took place with the Lisbon Treaty of 2009,<sup>1245</sup> which defined it as representing "citizens of the Union"<sup>1246</sup> rather than "peoples of the states," emphasizing the concept of European citizenship.<sup>1247</sup> The Lisbon Treaty<sup>1248</sup> elevated the European Parliament to an equal standing with the Council and assigns it four crucial powers: legislative,<sup>1249</sup> budgetary,<sup>1250</sup> control, and electoral.

The bolstering of the European Parliament's authority, notably through the introduction of the ordinary legislative procedure and expanding its scope across 40 policy areas,<sup>1251</sup> represented a significant step toward addressing the EU's legitimacy challenges. The absence of a unified European identity,<sup>1252</sup> casting doubt on the notion of a European "people,"<sup>1253</sup> highlighted the importance of upholding the rule of law<sup>1254</sup> as European citizenship

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<sup>1240</sup> J. O'BRENNAN, *The Eastern Enlargement of the European Union*, 2006.

<sup>1241</sup> M. E. BÉLANGER, F. SCHIMMELFENNIG, *Politicization and Rebordering in EU Enlargement: Membership Discourses in European Parliaments*, in *Journal of European Public Policy*, 2021.

<sup>1242</sup> E. SALVATI, *Il Parlamento Europeo: Un Profilo Storico*, in *Rivista Trimestrale di Scienza dell'Amministrazione*, 2013.

<sup>1243</sup> S. JACOBS, *Improving the Quality of Legislation in Europe*, in *Brill*, 2023.

<sup>1244</sup> F. JACOBS, *The European Parliament*, in *Reforming the European Union*, 2014.

<sup>1245</sup> E. BRESSANELLI, N. CHELOTTI, *The European Parliament in the Contested Union: Power and Influence Post-Lisbon*, 2020.

<sup>1246</sup> P. CARETTI, M. MORISI, G. TARLI BARBIERI, *Il Parlamento Europeo: dagli Stati ai Popoli? Il Divieto di Mandato Imperativo: un Principio in Discussione*, 2019.

<sup>1247</sup> M. HEERMANN, D. LEUFFEN, *No Representation Without Integration! Why Differentiated Integration Challenges the Composition of the European Parliament*, in *Journal of Common Market Studies*, 2020.

<sup>1248</sup> F. PETRI, V. ZAPLETALOVÁ, K. BIEDENKOPF, *The European Parliament: a Strong Internal Actor with External Ambitions*, in *Handbook on European Union Climate Change Policy and Politics*, in *Edward Elgar Publishing*, 2023.

<sup>1249</sup> V. GRAVEY, A. BUZOGÁNY, *For Farmers or the Environment? The European Parliament in the 2013 Cap Reform*, in *Politics and Governance*, 2021.

<sup>1250</sup> G. BENEDETTO, *The European Parliament as a Budgetary Extractor Since the Lisbon Treaty*, in *The European Parliament in the Contested Union*, 2020.

<sup>1251</sup> R. SCHÜTZE, *European Constitutional Law*, Cambridge University Press, 2012, p. 38.

<sup>1252</sup> M. BRUTER, *Citizens of Europe?: The Emergence of a Mass European Identity*, 2005.

<sup>1253</sup> W. MAAS, *The Origins, Evolution, and Political Objectives of EU Citizenship*, in *German Law Journal*, 2014.

<sup>1254</sup> J. W. MÜLLER, *Should the EU Protect Democracy*, cit.



theoretically enabled representative democracy within the EU. In response to the EU's democracy and legitimacy challenges,<sup>1255</sup> the solution is not "secession" but rather embracing "shared political power in a more integrated Europe,"<sup>1256</sup> where the European Parliament represents the will of European citizens.<sup>1257</sup> Boosting European Parliament's powers is seen as a solution for EU's legitimacy, but it doesn't automatically resolve the democratic deficits.<sup>1258</sup> Over the time, the European Parliament has gained increasing importance in the institutional framework of the EU,<sup>1259</sup> particularly in addressing the democratic deficit and involving directly elected representatives of European citizens in decision-making and oversight.<sup>1260</sup> Significantly, ensuring the rule of law remains paramount in this evolution, serving as a foundational principle<sup>1261</sup> to uphold democratic values and safeguard citizens' rights within the EU.<sup>1262</sup>

The functioning of the Union is based on representative democracy,<sup>1263</sup> with citizens represented directly by the European Parliament and member states represented indirectly through their governments in the European Council and the Council, ensuring a dual legitimacy principle in the Union's organizational structure.<sup>1264</sup> The development of European law and the principles of direct effect and the primacy of Community law have resulted in a partial transfer of legislative power from national parliaments to the European Parliament, indirectly strengthening the role of national parliaments within the overall system.<sup>1265</sup> Interestingly, the role of the European Parliament in the EU's institutional architecture appeared weak in terms

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<sup>1255</sup> A. ALEMANNI, *Europe's Democracy Challenge: Citizen Participation in and Beyond Elections*, in *German Law Journal*, 2020.

<sup>1256</sup> F. B. CALLEJÓN, *La Crisi della Democrazia Rappresentativa di Fronte alla Democrazia Digitale*, in *Cittadinanza Europea*, 2022.

<sup>1257</sup> L. HENNEN, *European E-Democracy in Practice*, 2020.

<sup>1258</sup> F. ROSIGNOLI, *Il Deficit Democratico dell'unione Europea, Due Punti di Vista*, in *Nomos*, 2014.

<sup>1259</sup> E. BRESSANELLI, N. CHELOTTI, *The European Parliament in the Contested Union*, cit.

<sup>1260</sup> M. BELLUATI, P. CARAFFINI, G. FINIZIO, F. M. GIORDANO, *Il Parlamento Europeo: Riforme Istituzionali, Ruolo Internazionale e Sfera Pubblica Integrata*, in *Il Parlamento Europeo e le Sue Sfide, tra Dibattiti, Proposte e Ricerca di Consenso*, 2020.

<sup>1261</sup> T. KLEINER, N. BÜCKER, *Is a Sense of Community Based on Similarity? The Perception of Shared Values and Citizens' EU Identity*, in *Journal of Contemporary European Studies*, 2024.

<sup>1262</sup> V. HOOTON, *Free Movement and Welfare Access in the European Union: Re-Balancing Conflicting Interests in Citizenship Jurisprudence*, in *Bloomsbury Publishing*, 2024.

<sup>1263</sup> J. BAST, A. VON BOGDANDY, *The Constitutional Core of the Union: On the CJEU's New Constitutionalism*, in *Max Planck Institute for Comparative Public Law & International Law (MPIL) Research Paper*, 2024.

<sup>1264</sup> J. M. P. RAMÍREZ, *La Arquitectura Institucional de la Unión Europea: Consideraciones Críticas tras su Reforma en el Tratado de Lisboa*, in *Revista de Estudios Políticos*, 2012.

<sup>1265</sup> N. LUPO, A. MANZELLA, *Il Parlamento Europeo, una Introduzione*, 2019, p. 126-127.

of representation, accountability, rule of law and political support to the executive despite numerous reform treaties.<sup>1266</sup>

The EU Parliament's developments post-Big Bang Enlargement are closely linked to democratic principles and the rule of law, emphasizing the crucial context for understanding its role within the EU's institutional framework.<sup>1267</sup> The arrival of new member states to the Union in 2004 and 2007 changed the allocation of the seats for the Members of the European Parliament (MEP) by increasing the number of members from 570 to 750 seats,<sup>1268</sup> subsequently triggering further attention to the composition of the EU Parliament requiring the criteria laid down under Article 14(2) TEU.<sup>1269</sup> Accordingly, the Parliament also represents very tiny population of very small member states such as Malta<sup>1270</sup> in international arena. Following the Lisbon Treaty's implementation<sup>1271</sup> and the enlargement of eurosceptic MEPs in 2002, significant concerns arose with regard the Parliament's position, its role, and the broader concept of rule of law within the EU's institutional framework.<sup>1272</sup> New national parties from recently acceding countries have caused a considerable modification upon the quantity of political groups within the institution.<sup>1273</sup> Meanwhile, involvement of Bulgaria and Romania stimulated the formation of new right-wing groups, while few parliamentarians united to the left oriented groups.<sup>1274</sup>

Considerably, the 2004 and 2007 EU expansions had a more significant impact<sup>1275</sup> on the Commission and the Council rather than on the European Parliament.<sup>1276</sup> The Parliament's

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<sup>1266</sup> E. SALVATI, *Rappresentanza Oltre lo Stato Nazionale, il Caso del Parlamento Europeo*, in *Quaderni di Scienza Politica*, 2013.

<sup>1267</sup> S. MARTINSON, *Opinions in the New Era of EU Enlargement: Examining the Politicisation of Two Debates on Enlargement in the European Parliament*, 2024.

<sup>1268</sup> European Council Decision (EU), 2023/2061, *Establishing the Composition of the European Parliament*, 22 September 2023.

<sup>1269</sup> The European Parliament, *European Parliament Resolution on the Composition of the European Parliament*, 2017/2054(INL) — 2017/0900(NLE), 2018/C 463/20, 7 February 2018.

<sup>1270</sup> J. MARTÍNEZ AROZA, V. RAMÍREZ-GONZÁLEZ, *Several Methods for Degressively Proportional Allotments. A Case Study: The European Parliament*, in *Mathematical and Computer Modelling*, 2008.

<sup>1271</sup> C. MOREIRO GONZÁLEZ, *Implementing the Rule of Law in the European Union: How Long Trapped in Penelope's Spinning Wheel from Article 2 of the TEU?*, in *Cambridge Yearbook of European Legal Studies*, 2024.

<sup>1272</sup> S. A. DE LEÓN, *Four Decades of the European Electoral Act: A Look Back and a Look Ahead to an Unfulfilled Ambition*, in *European Law Review*, 2017.

<sup>1273</sup> M. MÜHLBÖCK, *National versus European: Party Control over Members of the European Parliament*, in *West European Politics*, 2012.

<sup>1274</sup> A. MUNGIU PIPPIDI, *EU Accession is No "End of History"*, in *Democracy*, 2007.

<sup>1275</sup> A. HÉRITIER, *Explaining Institutional Change in Europe*, Oxford, 2007.

<sup>1276</sup> M. OSTROWSKI, *A New Treaty Agenda for a Progressive Europe*, in *Progressive Ambition: How to Shape Europe in the Next Decade*, 2024.

structure<sup>1277</sup> remained unchanged, but it adapted efficiently to accommodate more members.<sup>1278</sup> The overall influence of enlargement on the Parliament was limited,<sup>1279</sup> as new members aligned with political groups rather than national interests. However, it sparked discussions about enhancing democratic participation across the EU.<sup>1280</sup> The adaptations made by the European Parliament in response to the recent EU expansions<sup>1281</sup> demonstrated its resilience in adjusting to changing circumstances within the Union.<sup>1282</sup> As the EU continued to evolve, the Parliament's commitment<sup>1283</sup> to democratic principles served as a cornerstone for upholding the rule of law and fostering legitimacy in the integration process.<sup>1284</sup>

The expansion of the Union with new member states had implications for the legal framework governing the European Parliament.<sup>1285</sup> While the inclusion of MEPs from Eastern European countries<sup>1286</sup> did not significantly alter the political landscape or disrupt parliamentary functioning, it impacted the equilibrium of power between political parties and their adherence to the rule of law<sup>1287</sup> within the EU legislative process. The adherence to legal principles such as the rule of law was crucial for the effective<sup>1288</sup> functioning of the European Parliament<sup>1289</sup> and the broader EU institutions. Additionally, legal considerations arose concerning the formation of political groups and the maintenance of balance among political

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<sup>1277</sup> F. JACOBS, A. DE FEO, *European Parliament's Administration*, in *The Routledge Handbook of Parliamentary Administrations*, 2023.

<sup>1278</sup> A. PEGAN, *A Temporal Perspective on Staff Support in the European Parliament*, in *Journal of European Integration*, 2022.

<sup>1279</sup> E. BRESSANELLI, N. CHELOTTI, *The European Parliament in the Contested Union*, cit.

<sup>1280</sup> B. DONNELLY, M. BIGATTO, *The European Parliament and Enlargement*, in *The Institutions of the Enlarged European Union: Continuity and Change*, in Edward Elgar, Cheltenham, 2008.

<sup>1281</sup> V. ZHELTOVSKYY, *The European Parliament as Transformational Actor Toward the Reconsideration of the EU Eastern Policy*, in *Politics in Central Europe*, 2022.

<sup>1282</sup> K. ARCHICK, S. GARDING, *European Union*, cit.

<sup>1283</sup> M. GOINARD, *The Growing Role of the European Parliament as an EU Foreign Policy Actor*, 2020.

<sup>1284</sup> R. COSTELLO, *How Does the Composition of the European Parliament Shape its Role in EU Decision-Making?*, in *Journal of European Public Policy*, 2022.

<sup>1285</sup> G. McELROY, K. BENOIT, *Policy Positioning in the European Parliament*, in *European Union Politics*, 2012.

<sup>1286</sup> M. SZCZEPANIK, *The European Parliament After Enlargement: Any Different*, in *European Parliament and the European Political Space Conference*, London, 2006.

<sup>1287</sup> E. DE ANGELIS, *The European Parliament's Identity Discourse and Eastern Europe, 1974-2004*, in *Journal of European Integration History*, 2011.

<sup>1288</sup> J. W. MÜLLER, *Should the EU Protect Democracy*, cit.

<sup>1289</sup> C. BURNS, *In the Eye of the Storm? The European Parliament, the Environment and the EU's Crises*, in *The European Parliament in the Contested Union*, 2020.

parties,<sup>1290</sup> ensuring fair representation and adherence to legal procedures within the parliamentary system.<sup>1291</sup>

Following the 2004 enlargement, notable shifts in MEPs' voting behavior<sup>1292</sup> emerged within the European Parliament, particularly evident when comparing the Fifth European Parliament (1999-2004)<sup>1293</sup> to the Sixth European Parliament (up to 2006).<sup>1294</sup> The expansion of the European Parliament led to increased cohesion among its members and greater diversity in its operations,<sup>1295</sup> indicating a trend towards a more unified and multifaceted legislative body.<sup>1296</sup> However, disparities in voting behavior between new and old MEPs,<sup>1297</sup> possibly influenced by economic and cultural differences, displayed potential challenges to upholding the rule of law and fostering unity within the Parliament, particularly with the emergence of East-West cleavages.<sup>1298</sup> These developments underscored the evolving dynamics<sup>1299</sup> within the European Parliament following the Big Bang enlargement, reflecting the complexities inherent in accommodating diverse legal frameworks and socio-economic realities within the legislative process.<sup>1300</sup>

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<sup>1290</sup> J. KANTOLA, C. MILLER, *Party Politics and Radical Right Populism in the European Parliament: Analysing Political Groups as Democratic Actors*, in *Journal of Common Market Studies*, 2021.

<sup>1291</sup> K. GRANAT, *The Parliamentary Politics of the Rule of Law Crisis in the EU*, in *Journal of European Integration*, 2023.

<sup>1292</sup> M. MÜHLBÖCK, *Linking Council and European Parliament? Voting Unity of National Parties in Bicameral EU Decision-Making*, in *Journal of European Public Policy*, 2013.

<sup>1293</sup> B. HOYLAND, *Allocation of Codecision Reports in the Fifth European Parliament*, in *European Union Politics*, 2006.

<sup>1294</sup> S. HIX, A. NOURY, *After Enlargement: Voting Patterns in the Sixth European Parliament*, in *Legislative Studies Quarterly*, 2009.

<sup>1295</sup> E. VOETEN, *Enlargement and the 'Normal' European Parliament*, in *The Legitimacy of the European Union After Enlargement*, 2009.

<sup>1296</sup> S. HIX, B. HØYLAND, *Empowerment of the European Parliament*, in *Annual Review of Political Science*, 2013.

<sup>1297</sup> S. VASILOPOULOU, K. GATTERMANN, *Matching Policy Preferences: The Linkage Between Voters and MEPs*, in *Journal of European Public Policy*, 2013.

<sup>1298</sup> S. HIX, A. NOURY, *After Enlargement*, cit.

<sup>1299</sup> E. PUCCIO, *Structure and Evolution of a European Parliament via a Network and Correlation Analysis*, in *Physica A: Statistical Mechanics and Its Applications*, 2016.

<sup>1300</sup> O. COSTA, *The European Parliament in Times of EU Crisis: Dynamics and Transformations*, 2018.

## 7. Judicial Evolution of the European Court of Justice

The EU Court adapted its procedures to accommodate the increased workload resulting from the enlargement,<sup>1301</sup> streamlining processes to effectively handle cases related to the rule of law.<sup>1302</sup> Furthermore, treaty reforms, particularly the Treaty of Lisbon,<sup>1303</sup> provided it with expanded jurisdiction and powers, enabling the Court to play a more assertive role in safeguarding the rule of law within the enlarged Union.<sup>1304</sup> The EU enlargement process brought to light significant challenges to the rule of law, marked by deficiencies in democratic procedural qualifications and institutional doubts.<sup>1305</sup> These challenges were exacerbated by the overburdened crisis<sup>1306</sup> faced by the ECJ and the enduring implications of the Amsterdam Treaty<sup>1307</sup> on judicial reforms. As the EU expanded, it became increasingly imperative to confront these challenges<sup>1308</sup> in order to safeguard the rule of law within its evolving framework.<sup>1309</sup> Consequently, the Nice Treaty<sup>1310</sup> emerged as a pivotal instrument aimed at addressing these pressing issues through comprehensive judicial and institutional reforms, including constitutional enhancements, designed to fortify the EU's governance structure.<sup>1311</sup> While the amendments primarily targeted the improvement of the Commission and the Council, corresponding adjustments were also made to the courts of the Community.<sup>1312</sup> These strategic adaptations were crucial in preparing for the forthcoming enlargement and bolstering the enforcement mechanisms of the rule of law within the EU,<sup>1313</sup> thereby reaffirming the

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<sup>1301</sup> E. GIPPINI FOURNIER, *Preliminary References and the Workload of the Court of Justice: 'Eh Bien, Dansez Maintenant!'*, in *Maastricht Journal of European and Comparative Law*, 2014.

<sup>1302</sup> A. BOIN, S. SCHMIDT, *The European Court of Justice: Guardian of European Integration*, in *Guardians of Public Value*, 2021.

<sup>1303</sup> R. EKSTEEN, *The Importance of the European Court of Justice*, in *Conflict & Peace in International Politics: Issues, Actors and Approaches*, 2020.

<sup>1304</sup> C. RAUCHEGGER, *Four Functions of the Principle of Primacy in the Post-Lisbon Case Law of the European Court of Justice*, in *Research Handbook on General Principles in EU Law*, in Edward Elgar Publishing, 2022.

<sup>1305</sup> N. KIRST, *The Rule of Law Crisis Within the European Union: Constitutional Challenges in Transatlantic Perspective*, Dublin, 2024.

<sup>1306</sup> E. SHARPSTON, *Making the Court of Justice of the European Union More Productive*, in *Maastricht Journal of European and Comparative Law*, 2014.

<sup>1307</sup> F. LAURSEN, *Explaining and Evaluating the Amsterdam Treaty: Some Concluding Remarks*, in *The Amsterdam Treaty, National Preference Formation, Interstate Bargaining and Outcome*, Odense, 2002.

<sup>1308</sup> E. VÁRNAY, *Judicial Passivism at the European Court of Justice?*, in *Hungarian Journal of Legal Studies*, 2019.

<sup>1309</sup> D. KOCHENOV, *Restoring the Dialogical Rule of Law in the European Union: Janus in the Mirror*, 2024.

<sup>1310</sup> A. ARNULL, *The Many Ages of the Court of Justice of the European Union*, 2020.

<sup>1311</sup> D. HALBERSTAM, *Could There Be a Rule of Law Problem at the EU Court of Justice?*, 2020.

<sup>1312</sup> E. BEST, T. CHRISTIANSEN, P. SETTEMBRINI, *The Institutions of the Enlarged European Union*, cit.

<sup>1313</sup> U. SADL, *A Dane, a German, and a Pole Walk into a Court: National Courts as Critics of the European Court of Justice*, 2024.

indispensable role of the ECJ in upholding legal principles and ensuring steadfast adherence to the rule of law.<sup>1314</sup>

The adoption of new provisions<sup>1315</sup> aimed at addressing the challenges within the ECJ underscored the commitment to upholding the rule of law and safeguarding EU fundamental values, ensuring effective governance and administration of justice across member states.<sup>1316</sup> By enhancing the capacity and efficiency of the judicial branch, the EU reaffirmed its dedication to promoting legal certainty, fairness, and the protection of individual rights within its legal framework.<sup>1317</sup> Efforts to alleviate the burden<sup>1318</sup> on the Court were not novel issue, as seen in the extensive discussions within the Maastricht Treaty<sup>1319</sup> aimed at improving the ECJ's operations. The Court's evident anxiety over the implications of enlargement and the increasing number of judges led to the introduction of Article 221 in the Treaty,<sup>1320</sup> which established a revised model of automatic national representation, requiring the inclusion of one judge from each member state in the ECJ.<sup>1321</sup> However, despite the provisions outlined in the Nice Treaty,<sup>1322</sup> which were intended to address such concerns, they have been criticized for their perceived inadequacy in providing robust and sustainable solutions to the workload crisis.<sup>1323</sup> In fact, these reforms are seen as insufficient to support the courts in addressing emerging challenges, such as enlargement and safeguarding the CFR, resulting in a prevailing sentiment that they fail to align with the EU's fundamental values, notably the rule of law.<sup>1324</sup>

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<sup>1314</sup> E. MUIR, *The Court of Justice: A Fundamental Rights Institution Among Others Within the EU Legal Order*, in *Revisiting Judicial Politics in the European Union*, in Edward Elgar Publishing, 2024.

<sup>1315</sup> G. DAVIES, *Legislative Control of the European Court of Justice*, in *Common Market Law Review*, 2014.

<sup>1316</sup> T. DANHIEUX, *The Role of the Court of Justice of the European Union in Ensuring Respect for the Rule of Law in EU Member States*, 2020.

<sup>1317</sup> A. JOHNSTON, *Judicial Reform and the Treaty of Nice*, in *Common Market Law Review*, 2001.

<sup>1318</sup> L. CAFLISCH, *The Reform of the European Court of Human Rights: Protocol No. 14 and Beyond*, in *Human Rights Law Review*, 2006.

<sup>1319</sup> J. GIBSON, G. CALDEIRA, *Changes in the Legitimacy of the European Court of Justice: A Post-Maastricht Analysis*, in *British Journal of Political Science*, 1998.

<sup>1320</sup> P. KENT, *Law of the European Union*, in Pearson Education, 2008.

<sup>1321</sup> D. LASOK, *The Maastricht Treaty on European Union*, in *Marmara Üniversitesi Avrupa Araştırmaları Enstitüsü Avrupa Araştırmaları Dergisi*, 2015.

<sup>1322</sup> H. DE WAELE, *Re-Appraising Success and Failure in the Life of the European Court of Justice*, in *Cambridge Yearbook of European Legal Studies*, 2021.

<sup>1323</sup> L. HEFFERNAN, *The Community Courts Post-Nice: A European Certiorari Revisited*, in *International & Comparative Law Quarterly*, 2003.

<sup>1324</sup> C. KILPATRICK, J. SCOTT, *New Legal Approaches to Studying the Court of Justice: Revisiting Law in Context*, Oxford, 2021.

The judicial culture<sup>1325</sup> in EU member states and candidate states before and after the 2004 enlargement raised questions about whether the distinct legal culture in CEE countries<sup>1326</sup> hampered their courts' integration into the EU legal system and whether they effectively managed to adhere to the principle of the rule of law. The comparison of three key factors between Western and Eastern countries<sup>1327</sup> highlighted notable differences, showcasing the impact of legal culture variations<sup>1328</sup> on the EU's legal order following subsequent enlargements. The restricted jurisdiction<sup>1329</sup> of the ECJ and Court of First Instance (CFI) meant they could only rule on cases explicitly granted by the Treaties, leaving other matters concerning the application of Community law to be addressed by domestic courts. However, the lack of explicit provision in the Treaties regarding the broad duty for national courts was deemed disappointing in the context of enlargement, raising concerns about upholding the principle of the rule of law.<sup>1330</sup>

The ECJ's emphasis on the necessity of judicial branch reforms in candidate countries underscored the pivotal role of a robust judiciary in fostering the EU's rule of law principles, essential for accession.<sup>1331</sup> The disparities in legal culture<sup>1332</sup> between older and newer EU member states posed a significant challenge to the cohesion of the EU's legal order, potentially undermining the principles of the rule of law.<sup>1333</sup> These differences, encompassing concepts of law, legal sources, methodology of law, argumentation and legitimization,<sup>1334</sup> impacted the judiciary's approach to interpreting and applying European law, affecting the consistency and effectiveness of legal decisions across the Union. Addressing these variations through

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<sup>1325</sup> T. ČAPETA, *Courts, Legal Culture and EU Enlargement*, in *Croatian Yearbook of European Law & Policy*, 2005.

<sup>1326</sup> F. EMMERT, *Rule of Law in Central and Eastern Europe*, in *Fordham International Law Journal*, 2008.

<sup>1327</sup> R. EPSTEIN, J. JACOBY WADE, *Eastern Enlargement Ten Years On: Transcending the East–West Divide?*, in *Journal of Common Market Studies*, 2014.

<sup>1328</sup> D. NELKEN, *Using the Concept of Legal Culture*, in *Legal Theory and the Social Sciences*, 2017.

<sup>1329</sup> P. CRAIG, *The Jurisdiction of the Community Courts Reconsidered*, 2001.

<sup>1330</sup> A. VON BOGDANDY, S. SCHILL, *Overcoming Absolute Primacy: Respect for National Identity Under the Lisbon Treaty*, in *Common Market Law Review*, 2011.

<sup>1331</sup> S. ECONOMIDES, J. KER-LINDSAY, 'Pre-Accession Europeanization': *The Case of Serbia and Kosovo*, in *Journal of Common Market Studies*, 2015.

<sup>1332</sup> T. ČAPETA, *Courts*, cit.

<sup>1333</sup> P. WESTERMAN, *Weaving the Threads of a European Legal Order*, in *European Papers-A Journal on Law and Integration*, 2024.

<sup>1334</sup> M. VAN HOECKE, M. WARRINGTON, *Legal Cultures, Legal Paradigms and Legal Doctrine: Towards a New Model for Comparative Law*, in *International & Comparative Law Quarterly*, 1998.

enhanced dialogue and convergence mechanisms was crucial for promoting the EU values, ensuring equal access to justice and preserving the integrity of its legal framework.<sup>1335</sup>

The challenging and complicated background of the judiciary system<sup>1336</sup> as well as authoritarian and totalitarian culture<sup>1337</sup> in the CEE countries created significant obstacles to the rule of law. Despite the fact that these countries adjusted their judicial system through the relevant modifications<sup>1338</sup> in course of the accession process, yet noticeable differences existed compared to their Western counterparts<sup>1339</sup> since the development process went slowly. In this regard, substantial issues such as judicial controversy associated with the formalism and textualism as well as unawareness with the enforcement of international law generated crucial challenges when those judges from new member states<sup>1340</sup> enforced the EU law. Furthermore, there was remarkable distinctions on the judicial background, attitude and working methods between the new European judges<sup>1341</sup> and the judges from old member states in the EU. The behavior of the post-communist judges<sup>1342</sup> refers to the old-fashioned narratives, doctrines and judicial philosophy which reminded the approach of Western European judges in the 19<sup>th</sup> century.<sup>1343</sup> Due to these motives the newly acceded European judges<sup>1344</sup> encountered crucial problems when applying and interpreting the EU law and therefore the difference between new and old member states was inevitable in the Court.

The Eastern Enlargement<sup>1345</sup> presented both challenges and opportunities for the adaptation of the Court's structure to reinforce its commitment to upholding the rule of law while effectively handling cases from new member states. The Court adapted to its

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<sup>1335</sup> L. D. SPIEKER, *EU Values Before the Court of Justice: Foundations, Potential, Risks*, Oxford, 2023.

<sup>1336</sup> M. BOBEK, D. KOSAŘ, *Global Solutions, Local Damages: A Critical Study in Judicial Councils in Central and Eastern Europe*, in *German Law Journal*, 2014.

<sup>1337</sup> H. P. GRAVER, P. ČUROŠ, *Judges Under Stress: Understanding Continuity and Discontinuity of Judicial Institutions of the CEE Countries*, in *German Law Journal*, 2021.

<sup>1338</sup> C. PARAU, *The Drive for Judicial Supremacy, Judicial Independence in Transition*, Berlin, Heidelberg, 2012.

<sup>1339</sup> Z. KÜHN, *Worlds Apart: Western and Central European Judicial Culture at the Onset of the European Enlargement*, in *The American Journal of Comparative Law*, 2004.

<sup>1340</sup> Z. KÜHN, *The Application of European Law in the New Member States: Several (Early) Predictions*, in *German Law Journal*, 2005.

<sup>1341</sup> S. SPÁČ, *Recruiting European Judges in the Age of Judicial Self-Government*, in *German Law Journal*, 2018.

<sup>1342</sup> J. PRIBÁŇ, *From 'Which Rule of Law?' to 'The Rule of Which Law?'* Post-Communist Experiences of European Legal Integration, in *Hague Journal on the Rule of Law*, 2009.

<sup>1343</sup> Z. KÜHN, *Worlds Apart*, cit.

<sup>1344</sup> M. BOBEK, *Central European Judges Under the European Influence: The Transformative Power of the EU Revisited*, in *Bloomsbury Publishing*, 2015.

<sup>1345</sup> G. PRIDHAM, *¿Trabajo Inconcluso? Ampliación Hacia el Este y Condicionalidad Democrática*, in *Documentos de Trabajo*, 2007.



enlargement, adding chambers and reducing the need for translated judicial instruments,<sup>1346</sup> thence, efficiently solving rule of law challenges and improving its working methods.<sup>1347</sup> The number of the cases was rising due to the growing number of member states which underlined the importance of relevant assistance for alleviating the workload of the Court.<sup>1348</sup> Thereby, the CFI has been established in 1989<sup>1349</sup> to reduce the existing pressure on the Court and maintain its effectiveness. The new institution consisted of one judge from each country,<sup>1350</sup> handling major cases, but its jurisdiction expanded significantly with the Union's growth. Despite the establishment of the CFI and the Court's efforts, the procedure's scope and caseload continued to increase.<sup>1351</sup> This was due to the growing legislation, especially in areas such as internal market, and a higher number of references from new member states that joined in 1995.<sup>1352</sup> To address these challenges, the Court called for changes in the legal framework and its operating methods to enhance its effectiveness.<sup>1353</sup> The obstacles broadened significantly with the Treaty of Amsterdam, which increased the EU's competencies,<sup>1354</sup> including a growing caseload, difficulties for the ECJ in dealing with more member states, and worsening language issues.<sup>1355</sup> Consequently, the Rules of Procedure underwent multiple amendments to enhance the preliminary ruling process, with the 2015 General Court Rules of Procedure<sup>1356</sup> designed to streamline and expedite intellectual property disputes, supplanting the 1991 rules.<sup>1357</sup> Further

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<sup>1346</sup> K. McAULIFFE, *Enlargement at the European Court of Justice: Law, Language and Translation*, in *European Law Journal*, 2008.

<sup>1347</sup> T. PAVONE, D. KELEMEN, *The Evolving Judicial Politics of European Integration: The European Court of Justice and National Courts Revisited*, in *European Law Journal*, 2019.

<sup>1348</sup> H. RASMUSSEN, *Present and Future European Judicial Problems after Enlargement and the Post-2005 Ideological Revolt*, in *Common Market Law Review*, 2007.

<sup>1349</sup> N. BROWN, *The First Five Years of the Court of First Instance and Appeals to the Court of Justice: Assessment and Statistics*, in *Common Market Law Review*, 1995.

<sup>1350</sup> M. BOBEK, *Selecting Europe's Judges: A Critical Review of the Appointment Procedures to the European Courts*, 2015.

<sup>1351</sup> I. JOSIFOVIĆ, *Reforming the European Union Judicial System: Simplicity or Complexity?*, in *Борник Радова Правног Факултета У Нишу*, 2018.

<sup>1352</sup> F. HOFFMEISTER, *Constitutional Implications of EU Membership: A View from the Commission*, in *Croatian Yearbook of European Law & Policy*, 2007.

<sup>1353</sup> C. NAÔMÉ, *EU Enlargement and the European Court of Justice*, in *The Institutions of the European Union: Continuity and Change*, in Edward Elgar, Cheltenham, 2008.

<sup>1354</sup> S. WEATHERILL, *Competence Creep and Competence Control*, in *Yearbook of European Law*, 2004.

<sup>1355</sup> I. BELLIER, *European Identity, Institutions and Languages in the Context of the Enlargement*, in *Journal of Language and Politics*, 2002.

<sup>1356</sup> *The General Court, Amendments to the Rules of Procedure of the General Court*, in *Official Journal of the European Union*, 12 August 2016.

<sup>1357</sup> D. WALICKA, *New Rules of Procedure of the General Court of the European Union as of 1 July 2015*, in *Journal of Intellectual Property Law & Practice*, 2016.

2023 changes on the Rules of Procedure<sup>1358</sup> focused on optimizing its time, including incorporating videoconferencing for hearings, enhancing case management, and addressing changes in personal data protection rules, resulting in clearer, simplified provisions and reduced requirements for written submissions. In navigating the challenges and opportunities brought about by Eastern Enlargement, the continuous adaptation and evolution of the Court's structure and procedures underscored its unwavering commitment to upholding the rule of law within the EU.<sup>1359</sup> The Court's dedication contributes to promote equitable access to justice and effective resolution of disputes across an increasingly diverse and complex landscape.<sup>1360</sup>

The Treaty of Nice<sup>1361</sup> in 2001 bolstered the EU principles by establishing a new statute for the Court of the European Communities, facilitating modifications through unanimous Council<sup>1362</sup> votes without necessitating new treaties. Through streamlined Rules of Procedure and expanded jurisdiction of the CFI, the treaty aimed to ensure efficient and impartial adjudication, thereby reinforcing the rule of law within the EU's legal framework.<sup>1363</sup> The provisions outlined in Article 225 of the Treaty of the European Communities expanded the jurisdiction of the CFI for preliminary rulings<sup>1364</sup> and allowed judgments without the advocate general's opinion, contributing to the upholding of the rule of law by ensuring timely and effective judicial review within the EU's legal system. Furthermore, the efforts undertaken by the Translation Directorate<sup>1365</sup> to streamline document translation facilitated accessibility to legal materials across multiple languages, promoting transparency, fairness, and equal access to justice, which were fundamental principles of the rule of law. Additionally, the allowance for Advocates General to propose in any of the five EU pivot languages<sup>1366</sup> enhanced linguistic

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<sup>1358</sup> Court of Justice of the European Union, *Significant Amendments to the Rules of Procedure of the General Court of the European Union will Come into Force on 1 April*, Press Release No 58/23, Luxembourg, 31 March, 2023.

<sup>1359</sup> L. D. SPIEKER, *EU Values before*, cit.

<sup>1360</sup> A. ROSAS, *The Rule of Law and Judicial Independence*, cit.

<sup>1361</sup> A. JOHNSTON, *Judicial Reform and the Treaty of Nice*, cit.

<sup>1362</sup> X. YATAGANAS, *The Treaty of Nice: The Sharing of Power and the Institutional Balance in the European Union—A Continental Perspective*, in *European Law Journal*, 2001.

<sup>1363</sup> A. MAHMUTOVIC, H. N. LITA, *The European Union Distinctiveness: A Concept of the Rule of Law*, in *Diponegoro Law Review*, 2021.

<sup>1364</sup> P. KAPTEYN, *Reflections on the Future of the Judicial System of the European Union after Nice*, in *Yearbook of European Law*, 2001.

<sup>1365</sup> P. ATHANASSIOU, *The Application of Multilingualism in the European Union Context*, 2006.

<sup>1366</sup> J. CURRALL, *Official Languages Inside and Outside the Institutions: An Analysis of Recent Cases*, in *Georgia Journal of International and Comparative Law*, 2010.

diversity and inclusivity within the legal process, aligning with principles of equality before the law and non-discrimination, which were integral components of the rule of law.

The recent ruling by the ECJ affirming the right of EU citizens to use a language other than the official one<sup>1367</sup> in civil proceedings not only reflected the principles of non-discrimination and freedom of movement<sup>1368</sup> but also reinforced the fundamental tenets of the rule of law. The Court's decision in the Grauel Rüffer case,<sup>1369</sup> anchored in Article 18 and Article 21 of the TFEU, epitomized the EU's commitment to upholding the rule of law and promoting equality by ensuring language rights for all citizens, thus fostering cross-border economic advantages and cohesion<sup>1370</sup> within the Union.

Following the Eastern enlargement of 2004, the EU upheld its commitment to its fundamental values by adapting the composition of judges,<sup>1371</sup> establishing an additional chamber to accommodate the growing number of member states. This restructuring ensured fair and effective adjudication, reinforcing the EU's dedication to upholding legal principles across an expanding union. The establishment of the EU Civil Service Tribunal in 2004, through direct applications and Selection Committee evaluations for judge appointments, exemplified a commitment to the rule of law by efficiently managing caseloads and ensuring impartiality in the adjudication of disputes within the EU.<sup>1372</sup> Changes in the Rule of Procedure within the Grand Chamber of the ECJ, alongside the expansion of additional chambers due to Bulgaria and Romania's EU accession, facilitated streamlined proceedings and impartiality, reflecting the Commission's emphasis on broadening the ECJ's jurisdiction to uphold the rule of law.<sup>1373</sup>

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<sup>1367</sup> C. PREITE, S. CAVALIERI, *Argumentative Strategies in the Judgments of the European Court of Justice, on the Use of Connectives in French and English Judgments*, in *Constructing Legal Discourses and Social Practices: Issues and Perspectives*, Cambridge, 2016.

<sup>1368</sup> H. H. V. HOFMEISTER, *La Giurisprudenza della Corte di Giustizia dell'UE sulla Lingua Processuale Dinanzi ai Tribunali Altoatesini: Un'analisi del Caso Grauel Rüffer*, in *Osservatorio sulle Fonti (Online)*, 2016.

<sup>1369</sup> Judgment of the Court (Second Chamber), *Ulrike Elfriede Grauel Rüffer v Katerina Pokorná*, C-322/13, 27 March 2014.

<sup>1370</sup> Judgment of the Court, *Criminal Proceedings against Horst Otto Bickel and Ulrich Franz*, C-274/96, 24 November 1998.

<sup>1371</sup> C. NAÔMÉ, *EU Enlargement*, cit, p.100-119.

<sup>1372</sup> H. CAMERON, *Establishment of the European Union Civil Service Tribunal*, in *The Law & Practice of International Courts and Tribunals*, 2006.

<sup>1373</sup> Commission of the European Communities, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions, and the Court of Justice of the European Communities, *Adaptation of the Provisions of Title IV of the Treaty Establishing*

The addition of ten new judges<sup>1374</sup> and the restructuring of chambers in the Court's legislative process aimed to reinforce the rule of law by enhancing judicial efficiency and facilitating the fair application of writs through delegated authority adjustments, particularly concerning Grand Chamber cases.<sup>1375</sup> The adaptation of governance powers within the ECJ committees since 2006 reflected a commitment to EU values by ensuring procedural integrity, judicial cohesion, and the seamless integration of new judges,<sup>1376</sup> thus upholding the principles of fairness, transparency, and the rule of law within the legislative process.<sup>1377</sup> The ability of the ECJ to effectively manage the challenges brought about by enlargement demonstrated its role in promoting the rule of law within the EU.<sup>1378</sup> By maintaining its preparedness, robust frameworks, and capacity to adapt, the ECJ ensured the consistent application and protection of legal principles across an expanding Union,<sup>1379</sup> reinforcing the foundation of the rule of law.<sup>1380</sup>

As the EU expanded to 28 member states in 2013, the growing power of the ECJ reflected the deepening commitment to the rule of law<sup>1381</sup> within its framework of integration and successive enlargement rounds. Established by the 1951 Paris Treaty,<sup>1382</sup> the ECJ has undergone successive transformations through the Treaties of Rome, Maastricht, Amsterdam, Nice, and Lisbon,<sup>1383</sup> adapting its competences and commitments in alignment with the EU's foundational values. In addition, the landmark case of *Van Gend en Loos*<sup>1384</sup> introduced a pivotal innovation in the EU judicial system by establishing the principle of direct effect,

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*the European Community Relating to the Jurisdiction of the Court of Justice with a View to Ensuring More Effective Judicial Protection*, Brussels, 28.6.2006.

<sup>1374</sup> Court of Justice of the EU, *Foreword of V. Skouris President of the Court of Justice*, 2004.

<sup>1375</sup> A. DASHWOOD, A. JOHNSTON, *The Future of the Judicial System of the European Union, Part Two: The Outcome at Nice*, in *Hart Publishing*, 2001, p.217-231.

<sup>1376</sup> M. WENDEL, *Enforcing the Independence of National Courts by Means of EU Law*, in *Rule of Law and the Judiciary*, in *Nomos Verlagsgesellschaft MbH & Co. KG*, 2023.

<sup>1377</sup> A. BAKARDJIEVA ENGELBREKT, *Rule of Law and Judicial Independence in the EU*, cit.

<sup>1378</sup> P. A. S. DE SANTA MARÍA PAZ, *Rule of Law and Judicial Independence in the Light of CJEU and ECtHR Case Law*, in *Fundamental Rights Challenges: Horizontal Effectiveness, Rule of Law and Margin of National Appreciation*, 2021.

<sup>1379</sup> A. TÜRK, *Judicial Review in EU Law*, in *Edward Elgar Publishing*, 2010.

<sup>1380</sup> M. OVÁDEK, *The Rule of Law in the EU: Many Ways Forward but Only One Way to Stand Still?*, in *Journal of European Integration*, 2018.

<sup>1381</sup> G. DI FEDERICO, *The Protection and Promotion of the Rule of Law in the European Union: State of the Art, Criticalities and Future Perspectives*, in *The Turkish Yearbook of International Relations*, 2015.

<sup>1382</sup> M. RASMUSSEN, *The Origins of a Legal Revolution—The Early History of the European Court of Justice*, in *Journal of European Integration History*, 2008.

<sup>1383</sup> F. LAURSEN, *The Lisbon Treaty: Overview of Institutional Choices and the EU's Lisbon Treaty: Institutional Choices and Implementation*, 2013.

<sup>1384</sup> M. RASMUSSEN, *Revolutionizing European Law: A History of the Van Gend en Loos Judgment*, in *International Journal of Constitutional Law*, 2014.

affirming the rule of law by enabling EU citizens to assert their rights directly before European courts. This principle ensured that EU law had a tangible and enforceable impact not only on member states but also on the individuals within the Community,<sup>1385</sup> thus reinforcing the foundations of the rule of law. The case of *Costa v. ENEL* (1964) underscored the foundational EU value of legal supremacy by affirming the superiority of EU law over national law<sup>1386</sup> in cases of conflict, thereby ensuring consistency and coherence in the legal framework of the Union. This consolidation of power within the ECJ, driven by the imperatives of European integration and enlargement, reflected the principle of the rule of law in the EU legal order.<sup>1387</sup>

Despite initial concerns about the impact of the 2004 enlargement on the European Court's operations, the successful integration of new member states demonstrated the EU's commitment to diversity, inclusivity, and effective multilingualism within its institutions.<sup>1388</sup> In response to the European integration difficulties, the ECJ<sup>1389</sup> undertook significant restructuring efforts, including delegating some jurisdiction to the Court of First Instance and establishing additional appellate bodies, demonstrating its commitment to upholding the rule of law through efficient and adaptable judicial processes. The ECJ's regulation of language use reflects the EU's commitment to linguistic diversity and ensuring citizens' rights to communicate with European institutions in their own language,<sup>1390</sup> thereby upholding principles of inclusivity and accessibility. However, the prioritization of French as the working language also underscored the importance of efficiency and streamlined processes in the administration of justice, while adhering to the rule of law through consistent application of procedural standards.<sup>1391</sup>

The 1995 accession process prompted concerns within the ECJ's Translation Directorate about the language regime, but subsequent enlargements in 2004 and 2007 led to institutional dynamics, including changes in advocate general working methods, aligning with

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<sup>1385</sup> R. GOSALBO-BONO, *The Significance of the Rule of Law and Its Implications for the European Union and the United States*, in *University of Pittsburgh Law Review*, 2010.

<sup>1386</sup> A. K. MANGOLD, *Costa v Enel (1964): On the Importance of Contemporary Legal History*, 2011.

<sup>1387</sup> R. FLAMINI, *Judicial Reach: The Ever-Expanding European Court of Justice*, in *World Affairs*, 2012.

<sup>1388</sup> K. McAULIFFE, *Enlargement at the European Court of Justice*, cit.

<sup>1389</sup> D. RUIZ-JARABO COLOMER, *Una Reforma Urgente para el Tribunal de Justicia Europeo*, in *Revista Española de Derecho Europeo*, 2007.

<sup>1390</sup> C. TRUCHOT, *Languages and Supranationality in Europe: The Linguistic Influence of the European Union*, in *Languages in a Globalising World*, 2003, p. 99-110.

<sup>1391</sup> L. C. SPĂTARU NEGURĂ, *Unity in Diversity, The European Union's Multilingualism*, in *LesIJ-Lex et Scientia International Journal*, 2016.

EU fundamental values and legal integration.<sup>1392</sup> The ECJ's structural changes driven by EU expansion aimed to bolster the rule of law by enhancing flexibility, efficiency and balanced caseloads, though challenges in reducing backlogs persisted.<sup>1393</sup> Enlargement-induced changes in the ECJ highlighted the imperative of upholding the rule of law by ensuring fair treatment of judges from new member states, amidst internal and external challenges, emphasizing adaptation to maintain judicial integrity.<sup>1394</sup>

The increased number of judges reflected the predominance of the rule of law for the ECJ by bolstering judicial capacity, despite challenges such as increased litigation post-enlargement and the imperative for swift adoption of EU law by member states.<sup>1395</sup> The scarcity of infringement<sup>1396</sup> actions from 2007 to 2009 prompted the adoption of an urgent preliminary ruling procedure, facilitated by Council amendments. This allowed the Court of Justice to efficiently address sensitive cases within the realm of freedom, security, and justice, thereby reinforcing the rule of law through effective judicial mechanisms.<sup>1397</sup> Despite concerns about judicial coherence and policy consistency stemming from the Treaty of Nice's reforms and the addition of 12 new judges, the European Court of Justice effectively managed its caseload post-enlargement, demonstrating a commitment to upholding the rule of law.<sup>1398</sup>

The enlargement-driven changes in chamber division within the EU Court highlighted the evolving dynamics within the institution, potentially affecting the interpretation and application of EU principles and the rule of law.<sup>1399</sup> The divergent perspectives observed in cases such as *The Viking*<sup>1400</sup> and *Laval*<sup>1401</sup> judgments underscored the ongoing dialogue between differing interpretations of EU values, particularly between those emphasizing social

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<sup>1392</sup> K. McAULIFFE, *Behind the Scenes at the Court of Justice: A Story of Process and People*, 2017.

<sup>1393</sup> S. ARNAUD, *European Union Enlargement Impact on the Activities of the European Court of Justice*, in *Jurisprudencija*, 2005.

<sup>1394</sup> T. DUMBROVSKÝ, *The European Court of Justice After the Eastern Enlargement: An Emerging Inner Circle of Judges*, in *EUSA Conference Paper*, Boston, 2011.

<sup>1395</sup> Court of Justice of the EU, *The Court of Justice in 2009: Changes and Proceedings*, in *Annual Report 2009*, 2009.

<sup>1396</sup> Court of Justice of the EU, *Statistics of General Activity of the Court of Justice, New Cases, Completed Cases, Cases Pending (2005–09)*, in *Annual Report 2009*, 2009, p. 93.

<sup>1397</sup> Court of Justice of the EU, *Foreword of V. Skouris President of the Court of Justice*, 2007.

<sup>1398</sup> Court of Justice of the EU, *Statistics Concerning the Judicial Activity of the Court of Justice*, 2004.

<sup>1399</sup> L. PIERDOMINICI, *The Mimetic Evolution of the Court of Justice of the EU*, 2020.

<sup>1400</sup> Judgment of the Court (Grand Chamber), *International Transport Workers' Federation and Finnish Seamen's Union v Viking Line Abp and Oü Viking Line Eesti*, C-438/05, 11 December 2007.

<sup>1401</sup> Judgment of the Court (Grand Chamber), *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet, Svenska Byggnadsarbetareförbundets avdelning 1, Byggettan and Svenska Elektrikerförbundet*, 18 December 2007.

and economic concerns and those advocating for liberalization within the EU framework.<sup>1402</sup> The 2004 and 2007 enlargement rounds of the EU had significant impacts on both national constitutional situations<sup>1403</sup> and organizational regulations,<sup>1404</sup> with a predominant perception of these enlargements as definitive achievements rather than continuous constitutional processes. The responses of Constitutional Courts in CEE countries and the European judicial system to challenges from EU expansion highlight the pivotal role of the rule of law in managing and evaluating the consequences of these enlargements.<sup>1405</sup> Thereby, the enlargement rounds of the EU prompted the ECJ to implement measures to cope with increased workload, addressing concerns over the rule of law in new member states and their judicial systems' alignment with EU values under Article 2 TEU.<sup>1406</sup> Despite initial challenges and backlogs, adjustments in the judicial system and a moderate approach by the European General Court led to gradual improvements, reinforcing the EU's commitment to upholding the rule of law and its core values.<sup>1407</sup>

The potential for constitutional disputes between domestic and supranational legal dimensions in newly acceded countries highlighted challenges to the rule of law, as it underscored the tension between sovereignty<sup>1408</sup> and adherence to supranational legal frameworks such as EU law. Ensuring harmonization between domestic legal systems and supranational obligations while safeguarding fundamental rights is imperative for maintaining the rule of law in these transitional contexts.<sup>1409</sup> Essentially, the dynamic interplay between the ECHR and the ECJ in addressing constitutional conflicts within the EU, particularly in CEE countries post-2004 enlargement, underscored the imperative of protecting EU values while

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<sup>1402</sup> C. JOERGES, *A New Alliance of De-Legalisation and Legal Formalism? Reflections on Responses to the Social Deficit of the European Integration Project*, in *Law and Critique*, 2008.

<sup>1403</sup> A. ALBI, *EU Enlargement and the Constitutions of the Central and Eastern Europe*, Cambridge, 2005.

<sup>1404</sup> A. ALBI, *The Impact of EU Accession on the Legal Orders of New Member States and (Pre-) Candidate Countries: Hopes and Fears*, in *Asser Press*, 2006.

<sup>1405</sup> H. P. GRAVER, P. ČUROŠ, *Judges*, cit.

<sup>1406</sup> F. DEHOUSSE, *The Reform of the EU Courts, The Brilliant Alternative Approach of the European Court of Human Rights*, Egmont Paper 86, September 2016.

<sup>1407</sup> Court of Justice of the European Union, *Annual Report 2015 Judicial Activity*, Luxembourg, 2016.

<sup>1408</sup> W. SADURSKI, *Constitutionalization of the EU and the Sovereignty Concerns of the New Accession States: The Role of the Charter of Rights*, 2003.

<sup>1409</sup> D. PIQANI, *Supremacy of EU Law and the Jurisprudence of Constitutional Reservations in Central Eastern Europe and the Western Balkans: Towards a Holistic Constitutionalism*, 2010.

respecting national identities and ensuring the endurance of member states' constitutional frameworks.<sup>1410</sup>

The reduced time gap between EU and ECHR law in the constitutional courts of CEE countries<sup>1411</sup> following the 2004 enlargement suggested a strengthening of the rule of law, as it indicated a closer alignment with international and supranational legal standards. The contrasting responses of the Strasbourg and Luxembourg Courts<sup>1412</sup> reflected divergent approaches to the rule of law within the European legal framework, with the former acting as a quasi-constitutional court and the latter adopting a 'reconciliation' model. This has led to increased convergence in judicial behavior among member states, emphasizing the growing significance of both EU and ECHR law<sup>1413</sup> in shaping national legal systems<sup>1414</sup> and reinforcing the principle of the rule of law.<sup>1415</sup> Thus, the ability of the ECJ to rule against member state governments, particularly new members, is intricately tied to the adherence and perception of the rule of law within those states.<sup>1416</sup> A robust commitment to the rule of law ensures that the ECJ can fulfill its role impartially and enforce EU law uniformly across all member states, regardless of enlargement.<sup>1417</sup>

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<sup>1410</sup> O. POLLICINO, *The New Relationship Between National and the European Courts After the Enlargement of Europe: Towards a Unitary Theory of Jurisprudential Supranational Law?*, in *Yearbook of European Law*, 2010.

<sup>1411</sup> M. GÓRSKI, *The Dialogue Between Selected CEE Courts and the ECtHR*, in *Transnational Judicial Dialogue on International Law in Central and Eastern Europe*, in *Wydawnictwo Uniwersytetu Łódzkiego*, 2017.

<sup>1412</sup> G. MARTINICO, O. POLLICINO, *The Interaction Between Europe's Legal Systems: Judicial Dialogue and the Creation of Supranational Laws*, in *Edward Elgar Publishing*, 2012, p.6-16.

<sup>1413</sup> M. ANDENAS, E. BJØRGE, A. FØLLESDAL, *National Implementation of ECHR Rights*, in *Constituting Europe: The European Court of Human Rights in a National, in European and Global Context*, 2013.

<sup>1414</sup> G. MARTINICO, *Is the European Convention Going to Be 'Supreme'? A Comparative-Constitutional Overview of ECHR and EU Law Before National Courts*, in *European Journal of International Law*, 2012.

<sup>1415</sup> I. MOTOC, I. ZIEMELE, *The Impact of the ECHR on Democratic Change in Central and Eastern Europe: Judicial Perspectives*, Cambridge, 2016.

<sup>1416</sup> L. PECH, D. KOCHENOV, *Respect for the Rule of Law in the Case Law of the European Court of Justice: A Casebook Overview of Key Judgments Since the Portuguese Judges Case*, in *SIEPS*, Stockholm, 2021.

<sup>1417</sup> C. CARRUBBA, *The European Court of Justice, Democracy, and Enlargement*, in *European Union Politics*, 2003.



# CHAPTER 4: THE CORE ROLE OF THE RULE OF LAW IN THE EU ACCESSION PROCESS

## 1. Background and Context

As the EU proceeds with its enlargement process,<sup>1418</sup> the centrality of the rule of law<sup>1419</sup> becomes increasingly pronounced, essential for fostering cohesion and stability across both EU and aspiring countries.<sup>1420</sup> Despite persistent challenges in enforcing this principle,<sup>1421</sup> the EU remains committed to navigating these complexities through strategic foresight and the robust utilization of its institutional mechanisms.<sup>1422</sup> As the EU expands its borders and embraces new members,<sup>1423</sup> sustained efforts to solve these challenges with diligence and adaptability are imperative, strengthening the rule of law<sup>1424</sup> as a main guideline for the Union's evolution towards a more cohesive and democratic union.<sup>1425</sup>

In the intricate landscape of EU enlargement endeavors,<sup>1426</sup> the concept of the rule of law<sup>1427</sup> emerges as a multifaceted cornerstone with profound implications for both the Union's internal coherence and its global standing. Beyond its pivotal role in assessing aspiring member

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<sup>1418</sup> A. DI GREGORIO, *La Nuova Stagione di Allargamento dell'Unione Europea Tra Dilemmi della Condizionalità Democratica e Fragilità Costituzionale dei Nuovi Candidate*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.119-143.

<sup>1419</sup> S. PENNICINO, *Rule of Law, Garanzia dei Diritti Umani e Tentazioni Illiberali, una Riflessione a Partire dal Caso Torubarov*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p. 203-210.

<sup>1420</sup> R. SCARCIGLIA, *Western Balkans and the European Union Enlargement: A Short Remark*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p. 305-309.

<sup>1421</sup> J. FROSINI, *Brexit e la Crisi della Rule of Law*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.145-148.

<sup>1422</sup> P. POHJANKOSKI, *Rule of Law with Leverage: Policing Structural Obligations in EU Law with the Infringement Procedure, Fines, and Set-Off*, in *Common Market Law Review*, 2021.

<sup>1423</sup> I. RISTIĆ, *The War in Ukraine: An Additional Obstacle or a New Chance for the EU Enlargement in the Western Balkans?*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.215-223.

<sup>1424</sup> M. GOBBO, *Rule of Law vs Lex Terrae dopo il Tramonto dello Ius Publicum Europaeum, L'incerto Quadro di Riferimento*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.151-165.

<sup>1425</sup> P. SONNEVEND, *The Responsibility of Courts in Maintaining the Rule of Law, Two Tales of Consequential Judicial Self-Restraint, Defending Checks and Balances in EU Member States, Taking Stock of Europe's Actions*, 2021, p.155-181.

<sup>1426</sup> M. MILENKOVIĆ, *Differentiated Integration of the Western Balkans – Emerging Alternative Membership Options?*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.235-245.

<sup>1427</sup> E. FRASCA, *Caselaw Commentary of the Torubarov Judgement of 29 July 2019 (C-556/17): Rule of Law Concerns Regarding Systems of Judicial Review in Asylum Cases: On the Binding Effect of Judicial Decision and the Fundamental Right to an Effective Remedy*, in *Cahier de l'EDEM*, 2019.

states,<sup>1428</sup> the rule of law stands as a guiding beacon in shaping the trajectory of European integration.<sup>1429</sup> As the EU contends with the difficulties stemming from democratic deficits<sup>1430</sup> and institutional fragilities in certain member states, the imperative for a proactive and unified stance toward upholding the rule of law grows ever more evident.<sup>1431</sup> In preparing for future accessions,<sup>1432</sup> the EU must carefully manage the dual task of enforcing conditionality<sup>1433</sup> while also fostering stability, utilizing dialogue-driven approaches and strategic interventions to ensure lasting progress. By elevating the rule of law as a fundamental ethos,<sup>1434</sup> the EU not only safeguards its integrity and core values<sup>1435</sup> but also steers toward a future characterized by fairness, transparency, and effective governance across all its members.<sup>1436</sup>

## 2. Significance of the Rule of Law in the European Integration Process

The EU places significant importance on the rule of law<sup>1437</sup> within its legal framework and as a criterion for accession, particularly evident in its policies and shared values. However, challenges<sup>1438</sup> persist in both enforcing the rule of law within current member states and

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<sup>1428</sup> K. BESHKU, *Save the EU's Enlargement Process! Are the Cases of North Macedonia and Albania Undermining It?*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.249-256; B. BANOVIĆ, *Controversies Over Montenegrin Identity after the Political Turn in 2020: Can Montenegro Overcome Identity Tensions on Its Path towards the EU Membership?*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.283-293.

<sup>1429</sup> W. SCHROEDER, *The Rule of Law as*, cit, p.105-126.

<sup>1430</sup> R. MAVROULI, A. VAN WAEYENBERGE, *EU Responses to the Democratic Deficit and the Rule of Law Crisis: Is It Time for a (New) European Exceptionalism?*, in *Hague Journal on the Rule of Law*, 2023.

<sup>1431</sup> J. POLAKIEWICZ, J. K. KIRCHMAYR, *Sounding the Alarm: The Council of Europe as the Guardian of the Rule of Law in Contemporary Europe, Defending Checks and Balances in EU Member States, Taking Stock of Europe's Actions*, 2021, p.361-381.

<sup>1432</sup> A. GOLDBERG, L. B. HOFFMANN, *Peoples' Perspectives on the 'Future of Europe', A Comparative Study from Within and Beyond the European Union*, in *European Union Politics*, 2024.

<sup>1433</sup> M. BONINI, *I principi dello Stato di Diritto nell'Unione Europea: Un difficile percorso fra rivendicazione della "Identità Costituzionale" e affermazione della "Condizionalità"*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.105-115; M. MILENKOVIĆ, *Using Ethnology-Based Intangible Heritage Safeguarding as an Alternative to Culturalized EU Conditionality in the Western Balkans*, in *We, the People of the United Europe: Reflections on the European State of Mind*, 2022, p.225-232.

<sup>1434</sup> J. WEILER, *Not on Bread Alone Doth Man Liveth (Deut. 8: 3; Mat 4: 4): Some Iconoclastic Views on Populism, Democracy, the Rule of Law and the Polish Circumstance*, in *Defending Checks and Balances in EU Member States: Taking Stock of Europe's Actions*, 2021.

<sup>1435</sup> D. KOCHENOV, *Article 7: A Commentary on a Much Talked-About 'Dead' Provision*, in *Defending Checks and Balances in EU Member States: Taking Stock of Europe's Actions*, 2021, p.127-154.

<sup>1436</sup> J. W. MÜLLER, *Should the EU Protect Democracy*, cit.

<sup>1437</sup> D. KOCHENOV, *The EU and the Rule of Law – Naïveté or a Grand Design?*, in *Constitutionalism and the Rule of Law: Bridging Idealism and Realism*, University of Groningen Faculty of Law, 2018.

<sup>1438</sup> R. HAVERKAMP, *The Rule of Law and the European Union in Challenging Times*, in *The Rule of Law in Retreat: Challenges to Justice in the United Nations World*, 2022.

ensuring its adherence in prospective member states, particularly evident in the context of the Western Balkans' accession process. The enforcement of the rule of law<sup>1439</sup> through the internal and external dimensions<sup>1440</sup> is negatively influenced owing to noticeable deficiencies which requires urgent solution. In this regard, certain measures concerning the transparency, autonomous state agencies, civil society participation,<sup>1441</sup> supervising instruments, and conditionality strategies. Rule of law challenges<sup>1442</sup> frequently stem from deliberate policies implemented by autocratic regimes<sup>1443</sup> rather than solely from inherent weaknesses within states. The rule of law principle is essential factor for preserving democratic systems in all member states and promoting efficient functioning of the internal market<sup>1444</sup> and the common area of security and justice.<sup>1445</sup> Therefore, the EU is legally bound to uphold its core principles, which are the basis of its foreign relations,<sup>1446</sup> as stated in Articles 21, 3(5),<sup>1447</sup> and 8 of the TEU.<sup>1448</sup> Importantly, the ECJ's jurisprudence has, on many occasions, positively influenced the rule of law by innovatively asserting fundamental legal principles, particularly in situations where national law and politics faced stagnation or obstruction.<sup>1449</sup> EU relies heavily on the internal market logic within the Treaties, shaping it as a fundamental aspect of its legal system.<sup>1450</sup>

A proper functioning of the rule of law is also a substantial component of the EU's enlargement policy, as wishing countries must exhibit its proper enforcement during the

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<sup>1439</sup> I. IOANNIDES, G. C. CELADOR, *The Internal–External Security Nexus and EU Police/Rule of Law Missions in the Western Balkans*, in *Conflict, Security & Development*, 2011.

<sup>1440</sup> A. MAGEN, *Overcoming the Diversity-Consistency Dilemmas in EU Rule of Law External Action*, in *Asia Europe Journal*, 2016.

<sup>1441</sup> C. MATTHES, *Safeguarding Democracy and the Rule of Law by Civil Society Actors? The Case of Poland*, in *Illiberal Trends and Anti-EU Politics in East Central Europe*, 2021.

<sup>1442</sup> R. H. ROHLFING, M. WIND, *Death by a Thousand Cuts: Measuring Autocratic Legalism in the European Union's Rule of Law Conundrum*, in *Democratization*, 2023.

<sup>1443</sup> A. MAGEN, L. MORLINO, *Hybrid Regimes, the Rule of Law, and External Influence on Domestic Change*, in *International Actors, Democratization and the Rule of Law: Anchoring Democracy*, 2009.

<sup>1444</sup> M. BARTL, *Internal Market Rationality, Private Law and the Direction of the Union: Resuscitating the Market as the Object of the Political*, in *European Law Journal*, 2015.

<sup>1445</sup> B. HUDSON, S. UGELVIK, *Justice and Security in the 21st Century: Risks, Rights and the Rule of Law*, 2012.

<sup>1446</sup> I. GOVAERE, *Promoting the Rule of Law in EU External Relations: A Conceptual Framework*, 2022.

<sup>1447</sup> V. KUBE, *The European Union's*, cit.

<sup>1448</sup> C. HILLION, *The EU Neighbourhood Competence under Article 8 TEU*, *Notre Europe*, 2013.

<sup>1449</sup> O. GERSTENBERG, *The Question of Standards for the EU: From Democratic Deficit to Justice Deficit?*, 2015.

<sup>1450</sup> D. KOCHENOV, *EU Law Without the Rule of Law: Is the Veneration of Autonomy Worth It?*, in *Yearbook of European Law*, 2015.

accession process, as outlined in Article 49(1) TEU.<sup>1451</sup> Candidate states undergo rigorous scrutiny for compliance with the rule of law before accession, and sanctions<sup>1452</sup> may be imposed during accession negotiations if rule of law breaches occur. Such punishments may involve actions such as suspending membership talks and refraining from supplying EU financial assistance to the receiving country.<sup>1453</sup> Certain candidate states experienced violations of the rule of law before and after joining the EU, while others, namely, Hungary<sup>1454</sup> and Poland, underwent a reawakening of these challenges after becoming EU members.<sup>1455</sup> In fact, President Ursula von der Leyen has acknowledged the risks posed by menaces to the rule of law,<sup>1456</sup> underlying the significance of tackling these difficulties.

Despite over two decades of EU involvement through the SAP<sup>1457</sup> aimed at bolstering the rule of law in candidate states, there has been a noticeable decline in adherence to these principles across those countries in the past decade. The challenge arose due to the lack of the rule of law, an increase in political patronage and a menace to democratic structures due to connections with organized crime and corruption.<sup>1458</sup> The Western Balkans<sup>1459</sup> exhibit democratic features but are hindered by reliance on unofficial systems, nepotism, media manipulation, and occasional crisis manipulation, undermining both democratization and the rule of law.<sup>1460</sup> In these nations, the exploitation and misuse of legal frameworks alongside fragile democratic institutions are pervasive issues.<sup>1461</sup> The EU has responded by making adherence to the rule of law a crucial requirement in its accession policy, utilizing unique

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<sup>1451</sup> L. NOTTENKÄMPER, *The Values Required to Join the European Union – An Attempt to Explain What Democracy and the Rule of Law Are by Legal Means*, 2023.

<sup>1452</sup> M. GESTRI, *Sanctions Imposed by the European Union: Legal and Institutional Aspects*, in *Coercive Diplomacy, Sanctions and International Law*, in Brill Nijhoff, 2016.

<sup>1453</sup> N. MORAN, *The Evolution of Conditionality in EU Financial Assistance Under the Recovery and Resilience Facility*, 2023.

<sup>1454</sup> B. BUGARIC, *Protecting Democracy and the Rule of Law in the European Union: The Hungarian Challenge*, 2014.

<sup>1455</sup> L. LOUWERSE, *The Rule of Law in EU External Relations: An Introduction*, in *The EU's Conceptualisation of the Rule of Law in its External Relations*, in Brill Nijhoff, 2023.

<sup>1456</sup> G. SÁEZ JIMÉNEZ, *Herramientas de la UE para Garantizar el Estado de Derecho. Los Derechos LGBT en Polonia y Hungría*, 2022.

<sup>1457</sup> A. ELBASANI, *The Stabilisation and Association Process in the Balkans: Overloaded Agenda and Weak Incentives?*, 2008.

<sup>1458</sup> D. ANASTASIJEVIC, *Getting Better? A Map of Organized Crime in the Western Balkans*, in *Transnational Terrorism, Organized Crime and Peace-Building: Human Security in the Western Balkans*, London, 2010.

<sup>1459</sup> X. RICHEL, *En Attendant Godot: La Résistible Intégration des Balkans Occidentaux à l'Union Européenne*, in *Les Frontières Revisitées: Héritage, Fragmentation, Recomposition, Hiérarchies*, 2020.

<sup>1460</sup> V. STOJAROVÁ, *Moving Towards EU Membership and Away from Liberal Democracy*, in *Southeast European and Black Sea Studies*, 2020.

<sup>1461</sup> B. RADELJIĆ, V. ĐORĐEVIĆ, *Clientelism and the Abuse of Power in the Western Balkans*, in *Journal of Balkan and Near Eastern Studies*, 2020.

justice and home affairs measures to strengthen the judiciary during the enlargement process.<sup>1462</sup>

Albania,<sup>1463</sup> Kosovo,<sup>1464</sup> Montenegro,<sup>1465</sup> North Macedonia,<sup>1466</sup> Serbia,<sup>1467</sup> and Bosnia and Herzegovina<sup>1468</sup> have experienced expansive and complex obstacles incorporating political, legal, and economic attributes during integration process towards the EU.<sup>1469</sup> In 2003, the EU formally committed to exploring the potential expansion of its membership to include these nations, a pledge articulated during the Thessaloniki Summit.<sup>1470</sup> Since then, the integration process has encountered various ups and downs, but one of the most significant setbacks occurred in 2019 with the veto of French President Macron.<sup>1471</sup> It was against the European Commission's proposal to initiate accession negotiations between the EU and North Macedonia and Albania,<sup>1472</sup> which was considered a particularly dramatic moment in the process. Criticism<sup>1473</sup> of the French leader's stance<sup>1474</sup> largely centred on its perceived obstruction of certain countries' European integration,<sup>1475</sup> with less attention given to Macron's

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<sup>1462</sup> M. KMEZIC, F. BIEBER, *Protecting the Rule of Law*, cit.

<sup>1463</sup> N. INVA, *Lessons Learned from the Justice Reform in Albania*, in *ÖGfE Policy Brief*, Vienna, 2021; M. BOGDANI, J. LOUGHLIN, *Albania and the European Union: The Tumultuous Journey towards Integration and Accession*, in *Bloomsbury Publishing*, 2007.

<sup>1464</sup> P. BARGUÉS, *Engagement Against All Odds? Navigating Member States' Contestation of EU Policy on Kosovo*, in *The International Spectator*, 2024.

<sup>1465</sup> V. VUČKOVIĆ, *Europeanizing Montenegro*, cit.

<sup>1466</sup> S. MOJSOVSKA, *North Macedonia: Politics versus Policy of EU Integration*, in *Comparative Southeast European Studies*, 2021, p.561-574.

<sup>1467</sup> M. PETROVIĆ, *Towards Gradual Integration of the Western Balkans into the European Union: The Case of Serbia*, in *Journal of Liberty and International Affairs*, 2022.

<sup>1468</sup> K. IMAMOVIĆ ČIZMIĆ, S. SABLJICA, *Legal and Political Aspects of Competition in Bosnia and Herzegovina as a Paradigm of the European Integration Process*, in *European Integration Studies*, 2020, p. 55-68; D. ŠILJAK, K. NIELSEN, *Institutions and Integration (Im)Maturity: The Case of Bosnia and Herzegovina*, in *Society and Economy*, 2023, p.136-155.

<sup>1469</sup> F. OSMANI, D. LEKA, G. JUSUFI, *Regional Economic Cooperation in the Western Balkans: Promoter or Inhibitor of EU Integration of This Region*, in *Advances in Business-Related Scientific Research Journal*, 2022.

<sup>1470</sup> D. TRIANTAPHYLLOU, *The Balkans Between Stabilisation and Membership, Partners and Neighbours: A CFSP for a Wider Europe*, 2003.

<sup>1471</sup> Ł. JURCZY SZYN, *The Significance of France's Opposition to EU Enlargement to North Macedonia and Albania*, 2019.

<sup>1472</sup> N. FALLON, *New Moves: Opening Up EU Prospects for North Macedonia and Albania*, 2020.

<sup>1473</sup> G. FEJÉRDY, *Enlargement of the European Union in the Western Balkans from a French Perspective, Historical Experience and the Reunification of Europe*, 2020.

<sup>1474</sup> D. BECHEV, D. MARUSIC, *North Macedonia on the Threshold of Europe*, Atlantic Council, 2022.

<sup>1475</sup> G. SKARA, *The Rocky Road of Western Balkan Countries Toward European Integration: The Need for a Credible and Effective Approach*, in *Journal of European Social Research*, 2020.

suggestion that compliance with EU regulations is insufficient without substantial internal reforms.<sup>1476</sup>

Macron's speech<sup>1477</sup> underscored the imperative for comprehensive reforms in the Western Balkans to advance towards EU membership, emphasizing the need for adherence to EU legislation encompassing economic, democratic, and human rights principles.<sup>1478</sup> The concerns focused on both the EU's wavering commitment to upholding the rule of law and democracy and the rise of authoritarian tendencies in Balkan governments. This issue aligned with the EU's longstanding<sup>1479</sup> focus on enhancing stability in the region,<sup>1480</sup> often at the expense of democratic principles, a phenomenon termed 'stabilitocracy'.<sup>1481</sup> However, this approach<sup>1482</sup> has led to democratic regression not only in the Balkans but also within certain EU member states, namely, Poland and Hungary,<sup>1483</sup> where the rule of law has weakened, eroding public support. Actions such as the Commission's Rule of Law Framework and CJEU rulings<sup>1484</sup> signaled recognition of the need to address these challenges,<sup>1485</sup> indicating a growing commitment to upholding democratic values within the Union.

While progress has been made in promoting the rule of law during accession phases, relying solely on assessing Chapters 23 and 24 of the *acquis communautaire*<sup>1486</sup> is inadequate

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<sup>1476</sup> I. GABIDZASHVILI, *The EU Enlargement to the Western Balkans: Accession Negotiations with North Macedonia and Albania*, in *European Policy*, 2021.

<sup>1477</sup> A. G. CORPĂDEAN, L. M. HERȚA, *The Dangers of Halting Enlargement Prospects in the Western Balkans*, in *Stosunki Międzynarodowe International Relations*, 2019.

<sup>1478</sup> N. HOGIĆ, *The European Union's Rule of Law Promotion in the Western Balkans: Building a Rule of Law Constituency*, in *Croatian Yearbook of European Law & Policy*, 2020.

<sup>1479</sup> A. BABUNA, *European Integration, Bosnia and Herzegovina and Stability in the Western Balkans: A New Strategy*, in *Perceptions: Journal of International Affairs*, 2014.

<sup>1480</sup> A. GAFURI, M. MUFTULER BAC, *Caught Between Stability and Democracy*, cit.

<sup>1481</sup> Z. IVANOV, *The EU-Balkans Enlargement Process Deadlock: The Role of Perceptions, Stabilitocracy, and Recommendations*, in *Uluslararası Suçlar ve Tarih*, 2023.

<sup>1482</sup> W. ZWEERS, *The EU as a Promoter of Democracy or "Stabilitocracy" in the Western Balkans?*, 2022.

<sup>1483</sup> F. BALAGUER CALLEJÓN, *Democracia y Estado de Derecho en Europa*, 2020.

<sup>1484</sup> P. BOGDANOWICZ, M. TABOROWSKI, *How to Save a Supreme Court in a Rule of Law Crisis: The Polish Experience: ECJ (Grand Chamber) 24 June 2019, Case C-619/18, European Commission v Republic of Poland*, in *European Constitutional Law Review*, 2020.

<sup>1485</sup> Judgement of the Court (Grand Chamber), *European Commission v Republic of Poland, C 619/18, 24 June 2019*.

<sup>1486</sup> M. ROCCIA, *European 'Dis-Integration' in Bosnia and Herzegovina: A Critical Reflection on Legal, Administrative and Political Obstacles Affecting the Approximation of Chapters 23 and 24 of the Acquis Communautaire*, in *European Review*, 2013.

for effectively tackling state capture,<sup>1487</sup> which remains the primary obstacle.<sup>1488</sup> Developing an innovative strategy centred on cultivating a rule of law constituency,<sup>1489</sup> utilizing legal mobilization, institutional reinforcement,<sup>1490</sup> anti-corruption politicization,<sup>1491</sup> and fostering economic prosperity to effectively tackle underlying structural issues.<sup>1492</sup> Balkan states are currently at various phases of the EU's integration process,<sup>1493</sup> and each of them encounters a wide range of difficulties.<sup>1494</sup> The achievement of reforms in these candidate states is at an unsatisfactory level, and their impact on democracy is highly restricted.<sup>1495</sup> Western Balkan-6 states can be categorized as semi-consolidated democracies,<sup>1496</sup> however, they are encountering notable challenges related to democratic setbacks<sup>1497</sup> and the emergence of illiberal patterns.<sup>1498</sup> The deteriorating state of the rule of law presents a shared challenge that hampers the process of faster integration in the region.<sup>1499</sup>

The strength and proficiency of the rule of law are impacted by multiple components,<sup>1500</sup> such as fragile and heavily politicized bodies, an absence of accountability and transparency<sup>1501</sup> in every domain, and deficit collective political backing for substantial changes. Limited progress in enhancing the rule of law<sup>1502</sup> in Western Balkan countries, despite numerous initiatives, was primarily attributed to ineffective EU monitoring mechanisms and

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<sup>1487</sup> W. BARTLETT, *International Assistance, Donor Interests, and State Capture in the Western Balkans*, in *Journal of Contemporary European Studies*, 2021, p.184-200.

<sup>1488</sup> T. PRELEC, *The Vicious Circle of Corrosive Capital, Authoritarian Tendencies and State Capture in the Western Balkans*, in *Journal of Regional Security*, 2020, p.167-198.

<sup>1489</sup> N. HOGIĆ, *The European Union's Rule of Law Promotion*, cit, p.197-223.

<sup>1490</sup> Z. HALILI, *Justice Reform or Façade Reform: The Case of the Western Balkans*, in *Politics in Central Europe*, 2020, p.479-497.

<sup>1491</sup> M. MAZZONI, *In Western Balkan Countries, Anti-Corruption Models and Experiences*, 2022.

<sup>1492</sup> T. PRELEC, *The Vicious*, cit.

<sup>1493</sup> M. BONOMI, Z. NECHEV, *Regional and EU Integration of the Western Balkans: Beyond a Two-Track Approach*, 2022.

<sup>1494</sup> G. GOLLA, *Case Study: Western Balkans*, in *Global State of Democracy 2023 Report, Global State of Democracy Initiative*, 2023.

<sup>1495</sup> J. BRŠAKOSKA BAZERKOSKA, *The EU Integration Process of the Western Balkans in the Aftermath of 2015's Refugee Crisis*, in *Studia Europejskie-Studies in European Affairs*, 2022.

<sup>1496</sup> I. KASHAMI, A. CURI, *The Path to Democracy: A Critical Evaluation of the Impact of Region on the Democratic Process in the Western Balkans*, Tirana, 2023.

<sup>1497</sup> S. MARKOVIĆ, *The Third Wave of Autocratisation and the Western Balkans*, in *Politički Život*, 2022, p.7-24.

<sup>1498</sup> N. ANDJELIC, *Hybrid Regimes of the Western Balkans: Reflection of a Global Geopolitical Struggle*, in *Journal of Regional Security*, 2020, p.236-289.

<sup>1499</sup> L. LIKA, *The Meaning of the Western Balkans Concept for the EU: Genuine Inclusion or Polite Exclusion?*, in *Southeast European and Black Sea Studies*, 2023.

<sup>1500</sup> F. HADŽIĆ, *Addendum and Erratum to the Paper [Psychology of Political Morality, Ethics, and Law: The Western Balkans' Review]*, in *Psychology Research on Education and Social Sciences*, 2022.

<sup>1501</sup> M. PANKOVSKI, *Governance versus Authoritarian Influence in the Western Balkans*, in *Governance*, 2021.

<sup>1502</sup> J. MAROVIĆ, *Western Balkans and the Rule of Law: How to Solve a Catch-22*, in *Agenda*, 2018.

resistance from ruling elites<sup>1503</sup> reluctant to relinquish illegal practices. The EU faced significant hurdles in fostering the rule of law in Balkan countries due to entrenched state capture,<sup>1504</sup> corruption,<sup>1505</sup> and a governance mode of particularism<sup>1506</sup> tied to political-business elites. Therefore, improving the situation in Balkan countries requires adopting inclusive bottom-up approaches to integrate EU norms, empowering civil societies,<sup>1507</sup> monitor law execution,<sup>1508</sup> and internalize norms during accession negotiations. Significant efforts to promote the rule of law in the Balkan region have failed<sup>1509</sup> to yield significant results, leading to the proposal of alternative strategies involving enhanced conditionality tools, performance metrics, and tailored roadmaps. Close collaboration<sup>1510</sup> between the EU and Balkan countries<sup>1511</sup> is essential, with Balkan administrations committing to EU benchmarks and emphasizing transparency and accountability<sup>1512</sup> to foster impactful rule of law reforms.<sup>1513</sup>

The European Commission consistently underscored challenges in the democratization of the Western Balkans<sup>1514</sup> and emphasized the need for unaltered adherence to stipulations by candidate countries. Key areas of reform included the rule of law, with a specific focus on anti-corruption<sup>1515</sup> and organized crime,<sup>1516</sup> along with economic reforms,<sup>1517</sup> competitiveness

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<sup>1503</sup> B. RADELJIĆ, V. ĐORĐEVIĆ, *Clientelism and the Abuse of Power*, cit, p.597-612.

<sup>1504</sup> W. BARTLETT, *International Assistance*, cit.

<sup>1505</sup> N. FERUNI, *The Impact of Corruption, Economic Freedom and Urbanization on Economic Development: Western Balkans versus EU-27*, in *Sustainability*, 2020.

<sup>1506</sup> V. PERRY, S. KEIL, *The Business of State Capture in the Western Balkans: An Introduction*, in *Southeastern Europe*, 2018.

<sup>1507</sup> D. G. REIANU, *Civil Society in the Context of the EU Accession: The Case of Montenegro*, in *Civil Szemle*, 2024, p.123-135.

<sup>1508</sup> R. Z. SHEHI, I. MELANI, *The Logic of EU Normative Power in the Western Balkans*, in *Widening Knowledge for a More Resilient European Union*, 2023.

<sup>1509</sup> M. PETROVIĆ, N. TZIFAKIS, *A Geopolitical Turn*, cit.

<sup>1510</sup> E. HAJDINI, *Western Balkans and the European Union*, 2020.

<sup>1511</sup> J. KLEMENC, M. HRABÁLEK, V. ĐORĐEVIĆ, *Regional Security Cooperation Revisited: The Western Balkans as the Future Security Provider*, in *European Security*, 2021, p.285-304.

<sup>1512</sup> A. EDGAR, *The Rule of Law, Peacebuilding, and Agenda 2030: Lessons from the Western Balkans*, in *Crime Prevention and Justice in 2030: The UN and the Universal Declaration of Human Rights*, 2021, p.401-415.

<sup>1513</sup> J. MAROVIĆ, T. PRELEC, M. KMEZIĆ, *Policy Study: Strengthening the Rule of Law in the Western Balkans: Call for a Revolution Against Particularism*, 2019.

<sup>1514</sup> D. JANO, J. MAROVIĆ, *How to Foster the Rule of Law in the Western Balkans: 10 Notes to Decision-Makers*, in *Institute for Democracy*, Skopje, 2019.

<sup>1515</sup> E. NASKOVSKA, N. GJORSHOSKI, *Comparative Practices of the Balkan Countries in the Fight Against Corruption*, in *Journal of Liberty and International Affairs*, 2023, p.561-579.

<sup>1516</sup> C. TĂRTEAȚĂ, *Human Security, Terrorism and Organized Crime in the Western Balkans*, in *Strategies XXI-National Defence College*, 2021, p.178-186.

<sup>1517</sup> M. D. M. GÓMEZ, D. TAGLIONI, R. ZARATE, *The Economic Effects of Market Integration in the Western Balkans*, in *World Bank*, 2023.



enhancement, regional cooperation<sup>1518</sup> promotion, and reconciliation facilitation.<sup>1519</sup> Addressing rule of law deficiencies necessitated a multifaceted approach including stronger regulations, impartial application, socio-political cultural change,<sup>1520</sup> and increased EU dedication through bolstered conditionality and monitoring.<sup>1521</sup> However, challenges<sup>1522</sup> arise due to the region's lack of democratic political culture<sup>1523</sup> and the EU's distance from the Western Balkans, requiring significant time and resource commitment for long-term transformations and sustainable progress. The stability<sup>1524</sup> of the Western Balkans relies on establishing democratic institutions and the rule of law based on liberal values,<sup>1525</sup> which the EU continues to support despite uncertainties regarding full integration. Collaboration among Western Balkan nations is crucial to address challenges such as slow reform progress,<sup>1526</sup> insufficient dedication, and internal EU issues, focusing on economic development,<sup>1527</sup> cooperation on criminal issues, and combating corruption and organized crime.<sup>1528</sup>

The EU placed significant emphasis on upholding its values<sup>1529</sup> internally and externally, reflecting its commitment to promoting stability and security. Through comprehensive interventions, the EU sought to foster the rule of law in partner countries, aiming ultimately for regional integration and potential accession.<sup>1530</sup> The implementation of the principle of democratic conditionality within the SAP,<sup>1531</sup> particularly in conjunction with

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<sup>1518</sup> M. BREGU, *The Regional Cooperation*, cit, p.191-206.

<sup>1519</sup> N. R. SMITH, N. M. KHAZE, M. KOVACEVIC, *The EU's Stability-Democracy Dilemma in the Context of the Problematic Accession of the Western Balkan States*, in *Journal of Contemporary European Studies*, 2021.

<sup>1520</sup> F. ISMAILI, *Navigating Democracy: Challenges and Triumphs in the Western Balkans*, in *Bengi Dünya Yörük-Türkmen Araştırmaları Dergisi*, 2024.

<sup>1521</sup> J. V. ZEKA, *Common Dynamics in the EU Integration Path of the Western Balkans*, 2023, pp. 11-22.

<sup>1522</sup> S. KEIL, *Europeanization, State-Building and Democratization in the Western Balkans*, 2013.

<sup>1523</sup> M. METUSHAJ, *Analysis of Political Atmosphere in the Western Balkans*, in *Acta Universitatis Danubius, Relationes Internationales*, 2023.

<sup>1524</sup> M. METUSHAJ, *Security in the Western Balkans*, in *EIRP Proceedings*, 2023.

<sup>1525</sup> D. JANO, J. MAROVIĆ, *How to Foster the Rule of Law*, cit.

<sup>1526</sup> M. BILALLI, *The Western Balkans and Possible Alternatives to Western Balkans and the Internal Integration Processes*, in *International Conference on Law*, 2021.

<sup>1527</sup> D. RISTIĆ, *Is Economic and Political "Western Balkans Union" Possible and What Could It Bring to the Western Balkan Countries? The Students' Views on the European Integration of the Western Balkans Region*, 2022.

<sup>1528</sup> M. PATRUCIĆ, *The Organized Crime and Corruption Reporting Project in the Western Balkans*, in *Südosteuropa Mitteilungen*, 2018.

<sup>1529</sup> M. CREMONA, *External Relations and External Competence of the European Union: The Emergence of an Integrated Policy*, 2011.

<sup>1530</sup> O. BURLYUK, *Variation in EU External Policies as a Virtue: EU Rule of Law Promotion in the Neighbourhood*, in *Journal of Common Market Studies*, 2015.

<sup>1531</sup> G. KOSTAKIS, *The "Europeanization" of the Western Balkans; Is European Conditionality Fostering Democracy?*, 2012.

CFSP,<sup>1532</sup> has contributed to strengthening the rule of law in the region by aligning EU support and assistance with democratic norms and values. This approach has provided additional clarity on the EU's concept of the rule of law, emphasizing democratic principles as integral to fostering legal frameworks and institutions within the region.<sup>1533</sup> The EU's external relations<sup>1534</sup> concerning the rule of law principle were influenced by member states' legal traditions, the EU's legal framework, and international law, with a notable reference to the Charter of Paris. Its endeavours<sup>1535</sup> in the Western Balkan-6 countries exemplified a strong commitment to the rule of law, closely aligned with European constitutionalism and the principles of pluralist democracy, human rights, and fundamental freedoms. Further efforts to promote the rule of law in the region<sup>1536</sup> focused on adopting a comprehensive interpretation, as demonstrated by the EU's commitment to advancing substantive legal reforms beyond mere formalities. The EU actively monitored adherence to democracy, rule of law, and human rights<sup>1537</sup> using mechanisms like democratic conditionality, ensuring compliance with the principles in the Copenhagen Document. Hence, the EU prioritized reinforcing the rule of law<sup>1538</sup> in its actions with third countries,<sup>1539</sup> especially Balkan candidates, recognizing its pivotal role in ensuring the Union's effectiveness.

The judicial system's effective reformation<sup>1540</sup> is integral to ensuring the rule of law's application within the EU accession process for Western Balkan states. This is particularly crucial as judiciary reform is often equated with broader rule of law reform in legal discourse.<sup>1541</sup> Challenges in the Balkan region stem from the absence of a universally recognized definition of the rule of law and a lack of specific frameworks delineating the consequences of assistance for individual candidate states.<sup>1542</sup> Despite limited resources, the

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<sup>1532</sup> V. SZÉP, *Case Studies of the EU's CFSP Activity*, 2023.

<sup>1533</sup> L. APPICCIAFUOCO, *The Promotion of the Rule of Law in the Western Balkans: The European Union's Role*, in *German Law Journal*, 2010.

<sup>1534</sup> S. KEUKELEIRE, T. DELREUX, *The Foreign*, cit.

<sup>1535</sup> L. SCAZZIERI, *Reviving European Policy Towards the Western Balkans*, Centre for European Reform, 2021.

<sup>1536</sup> A. K. BOJOVIĆ, V. ČORIĆ, *Challenges of Rule of Law Conditionality in EU Accession*, cit.

<sup>1537</sup> K. BÖTTGER, D. MAUGEAIS, *Countering the Rule of Law Backsliding in the Western Balkans*, in *Ögfe Policy Brief*, 2021.

<sup>1538</sup> A. EDGAR, *The Rule of Law*, cit.

<sup>1539</sup> L. LOUWERSE, *Conclusions: The Influence of the Policy Area on the EU's Conceptualisation of the Rule of Law in its External Relations*, in *The EU's Conceptualisation of the Rule of Law in its External Relations*, in Brill Nijhoff, 2023.

<sup>1540</sup> Z. HALILI, *Justice Reform*, cit.

<sup>1541</sup> M. M. BOŠKOVIĆ, *The Perception of Justice in Western Balkans Countries*, in *Regional*, 2021.

<sup>1542</sup> A. MEMETI, *Rule of Law Through Judicial Reform*, cit.

EU has supported judicial reforms<sup>1543</sup> in these countries, underscoring a shared responsibility between candidate nations and the EU in advancing the rule of law. Sustained and strengthened EU assistance is imperative to fostering adherence to the rule of law in the region,<sup>1544</sup> emphasizing the collaborative nature of the reform process.

The recent report of Freedom House emphasized present difficulties concerning the rule of law in the Balkans,<sup>1545</sup> identifying the lack of its adherence and a growing level of abuse of power or unfair distribution of resources. Besides this, the Commission<sup>1546</sup> highlighted the presence of apparent indication of state capture, including connections with organized crime and corruption at multiple levels of administrative structures, along with a crucial link between public and private interests. The impact of the political elites on media control<sup>1547</sup> and their strong links with informal structures and clientelism is also obvious in the region.<sup>1548</sup> Established mechanism of these elites ensuring their access to decision-making powers,<sup>1549</sup> threatens the democratic governance. The EU's response to the ongoing situation has been notably restrained due to the pro-European rhetoric and apparent commitment to European integration<sup>1550</sup> demonstrated by emerging authoritarian elites in affected states. Additionally, the EU's past support for certain groups, individuals, and political parties has inadvertently contributed to the emergence and endurance of these elites,<sup>1551</sup> complicating direct confrontation. Lastly, the EU has been ineffective in confronting these elites while they undermine principles of the rule of law and democracy.<sup>1552</sup> Thus, the integration process of the Western Balkans into the EU has been hindered by clientelism, informal networks, and the

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<sup>1543</sup> D. PRESHOVA, I. DAMJANOVSKI, Z. NECHEV, *The Effectiveness of the 'European Model' of Judicial Independence in the Western Balkans: Judicial Councils as a Solution or a New Cause of Concern for Judicial Reforms*, 2017.

<sup>1544</sup> P. NEDANOVSKI, K. S. KOCEVSKA, *Rule of Law and Economic Growth: Evidences from South East Europe*, 2023.

<sup>1545</sup> S. MARKOVIĆ, *The Third Wave*, cit.

<sup>1546</sup> P. CVETIČANIN, J. BLIZNAKOVSKI, N. KRSTIĆ, *Captured States and/or Captured Societies in the Western Balkans*, in *Southeast European and Black Sea Studies*, 2023.

<sup>1547</sup> B. RADELJIĆ, *In Favour of Censorship and Propaganda: Elites, Media Capture and the Journalistic Profession in the Western Balkans*, in *Journal of Contemporary Central and Eastern Europe*, 2020.

<sup>1548</sup> S. KEIL, *The Business of State Capture and the Rise of Authoritarianism in Kosovo, Macedonia, Montenegro and Serbia*, in *Southeastern Europe*, 2018.

<sup>1549</sup> N. ANDJELIĆ, *Western Balkans Regimes Between European Democracy and Autocracy*, in *Covid-19, State-Power and Society in Europe: Focus on Western Balkans*, 2022.

<sup>1550</sup> M. LAVRIČ, F. BIEBER, *Shifts in Support for Authoritarianism and Democracy in the Western Balkans*, in *Problems of Post-Communism*, 2021.

<sup>1551</sup> D. PAVLOVIĆ, *Is European Enlargement Policy a Form of Non-Democracy Promotion?* in *Journal of International Relations and Development*, 2023.

<sup>1552</sup> M. BODUSZYŃSKI, C. LI, *External Autocratic Influence, the Balkans, Democratic Decline*, in *Geopolitical Turmoil in the Balkans and Eastern Mediterranean*, Cham: Springer International Publishing, 2023.

close ties between political and economic elites,<sup>1553</sup> who prioritized personal power and wealth over fulfilling accession reforms.<sup>1554</sup> Despite substantial financial support and adherence to EU rules, the EU's strategy for promoting the rule of law in the region is constrained by its limited capacity to influence political behaviour and foster local accountability in candidate states.<sup>1555</sup>

The elites actively engage in the systematic manufacture of crises, including, diverting attention, maintaining control, or manipulating public opinion,<sup>1556</sup> which undermines democracy and the rule of law. Autocratic leaders govern by exploiting informal power structures, engaging in state capture through leading parties, patronage and media control.<sup>1557</sup> The uneven distribution of development levels among Balkan countries, alongside with the varying nature of flawed democracy, is widely recognized as a prevalent phenomenon. Bosnia & Herzegovina is identified as possessing a complex and detrimental institutional framework that stimulates destructive behaviour among illiberal politics,<sup>1558</sup> whereas Albania faces significant inter-party polarization.<sup>1559</sup> Despite the fact that all extensive efforts focused on moving closer to the EU, engaging in accession negotiations, and receiving an abundance of reports and recommendations, none of these endeavours have resulted in the anticipated development towards democracy.<sup>1560</sup>

State capture, defined as the influence of informal networks over formal government structures, presents a major obstacle to democratization efforts and EU conditionality in certain regions.<sup>1561</sup> It undermines democratic development,<sup>1562</sup> strengthens corrupt elites, and hampers

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<sup>1553</sup> B. RADELJIĆ, V. ĐORĐEVIĆ, *Clientelism and the Abuse of Power*, cit.

<sup>1554</sup> D. JOVIĆ, *Accession to the European Union and Perception of External Actors in the Western Balkans*, in *Croatian International Relations Review*, 2018.

<sup>1555</sup> A. ELBASANI, S. Š. ŠABIĆ, *Rule of Law, Corruption and Democratic Accountability in the Course of EU Enlargement*, in *Journal of European Public Policy*, 2018.

<sup>1556</sup> I. DAMJANOVSKI, M. LAVRIČ, A. NATERER, *Predictors of Euroscepticism in Six Western Balkan Countries*, in *Southeast European and Black Sea Studies*, 2020.

<sup>1557</sup> B. RADELJIĆ, *In Favour of Censorship and Propaganda*, cit.

<sup>1558</sup> D. KAPIDŽIĆ, *Subnational Competitive Authoritarianism and Power-Sharing in Bosnia and Herzegovina*, in *Southeast European and Black Sea Studies*, 2020.

<sup>1559</sup> D. BĚRDUFI, A. KRASNIQI, *Democracy State and Autocratization Features in the Republic of Albania*, in *Journal of Liberty and International Affairs*, 2022.

<sup>1560</sup> M. KMEZIĆ, F. BIEBER, *The Crisis of Democracy in the Western Balkans. An Anatomy of Stabilitocracy and the Limits of EU Democracy Promotion*, in *Biepag Policy Study*, 2017.

<sup>1561</sup> I. DJORDJEVIC, D. STONE, *State Captured? Policy Advice? Think Tanks as Expert Advisors in the Western Balkans*, in *Policy and Society*, 2023.

<sup>1562</sup> S. RICHTER, N. WUNSCH, *Money, Power, Glory: The Linkages between EU Conditionality and State Capture in the Western Balkans*, in *Journal of European Public Policy*, 2020.

meaningful reforms,<sup>1563</sup> ultimately impeding the EU's goal of promoting democracy<sup>1564</sup> in affected areas. Weak democratic governance in the Western Balkan countries perpetuates authoritarian tendencies, enabling ruling elites<sup>1565</sup> to manipulate institutions and suppress opposition through violence and arbitrary measures.<sup>1566</sup> This erosion of democratic principles undermines the rule of law, stifles freedoms such as expression and association, and hampers the development of authentic democracy beyond formal constitutional frameworks.<sup>1567</sup> The EU's enlargement strategy for the Western Balkans, established in 2018, emphasized the importance of addressing the rule of law,<sup>1568</sup> combating corruption, and tackling organized crime, particularly evident in the 2020 accession negotiations. Central to this strategy was a focused effort on judicial system reform<sup>1569</sup> as a critical component for candidate states aspiring to join the EU. The EU's efforts to address justice system reforms<sup>1570</sup> in the Western Balkans, influenced by concerns over democratic erosion in Poland and Hungary,<sup>1571</sup> have led to the introduction of governance models aimed at promoting the rule of law and combating corruption.<sup>1572</sup> Through initiatives such as setting up autonomous structures<sup>1573</sup> and prioritizing judicial independence,<sup>1574</sup> the EU aims to mitigate corruption and strengthen the rule of law in the region as part of the accession negotiations process.

The EU's strategy for promoting the rule of law<sup>1575</sup> in the Western Balkans underscored the importance of judicial reform,<sup>1576</sup> linking it to political criteria and providing institutional

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<sup>1563</sup> D. BEQIRI, *Neopatrimonialist Practice as a Soft Strategy of State Capture: The Case of Western Balkans*, in *Political Clientelism in the Western Balkans*, 2020.

<sup>1564</sup> I. PREZELJ, N. O. VOGRINČIĆ, *Criminal and Networked State Capture in the Western Balkans: The Case of the Zemun Clan*, in *Southeast European and Black Sea Studies*, 2020.

<sup>1565</sup> D. SOTIROPOULOS, *Corruption, Anti-Corruption and Democracy in the Western Balkans*, in *Political Perspectives: Journal for Political Research*, 2017.

<sup>1566</sup> S. GAGLIARDO, *Between Democratic Backsliding and EU Integration: Explaining Diverse Democratic Paths in the Western Balkans*, 2023.

<sup>1567</sup> M. KMEZIĆ, *Rule of Law and Democracy in the Western Balkans: Addressing the Gap between Policies and Practice*, in *Illiberal Politics in Southeast Europe*, 2021.

<sup>1568</sup> P. BARGIACCHI, *The Revised Enlargement Methodology for the Western Balkans*, in *Regional Law Review*, 2020.

<sup>1569</sup> A. HOXHAI, *The EU Rule of Law Initiative Towards the Western Balkans*, cit.

<sup>1570</sup> A. SHEHAJ, *The Perils of Succor: The European Union's Financial Role in the Western Balkans During COVID-19*, in *European Policy Analysis*, 2020.

<sup>1571</sup> M. BERNHARD, *Democratic Backsliding in Poland and Hungary*, in *Slavic Review*, 2021.

<sup>1572</sup> European Commission, High Representative of the Union for Foreign Affairs and Security Policy, *Joint Communication to the European Parliament, the Council and the European Economic and Social Committee on the Fight Against Corruption*, JOIN(2023) 12 Final, Brussels, 3 May 2023.

<sup>1573</sup> M. MAKSIMOVIĆ, N. NOVAKOVIĆ, *Western Balkans, Reforms and Eurointegrations*, 2020.

<sup>1574</sup> M. M. BOSKOVIC, *The Perception of Justice*, cit.

<sup>1575</sup> T. ÖRDÖGH, *Rule of Law in the Western Balkans*, Institute for Foreign Affairs and Trade Hungary, 2022.

<sup>1576</sup> V. ĆORIĆ, A. KNEŽEVIĆ BOJOVIĆ, *Framing an Improved Model for Judicial Reform in Aspiring Member States of the European Union*, in *European Journal of Transformation Studies*, 2019.

resources, technical assistance, and economic support. While the promise of EU membership has incentivized national authorities to adopt reforms,<sup>1577</sup> credibility issues in some regions, like Kosovo<sup>1578</sup> and Bosnia-Herzegovina,<sup>1579</sup> have rendered mere conformity insufficient. Challenges such as resistance from national elites and pervasive corruption hinder effective judiciary reform efforts.<sup>1580</sup> To ensure enduring adherence to the rule of law,<sup>1581</sup> it is essential to go beyond judicial reform and address cultural predispositions, informal structures, and wider societal participation in the transformation process.

To address challenges in EU accession negotiations for Western Balkan countries, particularly in the rule of law reform process,<sup>1582</sup> several key strategies can be considered. These include addressing governmental barriers such as corruption and lack of expertise,<sup>1583</sup> enhancing transparency and accountability mechanisms, and involving civil society<sup>1584</sup> in the reform process. Additionally, establishing effective judicial mechanisms is crucial for enforcing legislative solutions,<sup>1585</sup> while providing clearer benchmarks for EU rule of law conditions can enhance clarity and certainty for candidate countries. Lastly, to incentivize progress, an intermediary system of rewards for achieving interim objectives could further encourage<sup>1586</sup> national actors<sup>1587</sup> alongside the promise of EU membership.

Western Balkans have observed considerable obstacles in its pursuit of economic consolidation, democratic advancement, and EU accession process.<sup>1588</sup> Meanwhile, Romania, Bulgaria, and Croatia have succeeded to accede to the Union,<sup>1589</sup> the remaining part of the

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<sup>1577</sup> M. MAKSIMOVIĆ, N. NOVAKOVIĆ, *Western Balkans*, cit.

<sup>1578</sup> B. TAHIRI, *Is There Hope for Kosovo's Rule of Law System? Three Immediate Actions Needed*, 2022.

<sup>1579</sup> R. BURIANOVA, V. HLOUŠEK, *Serious About Integration or Political Posturing? Political Elites and Their Impact on Half-Hearted Europeanisation in Bosnia and Herzegovina*, in *Politics in Central Europe*, 2022.

<sup>1580</sup> A. MUNGIU PIPPIDI, *A House of Cards*, cit.

<sup>1581</sup> E. GORDY, A. EFENDIC, *Meaningful Reform in the Western Balkans: Between Formal Institutions and Informal Practices*, Peter Lang International Academic Publishers, 2019.

<sup>1582</sup> M. KMEZIC, *Europeanization by Rule of Law Implementation in the Western Balkans*, 2014.

<sup>1583</sup> C. DOLAN, *Hybrid Warfare in the Western Balkans: How Structural Vulnerability Attracts Maligned Powers and Hostile Influence*, in *SEEU Review*, 2022.

<sup>1584</sup> J. KASMI, *Civil Society Initiatives: The Key to Albania's EU Accession*, in *EU Enlargement and the Western Balkans: Current Challenges and Prospects*, 2023.

<sup>1585</sup> H. KUCI, K. VLAHNA, *Legal Characteristics of the EU-Kosovo Relations*, in *Perspectives of Law and Public Administration*, 2021.

<sup>1586</sup> G. GASMI, D. PRLJA, *European Path of the Western Balkans Region-Normative Aspects and Geopolitical Factors*, in *Regional Law Review*, 2020.

<sup>1587</sup> J. SUBOTIC, *Europe is a State of Mind*, cit.

<sup>1588</sup> A. HOXHAI, F. ZHILLA, *The Impact of COVID-19 Measures on the Rule of Law in the Western Balkans and the Increase of Authoritarianism*, in *European Journal of Comparative Law and Governance*, 2021.

<sup>1589</sup> D. JOVIĆ, *Accession to the European Union*, cit.

region encounters postponements in accession as a result of a combination of features, such as state dissolution, violent disputes, unstable institutions, and unsettled ethnic conflicts.<sup>1590</sup> The SAP aimed to address challenges, yet progress remained hindered by political elites prioritizing national interests, impeding reform and reconciliation efforts.<sup>1591</sup> Bosnia-Herzegovina and Kosovo<sup>1592</sup> are still suffering from ethical issues, North Macedonia<sup>1593</sup> encounters political hurdles, Serbia struggles with nationalism,<sup>1594</sup> Montenegro<sup>1595</sup> confronts with governance matters and Albania grapples with polarization and corruption.<sup>1596</sup> Conversely, Romania and Bulgaria<sup>1597</sup> observed harmonious transitions despite the legal reforms for the rule of law were required, whereas Croatia's progress has been prevented by matters related to cooperation and border disputes.<sup>1598</sup> The EU's impact on the rule of law in the Balkans reveals political motivations, lacks standardized methodologies for institution building, and faces potential disparities between EU criteria and domestic laws.<sup>1599</sup> The notion of the rule of law in the Western Balkans region signified addressing stakeholder perspectives, enhancing judicial capacity, safeguarding human rights, combating corruption, and protecting minority rights.<sup>1600</sup>

Challenges in the Western Balkans' rule of law, including judicial independence, political influence, corruption, and inefficiencies, emphasized the crucial need for digital case management systems to improve transparency and restore public trust in the judiciary.<sup>1601</sup> Corruption and organized crime<sup>1602</sup> persist despite legal reforms and anti-corruption institutions, hindered by political interference and a deficiency in judicial independence. War

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<sup>1590</sup> R. ZAMFIR, *Risks and Vulnerabilities in the Western Balkans*, 2020.

<sup>1591</sup> F. HADZIC, *The Political Psychology of Extremism; "Naturalness" of the Phenomenon in the Western Balkans*, in *Technium Social Sciences Journal*, 2020.

<sup>1592</sup> C. KVESKA, A. HUSKIĆ, G. KRASNIQI, *Macedonia, Bosnia and Kosovo: Contested Statehood and the EU*, in *Journal of Intervention and Statebuilding*, 2023.

<sup>1593</sup> D. ĐUKANOVIĆ, *North Macedonia and Its Neighbours: Challenges and Perspectives*, in *Croatian International Relations Review*, 2019.

<sup>1594</sup> J. DŽANKIĆ, M. RUDI, B. STAHL, *When a State Seeks a Nation and a Nation Seeks a State—EU Accession in the Foreign Policies of Montenegro and Serbia*, in *Journal of Intervention and Statebuilding*, 2023.

<sup>1595</sup> V. VUČKOVIĆ, *Europeanizing Montenegro*, cit.

<sup>1596</sup> E. ALIAJ, E. TIRI, *Integration Standards and Public Administration Dimensions in Light of the Integration Perspective of Albania in the EU*, in *Interdisciplinary Journal of Research and Development*, 2023.

<sup>1597</sup> S. ANDREEV, *The Unbearable Lightness*, cit.

<sup>1598</sup> I. A. LIVIU, C. A. IOV, *Croatia: Administrative Reform and Regional Development in the Context of EU Accession*, in *Transylvanian Review of Administrative Sciences*, 2010.

<sup>1599</sup> M. KMEZIĆ, *EU Rule of Law Promotion: Judiciary Reform in the Western Balkans*, 2016.

<sup>1600</sup> L. MOKRÁ, *European Union's Value-Based Approach*, cit.

<sup>1601</sup> N. S. JUVAN, A. GRIZOLD, *The Complex of Security in the Western Balkans: Processes and Issues*, 2017.

<sup>1602</sup> U. ZVEKIĆ, *Challenges of Corruption and Organised Crime in the Western Balkans*, in *Journal of Anti-Corruption Law*, 2017.

crimes prosecution<sup>1603</sup> remains inadequate, primarily due to factors, including political will, ethnic tensions, and limited resources. Media freedom has declined,<sup>1604</sup> marked by political interference, corruption between officials and media owners, and intimidation of journalists, thereby impeding accountability and transparency. Inadequate implementation of legislative frameworks against discrimination persists in minority protection, driven by institutional shortcomings and a lack of political will, with ongoing concerns regarding discrimination against the Roma<sup>1605</sup> and LGBTQI+ communities.<sup>1606</sup> Moreover, various factors which influence rule of law reforms in the region include historical legacies, the obligation of political elites, and the matter of politicization and instrumentalization of new laws and reforms.<sup>1607</sup> Thus, the countries of the Western Balkan region encounter crucial challenges in obtaining the rule of law, including matters related to organized crime,<sup>1608</sup> judicial independence,<sup>1609</sup> corruption,<sup>1610</sup> war crimes prosecution,<sup>1611</sup> media freedom,<sup>1612</sup> minority protection,<sup>1613</sup> and asylum frameworks.<sup>1614</sup> Therefore, comprehensive reforms and political determination are crucial with a focus on historical context, political commitment, global strategies, to achieve meaningful reform effectively.<sup>1615</sup>

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<sup>1603</sup> A. IVANOVIĆ, L. P. SOLTVEDT, *Investigating and Prosecuting War Crimes in the Western Balkans*, in *Varstvoslovje: Journal of Criminal Justice & Security*, 2016.

<sup>1604</sup> V. STOJAROVÁ, *Media in the Western Balkans: Who Controls the Past Controls the Future*, in *Southeast European and Black Sea Studies*, 2020.

<sup>1605</sup> M. R. ABRIL, N. MILLAN, *Breaking the Cycle of Roma Exclusion in the Western Balkans*, 2019.

<sup>1606</sup> K. SLOOTMAECKERS, H. TOUQUET, P. VERMEERSCH, *EU Enlargement and Gay Politics*, 2016.

<sup>1607</sup> M. MILOSAVLJEVIĆ, M. POLER, *Balkanization and Pauperization: Analysis of Media Capture of Public Service Broadcasters in the Western Balkans*, 2018.

<sup>1608</sup> F. D. CHIESA, D. DESNICA, *La Criminalità Organizzata nei Balcani Occidentali*, 2015.

<sup>1609</sup> D. BELKOKJESKA, *The Evolution of the Judicial Independence in Western Balkans: The Case of the Republic of North Macedonia*, 2020.

<sup>1610</sup> N. FERUNI, *The Impact of Corruption*, cit.

<sup>1611</sup> J. KIM, *Library of Congress, Foreign Affairs Division, Balkan Cooperation on War Crimes Issues*, in *Congressional Research Service*, 2019.

<sup>1612</sup> B. HUSZKA, Z. KÖRTVÉLYESI, *Conditional Changes: Europeanization in the Western Balkans and the Example of Media Freedom*, in *Intersections*, 2017.

<sup>1613</sup> S. MAMELI, S. KAJINIĆ, *Minorities and Reconciliation in the Western Balkans, The Challenges of Democratization and Reconciliation in the Post-Yugoslav Space*, 2020.

<sup>1614</sup> S. D. MONICO, *The Principle of Solidarity and Integration in the EU: The Challenge of Western Balkans*, 2022.

<sup>1615</sup> H. HAIDER, *Rule of Law Challenges in the Western Balkans*, 2018.



### 3. The Rule of Law as a Requisite in EU Accession Process

The elucidation of the rule of law's<sup>1616</sup> parameters assume paramount significance within the context of the EU's enlargement endeavors. This imperative arises from its pivotal role in delineating the Union's foundational ethos and guiding principles,<sup>1617</sup> essential for prospective member states seeking accession. A defined articulation of the rule of law furnishes a structured framework facilitating a comprehensive evaluation of candidate countries' legal frameworks, judicial autonomy, and adherence to democratic norms which are integral prerequisites for the European integration.<sup>1618</sup> Furthermore, a meticulously defined conception of the rule of law serves as a compass, guiding both aspiring member states and EU institutions in identifying deficiencies necessitating correction and implementing required changes.<sup>1619</sup> By cultivating a shared understanding of the rule of law, the EU endeavors to engender transparency, accountability, and coherence within its expanded ambit, thereby fortifying the Union's internal cohesion and advancing democratic governance paradigms throughout its constituent entities.<sup>1620</sup>

While the World Bank<sup>1621</sup> emphasizes the rule of law's role<sup>1622</sup> in fostering economic development and poverty reduction,<sup>1623</sup> and the UN<sup>1624</sup> focuses on reinforcing the concept within its system<sup>1625</sup> and providing technical assistance,<sup>1626</sup> the EU distinctly prioritizes the rule of law during the accession of new member states. This unique perspective by the EU ensures that potential states meet stringent legal and institutional standards before joining,<sup>1627</sup>

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<sup>1616</sup> T. VERELLEN, *H v. Council*, cit.

<sup>1617</sup> L. PECH, *A Union Founded on the Rule of Law: Meaning and Reality of the Rule of Law as a Constitutional Principle of EU Law*, in *European Constitutional Law Review*, 2010.

<sup>1618</sup> M. PANEBIANCO, *Note Minime sui Recenti Sviluppi dello Stato di Diritto nell'Unione Europea*, 2021.

<sup>1619</sup> A. M. OROS, *La Prospettiva di Allargamento dell'Unione Europea ai Paesi dei Balcani Occidentali e lo Stato di Diritto*, Pisa, 2022.

<sup>1620</sup> G. CAGGIANO, *Dialogo Sullo Stato Di Diritto Negli Stati Membri Dell'unione Europea*, in *Dialoghi Con U. VILLANI, (A Cura Di) E. TRIGGIANI, F. CHERUBINI, I. INGRAVALLO, E. NALIN, R. VIRZO*, in *Cacucci Editore*, Bari, 2017.

<sup>1621</sup> *Legal Vice Presidency, The World Bank, Initiatives in Legal and Judicial Reform*, 2004.

<sup>1622</sup> J. ALVAREZ, *International Organisations and the Rule of Law*, in *New Zealand Journal of Public and International Law*, 2016.

<sup>1623</sup> A. SANTOS, *The World Bank's Uses of the 'Rule of Law' Promise in Economic Development*, in *The New Law and Economic Development: A Critical Appraisal*, 2012.

<sup>1624</sup> United Nations General Assembly, *Strengthening and Coordinating United Nations Rule of Law Activities, Report of the Secretary-General*, Seventy-Fifth Session, 3 August 2020.

<sup>1625</sup> J. DUNOFF, *Is Sovereign Equality Obsolete? Understanding Twenty-First Century International Organizations*, in *Netherlands Yearbook of International Law*, 2012, p.121-122.

<sup>1626</sup> J. KUNZ, *The United Nations and the Rule of Law*, in *American Journal of International Law*, 1952.

<sup>1627</sup> R. K. BELTON, *Competing Definitions of the Rule of Law: Implications for Practitioners*, 2005, p. 3.

thereby upholding democratic values and stability within the union. Other organizations, like the World Bank and UN, do not emphasize this conditional approach to membership, highlighting a key difference in the EU's strategy. Both the Commission and other EU organs refrained distinguishing the rule of law from other fundamental values,<sup>1628</sup> failed to establish clear boundaries between it and related concepts such as democracy and human rights and did not offer a precise explanation of how the rule of law supports the functioning of democracy and human rights, especially during the enlargement process. In the significant *Le Verts v. Parliament* case in 1986,<sup>1629</sup> the Court of Justice made a notable reference to the EC as "a community based on the rule of law" for the first time. Analogously, in the current period, the legal and political operating of the Union relies on the hypothesis that all member states commonly abide by to the principles underlined in Article 2 TEU.<sup>1630</sup> The Court of Justice pointed out this reciprocal confidence between member states, highlighting that each member state conveys a shared set of values upon which the EU is founded, as articulated in Article 2 TEU,<sup>1631</sup> which justifies the existence of such trust.<sup>1632</sup>

The definition of rule of law, indicating a significant position during enlargement process, was considered as undefine and vague because of the absence of its constant notion.<sup>1633</sup> The EU recognizes the principle of the rule of law as part of fundamental norm which plays substantial position in the precondition for the admission to the Union.<sup>1634</sup> The diverse backgrounds, traditions, and ideas among member states have led to distinctive interpretations of the rule of law, which is regarded as a foundational principle crucial for the protection of human rights and democracy within the EU.<sup>1635</sup> Adhering to membership conditions fosters self-governing societies, especially aiding former authoritarian states, by promoting

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<sup>1628</sup> N. LEVRAT, *L'état de Droit Est-Il Une Valeur Européenne Dont L'UE Assure La Promotion*, in *Union Des Valeurs*, 2018.

<sup>1629</sup> Judgement of the Court, *Parti Écologiste "Les Verts" v. European Parliament*, Action for Annulment - Information Campaign for the Elections to the European Parliament, Case 294/83, 23 April 1986.

<sup>1630</sup> L. D. SPIEKER, *Breathing Life into the Union's Common Values: On the Judicial Application of Article 2 TEU in the EU Value Crisis*, in *German Law Journal*, 2019.

<sup>1631</sup> L. D. SPIEKER, *Defending Union Values in Judicial Proceedings: On How to Turn Article 2 TEU into a Judicially Applicable Provision*, in *Defending Checks and Balances in EU Member States*, 2021.

<sup>1632</sup> J. SCHOLTES, *Constitutionalising the End of History? Pitfalls of a Non-Regression Principle for Article 2 TEU*, in *European Constitutional Law Review*, 2023.

<sup>1633</sup> D. MINESHIMA, *The Rule of Law and EU Expansion*, in *Liverpool Law Review*, 2002.

<sup>1634</sup> G. LAUTENBACH, *The Concept of the Rule of Law and the European Court of Human Rights*, OUP Oxford, 2013.

<sup>1635</sup> U. VILLANI, *Sul Controllo*, cit.

transparent governance rooted in the rule of law, thereby sustaining democratic values.<sup>1636</sup> Including the rule of law in enlargement documentation aims to stabilize and enhance human rights and democratic standards<sup>1637</sup> within the EU, supported by member state officials advocating for indicators to measure its enforcement. Thence, the EU's intentionally vague founding criterion for the rule of law allowed candidate states to adapt their approaches to improving rule of law and democracy during the accession process.<sup>1638</sup>

The definition, suggested terms, and overarching principle of the rule of law have played a crucial role in the enlargement process, even though its definition remained elusive and ambiguous due to the lack of a consistent understanding.<sup>1639</sup> The EU recognizes the principle of the rule of law<sup>1640</sup> as part of fundamental norm which plays substantial position in the precondition for the admission to the Union.<sup>1641</sup> Diverse interpretations of the rule of law among member states stemmed from variations in behaviors, backgrounds, traditions, and ideas, such as the role of the state and legal systems.<sup>1642</sup> The principle of the rule of law, designated as a 'founding principle' among member states, is recognized as crucial for safeguarding human rights and democracy, particularly aiding candidate countries with authoritarian histories in shaping self-governing civil and political societies.<sup>1643</sup> Besides this, efficient and transparent functioning of a government and its structures based on the principle of the rule of law also stimulated the constant existence of democratic values<sup>1644</sup>. The inclusion of the rule of law in enlargement documentation aimed to provide the EU with a more stable and fair approach to human rights and democratic standards by emphasizing its effective enforcement for democracy improvement. To facilitate this, EU officials insisted on establishing vague<sup>1645</sup> indicators to measure and evaluate the rule of law, allowing candidate

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<sup>1636</sup> European Commission, Communication from the Commission to the European Parliament and the Council, *A New EU Framework to Strengthen the Rule of Law*, Brussels, 11 March 2014.

<sup>1637</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2023 Rule of Law Report*, Brussels, 5 July 2023.

<sup>1638</sup> S. SCHEINGOLD, *Regional Integration: The Rule of Law*, in *The Rule of Law in European Integration: The Path of the Schuman Plan*, in *Quid Pro Books*, 2013.

<sup>1639</sup> D. MINESHIMA, *The Rule of Law*, cit.

<sup>1640</sup> C. BARNARD, S. PEERS, *European Union Law*, cit.

<sup>1641</sup> K. LENAERTS, *New Horizons for the Rule of Law*, cit.

<sup>1642</sup> E. WENNERSTRÖM, *The Rule of Law and the European Union*, 2007.

<sup>1643</sup> B. BAKÓ, *National Democracy vs European Rule of Law? The Lack of Public Demand for the Rule of Law in Hungary*, in *Forum Transregionale Studien*, 2023.

<sup>1644</sup> J. FERREJOHN, P. PASQUINO, *Rule of Democracy and Rule of Law*, in *Democracy and the Rule of Law*, 2003.

<sup>1645</sup> T. BÖRZEL, T. RISSE, *One Size Fits All*, cit.

states to tailor their approaches to meet accession criteria while reflecting their actual situations regarding rule of law and democracy.

The EU organs<sup>1646</sup> have suggested nearly identical approaches to understanding the rule of law, with the European Commission emphasizing enforcement and promotion, the Parliament focusing on independent judiciary and fundamental rights protection, and the Council prioritizing the rule of law's functioning within the Union. Effective and trustworthy public governance in candidate countries was considered crucial for accession, reinforcing both the rule of law and economic and social cohesion.<sup>1647</sup> The Commission's<sup>1648</sup> proposal emphasized EU involvement in advancing and reinforcing the rule of law, democracy, and human rights, focusing on endorsing judicial independence, strengthening justice governance, addressing offender treatment, crime prevention, and promoting organizational and legislative reforms.<sup>1649</sup>

The concept of the rule of law<sup>1650</sup> was frequently<sup>1651</sup> referenced but lacked a precise definition,<sup>1652</sup> leading candidate countries seeking to establish such a system to encounter significant challenges.<sup>1653</sup> The European integration<sup>1654</sup> process has highlighted the crucial connection between the rule of law, good governance, economic development, and the functioning of a market economy, positioning the EU as a community primarily based on the rule of law.<sup>1655</sup> The rule of law dictated equal treatment under law, universal adherence to rules, and accountability for all, emphasizing that no one is above legal scrutiny.<sup>1656</sup> In fact, the President of the ECJ<sup>1657</sup> stated that the rule of law serves as the essential defense against

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<sup>1646</sup> A. FESTA, *L'Unione Europea e L'Erosione dello Stato di Diritto in Polonia*, 2020.

<sup>1647</sup> A. MUNGIU PIPPIDI, *A House of Cards*, cit.

<sup>1648</sup> K. L. SCHEPPELE, *The Treaties Without a Guardian*, cit.

<sup>1649</sup> R. UITZ, *The Perils of Defending the Rule of Law through Dialogue*, in *European Constitutional Law Review*, 2019.

<sup>1650</sup> A. CIRCOLO, *Il Valore Dello Stato di Diritto nell'Unione Europea, Violazioni Sistemiche e Soluzioni di Tutela*, in *Editoriale Scientifica*, 2023.

<sup>1651</sup> L. GOLDSTEIN, C. BAN, *The Rule of Law and the European Human Rights Regime*, 2003.

<sup>1652</sup> L. PECH, *The Rule of Law as an Umbrella Principle with Formal and Substantive Components*, in *A Union Founded on the Rule of Law: Meaning and Reality of the Rule of Law as a Constitutional Principle of EU Law*, in *European Constitutional Law Review*, 2010.

<sup>1653</sup> F. EMMERT, *Rule of Law in Central and Eastern Europe*, cit.

<sup>1654</sup> A. DIRRI, Y. GUERRA, *Il Regolamento Europeo sulla Condizionalità Legata al Rispetto dello Stato di Diritto: Impatto e Criticità Applicative sul Processo di Integrazione Europea*, in *DPCE Online*, 2024.

<sup>1655</sup> E. FRANK, *Rule of Law In Central And Eastern Europe*, in *Fordham International Law Journal*, 2008.

<sup>1656</sup> A. V. DICEY, *The Rule of Law*, in *Introduction to the Study of the Law of the Constitution*, Liberty Classics, 1982.

<sup>1657</sup> L. PECH, *The Rule of Law in the EU*, cit.

arbitrary exercise of authority,<sup>1658</sup> emphasizing the need for legal conflicts to be addressed in accordance with established rules, thereby affirming that neither EU organs nor member states are exempt from EU law.

The principle of the rule of law was clarified through ECJ case law<sup>1659</sup> and Commission instruments,<sup>1660</sup> revealing historical gaps in safeguarding it regarding supranationalism and court independence. The 1986 judgement of the ECJ regarding the rule of law conspicuously and clearly addressed to the ruling where the Community has been defined as ‘a community based on the rule of law’.<sup>1661</sup> The ECJ's<sup>1662</sup> main task is to uphold the rule of law by interpreting and applying EU provisions, establishing it as a fundamental component of the EU legal context. The European Commission<sup>1663</sup> issued clarifications and proposed measures in a 2019 communication<sup>1664</sup> to strengthen and apply the rule of law, ensuring adherence to legal limits, democratic values, and fundamental rights under the supervision of independent courts. The principle of the rule of law<sup>1665</sup> encompassed standards like legality, transparency, accountability, democracy, prevention of executive power abuse, efficient judicial promotion, judicial review, separation of powers, and equality before the law.<sup>1666</sup> Additionally, linguistic considerations<sup>1667</sup> must be taken into account, with variations in translation across

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<sup>1658</sup> J. BRAUCH, *The Margin of Appreciation and the Jurisprudence of the European Court of Human Rights: Threat to the Rule of Law*, in *Columbia Journal of European Law*, 2004.

<sup>1659</sup> A. ROSAS, *The Rule of Law and Judicial Independence: Recent EU Developments and Case Law of the European Court of Justice*, in *Der Schutz des Individuums durch das Recht: Festschrift für Rainer Hofmann zum Geburtstag*, Berlin, Heidelberg, 2023.

<sup>1660</sup> V. CARLINO, *Lo Stato di Diritto in Lussemburgo Attraverso la Lente della Commissione Europea*, in *Collana di Studi di Consulta Online*, 2023.

<sup>1661</sup> D. KELEMEN, *Is Differentiation Possible in Rule of Law Comparative European Politics?*, 2019.

<sup>1662</sup> U. VILLANI, *Sul Controllo*, cit.

<sup>1663</sup> Communication from the Commission to the European Parliament, the European Council and the Council, *Further Strengthening the Rule of Law within the Union, State of Play and Possible Next Steps*, Brussels, 3.4.2019.

<sup>1664</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, and the Council, *Further Strengthening the Rule of Law within the Union: State of Play and Possible Next Steps*, Brussels, 3 April 2019.

<sup>1665</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Strengthening the Rule of Law within the Union: A Blueprint for Action*, Brussels, 17 July 2019.

<sup>1666</sup> V. ADAMIDIS, *Democracy, Populism, and the Rule of Law: A Reconsideration of Their Interconnectedness*, in *Politics*, 2021.

<sup>1667</sup> Y. SHARANDIN, D. KRAVCHENKO, *Rule of Law, Legal State and Other International Legal Doctrines: Linguistic Aspects of Their Convergence and Differentiation*, in *The Legal Doctrines of the Rule of Law and the Legal State (Rechtsstaat)*, 2014.

languages,<sup>1668</sup> such as the French translation of ‘the rule of law’ as ‘without being exhaustive’.<sup>1669</sup>

Almost identical approaches have been suggested by the EU organs with regard to the real term of the rule of law which helps to comprehend the major position of this principle in the EU system.<sup>1670</sup> The European Commission<sup>1671</sup> prioritized enforcing and promoting the rule of law<sup>1672</sup> within candidate states, emphasizing the importance of support from relevant political structures. Similarly, the European Parliament emphasized the rule of law's role in ensuring an independent judiciary,<sup>1673</sup> protecting citizens' rights, and maintaining transparent public management, essential for accession and promoting economic and social cohesion in candidate countries. Meanwhile, the Council<sup>1674</sup> focused on ensuring the rule of law's effectiveness within the Union and has adopted proposals to advance democracy, human rights, and rule of law principles, emphasizing EU involvement in underpinning necessary improvements.

The complex nature and definition of the rule of law illustrated by the European Commission highlighted its significance across key areas of EU identity and operations during European integration.<sup>1675</sup> First of all, it embodied a cornerstone principle<sup>1676</sup> underpinning the very foundation of the Union and is esteemed as a collectively shared heritage among all EU states. Secondly, it acted as a paramount condition for guaranteeing confidence and fostering the smooth running of the internal market and the domain of freedom, security, and justice.<sup>1677</sup> Thirdly, the rule of law principle operated as an essential qualification for countries aspiring to

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<sup>1668</sup> Council of Europe, *Statute*, cit.

<sup>1669</sup> P. LEA LANÇOS, *The Challenges Posed by Multilingual EU Law*, 2017.

<sup>1670</sup> D. HODSON, *The Institutions of the European Union*, Oxford, 2022.

<sup>1671</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, 2020 Rule of Law Report: *The Rule of Law Situation in the European Union*, Brussels, 30 September 2020.

<sup>1672</sup> D. KOCHENOV, *Elephants in the Room: The European Commission's 2019 Communication on the Rule of Law*, in *Hague Journal on the Rule of Law*, 2019.

<sup>1673</sup> European Parliament, Briefing: *Protecting the Rule of Law in the EU Existing Mechanisms and Possible Improvements*, November 2019.

<sup>1674</sup> The Council of the European Union, *EU Strategic Framework and Action Plan on Human Rights and Democracy*, 11855/12, Luxembourg, 25 June 2012.

<sup>1675</sup> F. MAURI, *The Contribution of the Venice Commission to the Strengthening of the Rule of Law in Europe*, 2021.

<sup>1676</sup> J. MOLINIER, *Les Principes Fondateurs de l'Union Européenne*, in PUF, Paris, 2005.

<sup>1677</sup> L. MARIN, *Policing the EU's External Borders: A Challenge for the Rule of Law and Fundamental Rights in the Area of Freedom, Security and Justice? An Analysis of Frontex Joint Operations at the Southern Maritime Border*, 2014.

become an EU member.<sup>1678</sup> Finally, it held a principal position in the Union's external relations,<sup>1679</sup> reaffirming its identity as an international player committed to consolidating a liberal international order. Moreover, eight key elements, including a clear legal hierarchy, effective state institutions, equal application of the law, combating illegality and corruption, protecting fundamental rights, civilian control over security forces, an independent judiciary, and fair access to justice, are identified as cornerstones of a just and well-governed society, reflecting a robust and democratic understanding of the rule of law concept.<sup>1680</sup>

#### 4. Enhancing Rule of Law Enforcement in the European Integration

During the EU pre-accession phase, efforts to bolster the rule of law in aspiring states focused on multiple components, with improvements seen in substantive legality<sup>1681</sup> and judicial capacity<sup>1682</sup> but challenges remaining in formal legality and judicial impartiality,<sup>1683</sup> alongside dilemmas regarding reform ownership and balancing change with stability.<sup>1684</sup> The EU struggles with enforcing rule of law conditionality,<sup>1685</sup> backing reformist agents despite undemocratic traits and granting reform control to self-interested national elites. In Eastern Partnership countries,<sup>1686</sup> pro-European oligarchs, pro-Western authoritarian leaders,<sup>1687</sup> or reformist politicians from emerging groups may be reinforced and underpinned. EU-backed reformists in countries with poor rule of law may lack the motivation and skills for unbiased

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<sup>1678</sup> D. BERNABÉ MELO, *La Protección del Estado de Derecho en la Unión Europea*, 2022.

<sup>1679</sup> J. WOUTERS, D. COPPENS, B. DE MEESTER, *The European Union's External Relations after the Lisbon Treaty*, The Lisbon Treaty, Vienna, 2008.

<sup>1680</sup> A. MAGEN, *Cracks in the Foundations: Understanding the Great Rule of Law Debate in the EU*, in *Journal of Common Market Studies*, 2016.

<sup>1681</sup> L. LOUWERSE, *Mind the Gap: Issues of Legality in the EU's Conceptualisation of the Rule of Law in its Enlargement Policy*, in *Croatian Yearbook of European Law & Policy*, 2019.

<sup>1682</sup> M. MENDELSKI, *EU-Driven Judicial Reforms in Romania: A Success Story?*, in *East European Politics*, 2012.

<sup>1683</sup> M. MENDELSKI, *The EU's Pathological Power*, cit.

<sup>1684</sup> M. MENDELSKI, *The EU's Rule of Law Promotion*, cit.

<sup>1685</sup> R. MAVROULI, A. VAN WAEYENBERGE, *EU Responses*, cit.

<sup>1686</sup> D. DEVRIM, E. SCHULZ, *The Eastern Partnership: An Interim Step towards Enlargement?*, in *Elcano Newsletter*, 2009.

<sup>1687</sup> M. MCHEDLISHVILI, WILSON, M. PETROVIC, *Jean Monnet Chair Dr Milenko Petrovic, Policy Briefs Series: Developments in South-Eastern Europe and the Eastern Partnership Countries, (Socio-Political Conditions and Developments)*, 2019.

reforms, leading to cycles of ineffective changes, underscoring the need for monitoring to prevent misuse by untrustworthy pro-EU elites.<sup>1688</sup>

To address the dilemma of ineffective reforms and exploitation of the rule of law, the EU should prioritize awarding elites in post-Soviet<sup>1689</sup> and Western Balkan countries who implement unbiased and comprehensive reform methodologies. Rather than granting ‘honeymoon periods,’<sup>1690</sup> the EU should give precedence to neutrality and comprehensive reform approaches, focusing on qualitative reform processes to ensure legal and judicial quality, stability, and fairness. Its conditionality<sup>1691</sup> methodology should align with a neutral and qualitative model, evaluating rule of law components and reform processes to promote more sustainable progress. Establishing constitutional democracy within the rule of law framework is challenging due to fragile institutions and reformers' tendency to impose Western models without considering local needs.<sup>1692</sup> Improving existing rule of law structures through context-specific reforms is essential for addressing the decline in democracy, as effective governance institutions are crucial for democracy.<sup>1693</sup>

The significance of the rule of law in the EU's legal framework is crucial, as seen in the 1986 *Les Verts* case<sup>1694</sup> where it applied the rule of law as a fundamental constitutional principle to address deficiencies in the legal defense mechanism.<sup>1695</sup> Such purpose-driven approach of the ECJ, aimed at upholding the rule of law while balancing EU values and legal constraints, has been pivotal in fostering European integration.<sup>1696</sup> A particular emphasis of the rule of law in the enlargement policy towards CEE countries steered the foundation of far-

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<sup>1688</sup> M. MENDELSKI, *The Limits of the European Union's Transformative Power: Pathologies of Europeanization and Rule of Law Reform in Central and Eastern Europe*, 2014.

<sup>1689</sup> T. ENACHE, *Democrazia e Sviluppo nello Spazio Post-Sovietico: Il Caso della Repubblica di Moldova*, 2021.

<sup>1690</sup> C. STRATULAT, *For Better, for Worse: The European Union Takes Croatia as its 28th Member*, in *European Policy Centre*, 2013.

<sup>1691</sup> S. RICHTER, N. WUNSCH, *Money, Power, Glory*, cit.

<sup>1692</sup> B. BUGARIC, *The Rule of Law Derailed: Lessons from the Post-Communist World*, in *Hague Journal on the Rule of Law*, 2015.

<sup>1693</sup> F. FUKUYAMA, *Democracy's Past and Future: Transitions to the Rule of Law*, in *Journal of Democracy*, 2010.

<sup>1694</sup> A. ALEMANNNO, *What Has Been, and What Could Be Thirty Years After Les Verts/European Parliament: Individual Access to EU Justice*, in *The Past and Future of EU Law-The Classics of EU Law Revisited on the 50th Anniversary of the Rome Treaty*, 2010.

<sup>1695</sup> N. FENNELLY, *Legal Interpretation at the European Court of Justice*, in *Fordham International Law Journal*, 1996.

<sup>1696</sup> K. LENAERTS, J. A. GUTIÉRREZ-FONS, *To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice*, in *Columbia Journal of European Law*, 2013.



reaching and complicated pre-accession process.<sup>1697</sup> Concerns arose regarding candidate states potentially deviating from commitments to liberal democracy and the rule of law upon accession to the EU, despite these principles being foundational doctrines within EU instruments.<sup>1698</sup> The response to this challenge is post enlargement tool, which is Article 7 TEU,<sup>1699</sup> considered as a precautionary action, sanctioning member states which infringe the fundamental norms<sup>1700</sup> of the EU.<sup>1701</sup>

As it appears, the Treaty of Lisbon strengthened the constitutional importance of the rule of law in the framework of the EU legal system.<sup>1702</sup> In the first place, Article 2 TEU<sup>1703</sup> includes the rule of law as one of the EU's core values, together with pluralism, equal treatment, tolerance, justice, solidarity, and gender equality. Sources of the rule of law are placed in the preambles of the EU Treaty and the CFR<sup>1704</sup> are relevant for candidate states during the accession process. As a second point, Lisbon Accord<sup>1705</sup> gave weight to upgrading and upholding such values as a principal purpose of the EU together with establishment of the domains of the freedom, security, justice, internal market, and economic union.

The Court's pivotal role in EU integration and the advancement towards a 'Europe des juges' underscores a commitment to the rule of law,<sup>1706</sup> despite occasional controversies over its expansive jurisdiction and strict textual interpretations of Treaty provisions.<sup>1707</sup> For the ECJ to fulfill its constitutional mission within an independent EU judiciary prioritizing the rule of

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<sup>1697</sup> A. ALBI, *Ironies in Human Rights Protection in the EU: Pre-Accession Conditionality and Post-Accession Conundrums*, in *European Law Journal*, 2009, p. 46-48.

<sup>1698</sup> M. VLAJKOVIĆ, *Rule of Law–EU's Common Constitutional "Denominator" and a Crucial Membership Condition on the Changed and Evolutionary Role of the Rule of Law Value in the EU Context*, in *EU and Comparative Law Issues and Challenges Series*, 2020.

<sup>1699</sup> D. KOCHENOV, *Article 7 TEU of the Oxford Commentary*, 2023.

<sup>1700</sup> L. PECH, J. JARACZEWSKI, *Systemic Threat to the Rule of Law in Poland: Updated and New Article 7(1) TEU Recommendations*, 2023.

<sup>1701</sup> A. BAR CENDÓN, *La Unión Europea como Unión de Valores y Derechos: Teoría y Realidad*, in *The European Union as a Union of Fundamental Values and Rights: Theory and Reality*, 2014.

<sup>1702</sup> E. PERILLO, *Le Decisioni Collettive*, cit.

<sup>1703</sup> M. KLAMERT, D. KOCHENOV, *Article 2 TEU*, cit.

<sup>1704</sup> D. TRIANTAFYLLOU, *The European Charter of Fundamental Rights and the "Rule of Law": Restricting Fundamental Rights by Reference*, in *Common Market Law Review*, 2002.

<sup>1705</sup> I. NEDELCO, P.-I. NEDELCO, *The Dimensions of the Rule of Law According to the Constitutive Acts of the EU and the Lisbon Treaty Regulations of the Rule of Law in European Documents*, in *Perspectives of Law and Public Administration*, 2022.

<sup>1706</sup> S. PLATON, *Les Fonctions du Standard de L'État de Droit en Droit de l'Union Européenne*, in *Revue Trimestrielle de Droit Européen*, 2019.

<sup>1707</sup> P. VAN ELSUWEGE, F. GREMMELPREZ, *Protecting the Rule of Law in the EU Legal Order: A Constitutional Role for the Court of Justice*, in *European Constitutional Law Review*, 2020.

law, adopting the approach guided by pivotal rulings like Van Gend and Loos and Les Verts<sup>1708</sup> is the most viable methodology. It has notably acknowledged the EU as "a union based on the rule of law,"<sup>1709</sup> highlighting the importance of EU Treaty as its constitutional document. Accordingly, the ECJ plays a crucial role in upholding the rule of law within the EU, thereby fostering the advancement of a protective legal order that benefits the European legal system.<sup>1710</sup>

The EU's core principle of "integration through the rule of law",<sup>1711</sup> underlines the importance of adhering to established standards by both EU institutions, its member states and candidate states. This concept underscores the pivotal role of an independent judiciary<sup>1712</sup> in upholding accountability, legality, and European integration through robust standards and safeguarding judicial autonomy. The European integration process relies heavily on the rule of law and autonomous judicial bodies, which have been crucial in shaping the EU's framework for judicial safeguarding.<sup>1713</sup> The ECJ's plan to bolster judicial independence<sup>1714</sup> in member states underscores the rule of law's crucial role in protecting democratic values and EU unity, vital for an ever-closer Union safeguarding individual freedoms.<sup>1715</sup> European integration evolves by balancing national procedural autonomy with equivalence and effectiveness standards, with the ECJ prioritizing productive remedies proposed by national courts over safeguarding domestic courts' independence.<sup>1716</sup> The ECJ's recent examination of "judicial independence"<sup>1717</sup> highlighted the need to safeguard both national court autonomy and the rule of law within the EU to maintain the integrity of its legal framework.<sup>1718</sup> The principle of

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<sup>1708</sup> G. PALOMBELLA, *Beyond Legality-Before Democracy: Rule of Law Caveats in the EU Two Level Systems*, 2016.

<sup>1709</sup> H. R. TASEV, M. A. STEPANOSKA, L. OGNJANOSKA, *Union Based on the Rule of Law: The Court of Justice of the European Union and the (Future of) European Integration*, in *Eastern Journal of European Studies*, 2020.

<sup>1710</sup> L. PECH, *The Rule of Law*, cit.

<sup>1711</sup> A. DÍAZ, *El Proceso de Integración Europea y su Vinculación con el Estado de Derecho y la Democracia*, Buenos Aires, July 2019.

<sup>1712</sup> M. M. BOŠKOVIĆ, *Role of Court of Justice*, cit.

<sup>1713</sup> J. DÍAZ LAFUENTE, *Europa Ante la Amenazas Contra el Estado de Derecho: Análisis de los Mecanismos Judiciales, Convencionales y Políticos para su Protección*, 2021.

<sup>1714</sup> E. CECCHERINI, *L'Indipendenza del Potere Giudiziario Come Elemento Essenziale dello Stato di Diritto*, in *DPCE Online*, 2019.

<sup>1715</sup> K. LENAERTS, *New Horizons for the Rule of Law*, cit.

<sup>1716</sup> M. DOUGAN, *National Remedies before the Court of Justice: Issues of Harmonisation and Differentiation*, 2004.

<sup>1717</sup> E. CECCHERINI, *L'Indipendenza del Potere Giudiziario*, cit.

<sup>1718</sup> M. PARODI, *Il Controllo della Corte di Giustizia sul Rispetto del Principio dello Stato di Diritto da Parte degli Stati Membri: Alcune Riflessioni in Margine alla Sentenza Associação Sindical dos Juizes Portugueses*, in *European Papers-A Journal on Law and Integration*, 2018.

judicial independence,<sup>1719</sup> firmly grounded in the constitutional customs embraced by the member states and organizing a key component of democratic governance, was unquestioned and indisputable. It was anticipated that national governments would protect and respect such principle, refraining any actions that may jeopardize it.<sup>1720</sup> Thus, The ECJ's rulings showcase the EU's dedication to the rule of law and common values, delivering tangible benefits to citizens and promoting European integration through increased visibility.<sup>1721</sup>

The notion of the rule of law and its significance in the EU framework can be identified through multiple judicial and treaty instruments across the decades.<sup>1722</sup> In the initial stages, the 1951 ECSC Treaty established the ECJ<sup>1723</sup> with the function of ensuring the observance of the law in the interpretation and application of the Treaty. Further treaties,<sup>1724</sup> including the 1957 EEC Treaty, the 1992 Maastricht Treaty, and the 1997 Amsterdam Treaty, additionally underlined the rule of law as a basic component of European identity<sup>1725</sup> and a shared standard of the EU.<sup>1726</sup> Over the years, numerous procedures were presented to strengthen the rule of law, such as the classification of the Copenhagen criteria in 1993,<sup>1727</sup> the incorporation of preventive efforts in the 2001 Nice Treaty,<sup>1728</sup> and the foundation of particular supervising mechanisms<sup>1729</sup> for some member states, as observed in 2007. Significantly, the Treaty of Lisbon in 2007 amended and reinforced the legal structure related to the rule of law.<sup>1730</sup> It

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<sup>1719</sup> C. GUARNIERI, D. PIANA, *Judicial Independence and the Rule of Law: Exploring the European Experience*, in *The Culture of Judicial Independence*, in Brill Nijhoff, 2012.

<sup>1720</sup> J. GUTMANN, S. VOIGT, *Judicial Independence*, cit.

<sup>1721</sup> T. VON DANWITZ, *Values and the Rule of Law: Foundations of the European Union-An Inside Perspective from the ECJ*, in *Potchefstroom Electronic Law Journal*, 2018.

<sup>1722</sup> M. KELLERBAUER, M. KLAMERT, J. TOMKIN, *The EU Treaties*, cit.

<sup>1723</sup> M. RASMUSSEN, *The Origins of a Legal*, cit.

<sup>1724</sup> A. PISANÒ, *L'Europa della Partecipazione e dei Diritti*, in *We the Young People of Europe*, 2017.

<sup>1725</sup> U. TEKINER, *The 'European (Union) Identity': An Overview*, in *E-International Relations*, 2020.

<sup>1726</sup> R. COMAN, C. LECONTE, *Contesting EU Authority in the Name of European Identity: The New Clothes of the Sovereignty Discourse in Central Europe*, in *Journal of European Integration*, 2019.

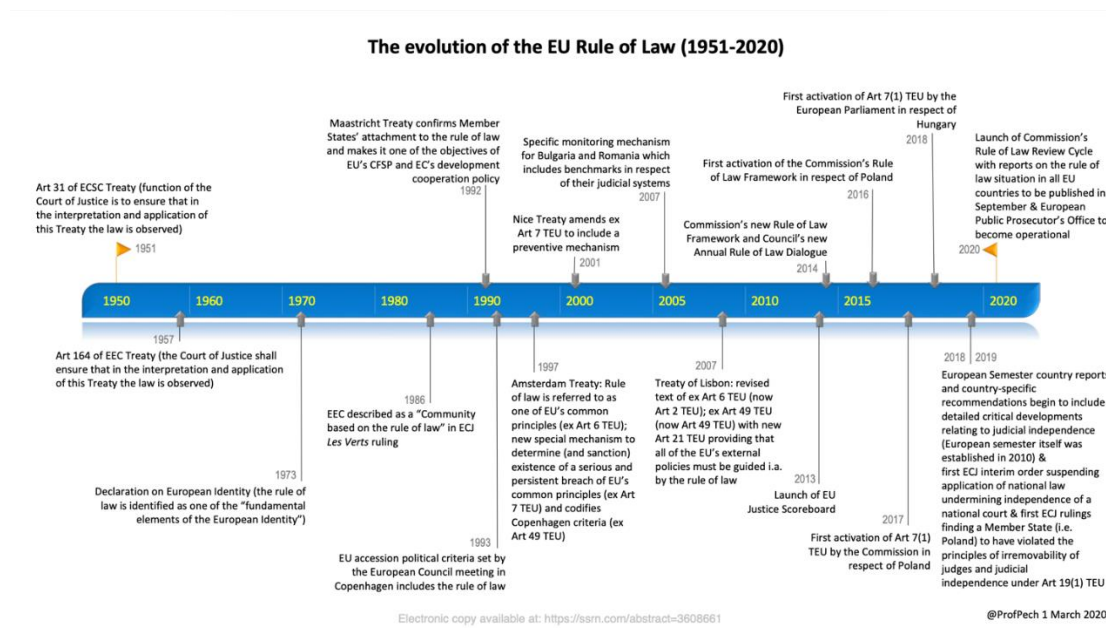
<sup>1727</sup> P. BILANCIA, *Lo Stato di Diritto Come Valore in una Dimensione 'Spaziale'*, in *Studi in Onore di Claudio Rossano, Jovene*, 2013.

<sup>1728</sup> M. T. ANDENÆS, J. USHER, *The Treaty of Nice and Beyond: Enlargement and Constitutional Reform*, in *Hart Publishing*, 2003.

<sup>1729</sup> C. CLOSA, D. KOCHENOV, *Reinforcing Rule of Law*, cit.

<sup>1730</sup> S. RIPO, *Unión Europea y Fortalecimiento y Defensa del Estado de Derecho*, in *Anuario Español de Derecho Internacional*, 2018.

validated<sup>1731</sup> the rule of law principle<sup>1732</sup> as a leading standard for all EU foreign policies and brought innovative provisions in Articles 2, 7, and 21 TEU to uphold the rule of law.<sup>1733</sup>



**Figure 1. Evolution of EU Rule of Law<sup>1734</sup> in the EU**

The rule of law in the EU Treaty context underwent a gradual establishment, with a significant milestone in 1986 when the Court of Justice recognized the EU as "a community grounded on the rule of law".<sup>1735</sup> Since 1992, the EU's founding Treaties increasingly emphasized the importance of the rule of law.<sup>1736</sup> Over the time of enlargement rounds, the EU's rule of law toolbox has evolved to address its growing significance and the threat of erosion within the EU.<sup>1737</sup> Article 2 TEU<sup>1738</sup> serves as a cornerstone provision underlining fundamental rule of law principles within the EU, facilitating legal recourse against EU law

<sup>1731</sup> J. M. M. SIERRA, *De Iure y De Facto: Las Dos Caras del Consejo Europeo tras Lisboa*, in *Revista de Derecho Comunitario Europeo*, 2022.

<sup>1732</sup> T. F. SANJUÁN, *La Configuración del Estado de Derecho en la Unión Europea*, in *Pliegos de Yuste: Revista de Cultura y Pensamiento Europeos*, 2022.

<sup>1733</sup> F. F. MORILLO, *El Estado de Derecho en la Unión Europea: Situación, el Estado de la Unión Europea*, 2022.

<sup>1734</sup> L. PECH, *The Rule of Law in the EU*, cit, p. 34.

<sup>1735</sup> L. HERTOOG, *The Rule of Law*, cit.

<sup>1736</sup> D. A. L. VILLANUEVA, *El Surgimiento de un Nuevo Modelo Político e Ideológico (Nacionalismo) Ante la Crisis del Estado de Derecho en la Unión Europea*, 2018.

<sup>1737</sup> M. SMITH, *Staring into the Abyss: A Crisis of the Rule of Law in the EU*, in *European Law Journal*, 2019.

<sup>1738</sup> L. S. ROSSI, *Il Valore Giuridico dei Valori, L'articolo 2 TEU: Relazioni con Altre Disposizioni del Diritto Primario dell'UE e Rimedi Giurisdizionali*, in *Federalismi, Rivista di Diritto di Pubblico Italiano, Comparato, Europeo*, 2020.

enforcement actions. This provision<sup>1739</sup> underscores the significance of elements like legality, legal certainty, separation of powers, effective judicial protection, and equality before the law,<sup>1740</sup> which are required from candidate states during accession process.

The European Commission has acknowledged criticism and challenges<sup>1741</sup> to the rule of law and has introduced various measures and tools, such as the "Rule of Law Review Cycle"<sup>1742</sup> initiated in 2020, to strengthen the EU's commitment to the principle of the rule of law. Leveraging Center for Judicial Cooperation (CJC) database case law,<sup>1743</sup> the report highlighted critical issues in judicial independence, impartiality, accountability, mutual trust,<sup>1744</sup> and the rule of law to raise awareness and provide insights aimed at fortifying the rule of law in Europe.<sup>1745</sup> Prompt and decisive action by the EU to address these issues is crucial to safeguarding the rule of law and preserving the integrity of the European project.<sup>1746</sup> Throughout the EU expansion, the ECJ has consistently expanded its authority with each new treaty, reinforcing its position as a key institution for upholding the rule of law in the EU.<sup>1747</sup> The EU's judicial branch, initially envisioned as a single Court of Justice under the ECSC Treaty, was established to ensure that the European Communities operate under the principles of the rule of law.<sup>1748</sup> After the inclusion of new member states to the Union, it has evolved into two separate courts, the Court of Justice and the General Court,<sup>1749</sup> both dedicated to

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<sup>1739</sup> G. ÍÑIGUEZ, *El Estado de Derecho*, cit.

<sup>1740</sup> C. RIZCALLAH, V. DAVIO, *The Requirement That Tribunals Be Established by Law: A Valuable Principle Safeguarding the Rule of Law and the Separation of Powers in a Context of Trust*, in *European Constitutional Law Review*, 2021.

<sup>1741</sup> C. C. CARLO, *La Commissione Europea Dinanzi alla Crisi Costituzionale Polacca: Considerazioni sulla Tutela dello Stato di Diritto nell'Unione*, 2016.

<sup>1742</sup> Á. B. GÁT, *Analysing the New Rule of Law Mechanism of the European Commission: Origins, Contexts and Questions about the First Annual Rule of Law Report*, in *Jogelméleti Szemle*, 2020.

<sup>1743</sup> K. PODSTAWA, *Trust, Independence, Impartiality and Accountability of Judges*, European University Institute, 2023.

<sup>1744</sup> W. SADOWSKI, *The Rule of Law and the Roll of the Dice: The Uncertain Future of Investor-State Arbitration in the EU*, in *Defending Checks and Balances in EU Member States, Taking Stock of Europe's Actions*, 2021, p. 333-358.

<sup>1745</sup> F. CASAROSA, M. MORARU, *Triial National Reports Belgium, Hungary, Italy, Poland, Portugal, Romania, Slovenia, Spain, The Netherlands*, in *Robert Schuman Centre for Advanced Studies Research Paper*, 2022.

<sup>1746</sup> L. PECH, D. KOCHENOV, *Strengthening the Rule of Law*, cit.

<sup>1747</sup> F. JACOBS, *The Sovereignty of Law: The European Way*, Vol. 58, Cambridge University Press, 2007, p. 35-37.

<sup>1748</sup> M. LAGRANGE, *The Role of the Court of Justice of the European Communities as Seen through Its Case Law*, in *Law and Contemporary Problems*, 1961.

<sup>1749</sup> M. BOBEK, *The Court of Justice of the European Union*, in *The Oxford Handbook of EU Law*, Oxford University Press, Oxford, 2015.

upholding the rule of law by promoting the observance of treaties in their interpretation and application.<sup>1750</sup>

Two specific chapters within the EU's accession process require adherence to fundamental elements of the rule of law.<sup>1751</sup> The process engages talks on multiple policy domains about rule of law through the Chapter 23 titled 'Judiciary and fundamental rights'<sup>1752</sup> and Chapter 24 titled 'Justice, freedom and security'.<sup>1753</sup> These instruments,<sup>1754</sup> crucial in the EU enlargement process, lack clear and comprehensive descriptions of the nature of the rule of law, thereby presenting a significant obstacle to addressing inherent shortcomings. The EU frequently counts on non-EU norms, namely, recommendations from the Council of Europe, owing to its restricted authority to enact standardized legislation.<sup>1755</sup> In recent years, the recognition of new threats to the rule of law within certain member states has grown significantly, prompting a sense of urgency for dedicated attention to this issue.<sup>1756</sup>

The evolution of the rule of law within the EU<sup>1757</sup> not only underscored its significance in internal governance but also played a pivotal role in the enlargement process,<sup>1758</sup> ensuring that aspiring member states adhere to democratic principles and fundamental rights.<sup>1759</sup> As the EU continued to welcome new member states,<sup>1760</sup> the robust enforcement of the rule of law became increasingly crucial,<sup>1761</sup> serving as a foundational pillar for the cohesion and stability of the Union.<sup>1762</sup> Moreover, the effective functioning of EU institutions relied heavily on the

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<sup>1750</sup> A. ARNULL, *The European Union and Its Court of Justice*, 2006.

<sup>1751</sup> I. MORINA, *Opening of the Chapter 23-24 in the Process of Negotiation with the European Union: Corruption in the Republic of North Macedonia*, in *Justicia—International Journal of Legal Sciences*, 2019.

<sup>1752</sup> A. DEANOSKA TRENDABILOVA, *Judiciary and Fundamental Rights, Chapter 23*, 2019.

<sup>1753</sup> W. NOZAR, *The 100% Union, The Rise of Chapters 23 and 24, EU Enlargement*, 2012.

<sup>1754</sup> M. M. BOSKOVIC, M. KOLAKOVIC BOJOVIC, *New Approach to the EU Enlargement Process-Whether COVID-19 Affected Chapter 23 Requirements?*, in *Eclic*, 2022.

<sup>1755</sup> L. PECH, *The EU as a Global Rule of Law Promoter: The Consistency and Effectiveness Challenges*, in *Asia Europe Journal*, 2016.

<sup>1756</sup> G. DE BÚRCA, *The Road Not Taken: The European Union as a Global Human Rights Actor*, in *American Journal of International Law*, 2011.

<sup>1757</sup> P. CRAIG, G. DE BÚRCA, *The Evolution*, cit.

<sup>1758</sup> P. MARTÍN RODRÍGUEZ, *El Estado de Derecho*, cit.

<sup>1759</sup> V. NAUMOVSKI, M. APOSTOLOVSKA STEPANOSKA, L. OGNJANOVSKA, *The Rule of Law in the Context of the European Union's Western Balkans Enlargement Policy*, in *Political Thought*, 2020.

<sup>1760</sup> Y. M. CITINO, *L'Unione Europea nelle Costituzioni Nazionali: Alcune Recenti Tendenze*, in *Gruppo di Pisa*, 2024.

<sup>1761</sup> Y. N. H. YENKONG, *Reflecting on the Rule of Law Contestations Narratives in the World Trading System*, in *Journal of International Dispute Settlement*, 2024.

<sup>1762</sup> B. GUTAN, *Are Rights of Judges Becoming Rule of Law Standards in Europe?*, in *Max Planck Institute for Comparative Public Law & International Law*, 2024.

rule of law,<sup>1763</sup> fostering trust<sup>1764</sup> among member states and promoting cooperation in addressing common challenges. As the EU charts its course into the future,<sup>1765</sup> a steadfast dedication to upholding the rule of law remains paramount for safeguarding its integrity<sup>1766</sup> and bolstering its credibility.<sup>1767</sup> This imperative not only reinforces the Union's foundational principles but also serves as a guiding beacon in shaping the terms of accession for potential member states, emphasizing the importance of adherence to its fundamental values.<sup>1768</sup> Today, effectively navigating the complexities of differentiated integration within the enlargement process necessitates safeguarding core values<sup>1769</sup> like the rule of law to prevent inefficiencies and ensure effective functioning.<sup>1770</sup>

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<sup>1763</sup> J. GROGAN, *The Limited Role of the European Union in the Management and Governance of the COVID-19 Pandemic*, in *International Organizations Law Review*, 2021.

<sup>1764</sup> D. KOCHENOV, P. BÁRD, *The Last Soldier Standing? Courts Versus Politicians and the Rule of Law Crisis in the New Member States of the EU*, in *European Yearbook of Constitutional Law 2019: Judicial Power: Safeguards and Limits in a Democratic Society*, 2020.

<sup>1765</sup> D. KELEMEN, *Will the European Union Escape Its Autocracy Trap?*, in *Journal of European Public Policy*, 2024.

<sup>1766</sup> C. DEMMKE, J. AUTIONIEMI, F. LENNER, *Explaining the Popularity of Integrity Policies in Times of Critical Governance, The Case of Conflicts of Interest Policies for Ministers in the EU-Member States*, in *Public Integrity*, 2023.

<sup>1767</sup> C. D. SOYALTIN COLELLA, *The EU Accession Process, Chinese Finance and Rising Corruption in Western Balkan Stabilitocracies: Serbia and Montenegro*, in *Europe-Asia Studies*, 2023.

<sup>1768</sup> H. LELIEVELDT, S. PRINCEN, *The Politics of the European Union*, cit.

<sup>1769</sup> L. HALMAN, N. NEVITTE, *Political Value Change in Western Democracies: Integration, Values, Identification, and Participation*, Brill, 2024, pp. 15-32.

<sup>1770</sup> F. BIERMANN, *The Differentiation Paradox of European Integration: Why Going It Alone Produces Suboptimal Results*, in *Journal of Common Market Studies*, 2023.

# CHAPTER 5: THE RULE OF LAW AND THE PROGRESS IN THE WESTERN BALKANS

## 1. Background and Context

The EU's commitment to the rule of law stands as a pivotal aspect<sup>1771</sup> of its identity<sup>1772</sup> and integration process,<sup>1773</sup> particularly evident in its engagement with the Western Balkans.<sup>1774</sup> The EU emphasizes the promotion<sup>1775</sup> of the rule of law within its member states<sup>1776</sup> while simultaneously advocating for compliance in candidate countries.<sup>1777</sup> This entails addressing challenges such as political interference in the judiciary, corruption, media restrictions and discrimination against minority communities.<sup>1778</sup> Western Balkan states seeking EU accession<sup>1779</sup> must prioritize rule of law, combat corruption, and ensure judicial independence<sup>1780</sup> to meet accession criteria aligned with EU values. Despite facing unique challenges,<sup>1781</sup> fostering democratic principles<sup>1782</sup> and upholding the rule of law remain paramount<sup>1783</sup> for both the EU and the Western Balkans to ensure stability, prosperity, and security<sup>1784</sup> in the region.<sup>1785</sup>

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<sup>1771</sup> F. WEBER, *The Identity of Union Law in Primacy, Piercing Through Euro Box Promotion and Others*, in *European Papers - A Journal on Law and Integration*, 2022.

<sup>1772</sup> R. COMAN, C. LECONTE, *Contesting*, cit.

<sup>1773</sup> T. BOKOVÁ, *Exploring the Concept of Essential State Functions on the Basis of the CJEU's Decision on the Temporary Relocation Mechanism*, in *European Papers - A Journal on Law and Integration*, 2022.

<sup>1774</sup> L. OGNJANOSKA, *Reinforcing the EU Enlargement Policy towards Western Balkans, Access to the Single Market as a Credible Goal*, in *European Papers*, 2022.

<sup>1775</sup> M. BONELLI, M. CLAES, B. DE WITTE, K. PODSTAWA, *Usual and Unusual Suspects, New Actors, Roles and Mechanisms to Protect EU Values*, in *European Papers - A Journal on Law and Integration*, 2022.

<sup>1776</sup> S. BARONCELLI, *Introduction to the Special Section*, cit.

<sup>1777</sup> S. R. ZENELAJ, D. KURTI, *Dynamics of Regionalism in the Western Balkans, A Quest for Regional Identity*, in *International Relations & European Studies*, 2023.

<sup>1778</sup> T. CONZELMANN, *Peer Reviewing the Rule of Law? A New Mechanism to Safeguard EU Values*, in *European Papers - A Journal on Law and Integration*, 2022.

<sup>1779</sup> H. YAZGAN, *Coming to Terms with the Past: Case of Albania in the European Union Process*, in *Balkan Araştırma Enstitüsü Dergisi-Trakya Üniversitesi*, 2023.

<sup>1780</sup> J. BORNEMANN, *Judicial Responses to Autocratic Legalism, The European Court of Justice in a Cleft Stick?*, in *European Papers - A Journal on Law and Integration*, 2022.

<sup>1781</sup> T. DOKOS, *Conclusion, The EU and the Western Balkans as a Single Security Space, Resilience in the Western Balkans*, 2017.

<sup>1782</sup> I. STAUDINGER, *The Rise and Fall*, cit.

<sup>1783</sup> M. FISICARO, *Beyond the Rule of Law Conditionality, Exploiting the EU Spending Power to Foster the Union's Values*, in *European Papers - A Journal on Law and Integration*, 2022.

<sup>1784</sup> T. RUSSO, A. ORIOLO, G. DALIA, *Solidarity and Rule of Law, The New Dimension of EU Security*, 2023.

<sup>1785</sup> T. GERGINOVA, *Maintaining Global Peace and Security*, in *Horizons-International Scientific Journal*, 2023.



The integration of the Western Balkans into the EU presents opportunities for mutual benefit and positive transformation.<sup>1786</sup> As these countries aspire to join the Union,<sup>1787</sup> adherence to EU values, including the rule of law,<sup>1788</sup> becomes not only a condition for accession but also a pathway to prosperity and stability.<sup>1789</sup> However, challenges such as enlargement fatigue<sup>1790</sup> among member states and the disruptive effects of the COVID-19 pandemic<sup>1791</sup> underscore the uncertainties surrounding the integration process. Nonetheless, the EU's strategy to enhance transparency and effectiveness in accession talks through the involvement of the rule of law<sup>1792</sup> signals a commitment to overcoming these challenges. The successful integration of the Western Balkans<sup>1793</sup> into the EU holds promises for fostering regional cooperation, strengthening democracy, and promoting economic development.<sup>1794</sup> Moreover, it brings Europe closer,<sup>1795</sup> reinforcing the EU's role as a beacon of democratic values and enhances its influence in ensuring peace and stability<sup>1796</sup> in the wider European region.

## 2. The Rule of Law in Western Balkans

The judicial system in Albania<sup>1797</sup> continues to be vulnerable to substantial political interference, influencing appointments and monitoring mechanisms, with the accomplishment of the vetting law leading to the resignation of numerous judges and prosecutors, potentially

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<sup>1786</sup> E. SHKEMBI, *Reconciliation Process Between Belgrade and Pristina, The Students' Views on the European Integration of the Western Balkans Region*, Tirana, 2022.

<sup>1787</sup> L. LUMIO, *Diffusion of Norms through EU Funding Instrument, A Qualitative Theory-Consuming Case Study of the EU's Ambition of Being a Normative Power within the Instrument Pre-Accession Assistance II in the Western Balkan*, 2023.

<sup>1788</sup> R. UITZ, *The Rule of Law*, cit.

<sup>1789</sup> T. RUSSO, *The Security Implications of Enlargement on EU Fundamentals, Solidarity and Rule of Law, The New Dimension of EU Security*, 2023.

<sup>1790</sup> W. ZWEERS, M. ROSSOKHATSKA, *Towards*, cit.

<sup>1791</sup> D. KUKAJ, M. ADEMI, *The Impacts of COVID-19 as an External Socio-Economic Factor in the Real Convergence of the Western Balkan States toward the European Union*, in *Pakistan Journal of Criminology*, 2024.

<sup>1792</sup> T. RUSSO, A. ORIOLO, G. DALIA, *Solidarity*, cit.

<sup>1793</sup> J. KRASNIQI, *The Mirror Reflection of the Russian Invasion of Ukraine in the Western Balkans, Opening New Conflicts as a Distraction, in Access to Justice in Eastern Europe*, 2023.

<sup>1794</sup> M. KOLAKOVIĆ BOJOVIĆ, I. SIMONOVSKI, *The Accession Negotiations of North Macedonia to the EU, Between New Methodology and Old Challenges*, 2023.

<sup>1795</sup> Á. IMBERNÓN, *Governance Amid Competition, Reflecting on Spain's 2023 EU Council Presidency*, in *European University Institute*, 2024.

<sup>1796</sup> European Council (2023), *Conclusions*, cit..

<sup>1797</sup> A. BALLIU, *The Reform of Justice in Albania, Beijing Law Review*, 2020.

hampering the functioning of key institutions, including the Constitutional Court.<sup>1798</sup> Court administration observes matters of resource shortage, postponements in proceedings, and case backlogs.<sup>1799</sup> Corruption<sup>1800</sup> is widespread in the governmental institutions, despite attempts to set up anti-corruption organs, and corrupt officials are rarely brought to justice. Whereas independent media is present,<sup>1801</sup> it faces political constraints, resource limitations, and menaces to journalists, fostering self-censorship.<sup>1802</sup> Discrimination accusations continues to exist against minority communities such as Romani and Balkan-Egyptian communities, particularly in the fields of housing, employment, healthcare, and education.<sup>1803</sup> Furthermore, the asylum system lacks proper supervision and adherence to legal procedures for certain asylum seekers, particularly in the field of education.<sup>1804</sup> Importantly, the judiciary<sup>1805</sup> still experiences deep-seated matters such as corruption and a lack of independence, which harms public trust and judicial authority. The fight against corruption<sup>1806</sup> is a central component of the long recovery process in countries with difficult transitional periods, including Albania, as it hinders progress and poses a significant obstacle to the rule of law and EU integration.<sup>1807</sup>

Recent considerable reforms have targeted reinforcing the rule of law, especially in the framework of the judicial system.<sup>1808</sup> Albania's vetting law for judges and prosecutors is seen as crucial for its political future and EU membership aspirations, addressing issues like corruption and politicization while aligning its judicial system with EU standards.<sup>1809</sup> The implementation of the *acquis communautaire* necessitates a shift towards an independent and

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<sup>1798</sup> E. GARUNJA, *The Effects of Constitutional Changes on the Judiciary System in Albania: The Process of Vetting*, in *Revista Juridica*, 2021.

<sup>1799</sup> J. RYSTEMAJ, A. VOKSHI, *A Practical and Analytical Approach to the Albanian Mechanism for Violation of Reasonable Length Requirement in Judicial Proceedings*, in *Balkan Social Science Review*, 2023.

<sup>1800</sup> I. JUSUFI, *The Nexus of Judiciary Power and Corruption in Albania: Strategies of Defiance and Evasions*, *Journal of Developing Societies*, 2023.

<sup>1801</sup> R. ZGURI, *Relations Between Media and Politics in Albania*, in *Friedrich-Ebert-Stiftung*, Tirana, 2017.

<sup>1802</sup> A. CARA, *Harmonization of State Legislation with EU Legislation-The Case of the So-Called Anti-Defamation Media Law in Albania*, 2021.

<sup>1803</sup> O. CHELSI WEST, *On Living and Moving with Zor: Exploring Racism, Embodiment, and Health in Albania*, *Medical Anthropology*, 2021.

<sup>1804</sup> H. MIÇO, *The Right to Education of Asylum Seekers and Refugees: The Reflection of International Instruments and Standards in Albanian Legislation*, 2022.

<sup>1805</sup> B. HAJDINI, G. SKARA, *The Role of Information and Communication Technology in Fighting Corruption in the Judiciary System: The Case of 2016 Judicial Reform in Albania*, in *Journal of Liberty and International Affairs*, 2022.

<sup>1806</sup> A. ELBASANI, S. Š. ŠABIĆ, *Rule of Law, Corruption and Democratic Accountability*, cit.

<sup>1807</sup> A. TEMA, *The War Against Corruption in Albania*, in *ESI Preprints*, 2023.

<sup>1808</sup> D. BASHKURTI HAXHIU, E. KARAMUÇO, *The Influence of the Justice Reform of Albania towards European Union Integration*, in *Journal of Namibian Studies: History Politics Culture*, 2023.

<sup>1809</sup> A. ANASTASI, *Reforming the Justice System in the Western Balkans, Constitutional Concerns and Guarantees*, 2018.

impartial judiciary, focusing on training and informing legal professionals about European law to meet the prerequisites for EU accession.<sup>1810</sup>

In spite of official adherence of EU regulations, a substantial gap exists in the effective application of rule of law.<sup>1811</sup> Weak rule of law institutions in Albania, characterized by inadequate stability, predictability, and protection of property and contract rights, hinder overall economic growth by creating high-risk conditions.<sup>1812</sup> The application of the rule of law is determined by the mobilization of vertical and horizontal accountability tools that assess political resistance, particularly in situations where political elites<sup>1813</sup> aim to safeguard their interests. The comprehensive justice sector reform<sup>1814</sup> in Albania and its importance in the framework of EU membership aspirations for Western Balkan countries identifies both the achievement and difficulties of this reform process. In 2016, Albania launched a progressive rule of law reform, targeting to purify<sup>1815</sup> its justice structure from corruption, failures, and malfunction. Albania's justice sector reform<sup>1816</sup> prioritized integrity, transparency, legal expertise, infrastructure improvement, and continuous learning to ensure long-term resilience against potential manipulation. EU membership desires have been progressively connected to the development of justice sector reform,<sup>1817</sup> especially in domains associated to judiciary, fundamental rights, and justice.

Albania's achievement in this concern was illuminated in the June 2018 Council conclusions,<sup>1818</sup> incorporating it as a basic aspect of the EU's requirements for accession talks.

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<sup>1810</sup> A. SHEHU, *Implementation of the Acquis Communautaire in Albanian Judicial System*, *Proceedings Book*, 2019.

<sup>1811</sup> M. LESKOVIKU, K. KAÇUPI, *Albania's Journey towards EU Integration and Accession in the Field of Rule of Law and Human Rights*, in *EU Enlargement and the Western Balkans: Current Challenges and Prospects*, 2023.

<sup>1812</sup> T. O'BRIEN, L. NEDELKOSKA, E. FRASHERI, *What is the Binding Constraint to Growth in Albania*, in *Center for International Development*, 2017.

<sup>1813</sup> G. MARGARITI, *The Process of Democratization and Role of Elites in Albania*, *Anglisticum*, in *Journal of the Association-Institute for English Language and American Studies*, 2022.

<sup>1814</sup> A. ANASTASI, *The Albanian Justice Reform in the Framework of the European Integration Process*, in *Euro-Balkan Law and Economics Review*, 2021.

<sup>1815</sup> J. XHAFERI, *Albania's Challenges to European Aspiration, Bringing the Justice System to Justice*, in *European Journal of Social Sciences*, 2018.

<sup>1816</sup> G. ÇARKAXHIU, *Justice Reform in Albania with Particular Focus on the Establishment of New Institutions*, in *EIRP Proceedings*, 2020.

<sup>1817</sup> D. DIMITROVA, *Judicial Reform and Process of Vetting in Albania: An Effective Project or an Unsuccessful Experiment*, in *The Balkans and Europe between Integration and Particularism*, 2019.

<sup>1818</sup> European Council, *Conclusions, Euco 9/18 Co Eur 9, Concl 3*, Brussels, 28 June 2018.

Nonetheless, the slow progress<sup>1819</sup> of judicial reform has prevented advancement in other domains, bringing about a complicated situation where pre-accession benefits are delayed as a result of a deficiency in the improvement of judicial reform. Albania's justice sector reform<sup>1820</sup> faces challenges due to political interference, high costs, and workload issues, affecting the functioning of key judicial institutions. Despite these hurdles,<sup>1821</sup> Albania has made significant progress in reshaping its judicial system,<sup>1822</sup> offering valuable lessons for other aspiring states,<sup>1823</sup> emphasizing the need to prioritize efficiency, process improvement, and quality outcomes while safeguarding reform system independence. Its success<sup>1824</sup> can be linked to the capability to formulate budgets, set up rules of procedure, and recruit employees autonomously.

Albania's persistent striving with adhering the rule of law, especially in fighting against corruption and organized crime,<sup>1825</sup> has triggered the introduction of constitutional reforms in 2015.<sup>1826</sup> It was supported by the EU to restrict individuals with criminal backgrounds from high state positions. Its reform challenges require collaboration with internal and EU judicial powers, highlighting the EU's crucial role in democratization, especially through digitized judicial cooperation, demanding significant constitutional changes for EU accession.<sup>1827</sup> Despite efforts, implementing reforms remains difficult, underscoring the importance of EU oversight and its focus on ethical standards in Albanian politics<sup>1828</sup> for establishing a robust democracy.<sup>1829</sup> The successful journey towards EU integration through such constitutional

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<sup>1819</sup> European Commission, Commission Staff Working Document, Albania 2016 Report, Accompanying the Document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2016 Communication on EU Enlargement Policy, COM (2016) 715 final*, Brussels, 9 November 2016.

<sup>1820</sup> J. BARA, B. BARA, *Trial within a Reasonable Time and the Impact of Justice Reform in Albania*, in *International Constitutional Law Journal*, 2020.

<sup>1821</sup> E. LIKMETA, K. TRESKA, *Crimes against Judges in Albania, Juridical Defense of Justice Officials Provided by the Criminal Law*, in *Journal on European History of Law*, 2021.

<sup>1822</sup> B.B. DHULI, *Organization of the Albanian Judicial System*, in *Interdisciplinary Journal of Research and Development*, 2021.

<sup>1823</sup> S. BLOCKMANS, A. HACKAJ, *Building on Core Strengths: Lessons from Justice Sector Reform in Albania, in Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

<sup>1824</sup> A. GJETA, *The Process of Enlargement of EU: The State of Art of Efforts of Albania in the Light of Latest Reports*, in *Euro-Balkan Law and Economics Review*, 2023.

<sup>1825</sup> I. GUNJIC, *Albania's Special Courts against Corruption and Organised Crime*, in *U4 Brief*, 2022.

<sup>1826</sup> A. NEXHIPI, *Issues on Political Transition in Albania*, in *Challenges of the Knowledge Society*, 2019.

<sup>1827</sup> A.A. PEJOVIĆ, *Amendments to the Constitution in the Area of Judiciary in the Candidate Countries for the Membership in the EU-The Examples of Montenegro, Albania and Serbia*, 2020.

<sup>1828</sup> A. NEXHIPI, E. NEXHIPI, *Albania's European Perspective and the Albanian Politics*, in *European Journal of Multidisciplinary Studies*, 2019.

<sup>1829</sup> I. TAFANI, *Albanian Judicial Cooperation with the European Union: A Support of the Implementation of the Constitutional Reform to Ensure a Functioning Democracy*, in *Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

reforms<sup>1830</sup> can provide precious guidance for other wishing candidate countries in the region. The lessons also include the obligation to EU values, the importance of technology in upgrading transparency,<sup>1831</sup> and the necessity of political integrity and public trust in this journey. France's veto on opening accession negotiations with Albania in October 2019 despite its successful reforms was seen as a setback to both the Western Balkans' European integration and the future of the EU.<sup>1832</sup>

Meanwhile, Bosnia & Herzegovina (BiH) has instituted a vigorous legal structure to promote and protect the autonomy of its judiciary<sup>1833</sup> and prosecutors, with the High Judicial and Prosecutorial Council,<sup>1834</sup> serving as a primary beneficiary of EU assistance. However, anxieties remain in terms of political pressure in the judicial system,<sup>1835</sup> particularly concerning the appointments, transfers, and removals of judges. Despite some improvements in addressing court case backlogs, persistent issues such as lengthy proceedings, insufficient judges and pay, limited IT resources, and poor media-judiciary communication continue to hinder efforts to rebuild public trust in the judiciary.<sup>1836</sup> The complex dynamics within BiH's judiciary,<sup>1837</sup> coupled with security challenges and systemic corruption, present formidable obstacles to the rule of law.<sup>1838</sup> The fragmented internal security apparatus requires robust international collaboration to effectively combat transnational organized crime,<sup>1839</sup> terrorism, and illegal migration.<sup>1840</sup> Rampant corruption<sup>1841</sup> and nepotism, fueled by socioeconomic instability, pose

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<sup>1830</sup> A. KUME, *Brief Analysis on Changes during the Last Twenty Years and Proposals for Issues Related to New Amendments in the Albanian Constitution*, in *Justicia International Journal of Legal Sciences*, 2023.

<sup>1831</sup> R. KONOMI, *Active and Proactive Transparency in the Judicial System-Approaches after the Reform*, 2020.

<sup>1832</sup> C. BARJABA, J. BARJABA, *The Wrong Decision at the Right Time: The Future of Europe and the European Future of Albania, Futuribili*, in *Rivista di Studi sul Futuro e di Previsione Sociale*, 2020.

<sup>1833</sup> F. VAN DIJK, S. KOOLEN, *Independence, Accountability and Quality of the Judiciary: Bosnia and Herzegovina 2018-2020*, 2021.

<sup>1834</sup> N. DŽANANOVIĆ, S. TURČALO, *Rule of Law in Bosnia and Herzegovina—The Transformation of the High Judicial and Prosecutorial Council*, 2022.

<sup>1835</sup> A. DAUTBEGOVIĆ, N. KORAJLIĆ, A. RAMADANI, *Reforma Pravosudnog Sistema u Bosni i Hercegovini i Problemi u Funkcionisanju (Reform of the Judicial System in Bosnia and Herzegovina and Problems in Functioning)*, in *Društvena i Tehnička Istraživanja*, 2019.

<sup>1836</sup> S. ORLOVIĆ, *Constitutional Issues of the Judicial Career in Western Balkan States (Serbia, Montenegro, Bosnia and Herzegovina, North Macedonia)*, in *Central European Journal of Comparative Law*, 2021.

<sup>1837</sup> I. MILINKOVIĆ, *Freedom of Expression of Judges in Bosnia and Herzegovina*, *Zbornik Radova*, 2023.

<sup>1838</sup> Z. BEGIĆ, *Anglo-American Elements of Constitutional Organization in the Constitutional Arrangement of Bosnia and Herzegovina: An Influence on Rule of Law through Legislative Function*, in *Journal of Politics and Law*, 2023.

<sup>1839</sup> D. VEJNOVIĆ, P. OBRENOVIĆ, *Organized Crime-Human Trafficking as a Form of Threats to Security with Reference to Bosnia and Herzegovina*, 2022.

<sup>1840</sup> Z. BAJRAMOVIĆ, M. BUZAR, *Law Enforcement Agencies Response to Contemporary Security Challenges in Bosnia and Herzegovina*, *Security Dialogues*, 2022.

<sup>1841</sup> J. MANGAFIĆ, L. VESELINOVIĆ, *The Determinants of Corruption at the Individual Level: Evidence from Bosnia-Herzegovina*, in *Economic Research-Ekonomska Istraživanja*, 2020.

significant threats to the country's socio-political stability and impede its progress towards EU integration. The persistent failure to enact meaningful reforms,<sup>1842</sup> coupled with challenges in detecting and prosecuting high-level corruption,<sup>1843</sup> underscores systemic deficiencies that erode confidence in the rule of law within the country.

Efforts to prosecute war crimes<sup>1844</sup> perpetrators are hindered by slow progress, incomplete processes, non-compliance, legislative hurdles, and limited regional cooperation, casting doubt on the effectiveness<sup>1845</sup> of tackling violations of international humanitarian law. Despite significant successful developments with established legal framework in media institutions,<sup>1846</sup> public service broadcasting in BiH often functions under the pressure of the ruling elite,<sup>1847</sup> causing to menaces and aggression towards press with insufficient response from governing bodies. The implementation of laws safeguarding ethnic minority groups is insufficient,<sup>1848</sup> with persistent harassment and prejudice against minority individuals. Notwithstanding conformity with international norms, the asylum and international protection system<sup>1849</sup> in BiH requires efficient supervision and enforcement. BiH's path<sup>1850</sup> to EU membership faces obstacles such as organizational complexity, legislative gaps, and political instability, yet civil society<sup>1851</sup> actively monitors and responds to EU inquiries, showcasing dedication and coordination. The challenges faced by the government concerning human rights and the rule of law<sup>1852</sup> are critical for its EU integration, with the need to depoliticize the

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<sup>1842</sup> F. HADŽIĆ, *Economic Crime, Abuse of Ethnopolitical Power, and Systemic Corruption in Bosnia and Herzegovina; Analysis of Causes and Risks of Phenomena*, *International Journal of Arts and Social Science*, 2020.

<sup>1843</sup> S. KAROVIC, Z. GALIC, P. DJUKIC, *Criminal-Legal Aspects of Corruption in Bosnia and Herzegovina*, 2022.

<sup>1844</sup> V. GURDA, D. MAHMUTOVIĆ, M. IVELJIĆ, *War Crimes Prosecution in Your Own Yard: Some Indicators of the Fifteen-Year Work of the War Crimes Chamber of the Court of Bosnia and Herzegovina*, 2021.

<sup>1845</sup> D. MAHMUTOVIĆ, M. ALIBEGOVIĆ, *Status and Perspectives of War Crimes Processing in Bosnia and Herzegovina*, in *Journal for Interdisciplinary Studies*, 2019.

<sup>1846</sup> N. VELADZIC, A. MUJKIC, *Development of Media Rights in Bosnia and Herzegovina from 2007 until 2019*, Banja Luka, 2021.

<sup>1847</sup> N. AHMETAŠEVIĆ, T. HADŽIRISTIĆ, *The Future of Public Service Broadcasting in Bosnia and Herzegovina*, Sarajevo, 2017.

<sup>1848</sup> V. LALIC, V. FRANCUZ, *Ethnic Minorities in Bosnia and Herzegovina-Current State, Discrimination and Safety Issues*, in *Balkan Social Science Review*, 2016.

<sup>1849</sup> K. HODŽIĆ, *Understanding the Migrant Crisis in Bosnia and Herzegovina*, in *Kriminalističke Teme-Časopis Za Kriminologiju i Sigurnosne Studije*, 2020.

<sup>1850</sup> V. PERRY, *Constitutional Reform in Bosnia and Herzegovina: Does the Road to Confederation Go Through the EU?*, in *International Peacekeeping*, 2015.

<sup>1851</sup> G. LEVI, *Bridging Brexit-Related Societal Divisions: Learning from Civil Society Initiatives in Bosnia and Herzegovina*, 2023.

<sup>1852</sup> B. NURKIĆ, *Legal Positivism: An Obstacle in the Process of Strengthening the Rule of Law in Bosnia and Herzegovina*, *Journal of Liberty and International Affairs*, 2021.

judiciary being emphasized in negotiations, especially in chapters 23 and 24.<sup>1853</sup> While progress has been made through the establishment of the judiciary under the Dayton Constitution, the country needs to fully consolidate its judiciary to meet EU accession conditions,<sup>1854</sup> crucial for democratization and addressing issues like border protection and illegal migration, which could impede negotiations.<sup>1855</sup>

In Kosovo, the rule of law<sup>1856</sup> faces significant challenges stemming from political interference and widespread corruption, which threaten the independence of the judiciary.<sup>1857</sup> Despite legal safeguards and institutional mechanisms, such as judicial and prosecutorial councils, efforts to improve judicial independence<sup>1858</sup> and efficiency have been hampered by ongoing corruption<sup>1859</sup> and a backlog of cases. Moreover, there are concerns about the capacity of local prosecutors to handle sensitive cases, such as those involving war criminals.<sup>1860</sup> Anti-corruption initiatives<sup>1861</sup> have struggled to produce tangible results due to organizational overlap and reluctance among judges and prosecutors to tackle high-level corruption. Additionally, the media landscape<sup>1862</sup> faces financial constraints and increasing risks for journalists, potentially undermining editorial freedom and hindering investigative journalism.<sup>1863</sup> These issues are crucial in Kosovo's journey towards European integration,<sup>1864</sup>

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<sup>1853</sup> I. MALETIĆ, V. KANDŽIJA, *The Accession Process and IPA Funds in Bosnia and Herzegovina – An Opportunity for Restructuring Public Spending and Convergence towards the EU*, in *Zbornik Radova Ekonomskog Fakulteta Sveučilišta u Mostaru Special Issue*, 2017.

<sup>1854</sup> S. KEIL, V. PERRY, *State-Building and Democratization in Bosnia and Herzegovina*, 2016.

<sup>1855</sup> A. HRASNICA, L. RAMIĆ MESIHOVIĆ, *Concretization of European Integration Process: Masks to Fall Off Benchmarking in Bosnia and Herzegovina*, in *European Policy Institute*, Skopje, 2018.

<sup>1856</sup> A. ROBAJ, *The Rule of Law and Criminality in the Republic of Kosovo*, in *Acta Universitatis Carolinae Iuridica*, 2023.

<sup>1857</sup> X. HALILI, *Judicial Independence in Kosovo*, 2020.

<sup>1858</sup> B. RRahmani, *Judicial Review and Political (In) Stability in Kosovo*, in *Eastern Journal of European Studies*, 2021.

<sup>1859</sup> B. THAQI, *No Money for the Rule of Law: How Kosovo's Budget Process Affects Judicial Independence*, 2019.

<sup>1860</sup> M. MUSANOVIC, *The Specialist Chambers in Kosovo: A Hybrid Court between Mounting Expectations and Domestic Contestation*, 2021.

<sup>1861</sup> T. GASHI, *Corruption, Its Causes and Consequences in the Republic of Kosovo*, in *Justicia–International Journal of Legal Sciences*, 2021.

<sup>1862</sup> A. FETOSHI, *Role of Media in European Integration Process – Kosovo Case*, in *Acta Universitatis Danubius Communicatio*, 2017.

<sup>1863</sup> K. ANDRESEN, *Journalism Under Pressure: The Case of Kosovo*, 2015.

<sup>1864</sup> L. MIRTEZANI, M. HALILI, *Historical Background, Reforms of the Public Administration, and the European Integration of Kosovo*, in *Hrvatska i Komparativna Javna Uprava: Časopis za Teoriju i Praksu Javne Uprave*, 2022.

highlighting the indispensable link between rule of law,<sup>1865</sup> media freedom,<sup>1866</sup> democracy,<sup>1867</sup> and the protection of human rights,<sup>1868</sup> including those of ethnic minorities<sup>1869</sup> and LGBTI+<sup>1870</sup> individuals.

The culture of impunity in Kosovo,<sup>1871</sup> persisting for over two decades since the conflict, allows political elites to commit human rights violations and crimes without fear of consequences,<sup>1872</sup> hindering justice and reconciliation efforts.<sup>1873</sup> However, the state of rule of law in Kosovo is guided by constitutional principles upheld by the Constitutional Court, aiming to shape the state's structure, protect the rule of law, human rights, and a multi-ethnic society.<sup>1874</sup> Addressing nationalist beliefs, political manipulation, corruption, organized crime, and judicial interference<sup>1875</sup> is crucial to bolstering the rule of law. Integrating context-specific approaches in transitional justice, alongside empowering civil society, is vital for implementing the EU's transitional justice policy effectively.<sup>1876</sup> Balkan countries, especially evidenced by Kosovo, have encountered substantial obstacles in adhering the rule of law,<sup>1877</sup> which is a principal principle in contemporary democracies and a crucial factor of European integration. Kosovo, as a potential EU candidate, has been working diligently to fulfill the rule of law standards,<sup>1878</sup> especially owing to its history of post-conflict crimes and the foundation of the

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<sup>1865</sup> B. TAHIRI, *Is There Hope for Kosovo's Rule of Law System*, cit.

<sup>1866</sup> A. GASHI, *Media Development in Post-Conflict Societies (Kosovo Case)*, in *Media Literacy and Academic Research*, 2021.

<sup>1867</sup> F. HALILI, R. LATIFI, *The Role of Education in Strengthening the State and Democracy in Kosovo*, 2022.

<sup>1868</sup> A. HOTI, D. GËRGURI, *Media Freedom – A Challenge in Kosovo's European Integration Process*, in *Europolity*, 2015.

<sup>1869</sup> A. BEHA, *Minority Rights: An Opportunity for Adjustment of Ethnic Relations in Kosovo*, 2014.

<sup>1870</sup> A. MAÇASTENA, *Gender-Based Violence in Kosovo*, in *Acta Universitatis Danubius, Juridica*, 2019.

<sup>1871</sup> A. HEHIR, S. FURTUNA, *Kosovo and Transitional Justice: The Pursuit of Justice after Large Scale-Conflict*, 2021.

<sup>1872</sup> U. THOMAS, *Keeping the Promise: Addressing Impunity in the Western Balkans*, in *Impunity Watch*, Utrecht, 2018.

<sup>1873</sup> S. OCHS, K. WALTERS, *Forced Justice: The Kosovo Specialist Chambers*, in *Duke Journal of Comparative and International Law*, 2021.

<sup>1874</sup> N. ÇEKU, H. XHEMAJLI, *Constitutional Principles and Their Impact on the Establishing of Constitutional Order and Rule of Law in Kosovo*, in *Zbornik Radova Pravnog Fakulteta u Splitu*, 2020.

<sup>1875</sup> A. SMITH, *Revising EULEX and Conditionality in Kosovo: Challenges, Purpose, and Practice*, in *European Policy*, 2021.

<sup>1876</sup> R. ISTREFI, *European Union Support and Transitional Justice Processes in Kosovo*, in *Europolity – Continuity and Change in European Governance*, 2017.

<sup>1877</sup> R. ZUPANČIČ, *The European Union Rule of Law Mission in Kosovo: An Effective Conflict Prevention and Peace-Building Mission?*, in *Journal of Balkan and Near Eastern Studies*, 2018.

<sup>1878</sup> R. ZUPANČIČ, *EULEX Kosovo: Projecting the EU's Normative Power via a Rule-of-Law Mission*, in *Limits to the European Union's Normative Power in a Post-Conflict Society: EULEX and Peacebuilding in Kosovo*, 2018.



Specialist Chambers and Specialist Prosecutor's Office (SC-SPO) to tackle grave offenses<sup>1879</sup> committed by former members of the Kosovo Liberation Army (KLA).<sup>1880</sup> This special transitional tribunal illustrates attempts to obtain reconciliation and justice<sup>1881</sup> in the absence of functional political mechanisms, with the final objective of democratizing Kosovo society and fulfilling EU accession criteria. However, the proficiency of these actions in reaching these targets is yet uncertain.<sup>1882</sup>

In the case of North Macedonia, even with the presence of required structural prerequisites for judicial independence,<sup>1883</sup> such as a legal structure and judicial councils, the influence of politics continues to be notable in judicial decisions. The judiciary's ability for self-ruling through the judicial council<sup>1884</sup> has raised doubts, with wiretapped dialogues exposing executive authority over the judiciary. The constitutional amendments<sup>1885</sup> provided a robust legal framework for the guarantees of a free and fair civil society as well as produced a small enhancement through judicial appointments, but corruption<sup>1886</sup> is still widespread, especially at higher levels, with constrained improvement in addressing high-level corruption. The media experiences hurdles<sup>1887</sup> related to perceived political affiliations and influence, with examples of intimidation, menaces, and violence against journalists and a situation of exemption, even considering the recent decrease in pressure on press. Excluded communities,

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<sup>1879</sup> M. HOLVOET, *Introducing the Special Issue 'Critical Perspectives on the Law and Politics of the Kosovo Specialist Chambers and the Specialist Prosecutor's Office'*, in *International Criminal Law Review*, 2020.

<sup>1880</sup> R. MUHARREMI, *The Kosovo Specialist Chambers and Specialist Prosecutor's Office*, in *American Society of International Law Insights*, 2016.

<sup>1881</sup> M.S. CATALETA, *The Kosovo Specialist Chambers: An International Tribunal Inside the National Judicial System*, in *Journal of International Criminal Law*, 2022.

<sup>1882</sup> E. HITAJ, *Stabilization of the Western Balkans and the Impact of the Rule of Law on the Prosecution of War Crimes in Kosovo: Some Reflections on the Kosovo Specialist Chambers and Specialist Prosecutor's Office*, in *Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

<sup>1883</sup> F. ISMAILI, *Reforms of the Judicial Sector in the Republic of North Macedonia*, *Justicia International Journal of Legal Sciences*, 2023.

<sup>1884</sup> S. VELJANOVSKA, S. DUKOSKI, *The Law on Free Access to Information of Public Character and Its Respect from the Judicial Council of North Macedonia*, 2021.

<sup>1885</sup> J. ZEJNELI, F. SHABANI, J. LOFTON, *Constitutional Changes in the Republic of North Macedonia and Their Function in Promoting Stability, Peace, and Integration*, *Freedom Journal for Peacebuilding and Transcultural Communication*, 2021.

<sup>1886</sup> E.G. TUDJAROVSKA, *The 'Silent Guardians' in the Fight Against Corruption: The Case of North Macedonia*, in *Central European Public Administration Review*, 2020.

<sup>1887</sup> E.P. DISHA, A. HALILI, A. RUSTEMI, *Vulnerability to Disinformation in Relation to Political Affiliation in North Macedonia*, *Media and Communication*, 2023.

such as the Roma community,<sup>1888</sup> ethnic minorities, and LGBTQI+ individuals,<sup>1889</sup> observe discrimination and hatred, denial of basic rights, and violence, with the absence of strong government condemnation and few arrests. Meanwhile Macedonia's asylum law harmonizes with EU norms,<sup>1890</sup> the mechanism for evaluating refugee status exhibits shortcomings, as underlined by the UNHCR.<sup>1891</sup> The country also faces significant challenges in its constitutional and political systems,<sup>1892</sup> notably within the judiciary, marked by political influence, corruption, and clientelism.<sup>1893</sup> The government's Judicial Reform Strategy (JRS)<sup>1894</sup> from 2017 to 2022 aimed to address these issues but has raised concerns about its effectiveness and potential negative impacts, particularly regarding the proposed Judicial Council's impact on judicial independence. There is a growing call for a more comprehensive and sustainable approach to judiciary reforms in North Macedonia to truly enhance judicial independence<sup>1895</sup> and ensure progress in European integration efforts.

The migration crisis in Europe has revealed critical deficiencies in the EU's asylum system and migration management, exacerbating challenges to the rule of law across the continent<sup>1896</sup> and impacting neighboring countries like North Macedonia. The rule of law problems in Europe include ineffective border procedures and asylum systems, exacerbating irregular migration<sup>1897</sup> and solidarity<sup>1898</sup> disparities among member states in addressing migration complexities. North Macedonia, positioned strategically along migration routes,

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<sup>1888</sup> E. RIZOVA, M. BEKAR, Z. VELKOVSKI, *Educational Challenges of Roma Minorities: The Case of the Republic of North Macedonia*, in *International Journal of Cognitive Research in Science, Engineering and Education*, 2020.

<sup>1889</sup> Z. STOJANOV, *The Effects of Ethnic Stereotypes on Inter-Ethnic Relations in the Republic of North Macedonia*, 2020.

<sup>1890</sup> A. AZIZI, *Impact of EU Migration Law on the Republic of North Macedonia*, in *The Migration Conference 2020 Proceedings: Migration and Politics*, London, 2020.

<sup>1891</sup> O. KOSEVALISKA, A.N. K. NIKODINOVSKA, *Migration and Asylum Policy System: The Case of Republic of Macedonia*, 2020.

<sup>1892</sup> B. GJUZELOV, M. I. HADJIEVSKA, *Institutional and Symbolic Aspects of Illiberal Politics: The Case of North Macedonia (2006–2017)*, in *Southeast European and Black Sea Studies*, 2020.

<sup>1893</sup> I. JUSUFI, *How the EU-Induced Institutional Changes Facilitated Patronage Over and Capture of Judiciary in North Macedonia*, in *Journal of Balkan and Near Eastern Studies*, 2022.

<sup>1894</sup> L. MILOVA, *Law on International Cooperation in Criminal Matters-A Segment of the Strategy for the Reform of the Judiciary System 2017-2022*, in *Iustinianus Primus Law Review*, 2020.

<sup>1895</sup> D. PRESHOVA, *Judicial Reforms in the Republic of Macedonia: Changes Without Reforms?*, in *Institute for Democracy "Societas Civilis"*, Skopje, 2018.

<sup>1896</sup> E. MAKSIMOVA, A. STANOJOSKA, *The Impact of the EU Principle of Solidarity and the Rule of Law on Criminal Aspects of the Migrant Crisis in the Republic of North Macedonia*, in *Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

<sup>1897</sup> F. ISMAILI, *Legal Aspect of Migrant Smuggling in Republic of North Macedonia*, in *Justicia-International Journal of Legal Sciences*, 2022.

<sup>1898</sup> E. KARAGEORGIU, G. NOLL, *What Is Wrong With Solidarity in EU Asylum and Migration Law?*, in *Jus Cogens*, 2022.

encounters significant security challenges,<sup>1899</sup> leading to exploitation of migrants' rights, necessitating urgent collaboration with the EU to protect human rights, uphold the rule of law, and address future crises effectively.<sup>1900</sup>

The government of Montenegro adopted legal instruments and established novel institutions to enhance judicial independence as required by the European Commission.<sup>1901</sup> However, necessary alterations in judicial practices are still absent, and anxieties remain concerning political intervention, even among judicial authorities.<sup>1902</sup> While progress have been achieved in the capacities of the judicial and prosecutorial councils, the accomplishment of promotion systems and disciplinary accountability is yet to be addressed.<sup>1903</sup> Corruption is also a prominent matter,<sup>1904</sup> with some development in tackling high-level corruption and organized crime, mainly linked to the proactive endeavors of the Special Prosecutor's Office (SPO).<sup>1905</sup> Media freedom and protection experience shortcomings, with restricted inspections on abuses against press members.<sup>1906</sup>

The application of anti-discrimination laws has been ineffective, particularly concerning vulnerable groups such as the Roma minority,<sup>1907</sup> Albanians, and Bosnians.<sup>1908</sup> The government has achieved restricted improvement in harmonizing with the EU political standards<sup>1909</sup> and the rule of law benchmarks in spite of establishment of novel anti-corruption

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<sup>1899</sup> Z. DIMOVSKI, I. ILIJEVSKI, K. BABANOSKI, *Security Challenges of Illegal Migration in North Macedonia: Overview of Migrant Smuggling*, in *Međunarodna Naučna Konferencija*, Orhid, 2019.

<sup>1900</sup> E. MAKSIMOVA, A. STANOJOSKA, *The Impact of the Eu Principle*, cit.

<sup>1901</sup> European Commission, Commission Staff Working Document, Montenegro 2022 Report, Accompanying the Document, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2022 Communication on Eu Enlargement Policy, Swd(2022) 335 Final*, Brussels, 12 October 2022.

<sup>1902</sup> M. VUKČEVIĆ, *Judicial System in Montenegro, Historical Development, Basic Principles, and Organisation*, in *Law & Justice Review*, 2016.

<sup>1903</sup> O. KOMAR, M. NOVAK, *Introduction: (De) Democratisation in Slovenia and Montenegro: Comparing the Quality of Democracy*, in *Politics in Central Europe*, 2020.

<sup>1904</sup> M. BAJRAMSPAHIĆ, *Refurbishing Montenegrin Anti-Corruption Institutional Framework: The Promise of an Independent Regulatory Agency*, in *Central European University*, 2013.

<sup>1905</sup> M. SEKULIĆ, *Instruments of Montenegro in the Fight Against Organized Crime*, in *International Journal of Economics & Law*, 2015.

<sup>1906</sup> D. NIKOČEVIĆ, V. ČAĐENOVIĆ, D. SULJEVIĆ, *Media in Montenegro from the Perspective of Citizens and Journalists*, 2021.

<sup>1907</sup> Ć. VUKOVIĆ, R. ĐOKOVIĆ, *Roma in the History of Montenegro – Displacement, Marginalization and Discrimination*, in *Southeast European and Black Sea Studies*, 2022.

<sup>1908</sup> M. DYMARSKI, *Political Situation of Ethnic Minority Groups in Independent Montenegro*, in *Central European and Balkan Studies*, 2017.

<sup>1909</sup> O. KOMAR, S. ŽIVKOVIĆ, *Montenegro: A Democracy Without Alternations*, in *East European Politics and Societies*, 2016.

organs and enactment of several regulations.<sup>1910</sup> Attempts to reform the judiciary<sup>1911</sup> are lasting, however, the initial matters characterized such as worries on accountability, independence, and impartiality, represent persistent challenges.<sup>1912</sup> The rule of law<sup>1913</sup> in Montenegro faces significant challenges due to shortcomings in the selection and accountability of prosecutors and judges, as well as issues with transparency and efficiency within the judicial system.<sup>1914</sup> The current political crisis, coupled with the emergence of new political parties, adds complexity to Montenegro's journey towards EU membership<sup>1915</sup> and underscores the importance of addressing these rule of law concerns.<sup>1916</sup>

The Republic of Serbia advanced in judicial independence<sup>1917</sup> as part of its Europeanization endeavors,<sup>1918</sup> but problematic matters prevail. Judicial and prosecutorial councils<sup>1919</sup> still encounter political interference in appointments and promotions, impeding the foundation of a transparent, merit-based system. Ineffective judicial procedures<sup>1920</sup> are influenced by a backlog of cases, bureaucratic hurdles, and procedural abuses, impacting access to justice. Corruption and organized crime<sup>1921</sup> remain widespread, with challenges in capacity, transparency, and organizational cooperation, whereas high-level corruption cases<sup>1922</sup> and war crimes prosecutions encounter difficulties.<sup>1923</sup> In Serbia, the legal framework for tackling

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<sup>1910</sup> V. VUČKOVIĆ, *Europeanizing Montenegro*, cit.

<sup>1911</sup> M. ANDELIC, *Rule of Law Between Law and Practice: Implications of Citizens' Distrust in Montenegrin Judiciary*, in *Collection Papers from the Conference Organized on Occasion of the Day of the Faculty of Law*, 2022.

<sup>1912</sup> A. K. BOJOVIC, V. CORIC, *Changes of Prosecutorial Legislation of Montenegro in the Light of European Standards on Prosecutorial Independence and Accountability*, in *Regional Law Review*, 2021.

<sup>1913</sup> M. ĐUKOVIĆ, *Backsliding Rule of Law and "Stabilitocracy" in Montenegro*, in *Polarization, Shifting Borders and Liquid Governance: Studies on Transformation and Development in the OSCE Region*, 2023.

<sup>1914</sup> A. VAVIĆ, *Monitoring and Evaluation of the Rule of Law in Montenegro*, in *European Fund for the Balkans*, Podgorica, 2016.

<sup>1915</sup> Z. VUJOVIĆ, A. NENEZIĆ, *Montenegro in Crises: Navigating Political Turmoil and the Path to European Integration*, in *Suedosteuropa-Mitteilungen*, 2023.

<sup>1916</sup> D. G. REIANU, *Civil Society in the Context of the EU Accession: The Case of Montenegro*, in *Civil Szemle*, 2024.

<sup>1917</sup> D. CVOROVIC, *Reform of Judiciary System in Serbia-Compliance with European Standards or Not?*, in *Collection of Papers from the Conference Organized on Occasion of the Day of the Faculty of Law*, 2022.

<sup>1918</sup> V. DABETIĆ, *New Constitutional Amendments in the Field of Judiciary in Serbia-A Step Towards Europe*, in *Contemporary Southeastern Europe*, 2023.

<sup>1919</sup> I. PEJIĆ, *Constitutional Referendum and Judicial Reform in Serbia*, in *Зборник Радова Правног Факултета У Хууу*, 2022.

<sup>1920</sup> W. HEBDA, *The Republic of Serbia: Stuck in the Grey Zone of Democratization?*, in *Rocznik Instytutu Europy Środkowo-Wschodniej*, 2020.

<sup>1921</sup> F. HADZIC, *Research of Corruption in the Republic of Serbia*, 2022.

<sup>1922</sup> S. ILIČIN, J. DRAGOJLOVIĆ, *On Certain Criminal-Legal Specific Characteristics of Corruption in Republic of Serbia*, in *Pravo-Teorija i Praksa*, 2022.

<sup>1923</sup> B. HUSZKA, *Human Rights on the Losing End of EU Enlargement: The Case of Serbia*, in *Journal of Common Market Studies*, 2018.

corruption in public procurement faces challenges that can erode transparency and competition, emphasizing the necessity of aligning regulations with EU standards to enhance anti-corruption safeguards.<sup>1924</sup> To combat corruption<sup>1925</sup> and organized crime<sup>1926</sup> in the country, strengthening institutional frameworks, promoting adherence to conflict-of-interest rules, and enhancing coordination among anti-corruption agencies and law enforcement are essential.

Media liberty has deteriorated,<sup>1927</sup> with documentation of government interventions and assaults on journalists. The Roma minority<sup>1928</sup> faces considerable prejudice, while in spite of legal structures, marginalized groups including LGBTI+ individuals<sup>1929</sup> and persons with disabilities observe persistent difficulties.<sup>1930</sup> Further shortcomings comprise non-presence of robust political will and ability for proficient rule of law enforcement in Serbia.<sup>1931</sup> EU poses concerns about the ability of government to effectively pursue policy discussions and undertake project management in the framework of the Serbian justice sector.<sup>1932</sup> Besides this, even though there have been legal reforms in place, the practical application of these modifications within the Serbian justice system still confronts challenges.<sup>1933</sup> Finally, obtaining the rule of law<sup>1934</sup> in Serbia is a continuous and complicated process that encompasses not just legislative modifications but also cultural education and harmony with basic norms of the constitutional

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<sup>1924</sup> J. KOSTIĆ, M. MATIĆ BOŠKOVIĆ, *The Legislation of the Republic of Serbia in the Field of Prevention of Corruption on Public Procurement*, in *Bratislava Law Review*, 2021.

<sup>1925</sup> Z. V. RADOJIČIĆ, *Serbian Approach to an Effective Public Integrity System and Combating Corruption*, in *International Scientific Conference, Towards a Better Future: Human Rights, Organized Crime and Digital Society*, 2020.

<sup>1926</sup> M. KMEZIĆ, D. ATANASIJEVIĆ, *How Organized is Organized Crime and Drug Trafficking in Serbia*, in *Kriminalističke Teme*, 2019; A. BOŠKOVIĆ, Z. PAVLOVIĆ, *Special Evidentiary Actions in the Function of Combating Organized Crime in Serbia*, 2015.

<sup>1927</sup> I. KISIĆ, *The Media and Politics: The Case of Serbia*, in *Southeastern Europe*, 2015.

<sup>1928</sup> G. BAŠIĆ, *Roma in the Republic of Serbia: The Challenges of Discrimination*, *Minority Rights Group*, London, 2021.

<sup>1929</sup> K. KAHLINA, D. RISTIVOJEVIĆ, *Desire to Resist: EU Border-Making and Anti-LGBT Mobilisation in Serbia*, in *Borders of Desire*, Manchester, 2023.

<sup>1930</sup> I. KRSTIĆ, *Serbian Constitutional Court—(In)Dependent Protector of the Rule of Law and Human Rights?*, in *Review of Central and East European Law*, 2023.

<sup>1931</sup> N. GOLUBOVIĆ, S. GOLUBOVIĆ, *Rule of Law and Democratic Consolidation in Serbia*, in *Facta Universitatis, Series: Law and Politics*, 2020.

<sup>1932</sup> D. DIMOVSKI, J. STANOJEVIĆ, *Legal and Economic Conditions for the EU Membership-Example of the Republic of Serbia*, in *Zbornik Radova*, 2019.

<sup>1933</sup> A. FAGAN, A. DIMITROVA, *Reforming Judicial Recruitment and Training in Bosnia-Herzegovina and Serbia Under EU Guidance: Implementation Without Institutionalisation?*, in *Journal of European Integration*, 2019.

<sup>1934</sup> B. KNEŽEVIĆ BOŽOVIĆ, A. V. ĆORIĆ, M. MATIJEVIĆ, *Individual Judge at the Heart of the Rule of Law—Judicial Ethics and Integrity in the Laws of Serbia and Montenegro*, 2023.

state.<sup>1935</sup> Thus, despite significant support from the EU and other global actors, the rule of law<sup>1936</sup> in Serbia remains in poor condition,<sup>1937</sup> with advancements in the judicial system overshadowed by challenges in achieving fairness and autonomy.<sup>1938</sup> Enhanced coordination and careful reform strategies are vital to address legal inconsistencies, rushed reforms, and politicization, fostering the rule of law<sup>1939</sup> and harmonization within Serbia's legal system.<sup>1940</sup>

Croatia's accession<sup>1941</sup> to the EU not only validates the effectiveness of the EU's enlargement policy<sup>1942</sup> but also underscores the pivotal role of upholding the rule of law<sup>1943</sup> in the accession process. Its successful integration endorses credibility of the program of SAP<sup>1944</sup> and validates the concept that EU membership can be earned by conforming to the enlargement model. Croatia's experience as the first country in the region to engage with the EU's innovative negotiation instruments underscores the significance of a robust commitment to the rule of law,<sup>1945</sup> serving as a guiding principle for aspiring member states.<sup>1946</sup> Drawing lessons<sup>1947</sup> from Croatia's accession journey emphasizes the critical importance of adherence to conditionality and the new negotiation methodology in shaping a strong foundation for the rule of law within the Western Balkans.<sup>1948</sup>

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<sup>1935</sup> T. M. R. C. GOMES, *Promoting the Rule of Law in Serbia. What is Hindering the Reforms in the Justice Sector?*, 2017.

<sup>1936</sup> Z. VASILKOV, S. PETROVIĆ, *Rule of Law: Legal Principle(s), EU Rule of Law Mechanism and Constitutional Category in the Republic of Serbia*, in *MB University International Review*, 2023.

<sup>1937</sup> T. M. R. C. GOMES, *Promoting the Rule of Law*, cit.

<sup>1938</sup> M. JELIČIĆ, *Impartiality of the Judge in the Misdemeanor Procedure of the Republic of Serbia*, in *International Scientific Conference "Towards a Better Future: Democracy, EU Integration and Criminal Justice*, in Bitola, 2019.

<sup>1939</sup> V. PETROV, *Judicial Reform in Serbia in Light of "The Venetian Concept" of the Rule of Law*, in *Central European Journal of Comparative Law*, 2023.

<sup>1940</sup> M. MENDELSKI, *They Have Failed Again! Donor-Driven Promotion of the Rule of Law in Serbia*, in *Südosteuropa, Zeitschrift für Politik und Gesellschaft*, 2013.

<sup>1941</sup> I. DRAŽENOVIĆ, M. KUNOVAC, D. PRIPUŽIĆ, *Dynamics and Determinants of Emigration: The Case of Croatia and the Experience of New EU Member States*, in *Public Sector Economics*, 2018.

<sup>1942</sup> M. DABIĆ, *The Stimulus of European Union Accession on the Personal Values Formation Process: A Study of Croatia and Slovenia*, in *Economic Research-Ekonomska Istraživanja*, 2023.

<sup>1943</sup> D. FUK, *What Should Croatia's Role Be in EU Policy Towards Western Balkans 6, The Students' Views on the European Integration of the Western Balkans Region*, 2022, p. 65-77.

<sup>1944</sup> H. BUTKOVIĆ, V. SAMARDŽIJA, *Challenges of Continued EU Enlargement to the Western Balkans-Croatia's Experience*, in *The Poznan University of Economics Review*, 2014.

<sup>1945</sup> N. BACIC SELANEC, I. GOLDNER LANG, D. PETRIĆ, *Rule of Law in the EU and the State of Croatian Judiciary*, in *Crisis Era European Integration: Economic, Political and Social Lessons from Croatia*, 2024.

<sup>1946</sup> T. CERRUTI, *The Political Criteria for Accession to the EU in the Experience of Croatia*, in *European Public Law*, 2014.

<sup>1947</sup> G. TUCKER, *Nature Conservation in Europe: Approaches and Lessons*, Cambridge, 2023.

<sup>1948</sup> H. BUTKOVIC, V. SAMARDŽIJA, *Challenges of Continued EU Enlargement*, cit.

### 3. Berlin Process

The Western Balkan countries' progression towards EU membership varies,<sup>1949</sup> hindered by insufficient reforms and limited impact on democratic stability.<sup>1950</sup> Each single country in the region can be characterized as semi-consolidated democracies,<sup>1951</sup> yet they have encountered significant challenges in the process of democratic progress. Meanwhile, every country experiences its unique set of difficulties,<sup>1952</sup> a commonly encountered barrier to their rapid integration into the EU is the problematic state of the rule of law.<sup>1953</sup> This is characterized by poor and corrupted institutions,<sup>1954</sup> absence of accountability and transparency<sup>1955</sup> at various levels of administration, and a substantial non-existence of political support for necessary reforms.<sup>1956</sup> The EU faces a dilemma as it balances enlargement fatigue among member states with the imperative of upholding democratic principles in the Western Balkans.<sup>1957</sup> Despite emphasizing the importance of rule of law and governance, the EU's strategies have lacked tangible methods for implementation, leading to tentative membership dates being offered but often abandoned and a prioritization of stability<sup>1958</sup> over rule of law progress.<sup>1959</sup>

The Berlin Process,<sup>1960</sup> initiated in 2014 by Germany and other EU members, aimed to support Western Balkan countries in their journey towards democracy, economic growth, and regional collaboration, aligning with existing EU strategies.<sup>1961</sup> However, despite efforts, these

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<sup>1949</sup> L. LIKA, *The Meaning of the Western Balkans*, cit.

<sup>1950</sup> S. MARCIC, *Informal Institutions in the Western Balkans: An Obstacle to Democratic Consolidation*, in *Journal of Balkan and Near Eastern Studies*, 2015.

<sup>1951</sup> F. BIEBER, *Patterns of Competitive Authoritarianism in the Western Balkans*, in *East European Politics*, 2018.

<sup>1952</sup> E. MANSI, *Poverty—A Challenge for Economic Development? Evidences from Western Balkan Countries and the European Union*, in *Sustainability*, 2020.

<sup>1953</sup> M. MUHAREMOVIĆ, *On the Causes of the Lack of Rule of Law in the Western Balkans*, in *Društvene i humanističke studije*, 2023.

<sup>1954</sup> S. LUCARELLI, K. MUÇO, E. VALENTINI, *Short Run and Long Run Effects of Corruption on Economic Growth: Evidence from Balkan Countries*, in *Economies*, 2024.

<sup>1955</sup> M. PAVKOVIĆ, *Quantifying the Functioning of Democratic Institutions: Developing a Reliable Model for the Western Balkans*, in *Policy*, 2023.

<sup>1956</sup> B. RADELJIĆ, V. ĐORĐEVIĆ, *Clientelism and the Abuse of Power*, cit.

<sup>1957</sup> C. SOLIOZ, *Deconsolidation and De-Democratisation: Current Western Balkans Experience of the Transition*, in *SEER Journal for Labour and Social Affairs in Eastern Europe*, 2021.

<sup>1958</sup> Z. IVANOV, *The EU-Balkans*, cit.

<sup>1959</sup> C. FASONE, M. SIMONCINI, *The Ambiguities of Conditionality as an Instrument of EU Internal Governance*, 2023.

<sup>1960</sup> D. KAMBERI, *Open Balkan vs. Berlin Process—Same, Same but Different?*, in *Freedom-Journal for Peacebuilding and Transcultural Communication*, 2021.

<sup>1961</sup> A. VESHI, *L'Albania e i Balcani Occidentali, Quali Prospettive?*, in *Euro-Balkan Law and Economics Review*, 2022.

states have not been effectively persuaded to implement necessary reforms for EU accession,<sup>1962</sup> with the rule of law often overlooked. The exclusion of the rule of law as a focal point can be attributed to a reliance on economic reforms to indirectly reinforce it, a perspective proven inadequate.<sup>1963</sup> To address this, the Berlin Process must prioritize the rule of law,<sup>1964</sup> involving diverse contributors and improved structures to better prepare Western Balkan countries for EU membership while preventing regression. To enhance its effectiveness, key recommendations include establishing a dedicated Rule of Law Task Force with diverse representation, integrating rule of law discussions into summit meetings, and involving national parliaments and a broader range of stakeholders for balanced oversight and effective strategies.<sup>1965</sup>

The Berlin Process aimed to enhance the rule of law and promote regional collaboration in the Western Balkans,<sup>1966</sup> but annual reports from the Commission<sup>1967</sup> revealed a significant deterioration in democratic governance and the rule of law in candidate countries, raising doubts about the effectiveness of the initiative. Despite emphasis on governance improvement and judiciary independence,<sup>1968</sup> tangible progress in bolstering the rule of law appeared to be delayed, highlighting the urgent need for more substantial reforms and stronger commitment to democratic standards in the region.<sup>1969</sup> However, the process emerged as a crucial intergovernmental initiative supported by the EU to maintain the European integration perspective for Western Balkan countries<sup>1970</sup> amid challenges in historical, economic, and political realms, fostering regional cooperation and addressing shared obstacles. It highlighted the imperative for strengthening rule of law and governance structures in the region to align

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<sup>1962</sup> C. GRIESSLER, *The Berlin Process. Bringing the Western Balkan Region Closer to the European Union*, in *Südosteuropa*, 2020.

<sup>1963</sup> D. MARKOVIĆ BAJALOVIĆ, *Competition Enforcement Models in the Western Balkans Countries, The Rule of Law Still Terra Incognita?*, in *Yearbook of Antitrust and Regulatory Studies (YARS)*, 2020.

<sup>1964</sup> A. M. OROS, *La Prospettiva di Allargamento*, cit.

<sup>1965</sup> J. MAROVIĆ, *Western Balkans and the Rule of Law*, cit.

<sup>1966</sup> R. GARCÍA LLORENTE, M. MILOSEVICH JUARISTI, I. MOLINA, *Apuntes para una Renovación de la Política Española Hacia los Balcanes Occidentales*, in *Análisis del Real Instituto Elcano*, 2021.

<sup>1967</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An Economic and Investment Plan for the Western Balkans*, COM (2020) 641 Final, Brussels, 6 October 2020.

<sup>1968</sup> M. MATIĆ BOŠKOVIC, *Selection and Evaluation of Judges-Impact of Criteria and Procedure on Independence of Judiciary*, in *Regional Law Review*, 2023.

<sup>1969</sup> V. MUSLIU, *The Berlin Process for the Western Balkans. What is in a Name?*, in *The Journal of Cross-Regional Dialogues/La Revue de Dialogues Inter-Régionaux*, 2021.

<sup>1970</sup> V. VUČKOVIĆ, *La Política*, cit.



with EU standards and criteria for membership, ultimately influencing the evolution of EU enlargement policy.<sup>1971</sup>

The Sofia Summit in May 2018 reaffirmed the EU's commitment to the Western Balkans,<sup>1972</sup> echoing the Thessaloniki Summit of 2003,<sup>1973</sup> and aimed to bolster cooperation across various crucial areas such as the rule of law, governance, security, migration, socio-economic development, and digital initiatives. It emphasized the importance of reconciliation, good neighborly relations, and collaboration in fostering democracy, combating corruption, and ensuring regional stability, extending the influence of the Berlin Process<sup>1974</sup> on the region's priorities for EU integration.<sup>1975</sup> This Process bolstered candidate countries' integration into the EU by fostering economic and regional cooperation,<sup>1976</sup> addressing governance issues, and facilitating debates, all within existing EU frameworks and without creating new organizations.<sup>1977</sup> Berlin Process<sup>1978</sup> has primarily focused on economic, social, and political connectivity,<sup>1979</sup> yet it has overlooked critical issues such as the rule of law, security, and reconciliation, lacking effective means for enforcing agreements and supervising development.<sup>1980</sup> The version of "Berlin Plus"<sup>1981</sup> appears insufficient to tackle these core challenges, which may impede endeavors to encourage regional leaders to focus on enhancing crucial aspects necessary for EU integration.

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<sup>1971</sup> N. WUNSCH, *EU Reengagement in the Western Balkans: 2018 as a Missed Opportunity*, in *OSCE Yearbook 2018*, Baden-Baden, 2019.

<sup>1972</sup> Z. NECHEV, *The Credible Enlargement Perspective for the Western Balkans*, 2018.

<sup>1973</sup> L. REXHAA, *An Analysis of the European Enlargement Policy Through Years: The Case of Western Balkans*, in *Iliria International Review*, 2019.

<sup>1974</sup> M. BREGU, *The Regional Cooperation*, cit.

<sup>1975</sup> E. TOTA, *Refocusing the European Union Attention on the Western Balkans: The Impact of the Berlin Process*, in *Journal of Liberty and International Affairs*, 2020.

<sup>1976</sup> M. SZPALA, *A New Opening in Relations Between the EU and the Western Balkans*, in *Centre for Eastern Studies*, 2018.

<sup>1977</sup> M. BONOMI, *Off Track: The EU's Re-Engagement with the Western Balkans*, in *Istituto Affari Internazionali*, 2019.

<sup>1978</sup> S. DEVETAK, *Reconciliation-a Prerequisite for the Integration of Western Balkans in the EU Stream of Values*, in *Balkan Social Science Review*, 2019.

<sup>1979</sup> M. HOLZNER, *Policy Options for Competitiveness and Economic Development in the Western Balkans: The Case for Infrastructure Investment*, 2016.

<sup>1980</sup> A. MARJANOVIĆ RUDAN, *Reconciliation Through the Berlin Process: The Role of RECOM*, in *The Berlin Process as a Framework for Concluding the Agreement on RECOM*, 2017.

<sup>1981</sup> F. MARCIACQ, *The EU and the Western Balkans After the Berlin Process*, in *Reflecting on the EU Enlargement in Times of Uncertainty*, 2017.

The EU's interaction with the Western Balkans has confronted several difficulties in ensuring the rule of law and democratic governance.<sup>1982</sup> The SAP<sup>1983</sup> introduced by the EU intended to set up these values as part of the region's journey towards EU integration.<sup>1984</sup> Nevertheless, the expected improvements were hampered due to delays in ratification, non-cooperation with international tribunals, and unsettled border disagreements in post-Yugoslav countries.<sup>1985</sup> In Serbia, North Macedonia, BiH and Albania, political chaos and segregation have posed obstacles to the transition to democracy, through corruption, authoritarian rule, and resistance to legal reforms.<sup>1986</sup> Bosnia and Herzegovina's ethnic divisions<sup>1987</sup> and complex institutional structure have hindered state cohesion, while Kosovo struggles with governance, corruption, and a fragile economy.<sup>1988</sup> The candidate countries in the Balkan region also observe crucial hurdles<sup>1989</sup> namely, long-standing political leaders, substantial unemployment level, ethnic nationalism, corruption,<sup>1990</sup> and organized crime.<sup>1991</sup> The relations<sup>1992</sup> with neighboring countries are still delicate, and the success of reconciliation initiatives is restricted.<sup>1993</sup> The EU has adopted a novel strategy highlighting justice, fundamental rights, corruption, and security at the outset of the accession process,<sup>1994</sup> but achievement relies on the obligation of political elites and civil society.<sup>1995</sup> Furthermore, external actors, including

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<sup>1982</sup> F. M. SAVASTANO, *La Stabilità nei Balcani Passa per l'Adesione all'Unione Europea?*, in *Coordinamento Adriatico*, 2023.

<sup>1983</sup> E. KALEMAJ, E. ÇELA, *The Open Balkans and the Impact on EU Membership*, in *Interdisciplinary Journal of Research and Development*, 2022.

<sup>1984</sup> M. UVALIĆ, *Economic Integration of the Western Balkans into the European Union: The Role of EU Policies*, in *The Europeanisation of the Western Balkans: A Failure of EU Conditionality?*, 2019.

<sup>1985</sup> T. BICKL, *Territorial Disputes in the Post-Yugoslav Space: Nation-Building Between Identity Politics and International Law*, in *Političke perspektive: Časopis za istraživanje politike*, 2023.

<sup>1986</sup> M. ICOSKI, *Recent Regional Developments in Human Rights and Democratisation in South-East Europe During 2019*, 2020.

<sup>1987</sup> D. KAPIDŽIĆ, *A Mirror of the Ethnic Divide: Interest Group Pillarization and Elite Dominance in Bosnia and Herzegovina*, in *Journal of Public Affairs*, 2019.

<sup>1988</sup> A. L. CAPUSSELA, *State-Building in Kosovo: Democracy, Corruption and the EU in the Balkans*, in *Bloomsbury Publishing*, 2015.

<sup>1989</sup> B. LIMANI, *Western Balkans: It's Complicated an Inter-Ethnic Communication Interdisciplinary Examination*, in *Journal of Intercultural Communication*, 2024.

<sup>1990</sup> I. INGRAVALLO, *Il Contrasto ai Crimini Transnazionali nella Prospettiva dell'Ammissione dei Paesi dei Balcani Occidentali all'Unione Europea*, in *Euro-Balkan Law and Economics Review*, 2022.

<sup>1991</sup> P. CVETIČANIN, J. BLIZNAKOVSKI, N. KRSTIĆ, *Captured States and/or Captured Societies in the Western Balkans*, in *Southeast European and Black Sea Studies*, 2024.

<sup>1992</sup> M. PETROVIĆ, G. WILSON, *Bilateral Relations*, cit.

<sup>1993</sup> R. MASTROROCCO, *OSCE and Civil Society in the Western Balkans: The Road to Reconciliation*, in *Transformation and Development: Studies in the Organization for Security and Cooperation in Europe (OSCE) Member States*, 2020.

<sup>1994</sup> M. BOBEK, J. ADAMS-PRASSL, *The EU Charter of Fundamental Rights in the Member States*, in *Bloomsbury Publishing*, 2020.

<sup>1995</sup> I. VIDAČAK, *The Effects of EU Conditionality on Patterns of Policy Engagement of Civil Society Organizations in Candidate Countries*, in *Southeast European and Black Sea Studies*, 2021.

China, Russia, and Turkey<sup>1996</sup> pursue strategic interests in the region, intensifying complexity of the rule of law scenery,<sup>1997</sup> which prevents democratic reforms and leads for alternative alliances.<sup>1998</sup> Thence, establishing an "EU Connectivity Fund" with clear benchmarks tied to legal advancements would robustly support<sup>1999</sup> conflict resolution, bolster civil society, and prioritize economic integration in the Western Balkans, ultimately safeguarding the rule of law.<sup>2000</sup>

#### 4. EU Initiatives in the Western Balkans

The EU's dedication to the rule of law, codified in its treaties<sup>2001</sup> and bolstered by the Copenhagen criteria,<sup>2002</sup> has been pivotal in extending its influence beyond geographic boundaries<sup>2003</sup> to ensure the adherence of third countries to EU regulations during the enlargement process. Since 1993, the EU has established Chapter 23 and Chapter 24<sup>2004</sup> to oversee rule of law reforms in candidate countries, adapting more personalized tools such as public opinion research and functional assessments for greater effectiveness. In February 2020, the Commission adopted an innovative strategy to EU enlargement,<sup>2005</sup> targeting to improve the credibility, predictability, and dynamism of accession negotiations by applying more transparent and more brief criteria for evaluating reforms in candidate countries.<sup>2006</sup> Preserving effective judiciaries is essential for ensuring legal certainty, fostering economic growth and investment, and maintaining the sound condition of the rule of law, which is vital for peace,

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<sup>1996</sup> M. HAKE, A. RADZYNER, *Western Balkans: Growing Economic Ties with Turkey, Russia and China*, 2019.

<sup>1997</sup> B. GÓRALCZYK, *The Great Power Game in the Balkans*, in *Balkan Ambitions and Polish Inspirations, Experiences, Problems and Challenges*, 2022, pp. 157-171.

<sup>1998</sup> F. BIEBER, N. TZIFAKIS, *The Western Balkans as a Geopolitical Chessboard? Myths, Realities and Policy Options*, in *Myths, Realities and Policy Options (June 1, 2019)*, in *BIEPAG Policy Brief*, 2019.

<sup>1999</sup> P. MIREL, *The Western Balkans: Between Stabilisation and Integration in the European Union*, in *European Issues Policy Paper*, *Fondation Robert Schuman*, 2018.

<sup>2000</sup> J. HAUPTMAN, *Western Balkans as an Area of European Union's Influence*, in *The Students' Views on the European Integration of the Western Balkans Region*, Maribor, 2022, pp. 37-48.

<sup>2001</sup> C. HILLION, *The EU External Action*, cit.

<sup>2002</sup> H. APPEL, *Minority Rights*, cit.

<sup>2003</sup> M. BÉLANGER, F. SCHIMMELFENNIG, *Politicization and Rebordering in EU Enlargement: Membership Discourses in European Parliaments*, in *Journal of European Public Policy*, 2021.

<sup>2004</sup> T. MIŠČEVIĆ, M. MRAK, *The EU Accession Process: Western Balkans vs EU-10*, in *Politička misao: Časopis za politologiju*, 2017.

<sup>2005</sup> European Commission (2020), *Enhancing the Accession Process*, cit.

<sup>2006</sup> E. ÇANI, A. MAZELLIU, *Public Consultation in the Western Balkans in the Light of the European Union Integration*, in *Regional Law Review*, 2021.

security, and social development.<sup>2007</sup> The 2020 approach, placing the rule of law at the core of the accession process, is deemed crucial, addressing deficiencies in prior strategies.<sup>2008</sup> The implementation of new tools for rule of law assessment may improve evaluation, but a stricter approach could slow down accession, underscoring the need for candidate countries to promptly enhance their rule of law development.<sup>2009</sup>

The prolonged<sup>2010</sup> accession process for candidate countries has been hindered by continuous demands to reinforce rule of law,<sup>2011</sup> which has undermined the credible perspective of membership. In the Western Balkans, ethnic identity interests often overshadow administrative reforms,<sup>2012</sup> complicating Europeanization efforts,<sup>2013</sup> while limited EU involvement and minimal proficiency in ensuring the rule of law further exacerbate the challenges. Despite the EU's deployment of civilian Common Security and Defence Policy (CSDP)<sup>2014</sup> missions aimed at reinforcing the rule of law and Europeanizing national political systems, the region has faced challenges in fully embracing these initiatives due to complex historical<sup>2015</sup> and socio-political factors.<sup>2016</sup> Such constraint is a product of scarcity of robust political determination among local political officials to effectively fight with organized crime and corruption<sup>2017</sup> and take on significant reforms to satisfy EU accession criteria. The Balkan countries' journey towards a strong rule of law system emphasizes adherence to EU conditions

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<sup>2007</sup> T. GINSBURG, *Pitfalls of Measuring the Rule of Law*, in *Hague Journal on the Rule of Law*, 2011.

<sup>2008</sup> M. MATTHIJS, *Lessons and Learnings from a Decade of EU Crises*, in *Journal of European Public Policy*, 2020.

<sup>2009</sup> M. MATIĆ BOŠKOVIĆ, J. KOSTIĆ, *New EU Enlargement Strategy towards the Western Balkans and Its Impact on Rule of Law*, in *Slovak Yearbook of European Union Law*, 2021.

<sup>2010</sup> M. BONOMI, I. RUSCONI, *From EU 'Enlargement Fatigue' to 'Enlargement Enthusiasm'?*, in *ÖGFE Policy Brief*, Vienna, 2023.

<sup>2011</sup> A. PLOSZKA, *It Never Rains but It Pours, the Polish Constitutional Tribunal Declares the European Convention on Human Rights Unconstitutional*, in *Hague Journal on the Rule of Law*, 2023.

<sup>2012</sup> D. BOCHSLER, A. JUON, *Authoritarian Footprints in Central and Eastern Europe*, in *East European Politics*, 2020.

<sup>2013</sup> J. DŽANKIĆ, S. KEIL, M. KMEZIĆ, *The Europeanisation of the Western Balkans: A Failure of EU Conditionality?*, 2018.

<sup>2014</sup> M. BONOMI, L. CHIODI, I. RUSCONI, *New Visions for the Western Balkans: EU Accession and Regional Security*, 2023.

<sup>2015</sup> M. GRÜNHAGEN, *Franchising in the Balkans: History, Status, and Challenges*, in *Journal of Marketing Channels*, 2020.

<sup>2016</sup> E. STOJANOVSKA, M. KOSTOVSKA, *Polyvinyl Alcohol (PVA) in Mining Waste Management: Navigating Environmental Benefits and Socio-Political Complexities in the West Balkans*, in *Advances in Urban Resilience and Sustainable City Design*, 2023.

<sup>2017</sup> I. DRAGOŞ, *Structuring Resilience in the Context of Common Security and Defence Policy*, in *Strategic Impact*, 2023.

for accession over reliance on CSDP missions, despite the latter's role in shaping EU foreign policy and regional stability.<sup>2018</sup>

Emphasizing the rule of law is pivotal in considering EU enlargement as an evolutionary process for candidate countries, necessitating the strengthening of democratic institutions, independent judiciaries, free media, and the protection of civil and political rights.<sup>2019</sup> Despite the EU's emphasis on its fundamental values in the enlargement methodology, persistent structural deficiencies, along with concerns about corruption and organized crime, continue to pose challenges in the region.<sup>2020</sup> Besides this, the weakening of the rule of law in some EU member states, namely, Poland and Hungary,<sup>2021</sup> has provoked anxieties about obligation to the rule of law within the Western Balkans. The EU's accession framework underlines the importance of the rule of law as a fundamental criterion for both candidate and acceding states,<sup>2022</sup> integrating it progressively into enlargement policies to ensure sound financial administration and effective EU funding.<sup>2023</sup> While systems like the 2014 Rule of Law Framework<sup>2024</sup> and the 2020 general regime of conditionality<sup>2025</sup> demonstrate a commitment to safeguarding the rule of law and EU budget integrity, ongoing concerns persist in certain member states regarding the adherence to these principles.<sup>2026</sup> Despite its entrenched status as a core value in EU enlargement, challenges persist in implementation and enforcement,<sup>2027</sup> complicating efforts to bridge the gap between accession requirements and membership commitments.

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<sup>2018</sup> N. MULLETTI, *EU Civilian CSDP Missions and the Consolidation of the Rule of Law in the Western Balkans*, in *Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

<sup>2019</sup> G. AVERSENTE, *Lo Stato di Diritto in Italia: Analisi dei Primi Report della Commissione Europea*, in *Collana di Studi di Consulta Online*, 2023.

<sup>2020</sup> Ž. BJELAJAC, J. MATIJAŠEVIĆ, *The Importance of the Fight against Corruption and Organized Crime in the Process of Accession of the Western Balkan Countries to the European Union*, in *The European Union and the Western Balkans: Challenges and Perspectives*, 2014.

<sup>2021</sup> J. JUZOVÁ, *Visegrad in the Western Balkans: Losing Ground?*, in *Think Visegrad Policy Briefs*, 2019.

<sup>2022</sup> O. BURLYUK, *An Ambitious Failure: Conceptualising the EU Approach to Rule of Law Promotion (in Ukraine)*, in *Hague Journal on the Rule of Law*, 2014.

<sup>2023</sup> A. SHEHAJ, *The Perils of Succor*, cit.

<sup>2024</sup> European Commission, Communication from the Commission to the European Parliament and the Council, *A New EU Framework to Strengthen the Rule of Law*, COM (2014) 158 final, Brussels, 11 March 2014.

<sup>2025</sup> T. TRIDIMAS, *Recovery Plan and Rule of Law Conditionality: A New Era Beckons?*, in *Croatian Yearbook of European Law & Policy*, 2020.

<sup>2026</sup> J. SLAPIN, *How European Union Membership*, cit.

<sup>2027</sup> T. RUSSO, *The Security*, cit.

The EU has been struggling with a crisis<sup>2028</sup> of rule of law adherence, endangering both EU core values and mutual trust among member states<sup>2029</sup> due to actions aimed at undermining judicial autonomy.<sup>2030</sup> The EU has reacted with necessary tools to safeguard the rule of law and the Court of Justice has been actively involved in dealing with these hurdles.<sup>2031</sup> The Court introduced the non-regression principle<sup>2032</sup> to safeguard judicial autonomy<sup>2033</sup> and reciprocal trust<sup>2034</sup> among member states, highlighting potential risks from unaddressed Article 7 procedures<sup>2035</sup> or further erosion of the rule of law<sup>2036</sup> in national contexts. Ensuring trust and adherence to the rule of law remains vital for Western Balkan<sup>2037</sup> countries aspiring for EU accession, crucial for both their integration into the Union<sup>2038</sup> and preserving its unity. Despite external challenges such as Russian aggression in Ukraine,<sup>2039</sup> prioritizing these principles is essential to safeguard the EU's legal framework and adapt to changing European political dynamics.<sup>2040</sup> Western Balkan countries prioritize adherence to EU standards, recognizing its dual significance in both EU accession requirements and the structuring of migration policies.<sup>2041</sup> They face challenges enforcing rule of law principles during accession, navigating conflicting viewpoints and varied notions, crucial for addressing complex migration and accession issues.<sup>2042</sup>

The Balkans, striving to meet EU standards, face challenges of transnational crime and corruption,<sup>2043</sup> emphasizing the rule of law, and stressing EU integration, regional cooperation,

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<sup>2028</sup> V. FAGGIANI, *Le Crisi Sistemiche dello Stato di Diritto e i Loro Effetti sulla Cooperazione Giudiziaria nell'UE*, 2019.

<sup>2029</sup> G. VOSA, *Sulla Problematica Tutela dello Stato di Diritto nell'Unione Europea: Spunti di Diritto Costituzionale e Comparato a Partire dal "Caso Romania"*, 2023.

<sup>2030</sup> C. HILLION, *Reversing a Member State's Regression and Restoring (Its) EU Membership*, 2023.

<sup>2031</sup> E. CECCHERINI, *L'indipendenza del Potere Giudiziario*, cit.

<sup>2032</sup> E. DICE, *The Principle of Non-Regression Rule of Law in the EU*, Stockholm, 2023.

<sup>2033</sup> J. SCHOLTES, *Constitutionalising*, cit.

<sup>2034</sup> M. LELOUP, D. KOCHENOV, A. DIMITROVS, *Non-Regression: Opening the Door to Solving the 'Copenhagen Dilemma'? All the Eyes on Case C-896/19 Republika v Il-Prim Ministru*, 2021.

<sup>2035</sup> A. MOBERG, *Article 7 TEU, Difficult by Design, Moving Forward on Article 7, The Rule of Law in the EU, Crisis and Solutions*, in *Swedish Institute for European Policy Studies*, 2023.

<sup>2036</sup> F. SPERA, *The Rule of Law as a Fundamental Value of the European Union Identity in the Western Balkans, State of Play and Potential Challenges*, 2022.

<sup>2037</sup> K. JAKIMOVSKA, *Crises and Opportunities in the Western Balkans*, in *European View*, 2023.

<sup>2038</sup> A. GINALI, *The Importance of Regional EU Member States in the Berlin Process: The Guided Integration of the Western Balkans*, in *European View*, 2023, p.111-118.

<sup>2039</sup> A. DI STASI, A. FESTA, *Breaches of the Rule of Law in the EU*, cit.

<sup>2040</sup> M. RHINARD, N. NUGENT, W. PATERSON, *Crises and Challenges*, cit.

<sup>2041</sup> J. WEBB, *The 'Refugee Crisis' and its Transformative Impact on EU-Western Balkans Relations*, in *Journal of Ethnic and Migration Studies*, 2022.

<sup>2042</sup> A. GOLIA, *Migration and the Janus Faces of Solidarity and the Rule of Law: Brief Remarks in the Light of the Italian Experience*, in *Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

<sup>2043</sup> E. NASKOVSKA, N. GJORSHOSKI, *Comparative Practices of the Balkan Countries*, cit.

and international legal compliance.<sup>2044</sup> The EU is actively engaged in bolstering legal frameworks and institutions in the region to combat violent extremism,<sup>2045</sup> crucial steps in their journey towards strengthening the rule of law, safeguarding human rights, and progressing towards European integration.<sup>2046</sup> The EU's focus on alignment with its standards and norms,<sup>2047</sup> including the ECJ's role, is vital for Western Balkan countries' accession by harmonizing legal systems and addressing transnational crime.<sup>2048</sup> Candidate countries pursuing EU accession must overcome legal and governance hurdles to align with EU environmental standards and improve the rule of law to safeguard environmental and social well-being for future generations.<sup>2049</sup> Nevertheless, challenges concerning the access to justice<sup>2050</sup> in environmental issues is relevant not only at the international level but also in the Western Balkans.<sup>2051</sup> Legal structures struggle to provide efficient access to justice for environmental rights, emphasizing the importance of global environmental concerns and intergenerational equity in the region.<sup>2052</sup> Aligning these organs with international norms,<sup>2053</sup> is crucial within the enlargement process as it ensures the promotion of a sustainable and equitable future for citizens while upholding the principles of the rule of law.

The EU faced a pressing challenge with recent member states leaning towards autocratic rule,<sup>2054</sup> threatening both internal democratic structures and enlargement prospects,

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<sup>2044</sup> D. GLODIĆ, *Role of International Law Instruments in Institutionalising Regional Cooperation in South East Europe*, in *Strani Pravni Život*, 2020.

<sup>2045</sup> J. BEAUJOUAN, V. DUDOUET, M. HALILOVIC-PASTUOVIC, J.-M. HÜLZER, M. KORTAM, A. RASHEED, *Vulnerability and Resilience to Violent Extremism*, 2024.

<sup>2046</sup> A. KUDLENKO, *The Western Balkan Counter-Terrorism Initiative and the Capability of the EU as a Counter-Terrorism Actor*, in *Journal of Contemporary European Studies*, 2019.

<sup>2047</sup> G. GASMI, *European Legal Principles on Human Rights and Democracy-Importance for the Western Balkans*, 2018.

<sup>2048</sup> A. ORIOLO, *The Rule of Law, Transnational Crimes, and the Human Rights-Based Approach in the European Union: The Court of Justice as Ultimate Guardian of the 'Good' Laws*, in *Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

<sup>2049</sup> S. KNEZ, S. ŠTRBAC, I. PODBREGAR, *Climate Change in the Western Balkans and EU Green Deal: Status, Mitigation and Challenges*, in *Energy, Sustainability and Society*, 2022.

<sup>2050</sup> M. WOLFEREN, M. ELIANTONIO, *Access to Justice in Environmental Matters—The EU's Difficult Road Towards Non-Compliance with the Aarhus Convention*, in *Research Handbook on European Environmental Law*, 2019.

<sup>2051</sup> D. TODIC, *Multilateral Environmental Agreements and EU Integration of Western Balkan States (Status of Bosnia and Herzegovina, Montenegro, Serbia and Croatia in Multilateral Environmental Agreements)*, in *European Energy and Environmental Law Review*, 2019.

<sup>2052</sup> A. FAGAN, I. SIRCAR, *Europeanization of the Western Balkans: Environmental Governance in Bosnia-Herzegovina and Serbia*, 2015.

<sup>2053</sup> E. VANNATA, *Environmental Solidarity and the Rule of Law in the EU System: Some Explanatory Reflections on Climate Justice Case-Law*, in *Solidarity and Rule of Law: The New Dimension of EU Security*, 2023.

<sup>2054</sup> K. L. SCHEPPELE, *Autocratic Legalism*, in *The University of Chicago Law Review*, 2018.

especially in the Western Balkans.<sup>2055</sup> Highlighting the importance of prioritizing the rule of law and European integration, the Conference on the Future of Europe<sup>2056</sup> aimed to address these critical issues for both the EU and potential enlargement.<sup>2057</sup> The conclusion of the Conference in May 2022<sup>2058</sup> was followed by the European Commission's communication "Putting Vision into Concrete Action,"<sup>2059</sup> which detailed its subsequent initiatives, including those in its 2023 work program<sup>2060</sup> focusing on the rule of law and the integration of the Western Balkans into the EU. Considering the future, collaborative efforts between the EU and the Western Balkans<sup>2061</sup> are crucial to counter the growing ties between some Balkan nations and authoritarian regimes,<sup>2062</sup> necessitating support for civil society,<sup>2063</sup> political pressure on regional elites, and potential financial restrictions.<sup>2064</sup> Prioritizing the rule of law and enlargement policies within the EU's agenda is significant to address democratic regression in Europe.<sup>2065</sup> Urgent action, including robust engagement and specific measures, is needed from EU institutions and member states to combat democratic backsliding both internally and in neighboring regions.<sup>2066</sup>

The critical role of the rule of law in Ukraine's<sup>2067</sup> integration, mirroring experiences in the Western Balkans, underscores the necessity of aligning security priorities with legal

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<sup>2055</sup> F. ROSSI, *I Balcani Occidentali Rischiano Di "Balcanizzare" L'unione Europea*, in *Nomos*, 2020.

<sup>2056</sup> C. STRATULAT, P. BUTCHER, *Balkan Youth Speaks Up About Digital Issues: Lessons for the Conference on the Future of Europe*, 2021.

<sup>2057</sup> U. ĆEMALOVIĆ, *One Step Forward, Two Steps Back: The EU and the Western Balkans After the Adoption of the New Enlargement Methodology and the Conclusions of the Zagreb Summit*, in *Croatian Yearbook of European Law & Policy*, 2020.

<sup>2058</sup> H. SUDER, *ZEI Future of Europe Observer*, in *Future of Europe Observer*, 2024.

<sup>2059</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions, *Conference on the Future of Europe, Putting Vision into Concrete Action*, Com(2022) 404 Final, Brussels, 17.6.2022.

<sup>2060</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Commission Work Programme 2023, A Union Standing Firm and United*, Com(2022) 548 Final, Strasbourg, 18.10.2022.

<sup>2061</sup> L. ZHANG, *Advancing European Integration*, cit.

<sup>2062</sup> D. KARABEGOVIĆ, *Fixing Things from the Outside? Diaspora Politicians and Transnational Political Engagement*, in *Globalizations*, 2024.

<sup>2063</sup> P. SCHERRER, *Western Balkans Civil Society Forum*, in *Journal for Labour and Social Affairs in Eastern Europe*, 2024.

<sup>2064</sup> F. NÉMETH, *Western Balkans, From the Berlin Process to the Open Balkan Initiative, Prospects for the Accession Process*, 2022.

<sup>2065</sup> R. MIHAILA, *Europeanisation Faces Balkanisation: Political Conditionality and Democratisation-Croatia and Macedonia in Comparative Perspective*, in *European Perspectives*, 2012.

<sup>2066</sup> K. BÖTTGER, D. MAUGEAI, *Countering the Rule of Law Backsliding in the Western Balkans*, 2021.

<sup>2067</sup> E. FOUÉRE, *Can the War in Ukraine Revive the EU's Enlargement Agenda for the Western Balkans?*, CEPS, 2022.



frameworks amidst rising geopolitical tensions within the EU. Despite opposition from certain member states such as France<sup>2068</sup> and the Netherlands,<sup>2069</sup> the EU should steadfastly support enlargement, particularly of Ukraine, Moldova, and potentially Georgia,<sup>2070</sup> prioritizing democratic accountability and oversight. Ukrainian crisis has fostered a renewed sense of European solidarity and identity,<sup>2071</sup> yet the EU must establish a clear doctrine for war-affected states<sup>2072</sup> seeking membership and address various forms of opposition to enlargement. Therefore, Balkan states<sup>2073</sup> must prioritize enhancing the rule of law, including combating corruption, bolstering judicial independence, and upholding democratic values, both in response to Russian aggression<sup>2074</sup> and to enhance their prospects for EU accession.<sup>2075</sup> In this manner, these nations can enhance their security and eligibility for EU accession,<sup>2076</sup> aligning more closely with European values in the face of external challenges such as geopolitical instability.<sup>2077</sup> The rule of law is observed as a vital element in the credibility<sup>2078</sup> of the enlargement process, and its proficient fulfillment is crucial for the democratic transformation of Balkan countries. The EU must uphold strict yet fair conditionality,<sup>2079</sup> engage with candidates on broader political issues, empower citizens, and take decisive actions to foster democratic reform and uphold the rule of law in the Balkans.<sup>2080</sup>

The initial vision of a stable, democratic<sup>2081</sup> Western Balkans fully integrated into the EU, adhering to its standards, especially regarding the rule of law, has gradually lost credibility

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<sup>2068</sup> T. E. TULUN, *France with Macron: The Destabilizing Factor in the Balkans*, 2022.

<sup>2069</sup> A. RUSTEMI, M. JOVETIĆ, *Policy Brief: The Role of the Netherlands in EU Enlargement Processes: A Potential Staller to the EU's External Stability*, in *Hague Centre for Strategic Studies*, 2019.

<sup>2070</sup> T. AKHVLEDIANI, *Geopolitical and Security Concerns of the EU's Enlargement to the East: The Case of Ukraine, Moldova and Georgia*, in *Intereconomics*, 2022.

<sup>2071</sup> M. ANDŽĀNS, *Fear, Solidarity, and Calls for Further Action in the Baltics as Russia Invades Ukraine*, 2022.

<sup>2072</sup> V. SAVLIDIS, *How the Russo–Ukrainian War Affected Commodity Returns*, University of Macedonia, Thessaloniki, 2024.

<sup>2073</sup> I. XHENETI, *Le Relazioni Tra Gli Stati Dei Balcani Occidentali E La NATO, Sfide, Futuro, Rischi*, 2023.

<sup>2074</sup> R. PANAGIOTOU, *The Western Balkans Between Russia and the European Union: Perceptions, Reality, and Impact on Enlargement*, in *Journal of Contemporary European Studies*, 2021.

<sup>2075</sup> B. F. COSTA, *Challenges and Barriers to the European Union Expansion to the Balkan Region*, in *IGI Global*, 2022.

<sup>2076</sup> M. CHIARUZZI, *Sui Balcani I Riverberi Della Guerra D'ucraina*, in *Vita e Pensiero*, 2023.

<sup>2077</sup> E. BERNARD, *Geopolitics of the European Rule of Law*, cit.

<sup>2078</sup> S. MITROVIĆ, M. LAZAREVIĆ, *The EU and Third Actors in the Balkans. Relaunching Enlargement, Reviving Credibility*, in *Europe and Russia on the Balkan Front: Geopolitics and Diplomacy in the EU's Backyard*, 2023.

<sup>2079</sup> I. HIGHAM, *Conditionalities in International Organization Accession Processes: Spreading Business and Human Rights Norms in Central and Eastern Europe?*, in *Business and Human Rights Journal*, 2024.

<sup>2080</sup> W. ZWEERS, *Between Effective Engagement*, cit.

<sup>2081</sup> S. GRIMM, O. L. MATHIS, *Stability First*, cit.

and strength over time. Challenges of the crisis in Bosnia and Herzegovina,<sup>2082</sup> the Belgrade–Pristina negotiations,<sup>2083</sup> and democratic regression in Serbia<sup>2084</sup> are all closely connected to the rule of law. The EU's emphasis on stability<sup>2085</sup> over democratic reforms in the Western Balkans, known as "stabilitocracy,"<sup>2086</sup> has allowed authoritarian governments<sup>2087</sup> to superficially<sup>2088</sup> align with European values while making little progress in areas like the rule of law. The security situation is portrayed as complicated and concerning matter in the Western Balkans,<sup>2089</sup> illustrating the rule of law's essential position<sup>2090</sup> in promoting stability and minimizing tensions. Potential EU compromises<sup>2091</sup> on EU values for geopolitical alignment<sup>2092</sup> risk undermining the integrity of rule of law principles in the Balkan region.<sup>2093</sup> Therefore, prioritizing the rule of law<sup>2094</sup> and democratic reforms<sup>2095</sup> over geopolitical concerns<sup>2096</sup> in the EU accession process is essential, emphasizing the significance of upholding these principles for stability and democratic progress in the Western Balkans.<sup>2097</sup>

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<sup>2082</sup> V. PERRY, *Constitutional Reform*, cit.

<sup>2083</sup> E. PLANITZ, *Towards a Comprehensive Framework of Mediation Success: EU Mediation in the Belgrade–Pristina Dialogue*, in *Journal of Regional Security*, 2018.

<sup>2084</sup> M. CASTALDO, *Back to Competitive Authoritarianism? Democratic Backsliding in Vučić's Serbia*, in *Europe-Asia Studies*, 2020.

<sup>2085</sup> M. MIRHASHIMLI, *From Europeanization to Stabilitocracy: How the EU Defines Its Relations with Azerbaijan*, in *Der Donauraum*, 2021.

<sup>2086</sup> M. KMEZIĆ, *EU Rule of Law Conditionality: Democracy or 'Stabilitocracy' Promotion in the Western Balkans?*, 2019; A. KOZOVIC, *The Role of the European Union in the Promotion of Western Balkan "Stabilitocracies:" Case Study of Serbia*, 2022; L. TOURNOIS, *Serbia's Political Flipper or Bumping into Balkanization, Europeanization, and Populism, A Synthesis through the Lenses of 'Stabilocracy'*, 2023; Z. LUTOVAC, *Populism, Stabilitocracy and Multiculturalism*, Institute of Social Sciences, 2020; P. MIROCHA, *Discourses of European 'Stabilitocracy' in Southeastern Europe According to Croatian and Serbian Press after 2007*, in *Fluminensia, Časopis Za Filološka Istraživanja*, 2023; M. ULBRICHTOVÁ, *Bosnia and Herzegovina at 26: Probing the Country's "Stabilitocracy" through the Case of David Dragičević*, in *Politické Vedy*, 2022.

<sup>2087</sup> Z. IVANOV, *The EU-Balkans*, cit.

<sup>2088</sup> P. PICKERING, *The Constraints on European Institutions' Conditionality in the Western Balkans*, in *Europe-Asia Studies*, 2011.

<sup>2089</sup> N. SKOČAJIĆ JUVAN, A. GRIZOLD, *The Complex of Security in the Western Balkans: Processes and Issues*, in *Teorija in Praksa*, 2017.

<sup>2090</sup> N. HOGIĆ, *The European Union's Rule of Law Promotion*, cit.

<sup>2091</sup> N.R. SMITH, N.M. KHAZE, M. KOVACEVIC, *The EU's Stability-Democracy*, cit.

<sup>2092</sup> G. GASMI, D. PRLJA, *European Path of the Western Balkans*, cit.

<sup>2093</sup> M. PETROVIC, N. TZIFAKIS, *A Geopolitical Turn*, cit.

<sup>2094</sup> J.S. VARA, *Estado de Derecho y Unión Europea*, in *Revista Española de Derecho Internacional*, 2020.

<sup>2095</sup> J.P. NIKIĆ, B. ELEK, D. POKUŠEVSKI, N. MUMIN, L. ŠTERIĆ, *New Impetus for Rule of Law Reforms in the Western Balkans*, in *Belgrade Centre for Security Policy*, 2022.

<sup>2096</sup> E. HAJDINI, *Western Balkans*, cit.

<sup>2097</sup> E. GORDY, *Europe in the Balkans, Weak Normative Power Meets Pallid Legitimacy*, in *Images of Europe, the Union between Federation and Separation*, in *Law and Visual Jurisprudence*, 2021.

The European Commission's approach<sup>2098</sup> to the accession process of Balkan states<sup>2099</sup> is continuously evolving, especially regarding the challenges<sup>2100</sup> associated with strengthening the rule of law.<sup>2101</sup> Meanwhile Balkan enlargement is still on the EU's agenda,<sup>2102</sup> the timeframe for this process is unpredictable, challenging the trustworthiness of the credibility of the accession<sup>2103</sup> model that associates adherence to EU membership conditions.<sup>2104</sup> The Commission's revised plan,<sup>2105</sup> acknowledged that foreign influence primarily on Western Balkan states' political and legal institutions often results in superficial compliance rather than genuine progress in the rule of law. In reaction, the Commission has vigorously pointed out the role of candidate states' parliaments<sup>2106</sup> as legitimate "watchdogs"<sup>2107</sup> to upgrade the ownership of accession-related reforms.<sup>2108</sup> Efforts to enhance the rule of law<sup>2109</sup> in Balkan parliaments can benefit from strengthening administrative capacity, fostering inter-parliamentary cooperation, and navigating inter-party competition. While the EU's uniform approach<sup>2110</sup> may not suit the diverse challenges of the region, prioritizing adaptable strategies and collaboration, both internally and externally, offers greater effectiveness, especially considering the unique political and historical contexts of the Western Balkans.<sup>2111</sup>

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<sup>2098</sup> P. MARTÍN RODRÍGUEZ, *El Estado de Derecho*, cit.

<sup>2099</sup> A. NIKODINOVSKA KRSTEVSKA, *Gli Accordi Di Riammissione Tra L'Unione Europea ei Paesi Balcanici, Più Di Quanto Non Sembri! Euweb Legal Essays, Global & International Perspectives*, 2022, p.9-18.

<sup>2100</sup> R. LOSURDO, *I Balcani Occidentali Verso L'Unione Europea*, in *Euro-Balkan Law and Economics Review*, 2022.

<sup>2101</sup> Active Youth for European Integration, *Countries on Their Path Towards, Challenges of Western Balkan Countries on Their Path Towards EU Integration*, 2022.

<sup>2102</sup> M. BONOMI, L. CHIODI, I. RUSCONI, *New Visions for the Western Balkans: EU Accession and Regional Security*, in *Istituto Affari Internazionali*, 2022.

<sup>2103</sup> G. DIMITROV, K. HARALAMPIEV, *The Race to EU Membership: Does the Acceleration Matter?*, in *Southeastern Europe*, 2022.

<sup>2104</sup> D. DUDLEY, *European Union Membership Conditionality*, cit.

<sup>2105</sup> European Commission, Commission Staff Working Document Kosovo, 2013 Progress Report, Accompanying the Document, Communication from the Commission to the European Parliament and the Council, *Enlargement Strategy and Main Challenges 2013-2014*, SWD(2013) 416 final, COM(2013) 700 final, Brussels, 16.10.2013.

<sup>2106</sup> A. STRELKOV, *The EU and Rule of Law Promotion in Western Balkans – A New Role for Candidate States' Parliaments*, 2016.

<sup>2107</sup> L. KINSKI, *What Role for National Parliaments in EU Governance? A View by Members of Parliament*, in *Journal of European Integration*, 2021.

<sup>2108</sup> A. WILLE, M. BOVENS, *Watching EU Watchdogs Assessing the Accountability Powers of the European Court of Auditors and the European Ombudsman*, in *Journal of European Integration*, 2022.

<sup>2109</sup> T. BÖRZEL, S. GRIMM, *Building Good (Enough) Governance in Post-Conflict Societies & Areas of Limited Statehood: The European Union & the Western Balkans*, in *Daedalus*, 2018.

<sup>2110</sup> M. KMEZIĆ, *Recalibrating the EU's Approach to the Western Balkans*, in *European View*, 2020.

<sup>2111</sup> O. BURLYUK, *Variation in EU*, cit.

The EU Court emphasized<sup>2112</sup> the critical importance of the rule of law across all EU activities, since the establishment of the EEC Treaty, with a focus on aligning national interests with supranational goals.<sup>2113</sup> National parliaments oversee their representatives' actions within the European Council, but lack a European-level mechanism to evaluate their promotion of broader European interests.<sup>2114</sup> However, the EU's unsystematic enforcement of standards, influenced by political expediency or national interests of member states,<sup>2115</sup> poses hurdles in the accession process, exemplified by Spain's refusal to recognize Kosovo's independence hindering its EU membership application.<sup>2116</sup> National interests<sup>2117</sup> within the EU, exemplified by Greece's tensions with North Macedonia<sup>2118</sup> and Croatia's border disputes with Slovenia,<sup>2119</sup> have obstructed Balkan states' integration progress despite meeting requirements. Controversial policies of Poland and Hungary, particularly regarding migration and democratic norms,<sup>2120</sup> strain intra-EU relations and weaken the union's credibility in upholding the rule of law.<sup>2121</sup> This influence undermines EU policy coherence and collective action,<sup>2122</sup> hindering efforts toward European integration.<sup>2123</sup> It also creates barriers to establishing a uniform legal framework, eroding the EU's role as a promoter<sup>2124</sup> of democratic values and the rule of law in the Balkans and beyond.<sup>2125</sup>

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<sup>2112</sup> Court of Justice of the European Union, *Upholding European Union Law, Annual Report 2022, The Year in Review*, 2023.

<sup>2113</sup> G. BIZIOLI, *Un Passo Ulteriore*, cit.

<sup>2114</sup> N. LUPO, *Il Controllo Parlamentare sui Governi degli Stati Membri dell'Unione Europea, Tra Trasparenza e Privacy*, in *Federalismi*, 2015.

<sup>2115</sup> C. BORGEN, *From Kosovo to Catalonia: Separatism and Integration in Europe*, in *Goettingen Journal of International Law*, 2010.

<sup>2116</sup> R. FERRERO TURRIÓN, *The Consequences of State Non-Recognition: The Cases of Spain and Kosovo*, in *European Politics and Society*, 2021.

<sup>2117</sup> S. BULMER, *The Member*, cit.

<sup>2118</sup> M. STAMOVA, *The Republic of (North) Macedonia, The Last Decade*, in *Freedom-Journal for Peacebuilding and Transcultural Communication*, 2023.

<sup>2119</sup> T. BICKL, *The Border Dispute Between Croatia and Slovenia*, 2021.

<sup>2120</sup> T. BICKL, *The Border Dispute*, cit.

<sup>2121</sup> T. DRINÓCZI, A. B. KACAŁA, *Rule of Law, Common Values*, cit.

<sup>2122</sup> L. BUONANNO, N. NUGENT, *Policies*, cit.

<sup>2123</sup> F. SCHIMMELFENNIG, T. WINZEN, *Ever Looser Union*, cit.

<sup>2124</sup> A. RUGGERI, *Stato di Diritto Sovranazionale e Stato di Diritto Interno*, in *Simul Stabant Vel Simul Cadent*, 2020.

<sup>2125</sup> F. BINDI, *European Union Foreign Policy: A Historical Overview*, in *The Foreign Policy of the EU, Assessing Europe's Role in the World*, in *Brookings Press*, 2022.

## 5. Present Realities and Future Prospects

The EU's enlargement policy for the Western Balkans emphasizes good governance in the context of the rule of law, as crucial for membership, initiating the Credible Enlargement Perspective<sup>2126</sup> in 2018 to address associated challenges. In 2020, the EU Council<sup>2127</sup> introduced a new enlargement approach, linking negotiation chapters based on mutual dependence, but this coincided with the onset of the COVID-19 pandemic,<sup>2128</sup> impacting judiciaries and the rule of law globally. The COVID-19 pandemic has led to significant adjustments in judicial procedures<sup>2129</sup> across Balkan states, including restricted access to lawyers in criminal cases and the adoption of digital tools in trial proceedings.<sup>2130</sup> Such changes prompt scrutiny of EU Commission evaluations, requiring assessment of COVID-19's impact on rule of law<sup>2131</sup> and distinguishing between temporary and lasting changes for enforcing EU conditionality policies. The pandemic has provided an opportunity for governing elites<sup>2132</sup> to strengthen their authority while potentially undermining democratic institutions,<sup>2133</sup> particularly in the judiciary<sup>2134</sup> and legislature, thereby posing threats to the rule of law<sup>2135</sup> and liberal democracy within the EU.<sup>2136</sup> The integration of video and audio conferencing<sup>2137</sup> in

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<sup>2126</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, and the Committee of the Regions, *A Credible Enlargement Perspective for an Enhanced EU Engagement with the Western Balkans*, Strasbourg, COM (2018) 65 Final, 6 February 2018.

<sup>2127</sup> Council of the European Union, *Enlargement and Stabilisation and Association Process, The Republic of North Macedonia and the Republic of Albania*, 7002/20, Brussels, 25 March 2020.

<sup>2128</sup> M. BOSKOVIĆ, S. NENADIĆ, *Impact of COVID-19 Pandemic on Criminal Justice Systems Across Europe*, in *EU and Comparative Law Issues and Challenges Series*, 2021.

<sup>2129</sup> J.M. BALDWIN, J. EASSEY, E. BROOKE, *Court Operations During the COVID-19 Pandemic*, in *American Journal of Criminal Justice*, 2020.

<sup>2130</sup> V. GORODOVENKO, O. BONDAR, L. UDOVYKA, *Justice in the COVID-19 Era Through the Prism of Judicial Power*, in *IUS Humani, Revista de Derecho*, 2021.

<sup>2131</sup> T. TESCHE, *Pandemic Politics: The European Union in Times of the Coronavirus Emergency*, in *Journal of Common Market Studies*, 2022.

<sup>2132</sup> A. PRAŠČEVIĆ, *Socio-Economic Consequences of Reforms in Post-Socialist Countries – Perspectives from the Post-COVID World*, in *Shaping Post-COVID World – Challenges for Economic Theory and Policy*, 2023.

<sup>2133</sup> N. GOLUBOVIĆ, M. DŽUNIĆ, *Democratic Resilience and the Challenges of the Post-COVID Era*, in *Shaping Post-COVID World – Challenges for Economic Theory and Policy*, 2023.

<sup>2134</sup> N. GOLUBEVA, I. BUT, P. PROKHOROV, *Access to Justice due to the COVID-19 Pandemic*, in *Ius Humani, Revista de Derecho*, 2020.

<sup>2135</sup> S. BIBI, *Defending Democracy*, in *European & Transatlantic Affairs*, 2023.

<sup>2136</sup> V. ANGHEL, E. JONES, *Riders on the Storm: The Politics of Disruption in European Member States During the COVID-19 Pandemic*, in *East European Politics*, 2022.

<sup>2137</sup> K. ZAHRASTNIK, D. BAGHRIZABEHI, *Videoconferencing in Times of the Pandemic and Beyond: Addressing Open Issues of Videoconferencing in Cross-Border Civil Proceedings in the EU*, in *Balkan Social Science Review*, 2022.

court proceedings<sup>2138</sup> reflected a transition toward modernizing legal practices, yet it also posed challenges<sup>2139</sup> to the foundational principles of the rule of law. While such technologies<sup>2140</sup> offered efficiency gains, presented accessibility challenges for self-represented litigants,<sup>2141</sup> emphasizing the ongoing need for technological innovation to ensure open justice, procedural fairness, and impartiality<sup>2142</sup> in the legal system. The response to the crisis should adhere to the rule of law, uphold human rights, and maintain legality, legal certainty, and proportionality in emergency measures, with continuous reassessment, as emphasized by the European Commission in 2020.<sup>2143</sup> The ECJ showcased resilience by upgrading contingency plans, embracing telework, modernizing IT infrastructure, efficiently applying procedural rules, and strategizing for future judicial and administrative changes.<sup>2144</sup>

Managing the pandemic situation<sup>2145</sup> varied across EU member states, affecting the protection of fundamental rights and fair trial access,<sup>2146</sup> particularly impacting the EU accession process for Balkan candidate countries. Remote hearings and digitalization<sup>2147</sup> became widespread, monitored for human rights adherence, with some states<sup>2148</sup> enacting laws to safeguard defendants' rights. For Western Balkan countries, adherence to Chapter 23 stipulations,<sup>2149</sup> emphasizing the rule of law and fundamental rights, remains unchanged. This entails ensuring procedural rights for defendants in both physical and remote court hearings, harmonizing legislation with EU standards, and integrating European Court of Human Rights

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<sup>2138</sup> P. GORI, A. PAHLADSINGH, *Fundamental Rights under COVID-19: A European Perspective on Videoconferencing in Court*, in *ERA Forum*, Berlin, Heidelberg, 2021.

<sup>2139</sup> M. BOSKOVIĆ, S. NENADIĆ, *Impact of COVID*, cit.

<sup>2140</sup> A. SANDERS, *Video-Hearings in Europe Before, During and After the COVID-19 Pandemic*, in *International Journal for Court Administration*, 2021.

<sup>2141</sup> A. BANNON, D. KEITH, *Remote Court: Principles for Virtual Proceedings During the COVID-19 Pandemic and Beyond*, in *Northwestern University Law Review*, 2020.

<sup>2142</sup> M. LEGG, *The COVID-19 Pandemic, the Courts and Online Hearings: Maintaining Open Justice, Procedural Fairness and Impartiality*, in *Federal Law Review*, 2021.

<sup>2143</sup> V. TEREMETSKYI, *Access to Justice and Legal Aid for Vulnerable Groups: New Challenges Caused by the COVID-19 Pandemic*, in *Journal of Legal, Ethical and Regulatory Issues*, 2021.

<sup>2144</sup> C. POPOTAS, *COVID-19 and the Courts, The Case of the Court of Justice of the European Union*, in *International Journal for Court Administration*, 2021.

<sup>2145</sup> K. GONIEWICZ, *Current Response and Management Decisions of the European Union to the COVID-19 Outbreak: A Review*, in *Sustainability*, 2020.

<sup>2146</sup> K. KAMBER, L. KOVAČIĆ MARKIĆ, *Administration of Justice during the COVID-19 Pandemic and the Right to a Fair Trial*, in *EU and Comparative Law Issues and Challenges Series*, 2021.

<sup>2147</sup> M. FABRI, *Will COVID-19 Accelerate Implementation of ICT in Courts?*, in *International Journal for Court Administration*, 2021.

<sup>2148</sup> P. PORETTI, V. ŠVEDL BLAŽEKA, *Remote Justice in Coronavirus Crisis – Do the Means Justify the Ends, or Do the Ends Justify the Means?*, in *EU and Comparative Law Issues and Challenges Series*, 2022.

<sup>2149</sup> M. BOSKOVIĆ, M. KOLAKOVIĆ BOJOVIĆ, *New Approach to the EU Enlargement Process – Whether COVID-19 Affected Chapter 23 Requirements?*, in *EU and Comparative Law Issues and Challenges Series*, 2022.

rulings to safeguard fundamental rights effectively.<sup>2150</sup> The EU has responded swiftly to the legal and economic<sup>2151</sup> challenges of the COVID-19 pandemic,<sup>2152</sup> implementing measures to bolster recovery and solidarity while addressing rule of law concerns.<sup>2153</sup> This has prompted a significant reevaluation of the balance between monetary and economic aspects within the EU,<sup>2154</sup> necessitating further constitutional reforms to strengthen economic governance and ensure effectiveness and legitimacy. During the pandemic, the EU enlargement process faced challenges as Balkan states struggled with reforms to align with European norms, particularly in judicial independence, corruption, and media freedom.<sup>2155</sup> Despite some positive steps, political interference in the judiciary and insufficient anti-corruption measures persisted, undermining trust in the accession process.<sup>2156</sup> This uncertainty, compounded by enlargement fatigue and pandemic-related disruptions, has cast doubt on the future of the rule of law in the Balkan region and the credibility of both the states seeking accession and the EU's enlargement strategy.<sup>2157</sup>

The COVID-19 pandemic<sup>2158</sup> has worsened democratic decline in the Balkan candidate states, with leaders<sup>2159</sup> sidestepping institutional procedures and eroding democratic values<sup>2160</sup> despite initial crisis management efforts. Balkan region indicated different levels of power exploitation, for example, North Macedonia<sup>2161</sup> exhibited fewer instances of abuse of power or democratic breach during the pandemic thanks to its caretaker government, whereas

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<sup>2150</sup> M. BOSKOVIĆ, M. KOLAKOVIĆ BOJOVIĆ, *New Approach to the EU Enlargement Process*, cit.

<sup>2151</sup> J. E. FERNÁNDEZ ECHEBARRIA, *A Critical Analysis on the European Union's Measures to Overcome the Economic Impact of the COVID-19 Pandemic*, in *European Papers – A Journal on Law and Integration*, 2021.

<sup>2152</sup> S. J. CHEESMAN, *The Hungarian Legislative Response to the COVID-19 Pandemic and Its Challenges to the Rule of Law*, in *Crime and Social Control in Pandemic Times*, Emerald Publishing Limited, 2023, pp. 141-154.

<sup>2153</sup> D. BOHLE, B. GRESKOVITS, M. NACZYK, *The Gramscian Politics of Europe's Rule of Law Crisis*, in *Journal of European Public Policy*, 2023.

<sup>2154</sup> F. FABBRINI, *The Legal Architecture of the Economic Responses to COVID-19: EMU Beyond the Pandemic*, in *Journal of Common Market Studies*, 2022.

<sup>2155</sup> I. RISTIĆ, *The War in Ukraine*, cit.

<sup>2156</sup> B. DOBEK OSTROWSKA, *How the Media Systems Work in Central and Eastern Europe*, in *Public Service Broadcasting and Media Systems in Troubled European Democracies*, 2019.

<sup>2157</sup> U. ČEMALOVIĆ, *Towards a New Strategy for EU Enlargement – Between the Wish for an Encouragement, the Reality of the Fatigue and the Threat of a Dead End*, in *EU and Comparative Law Issues and Challenges Series*, 2020.

<sup>2158</sup> C. BEYAZ, *COVID-19, State-Power and Society in Europe: Focus on Western Balkans*, 2023.

<sup>2159</sup> V. ESCH, V. PALM, *The COVID-19 Pandemic in the Western Balkans: Consequences and Policy Approaches*, 2020.

<sup>2160</sup> N. TZIFAKIS, *The Western Balkans During*, cit.

<sup>2161</sup> M. O. SHUNDOVSKA OPASHINOVA, *Are Emergency Measures in Response to COVID-19 a Threat to Democracy? Faction and Fiction - The Case of North Macedonia*, in *IALS Student Law Review*, 2021.

Albania<sup>2162</sup> and Serbia<sup>2163</sup> encountered substantial hurdles. EU conditionality in the Western Balkans yielded short-term benefits but posed risks to democracy due to challenges<sup>2164</sup> in government accountability, opposition strength, and judicial proficiency.<sup>2165</sup> The EU's financial assistance effectively addressed the health crisis and economic challenges, but concerns raised due to inadequate surveillance systems, political obscurity,<sup>2166</sup> and increased governmental authority. The misuse of EU funds<sup>2167</sup> in the Western Balkans highlighted the critical need for enhanced legal oversight to uphold the rule of law, ensuring transparent and accountable utilization of resources while fostering democratic principles and effective state-building endeavors.<sup>2168</sup>

In the pre-Covid-19 and pre-Ukraine war era,<sup>2169</sup> the EU enlargement into the Western Balkans region faced significant challenges due to concerns about the functioning of democratic institutions and the rule of law in candidate countries,<sup>2170</sup> as well as reluctance among EU member states to share resources amidst economic crises.<sup>2171</sup> The slow pace of enlargement<sup>2172</sup> was also influenced by fears of disrupting EU decision-making processes<sup>2173</sup> and resistance from citizens wary of accommodating new members.<sup>2174</sup> However, recent global shifts, including the Covid-19 outbreak<sup>2175</sup> and geopolitical tensions,<sup>2176</sup> have emphasized the

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<sup>2162</sup> E. HOXHA, *Pandemic Response as Threat to Democracy – Albania*, in *Observatory*, 2020.

<sup>2163</sup> L. GLUŠAC, *Serbia and COVID-19: The State of Emergency as a State of Uncertainty*, in *Security Crises in the 21st Century and How to Manage Them: COVID-19 - Health and Safety Aspects, Proceedings of the International Scientific Conference held online on October 13 and 14, 2020*, in *Center for Risk Analysis and Crisis Management*, Belgrade, 2021.

<sup>2164</sup> F. BIEBER et al., *The Western Balkans in Times of the Global Pandemic*, in *BIEPAG Policy Brief*, April 2020.

<sup>2165</sup> S. AREŽINA, *Post-Pandemic World and Western Balkans: Transformative Resilience as the Response to the Consequences of the COVID-19 Pandemic*, 2020.

<sup>2166</sup> V. AGOLLI, *Populism during the COVID-19 Pandemic in the Western Balkans*, in *Serbian Political Thought*, 2022.

<sup>2167</sup> A. KERIĆ, *The Berlin Initiative, A Necessary Bond Between the EU and Western Balkans*, in *The Students' Views on the European Integration of the Western Balkans Region*, 2022.

<sup>2168</sup> A. SHEHAJ, *The Perils of Succor*, cit.

<sup>2169</sup> M. UVALIC, *The Uncertain Impact of the Russian-Ukraine War on the Western Balkans*, 2023.

<sup>2170</sup> E. POLI, *A Vital Question Mark for the EU: Embracing the Western Balkan Countries' EU Accession at Present*, Head of Analysis at the Rome Office of the Centres for European Policy Network, in *Foundation for European Progressive Studies*, 2023.

<sup>2171</sup> M. BONOMI, Z. NECHEV, *Regional and EU Integration*, cit.

<sup>2172</sup> M. NAVRÁTIL, M. LOVEC, *From New to Indispensable: How the 2004 Enlargement Reshaped the EU's Transformative Powers, Politics and Governance*, 2024.

<sup>2173</sup> H. WALLACE, *Policy-Making*, cit.

<sup>2174</sup> K. SMITH, *An End to Enlargement: The EU, its Neighbourhood, and European Order, International Relations and the European Union*, 2023.

<sup>2175</sup> S. CVETKOVSKI, A. PAVLESKI, N. SPASOV, *Understanding and Managing Risks Caused by COVID-19 Pandemic*, *Security Horizons*, 2021, p.113-121.

<sup>2176</sup> R. PANAGIOTOU, *The Impact of the Ukraine War on the Western Balkans: What is at Stake?, A Year Later, War in Ukraine and Western Balkan (Geo) Politics*, 2023, p.165-175.



need for EU regional engagement and protection of its borders.<sup>2177</sup> While countries, namely, Ukraine,<sup>2178</sup> Moldova,<sup>2179</sup> and possibly Georgia<sup>2180</sup> have become EU candidates, the delayed integration of the WB6 has become untenable, given external influences from Russia, China, Turkey, and Saudi Arabia.<sup>2181</sup> The prolonged delay not only jeopardizes the rule of law principles<sup>2182</sup> within the region but also presents a significant threat to EU security interests.<sup>2183</sup> Therefore, urgent inclusion<sup>2184</sup> of the WB6 into the EU is crucial for regional stability<sup>2185</sup> and the establishment of a geopolitically strategic Europe.<sup>2186</sup> The advancement of the integration process necessitates a shared responsibility between the EU and the Western Balkan states.<sup>2187</sup>

The Western Balkans states today continue to express a strong desire<sup>2188</sup> for EU integration,<sup>2189</sup> viewing it as a pathway to stability,<sup>2190</sup> economic growth,<sup>2191</sup> and increased

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<sup>2177</sup> V. PERRY, *Missed Opportunities: Reheating Stale Policies in the Western Balkans After a Year of War in Ukraine, A Year Later, War in Ukraine and Western Balkan (Geo) Politics*, 2023, p.176-184.

<sup>2178</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, and the Council, *Commission Opinion on Ukraine's Application for Membership of the European Union*, COM(2022) 407 final, Brussels, 17.6.2022; Commission Staff Working Document, Analytical Report Following the Communication from the Commission to the European Parliament, the European Council, and the Council, *Commission Opinion on Ukraine's Application for Membership of the European Union*, SWD(2023) 30 final, Brussels, 1.2.2023.

<sup>2179</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, and the Council, *Commission Opinion on the Republic of Moldova's Application for Membership of the European Union*, COM(2022) 406 final, Brussels, 17.6.2022; Commission Staff Working Document Analytical Report Following the Communication from the Commission to the European Parliament, the European Council, and the Council *Commission Opinion on the Republic of Moldova's Application for Membership of the European Union*, SWD(2023) 32 final, Brussels, 1.2.2023.

<sup>2180</sup> European Commission, Communication from the Commission to the European Parliament, the European Council, and the Council, *Commission Opinion on Georgia's Application for Membership of the European Union*, COM(2022) 405 final, Brussels, 17.6.2022; Commission Staff Working Document, Analytical Report Following the Communication from the Commission to the European Parliament, the European Council, and the Council *Commission Opinion on Georgia's Application for Membership of the European Union*, SWD(2023) 31 final, Brussels, 1.2.2023.

<sup>2181</sup> R. DOPCHIE, *The Increasing Influence of Emerging Powers in the Western Balkans: A Brief Analysis*, in *Journal of Liberty and International Affairs*, 2022.

<sup>2182</sup> W. OOSTERVELD, *Geopolitical Influences of External Powers in the Western Balkans*, The Hague Centre for Strategic Studies, 2019.

<sup>2183</sup> T. KONDAREV, *The Role of the European Union as a Factor for Security, Stability and Prosperity of the Balkan Countries*, in *The Membership of Bulgaria in the European Union, Fifteen Years Later: Twenty-First Scientific Conference*, in *Университет за национално и световно стопанство*, Sofia, 2022.

<sup>2184</sup> B. REKA, *New Regional Integration Initiatives for the Western Balkans as Substitutes for EU Accession*, 2021.

<sup>2185</sup> N.R. SMITH, N. MARKOVIC K, M. KOVACEVIC, *The EU's Stability-Democracy*, cit.

<sup>2186</sup> H. SMITH, C. JUOLA, *Western Balkans*, in *Hybrid Coe Trend*, 2020.

<sup>2187</sup> R. MEHANA, *EU Policy toward Western Balkan Countries - Current and Future Challenges*, *The Students' Views on the European Integration of the Western Balkans Region*, Pristina, 2022, p.25-36.

<sup>2188</sup> H. GABRISCH, *How to Get Things Moving in EU-Western Balkan Relations*, *Policy Notes and Reports*, 2023.

<sup>2189</sup> J. L. K. LINDSAY, *The National Politics of EU Enlargement in the Western Balkans*, 2020.

<sup>2190</sup> D. ĐUKANOVIĆ, *Current Security Challenges in the Western Balkans and Consequences of the War in Ukraine*, in *Security Dialogues*, 2023.

<sup>2191</sup> M.D. GÓMEZ, D. TAGLIONI, R. ZARATE, *The Economic Effects*, cit.

democratic standards.<sup>2192</sup> They have made significant efforts to align their legal frameworks with EU standards through the implementation of reforms in various areas such as judiciary,<sup>2193</sup> public administration,<sup>2194</sup> and human rights.<sup>2195</sup> The prospect of EU membership serves as a catalyst for these reforms,<sup>2196</sup> as it requires adherence to EU legal norms and standards, fostering the development of transparent and accountable governance structures in the region.<sup>2197</sup> The EU remains engaged in integrating the Balkan states, viewing their accession as a means to foster stability<sup>2198</sup> and security in the region,<sup>2199</sup> as well as to advance the principles of democracy, human rights, and the rule of law.<sup>2200</sup> However, the pace of integration is contingent upon the readiness of candidate states to meet the EU's criteria,<sup>2201</sup> particularly in areas such as the rule of law, judicial independence, and the fight against corruption.<sup>2202</sup> The importance of the rule of law<sup>2203</sup> in this context cannot be overstated,<sup>2204</sup> as it serves as the foundation for democratic governance, respect for human rights, and the functioning of market economies.<sup>2205</sup> Legal reforms aimed at strengthening the rule of law not only enhance the credibility<sup>2206</sup> of candidate states but also contribute to building trust between the EU and the Western Balkans. Therefore, the effective implementation and enforcement of legal measures

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<sup>2192</sup> L. ZHANG, *Advancing European Integration*, cit.

<sup>2193</sup> E. KOLANECI, A. MAZELLIU, *Public Consultation in the Western Balkans in the Light of the European Union Integration*, in *Regional Law Review*, 2021.

<sup>2194</sup> M. PAVKOVIĆ, *Quantifying*, cit.

<sup>2195</sup> D. MALAJ, E. POLO, *An Evidence-Based Analysis of the EU's Hampered Transformative Power in the Western Balkans*, in *Journal of Liberty and International Affairs*, 2023.

<sup>2196</sup> T. SEKULIĆ, *The European Union*, cit.

<sup>2197</sup> E.M. ÇANI, A. MAZELLIU, *Public Consultation in the Western Balkans in the Light of the European Union Integration*, in *Regional Law Review*, 2021.

<sup>2198</sup> C. BALLIEU, R. SCHWOK, *European Integration in Belarus, Moldova and Ukraine: Assessing the Role and Strategies of the European Union in the Eastern Neighbours Compared with the Western Balkans*, Geneva, 2023.

<sup>2199</sup> M. BREGU, *The Regional Cooperation*, cit.

<sup>2200</sup> J. GALEVA, *The "Visegrad" Initiative Vis-À-Vis "Open Balkan Initiative" in the Process of European Integration*, in *Harmonius Journal of Legal and Social Studies in South East Europe*, 2023.

<sup>2201</sup> M. ORENSTEIN, *The European Union's Transformation after Russia's Attack on Ukraine*, in *Journal of European Integration*, 2023.

<sup>2202</sup> E. ZOTAJ, M. BREGU, *The Instrument for Pre-Accession Assistance II Role on Promoting Regional Cooperation within Western Balkan Countries*, Proceedings, 2023.

<sup>2203</sup> M. AVBELJ, *The Rule of Law, Comprehensive Doctrines*, cit.

<sup>2204</sup> V. ANGHEL, E. JONES, *Is Europe Really Forged Through Crisis? Pandemic EU and the Russia–Ukraine War*, in *Journal of European Public Policy*, 2023.

<sup>2205</sup> I. KAMPOURAKIS, *Bound by the Economic Constitution: Notes for "Law and Political Economy" in Europe*, in *Journal of Law and Political Economy*, 2023.

<sup>2206</sup> B. KOLLER, T. ÖRDÖGH, *Rule of Law as the Hard Condition for Accession: Analyzing the Current Preparedness of the Candidates in the Fields of the Judiciary and Fundamental Rights and Justice, Freedom and Security*, in *Európai Tükör*, 2023.

to uphold the rule of law<sup>2207</sup> are crucial for advancing the European integration process<sup>2208</sup> in the region and fostering a culture of accountability and transparency.

At the onset of Jean-Claude<sup>2209</sup> Juncker's Commission from 2014 to 2019,<sup>2210</sup> a strategic stance on enlargement was adopted, acknowledging the historic success of past expansions while emphasizing the need for consolidation among the existing 28 member states before further enlargement.<sup>2211</sup> This entailed a shift in focus towards enhancing cooperation, association, and partnership with neighboring countries<sup>2212</sup> such as Moldova, Ukraine and Georgia,<sup>2213</sup> rather than prioritizing the accession of Western Balkans.<sup>2214</sup> Meanwhile, the integration of the Western Balkans<sup>2215</sup> into the EU remains a crucial endeavor, promising<sup>2216</sup> stability, prosperity, and cooperation in the region.<sup>2217</sup> Central to this process is the alignment with EU standards and regulations, emphasizing the rule of law as a cornerstone for democratic values, human rights, and accountability.<sup>2218</sup> Upholding the rule of law fosters a fair and transparent legal system, essential for combating corruption,<sup>2219</sup> ensuring equal treatment, and promoting good governance practices.<sup>2220</sup> By adhering to these principles,<sup>2221</sup> the Western Balkans not only enhance their economic prospects and governance structures but also

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<sup>2207</sup> P. MARTÍN RODRÍGUEZ, *El Estado de Derecho*, cit.

<sup>2208</sup> H. LELIEVDT, S. PRINCEN, *The Politics of the European Union*, cit.

<sup>2209</sup> European Commission, Speech, *President Jean-Claude Juncker's State of the Union Address 2017*, Brussels, 13 September 2017.

<sup>2210</sup> E. GRAD RUSU, *Juncker's Silence on Enlargement: Discourse Analysis*, in *Research and Science Today*, 2022.

<sup>2211</sup> G. PELLAT, J. ZAFIROSKI, M. ŠUPLATA, *Future Challenges for the EU Enlargement: Cooperation and Enlargement, Two Challenges to Be Addressed in the European Projects*, Springer Nature, 2023, p.13-15.

<sup>2212</sup> A. TYUSHKA, *The Power and Performance of 'Association Bodies' under the EU's Association Agreements with Georgia, Moldova and Ukraine*, in *Journal of Common Market Studies*, 2022.

<sup>2213</sup> J. CROMBOIS, *The Ukraine War and the Future of the Eastern Partnership*, in *European View*, 2023.

<sup>2214</sup> B. BALIQI, *Lost in Integration – Perspectives for Regional Cooperation, Europeanization and Transitional Justice in the Western Balkans*, in *Der Donauraum*, 2021.

<sup>2215</sup> A. MUNSTER, *European Union Fifth Enlargement: An Opportunity for the Future?*, in *Vanderbilt Law Research Paper*, 2023.

<sup>2216</sup> P. DRAÇI, G. KRAJA, H. THEMELKO, *The Regional Cooperation of the Western Balkans and the Challenges on the Path of Integration in the European Union*, in *Interdisciplinary Journal of Research and Development*, 2022.

<sup>2217</sup> S. DEVETAK, *The Thorny Road to the European Integration of the Western Balkans Region*, 2022.

<sup>2218</sup> N. NEUWAHL, A. ROSAS, *The European Union and Human Rights*, cit.

<sup>2219</sup> E. MALAJ, *European Integration, Economy and Corruption in the Western Balkans*, 2021.

<sup>2220</sup> C. BARNARD, S. PEERS, *European Union Law*, cit.

<sup>2221</sup> M. PETROVIĆ, *Towards Gradual Integration*, cit.

strengthen the EU's influence while promoting<sup>2222</sup> stability and cooperation in the broader European context.<sup>2223</sup>

## FINAL CONCLUSION

The thesis thoroughly examines the principle of the rule of law in the context of EU enlargement,<sup>2224</sup> emphasizing the intricate balance and effectiveness of legal frameworks. The primary research problem addressed herein revolves around understanding how EU enlargement processes adhere to and promote the EU fundamental values,<sup>2225</sup> particularly through mechanisms of conditionality<sup>2226</sup> and differentiation.<sup>2227</sup> Conditionality<sup>2228</sup> refers to the EU's requirement that candidate countries implement significant legal and political reforms to qualify for membership, ensuring adherence to the rule of law and democratic principles. Differentiation,<sup>2229</sup> on the other hand, allows the EU to adopt flexible integration<sup>2230</sup> strategies to accommodate the diverse legal and political landscapes of its member states.<sup>2231</sup>

The objectives of this research included a thorough analysis of the legal impediments to European integration,<sup>2232</sup> and the overall impact of widening and deepening<sup>2233</sup> within the EU on the rule of law. Specifically, this thesis aimed to explore how the legal frameworks

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<sup>2222</sup> European Commission, Communication from the Commission to the European Parliament, *the European Council and the Council on Pre-Enlargement Reforms and Policy Reviews*, COM(2024) 146 final, Brussels, 20.3.2024.

<sup>2223</sup> V. RANT, M. MRAK, M. MARINČ, *The Western Balkans and the EU Budget: The Effects of Enlargement*, in *Southeast European and Black Sea Studies*, 2020.

<sup>2224</sup> C. CLOSA, D. KOCHENOV, *Reinforcing Rule of Law*, cit; A. BAKARDJIEVA ENGELBERKT, *The Eastward Enlargement as a Driving Force and Testbed for Rule of Law Policy in the EU*, in *Rule of Law in the EU, 30 Years After the Fall of the Berlin Wall*, in *Swedish Studies in European Law*, 2021; M. BONANNO, *L'Adesione all'Unione Europea e il Diritto di Recesso*, *Diritto dell'Unione Europea*, 2023, p.81-91.

<sup>2225</sup> C. BRASSEUR, V. PACHTA, C. GRIGOLO, *Towards an Enlarged Union, Upholding the Rule of Law*, in *International IDEA*, Stockholm, 2024.

<sup>2226</sup> D. MONTE SILVA, *EU's Democratic Conditionality: Democratic Principles and Procedures?*, in *Contexto Internacional*, 2023.

<sup>2227</sup> I. DAMJANOVSKI, C. HILLION, D. PRESHOVA, *Uniformity and Differentiation*, cit.

<sup>2228</sup> A. K. BOJOVIĆ, V. ČORIĆ, *Challenges of Rule of Law Conditionality in EU Accession*, cit.

<sup>2229</sup> I. DAMJANOVSKI, C. HILLION, D. PRESHOVA, *Uniformity and Differentiation*, cit.

<sup>2230</sup> R. BELLAMY, S. KRÖGER, M. LORIMER, *Flexible Europe*, 2022.

<sup>2231</sup> R. ZBIRAL, S. PRINCEN, H. SMEKAL, *Differentiation Through Flexibility in Implementation: Strategic and Substantive Uses of Discretion in EU Directives*, in *European Union Politics*, 2023.

<sup>2232</sup> E. FAHEY, F. TERPAN, R. ZAHN, *Understanding EU Legal Integration/Disintegration: In Search of New Perspectives*, 2023.

<sup>2233</sup> T. KÖNIG, *The Dynamics*, cit.

guiding EU enlargement manage the dual dynamics of widening and the deepening<sup>2234</sup> of integration processes among existing member states.

The essential findings underscore crucial disparities between EU enlargement and accession processes,<sup>2235</sup> while highlighting their shared commitment to safeguarding the rule of law.<sup>2236</sup> Enlargement involves expanding EU borders and incorporating new member states, highlighting the need to uphold the rule of law in newly incorporated regions.<sup>2237</sup> Accession entails a legal integration process for candidate countries, underscoring the rule of law's pivotal role in guiding reforms and institutional alignment.<sup>2238</sup> In addition, the 'Big Bang' enlargement strategy,<sup>2239</sup> experiencing the accession of ten new member states, demonstrated both the flexibility and rigidity required to manage diverse integration objectives.<sup>2240</sup> While the strategy facilitated rapid expansion, it also highlighted the need for stringent adherence to EU standards.<sup>2241</sup> This dual approach has allowed the EU to manage the complexities of integrating a diverse group of countries with varying levels of political, economic, and legal development.<sup>2242</sup>

The implications of these findings hold profound significance for the future<sup>2243</sup> of EU enlargement and integration,<sup>2244</sup> particularly in confronting persistent challenges to the EU's legal framework, notably regarding the rule of law. The EU's enlargement necessitates meticulous navigation of integration processes alongside steadfast commitment to bolstering legal and political unity among its current members.<sup>2245</sup> This dual approach ensures the

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<sup>2234</sup> F. MAYER, *Enlarging and Deepening: Giving Substance to The European Political Community*, in *Bruegel Policy Contribution*, 2022.

<sup>2235</sup> T. BÖRZEL, A. DIMITROVA, F. SCHIMMELFENNIG, *European Union*, cit.

<sup>2236</sup> A. K. JONASSON, *EU Norm Promotion in A Conflictual World. An Existential Necessity with Obstacles? The Borders of The European Union in A Conflictual World: Interdisciplinary European Studies*, 2024.

<sup>2237</sup> M. KAEDING, J. POLLAK, P. SCHMIDT, *Enlargement and The Future of Europe: Views from The Capitals*, 2024.

<sup>2238</sup> D. DUDLEY, *European Union Membership Conditionality*, cit.

<sup>2239</sup> Burson-Marsteller, *Big Bang - Smaller Shocks, Enlargement 2004's Impact on EU Policies and Process*, 2010.

<sup>2240</sup> J. AHRENS, M. MEURERS, C. RENNER, *Beyond the Big-Bang*, cit.

<sup>2241</sup> H. IKONOMOU, A. ANDRY, R. BYBERG, *European Enlargement Across Rounds and Beyond Borders*, London, 2017.

<sup>2242</sup> P. JORDAN, J. EDER, *10 Years of EU Eastern Enlargement: The Geographical Balance of a Courageous Step*, Proceedings of The Symposium in Vienna, 3-4 December 2014, in *Verlag Der Österreichischen Akademie Der Wissenschaften*, 2017.

<sup>2243</sup> G. ALTUG, B. DARICI, *Future of The European Union Integration: A Failure or A Success? Future Expectations*, in *Peter Lang Edition*, 2020.

<sup>2244</sup> T. LAVRELASHVILI, *How to Make EU Enlargement Work? A Grass-Roots Approach to Strategic Preparations*, in *European View*, 2024.

<sup>2245</sup> F. SCHIMMELFENNIG, *Crisis and Polity Formation in The European Union*, in *Journal of European Public Policy*, 2024.

preservation of the EU's integrity and enhances its effectiveness, fostering cohesion and collaboration across its evolving landscape.<sup>2246</sup> The flexible approach to integration,<sup>2247</sup> highlighted by the differentiated integration strategy,<sup>2248</sup> has allowed the EU to accommodate diversity among member states while maintaining core legal and democratic standards.

The concept of differentiated integration<sup>2249</sup> recognizes the diverse capacities and preferences of member states, allowing to accommodate at varying speeds and depths. This strategy has proven instrumental in navigating the complexities of integrating countries with differing degrees of adherence to EU principles and standards.<sup>2250</sup> Furthermore, the experiences of countries such as Bulgaria and Romania<sup>2251</sup> post-accession have illustrated the ongoing challenges of maintaining rule of law standards, even after formal compliance with EU criteria. These countries have faced persistent issues such as corruption and weak judicial systems,<sup>2252</sup> underscoring the need for continuous monitoring and support from the EU. This necessitates a sustained and adaptive approach to post-accession conditionality, as evidenced by the CVM,<sup>2253</sup> which monitors the progress of these countries in implementing judicial reforms and combating corruption.

Future research should investigate the equilibrium between flexibility and rigidity in upcoming EU enlargement strategies, focusing on the enduring efficacy of conditionality mechanisms and their influence on the rule of law across member states. While conditionality<sup>2254</sup> has been effective in encouraging reforms in candidate countries, its long-term impact on maintaining rule of law standards post-accession<sup>2255</sup> remains a critical area of inquiry. Additionally, conducting comparative studies between past rounds of enlargement<sup>2256</sup>

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<sup>2246</sup> I.B. BOSOANĂ, *The EU Eastern Enlargement*, cit.

<sup>2247</sup> A.B. ENGELBREKT, *The EU Between Federal Union and Flexible Integration*, in *Interdisciplinary European Studies*, 2023.

<sup>2248</sup> D. LEUFFEN, B. RITTBERGER, F. SCHIMMELFENNIG, *Integration and Differentiation in The European Union: Theory and Policies*, 2022.

<sup>2249</sup> E. PISTOIA, *Limiti All'integrazione Differenziata*, cit.

<sup>2250</sup> A. MIGLIO, *Riforme E Allargamento*, cit.

<sup>2251</sup> A. SPENDZHAROVA, M.A. VACHUDOVA, *Catching Up*, cit.

<sup>2252</sup> C. NICOLESCU-WAGGONER, *Democratic Rule of Law and Corruption in Practice*, in *No Rule of Law, No Democracy: Conflicts of Interest, Corruption, And Elections as Democratic Deficits*, New York, 2016, p. 47-164.

<sup>2253</sup> Ş. OANA, *Preserving the Rule of Law Through Transnational Soft Law: The Cooperation and Verification Mechanism*, in *Hague Journal on the Rule of Law*, 2024.

<sup>2254</sup> E. GATEVA, *European Union Enlargement Conditionality*, 2016.

<sup>2255</sup> N. BACIC SELANEC, I. GOLDNER LANG, D. PETRIĆ, *Rule of Law in the EU*, cit.

<sup>2256</sup> H. IKONOMOU, A. ANDRY, R. BYBERG, *European Enlargement*, cit.

and forthcoming policy modifications can yield profound insights into the evolving landscape of EU integration policies. By scrutinizing the influence of diverse political, economic, and legal contexts on enlargement strategies, such research endeavors would offer valuable perspectives for identifying both effective practices and potential pitfalls in the EU's approach to enlargement. By engaging with emerging challenges and adapting its functions, the EU institutions may contribute to shaping the future trajectory of EU governance and integration, enriching the very understanding of its pivotal role in the European legal landscape.

Our study has demonstrated that the rule of law remains a cornerstone<sup>2257</sup> of the EU's enlargement strategy, providing both a framework for integration and a mechanism for ensuring compliance with fundamental democratic values. The judicial character of this thesis delves into the rigorous analysis of the legal frameworks<sup>2258</sup> and mechanisms<sup>2259</sup> pivotal in upholding the rule of law within the context of EU enlargement.<sup>2260</sup> It offers a critical examination of the Court's role<sup>2261</sup> alongside other legal instruments, elucidating how mechanisms such as conditionality<sup>2262</sup> and differentiation<sup>2263</sup> are instrumental in fostering compliance with EU standards among member states and candidate countries.<sup>2264</sup> As the EU continues to evolve, maintaining a robust commitment<sup>2265</sup> to the rule of law<sup>2266</sup> will be essential in fostering a cohesive and integrated union that respects both diversity<sup>2267</sup> and shared values.<sup>2268</sup> This emphasis underscores the paramount significance of legal principles and judicial oversight in both achieving and sustaining European integration.<sup>2269</sup>

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<sup>2257</sup> A. I. DRĂGULIN, *Democracy and Rule of Law in the European Union*, in *Essays in Honour of Jaap W. De Zwaan*, in *Studia Politica; Romanian Political Science Review*, 2019.

<sup>2258</sup> F. SCHIMMELFENNIG, T. WINZEN, *Ever Looser Union*, cit.

<sup>2259</sup> S. ANANICZ, P. BURAS, *The Home Straight: The EU Mechanism for Defending the Rule of Law*, Stefan Batory Foundation, in *Ideaforum*, Warsaw, 2020.

<sup>2260</sup> M. CARTA, *Unione Europea e Tutela Dello Stato di Diritto Negli Stati Membri*, in *Cacucci*, 2020.

<sup>2261</sup> M. CREMONA, A. THIES, *The European Court of Justice and External Relations Law, Constitutional Challenges*, Modern Studies in European Law, Oxford and Portland, Oregon, 2014.

<sup>2262</sup> R. PESHKOPIA, *EU Membership Conditionality in Promoting Acceptance of Peremptory Human Rights Norms: A Case Study in Albania Considering Public Opinion, Peremptory International Legal Norms and the Democratic Rule of Law*, 2020.

<sup>2263</sup> B. LERUTH, S. GÄNZLE, J. TRONDAL, *Differentiation in the European Union*, cit, p.1-11.

<sup>2264</sup> B. LERUTH, S. GÄNZLE, J. TRONDAL, *Differentiation in the European Union*, cit.

<sup>2265</sup> European Court of Auditors, *The Commission's Rule of Law Reporting, Review 02*, Curia Rationum, 2024.

<sup>2266</sup> U. VON DER LEYEN, *A Union That*, cit.

<sup>2267</sup> F. BIEBER, R. BIEBER, *Negotiating Unity and Diversity in the European Union*, 2020.

<sup>2268</sup> E. SCISO, C. MORVIDUCCI, R. BARATTA, *I Valori dell'Unione Europea e l'Azione Esterna*, in *G. Giappichelli Editore*, Turin, 2016.

<sup>2269</sup> J. MARTONYI, *Law and Identity in the European Integration*, in *Hungarian Journal of Legal Studies*, 2021.

The final conclusion demonstrates that the rule of law<sup>2270</sup> stands as a core pillar of European integration process, indispensable for protecting the EU's essential democratic values and governance structures.<sup>2271</sup> It serves as a significant element within the EU's enlargement strategy,<sup>2272</sup> ensuring that new members respect to stringent legal and democratic norms, thereby preserving the Union's integrity and credibility.<sup>2273</sup> Moreover, the rule of law is pivotal<sup>2274</sup> in advancing the EU's cohesion and resilience, enabling it to efficiently navigate internal and external difficulties, such as shifts in political and legal dynamics and socio-economic pressures.<sup>2275</sup> Our findings emphasize the essential role that the rule of law<sup>2276</sup> plays not only in the functioning of the EU's current framework but also in securing its future stability and growth, affirming the necessity of deeply integrating this principle<sup>2277</sup> into the Union's policies and expansion strategies.<sup>2278</sup>

In an era marked by shifting geopolitical landscapes<sup>2279</sup> and internal challenges, the EU faces a pivotal juncture in its enlargement strategy, navigating intricate dynamics with a steadfast commitment to upholding its foundational principles.<sup>2280</sup> As the Union evolves, vigilance in ensuring alignment with core values is essential, safeguarding the integrity and vitality of the European project.<sup>2281</sup> The future<sup>2282</sup> of the EU's enlargement strategy will likely

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<sup>2270</sup> P. CRAIG, G. DE BÚRCA, *The Evolution*, cit; N. KIRST, *Rule of Law Conditionality: The Long-Awaited Step Towards a Solution of the Rule of Law Crisis in the European Union?*, European Papers, 2021; R. PETROV, *Bumpy Road of Ukraine*, cit.

<sup>2271</sup> T. KÖNIG, *The Dynamics*, cit.

<sup>2272</sup> T. SEKULIĆ, *The European Union*, cit.

<sup>2273</sup> S. MITROVIĆ, M. LAZAREVIĆ, *The EU and Third Actors*, cit.

<sup>2274</sup> European Court of Auditors, *The Rule of Law in the EU, An Improved Framework to Protect the EU's Financial Interests, But Risks Remain, Special Report*, Curia Rationum, 2024.

<sup>2275</sup> S. BEKKER, *The EU's Recovery and Resilience Facility: A Next Phase in EU Socioeconomic Governance?*, *Politics and Governance*, 2021.

<sup>2276</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *2023 Rule of Law Report, The Rule of Law Situation in the European Union, COM(2023) 800 Final*, Brussels, 5.7.2023.

<sup>2277</sup> A. OLEART, *The Political Construction of the 'Citizen Turn' in the EU: Disintermediation and Depoliticisation in the Conference on the Future of Europe*, in *Journal of Contemporary European Studies*, 2023.

<sup>2278</sup> L. NALYVAIKO, O. CHEPIK-TREHUBENKO, *Application of the Principle of the Rule of Law International and National Courts*, in *Щорічник*, 2023.

<sup>2279</sup> S. KEIL, *Enlargement Politics Based on Geopolitics? A Proposal for a Geopolitics-Driven Enlargement Policy, A Year Later: War in Ukraine and Western Balkan (Geo) Politics*, 2023.

<sup>2280</sup> European Commission, *European Rule of Law Mechanism: Input from Member States, 2022 Rule of Law Report*, Directorate-General for Justice and Consumers, 13 July 2022.

<sup>2281</sup> J. E. FOSSUM, *The EU and Third Countries: Consequences for Democracy and the Political Order*, in *Journal of Common Market Studies*, 2023.

<sup>2282</sup> European Parliament, Plenary Sitting, 2019-2024, *Report on Deepening EU Integration in View of Future Enlargement, Committee on Foreign Affairs, Committee on Constitutional Affairs, Joint Committee Procedure – Rule 58 of the Rules of Procedure*, 30.1.2024.



depend on its ability to navigate these complex dynamics, ensuring that new and existing member states adhere to its fundamental principles. By continuing to refine its mechanisms for promoting the rule of law and accommodating diversity, not only would fortify internal cohesion but also reinforce the EU's global leadership in democracy, human rights, and the rule of law.<sup>2283</sup>

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<sup>2283</sup> European Commission (2024), *Pre-Enlargement Reforms and Policy Reviews*, cit.

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