



A Template for Staged Accession to the EU

Michael Emerson, Milena Lazarević, Steven Blockmans and Strahinja Subotić

Abstract

An idea is gaining ground that a system of **accession to the EU in stages** is now needed to revive and sustain the incentives for the states of the Western Balkans to continue their European integration journey and overcome an apparent impasse over accession prospects. At the same time there is the need to ease the most serious concerns that existing EU Member States have over the prospect of further enlargement. If there can be a broad intuitive appeal for the idea of staged accession, then what naturally follows is the need for a detailed explanation on how this would work in practice, which this paper explores for each of the EU institutions. The picture that emerges is that the EU's institutions could well lend themselves to the idea of staged membership, with various examples or precedents to be noted, also connecting with the related idea of 'differentiated' integration. A successful development and practical application along these lines would do much to restore positive momentum to the European project itself, currently threatened by a damaged reputation, as well as numerous internal and external threats. The paper sets out a substantial institutional, technical and legal basis for a breakthrough out of the current impasse. It remains for political leaders in both the EU and the Western Balkans to signal their interest in such ideas, and thus launch debate at the strategic level, so that the institutions can work towards defining a formal proposal. The implementation of the system of staged accession would have to be supplemented by a robust EU policy geared towards the resolution of bilateral disputes and issues of statehood in the region.

Michael Emerson and Steven Blockmans are respectively Associate Senior Research Fellow and Director at the Centre for European Policy Studies (CEPS), Brussels; Milena Lazarević and Strahinja Subotić are respectively Programme Director and Programme Manager at the European Policy Centre (CEP), Belgrade. The authors thank Florian Bieber, Srđan Cvijić, Dunja Duić, Erwan Fouéré, Christophe Hillion, Srđan Majstorović and Pierre Mirel for helpful comments on an earlier draft.

Four proposed stages in accession to the EU

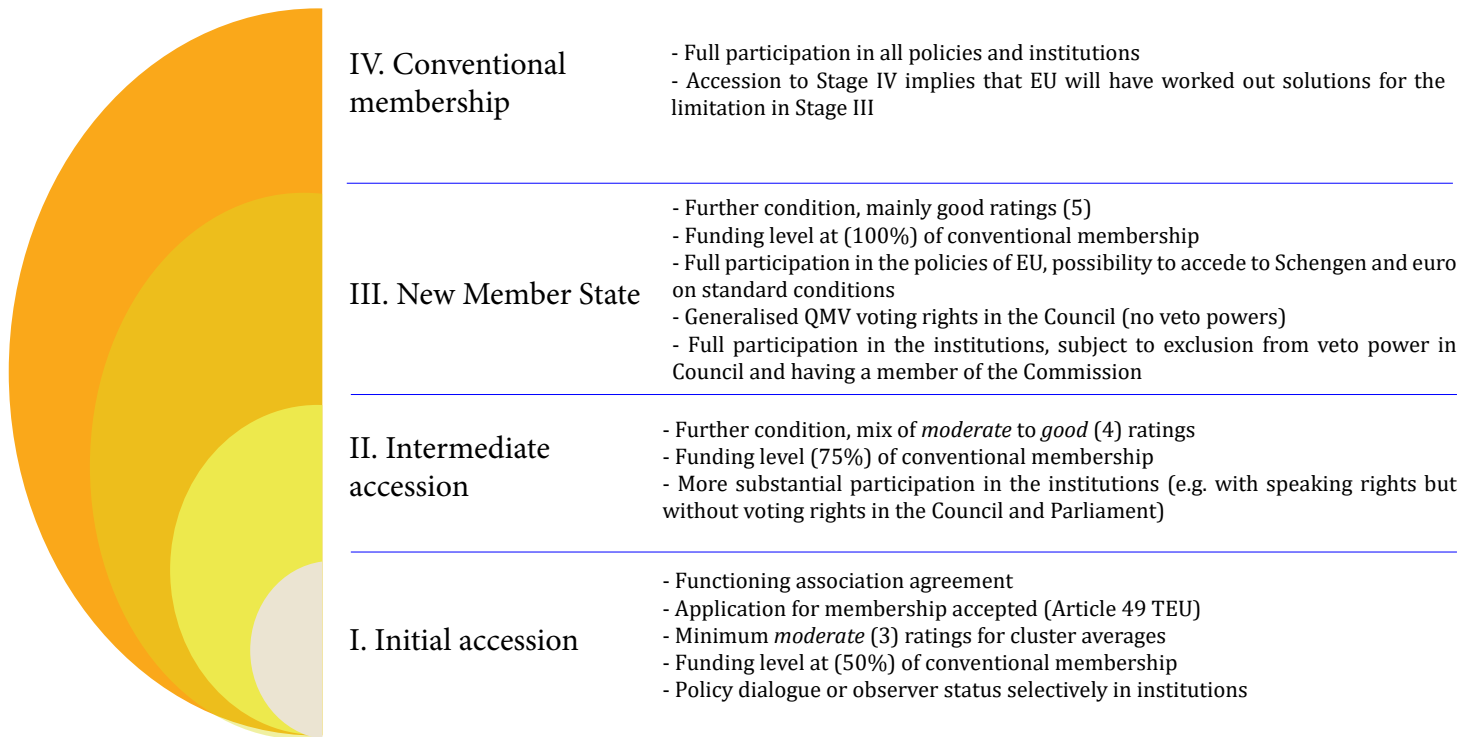


Table of contents

1. Introduction
2. Stages of accession to membership
3. Policy chapters and clusters
4. EU institutions
 - a. Council of the EU
 - b. European Council
 - c. European Commission
 - d. Comitology
 - e. European Parliament
 - f. Court of Justice of the European Union
 - g. European Court of Auditors
 - h. Consultative bodies
 - i. Agencies
 - j. Schengen area
 - k. European Central Bank
5. Citizenship
6. Funding
7. Ratings
8. Reversibility
9. Legal basis
10. Conclusions

Annexes

- A. Clusters of chapters
- B. Council configurations
- C. Committees of the Council and Commission
- D. Committees of the Parliament
- E. Agencies

References

1. Introduction

An increasing number of independent analysts specialised in the EU's Western Balkans enlargement process, recognising the present damaging impasse¹, are calling for a revised enlargement procedure, with a new method emphasising accession 'stages' (or a phased/partial/progressive/step-by-step method). This broad idea fits into the concept of 'differentiated' EU integration. However, this thinking often remains solely an intuitive idea, lacking operational specification. For these ideas to advance, this paper sets out to debate a potential operational template model to help explore options for a staged accession to EU membership. It concludes that the EU's institutional structure could well accommodate a regime of progressive, conditional and staged participation by states aiming at full membership, as an alternative to the current binary 'in' or 'out' model. The ideas presented here are sufficiently developed in their institutional, technical and legal content to offer a basis in which political leaders in both the EU and Western Balkans could signal their interest in the broad proposition. After a period of strategic debate among all stakeholders, the Commission should be invited to take the lead in advancing a formal proposal.

2. Stages of accession to membership

The main idea is to break away from the present binary procedure of 'in' or 'out' and to have set stages in the process with a view to satisfying two objectives:

- » First, to have an effective incentive structure for the applicant states throughout, from the early to the final stages. Four stages are proposed – 'initial', 'intermediate', 'new Member State', and 'conventional membership.'
- » Second, to retain safeguards in relation to existing Member States' concerns over further enlargement for which the EU's institutional structure is not yet adapted. Graduations in access to the institutions are therefore envisaged for each of the four stages.

The stages outlined below are suggested as preliminary ideas reflecting a work in progress by a group of researchers. More extensive consultations with both the expert community and officials are envisaged, which may well lead to improved formulations.

The basic features of the existing enlargement system are retained, notably the 35 chapters of the EU acquis. The performance of the applicant states needs to be monitored for each chapter, going beyond the present qualitative assessments, with the addition of quantified ratings, for example in the range of '0 to 5'. Crucially, quantification permits both aggregation and averaging of the assessments, and thus a clear basis for regulating the conditions to progress through the stages. The Commission's ratings should be monitored and checked by civil society.

Beyond the necessarily technocratic content of the monitoring and ratings process, there are two further essential aspects:

- » While the proposed template creates a 'hub-and-spoke' system, treating each associated state on its merits, there is an overarching regional imperative, namely the need for peace and cooperation between the states of the region.
- » Ongoing experience of the accession process is underlining the need not only for technocratic compliance with EU law, but also societal understanding and support for the process in the states of the region, as well as within the EU.

1 See References below.

The quantified assessments would also be the basis for progressive increases in the level of structural funding as part of the stages, thus providing incentives throughout.

A summary of the four stages below is followed by further details in subsequent sections. In particular, section 9 on the legal basis addresses the need for adequate arrangements for successfully passing from stage to stage.

Proposed regime:

I - Initial accession stage:

» Conditions:

- Functioning Association Agreement
- Application for membership accepted (Article 49 TEU)
- Minimally moderate ratings of [3] for cluster averages

» Funding level corresponding to 50% of the conventional membership amount

» Policy dialogue or observer status with the institutions

II - Intermediate accession stage:

» Further condition: mix of moderate to good ratings, minimum average rating of [4]

» Funding level corresponding to 75% of the conventional membership amount

» More substantial participation in the policies and institutions (e.g., speaking rights in the Council and Parliament but no voting rights)

III – New Member State stage:

» Further condition: mainly good ratings of [5]

» Funding level equal to the corresponding amounts for conventional membership

» Full participation in the policies of the EU

» EU citizenship rights

» Maximum participation in the institutions, subject to limitations:

- no veto right in the Council of the EU
- no Commissioner in the College of Commissioners
- no Judge in the Court of Justice

» Possibility to accede to the Schengen area and eurozone on standard conditions

IV - Conventional membership:

» Full participation in all policies and the institutions on condition that all requirements have been met. This also implies that the EU itself will have worked out solutions for the limitations in participation in certain institutions in Stage III, notably for the Council and Commission.

Stages I and II would be grafted onto (and take over from) the existing procedures for the opening and closing of chapters, and candidate status. It would build upon the existing Stabilisation and Association Agreements, as well as the revised enlargement methodology. The precise operational details of this ‘grafting’ process will warrant discussions with the EU institutions at an appropriate moment. It is envisaged that with entering Stage I, a European associated country whose application for membership (as per Article 49 TEU) has been accepted will open all chapters and clusters on the condition of having reached minimally moderate levels of ratings of cluster averages. The entry to Stage I would have to be supplemented by a robust EU policy geared towards the resolution of regional bilateral disputes and issues of statehood.

Stage III warrants special comment. The Treaty of Accession would be needed to pass to Stage III, especially given the QMV voting rights obtained at this stage. Although certain institutional rights would be temporarily derogated by the Treaty of Accession, the idea is that all newly acceding states would have member state status from then on. Rather than being viewed as a second-grade status, the ‘new Member States’ could be regarded as an avant-garde, in that their exclusion from veto voting power would take them closer to where the EU would like to get to in due course when unanimity requirements would be progressively reduced. Underlining this point, as and when reforms of voting and membership of the Commission advance, Stage IV would – somewhat paradoxically - be converging on Stage III.

The legal form of the proposed staged accession regime merits thorough investigation, across the hierarchy of possibilities of which the EU has extensive experience:

- » Political declarations of leaders, for example at EU summits and in the applicant states (the lowest legal status, but still top level in terms of political importance).
- » Policy communications and the political orientations of the EU institutions.
- » Specific elements of EU legislation.
- » Agreements with treaty status made between the EU and applicant states, including the Treaty of Accession.
- » Changes to the EU’s basic treaties. See further details below under ‘Legal basis’.

3. Policy chapters and clusters

These policy chapters and clusters would be based on the Commission’s revised 2020 methodology (see Annex A below). The main proposed change would be to revise the system of opening and closing chapters and clusters, with each currently subject to the unanimity of Member States. All chapter clusters could be opened from Stage I, with the Commission having published the lists of EU acquis to be adopted for each chapter. Chapters would be effectively closed with the passage to Stage III, when compliance is assessed to be good (level 5) across the board. There will also have to be a procedure for updating the EU acquis built into the process, as EU law often changes substantially over the years with the passage of new legislation.

For the calculation of average quantitative ratings, a weighting system is needed. For example, the Chapters under the cluster ‘Fundamentals’ and Chapter 1 for the free movement of goods in the internal market cluster warrant higher weights than other chapters (see also the Ratings section below).

Chapter 2 for the free movement of workers will warrant special treatment as there should not be a premature complete opening of free movement to the point of causing excessive migration.

The Green agenda and sustainable connectivity cluster in the Commission’s methodology would need to be updated for the much higher level of ambition in the Green Deal, as now specified with the ‘Fit for 55’ target for 2030 and the 2050 target for reaching climate neutrality. The programmes of action for these longer-term targets are relevant both for the time horizons to be envisaged for the accession stages and for the extent of financial support given.

Our analysis will be organised around the clusters of policy chapters, based on the structure laid out in the revised enlargement methodology²:

1. Fundamentals
2. Internal market
3. Competitiveness and inclusive growth
4. Green Agenda and sustainable connectivity
5. Resources, agriculture and cohesion
6. External relations

Proposed regime:

- » All clusters are opened in Stage I
- » All chapters are closed when achieving *mainly good* ratings before entering Stage III
- » The Green Deal will substantially upgrade the energy/environment/climate chapters

Up for consideration is the question on whether the stages should be ‘monolithic’, i.e., simply passing from stage to stage as unified blocks; or, alternatively, there might be some differentiation between clusters that could achieve different levels of ratings. There are pros and cons to be weighed here. A differentiated regime adds complexity and difficulties for public communications. On the other hand, it has become an important reality for the EU itself, with the major initiatives of the euro and Schengen area standing as positive examples of ‘differentiation’³.

4. Institutions

Definitions on the degrees of institutional participation

Policy dialogue: meetings between applicant states and the Commission, the European Parliament, and/or with Council leadership and Member States, including at European Council level.

Observer: presence at meetings without speaking or voting rights.

Participation with speaking rights, but without voting rights.

Participation with QMV voting rights in the Council, without veto powers.

Full participant: as conventional Member States

To review how each of the institutions could accommodate the several stages, a standard vocabulary for the degrees of participation is proposed (see the box below), with five broad levels, alongside the four stages. However, the differing ease or difficulty for each institution in accommodating the applicant states means that in some instances there can be more participation earlier in some stages than others. While there is a clear hierarchy from observer through to participation with speaking and then voting rights, the policy dialogue mode is a different category and can be of high importance, for example in European Council meetings.

² See Annex A for an overview of all chapters per clusters as per the revised methodology.

³ See Schimmelfennig F., ‘Is differentiation the future of European integration?’, in Fagesten B. and von Sydlow G., eds., ‘Perspectives on the Future of the EU’, SIEPS, April 2019

Given the Council's hybrid system of QMV and unanimity rules, a system of graduated voting rights for the applicant states would be possible. There would be no voting rights in Stages I or II. However, for Stage III, the new Member States would have QMV rights, but without veto powers, which could significantly ease some of the concerns over enlargement in existing Member States.

4.a Council of the EU

Participation in the legislative function of the Council is the most sensitive of the institutional issues posed by enlargement. Many existing Member States are apprehensive about extending the number of new and fragile democracies with full voting powers (which include the remaining unanimity provisions) at the Council table. President Macron, for example, has argued that further enlargement should be avoided until there have been systemic reforms within the institutions. While the precise nature of such reforms has not been spelt out, one hypothesis is that QMV should be significantly extended or generalised. Such a development is currently beyond the political horizon.

In this situation there is the need in the foreseeable future for a set of graduated possibilities for progressive participation by the applicant states, as illustrated in the box above.

Below the level of European Council summit meetings of Heads of State and Government, the ministerial Council has 10 sectoral configurations, all able to legislate (Annex B).

Policy dialogue can be conducted at three levels, first at the level of the Commission alone, notably for technical issues, second with the Council Presidency, and third at full meetings with the Member States.

Eurozone finance ministers meet in the Eurogroup, together with representatives of the Commission and European Central Bank (ECB). Non-eurozone Member States are excluded, even as observers.

Given the Council's hybrid system of QMV and unanimity rules, a system of graduated voting rights for the applicant states would be possible. There would be no voting rights in Stages I or II. However, for Stage III, the new Member States would have QMV rights, but without veto powers, which could significantly ease some of the concerns over enlargement in existing Member States.

Further refinements are conceivable, for example with QMV voting rights at those sectoral Councils for which good ratings are achieved in corresponding chapter clusters, possibly in Stage III. However, this would introduce further complexity to the system and might contradict the important objective of safeguarding the homogeneity of EU law.

For the revised enlargement process proposed here, the Council should restrict the use of the unanimity requirement to the fundamental decisions over the passage of the applicant state from stage to stage, except for the passage from Stage II to Stage III, which would require the signing and ratification of the Accession Treaties. As Member States would no longer have veto powers over smaller individual decisions within stages, this would do away with the present notorious use of veto powers by single Member States over the smallest steps to open or close single chapter clusters, even on matters where there is no EU legal competence. This is currently the case with Bulgaria blocking any progress in North Macedonia's accession process.

Proposed regime:

- » Policy dialogue with the EU leadership of Councils and selective observer participation from Stage I.
- » Participation with speaking rights, without voting, in Council meetings from Stage II.
- » Participation with QMV voting rights in the Council, without veto powers in Stage III.
- » Full participation in Stage IV.

4.b European Council

The European Council is the supreme policy setting institution although it does not formally legislate. Generally, it decides by consensus, and only exceptionally by QMV (the appointment of its president).

There would be stages broadly analogous to the ministerial Council, with notably important policy dialogue from Stage I, and speaking participation in all meetings from Stage III.

The policy dialogue between the European Council and applicant states is likely to be crucially important. Given its relatively informal legal character, policy dialogue here can range between routine diplomatic exchanges of views through to negotiations and effective decisions on strategic issues. Typically, decisions or orientations at the European Council are passed on for legal implementation to the ministerial Councils.

Proposed regime:

- » Policy dialogue from Stage I.
- » Speaking participation in Stage III.

4.c European Commission

The generally perceived need to reduce the number of Commissioners saw the introduction into the Lisbon Treaty (in Article 17.5 TEU) of the provision to reduce the number of Commissioners to “two thirds of the number of Member States as from 1 November 2014 unless the European Council acting unanimously, decides to alter this number”. The selection of the nationality of Commissioners would be “on the basis of strictly equal rotation between the Member States”. To overcome the Irish rejection of the Lisbon Treaty in a popular referendum, it was agreed not to proceed with a reduction of the number of Commissioners.

There should be no expectation for applicant states to secure a member of the Commission, except if by Stage IV there weren't a switch to the Lisbon Treaty two-thirds rule with rotation.

This means that there should be no expectation by the applicant states to ‘have their own Commissioner’. By the time full conventional membership becomes feasible, the EU may have finally moved to adopt the original provision of Article 17.5 TEU.

An alternative scheme could be to introduce a constituency system for members of the Commission, such as the Board of the IMF where a single board member may represent several countries, with provision also for plenary and deputy members where the deputy has a different nationality to the plenary member.

However, the introduction of eligibility for applicant state nationals to take up staff positions in the Commission, including within the cabinets of Commissioners of existing Member States, would be a considerably important development (see further details below on citizenship).

Proposed regime:

- » No expectation for applicant states to secure a member of the Commission, except if by Stage IV there weren't a switch to the Lisbon Treaty two-thirds rule with rotation.
- » Alternatively, in the event of an introduction of a constituency system.
- » Eligibility of citizens for staff and cabinet positions on fixed-term contracts from Stage II, full civil servant status from Stage III.

4.d Comitology

This informal expression used in EU circles, 'comitology', covers a major but arguably the least visible part of the institutional system, namely the functions and rules of Council and Commission committees⁴.

There were 318 Council working groups and committees, with Member State representatives in 2019, holding 590 meetings and adopting 944 decisions by written procedures. These committees have several functions, outlined in the governing Regulation (EU/182/2011) as 'Advisory', 'Examination' and 'Regulatory with Scrutiny'. The committees prepare legislation for adoption by the Council and involve the possibility of voting on Commission proposals and for their amendment. Their work involves taking control of the Commission's powers of implementation of EU law, including secondary legislation and delegated acts. Participation in all committees is not always 100 % by Member States, especially smaller ones with less ample administrations.

In a class of its own is the Committee of Permanent Representatives of Member States (COREPER), which acts as the 'ante-chamber' of the Council of Ministers, conducting many negotiations over legislation or policy statements to be adopted by the Council. COREPER has two sections, 'COREPER I' at deputy ambassador level, and is concerned with economic and social policy issues, including the internal market, and COREPER II at ambassador level with general policy as its main concern, including foreign affairs.

In addition, there are no less than 1 729 Commission Expert Groups advising on proposed legislation and policy⁵. Of these, 562 are formed of government representatives only, 652 are with NGOs and 394 with industry representatives⁶.

Observer status in the committees from Stage II would amount to an important learning, socialisation and capacity-building process for the implementation of EU law and policies by the public administrations of acceding states. But the scale of these activities is so extensive that applicant states with relatively weak public administrations could only realistically participate selectively.

There would be a plausible hierarchy of relations between the applicant states and the European Parliament, starting with observer status for delegated national parliamentarians in Stage I, to participation with speaking rights in Stage II, moving on to directly elected MEPs with full voting rights in Stage III.

⁴ Report from the Commission on the working of committees during 2019, COM/2021/69 final.

⁵ The Commission publishes a *Register* of its Expert Groups. <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups-explained?lang=en>

⁶ ALTER EU (Alliance for Lobbying Transparency and Ethics Regulation in the European Union), 'Secrecy and Corporate Dominance – a Study on the Composition and Transparency of European Commission Expert Groups'. <https://corporateeurope.org/sites/default/files/sites/default/files/resource/published.pdf>

Proposed regime:

- » Policy dialogue, very selectively, from Stage I.
- » Observers, selectively from Stage II.
- » Participation with QMV voting rights, without veto powers from Stage III.
- » Full participation from Stage IV.

4.e European Parliament

The European Parliament has 705 directly elected MEPs. The numbers of MEPs per Member State are semi-proportional based on population. The minimum number is six MEPs for the smallest Member States such as Malta and Estonia, while for example Croatia has 12, Sweden 21, Poland 52, and Germany 96. The Parliament has 20 Committees, most of which have important roles in the co-decision legislation process with the Council (Annex C). The Committees have between 21 and 80 MEP members, so not all Member States have a seat in all Committees.

The European Parliament has an EEA Joint Parliamentary Committee bringing together MEPs and national parliamentarians from EEA states.

There would be a plausible hierarchy of relations between the applicant states and the European Parliament, starting with observer status for delegated national parliamentarians in Stage I, to participation with speaking rights in Stage II, moving on to directly elected MEPs with full voting rights in Stage III.

It is important to add here that after the UK's withdrawal, the Parliament adopted a resolution in which it not only reduced the number of seats to 705 but reserved some of the UK's seats for future members. To be more specific, it placed '46 of the 73 seats, to be freed up by the departure of the UK, in a reserve,' thus "'leaving room for new countries that may join in the future'. This way, any possible future incorporation of new states does not lead to a loss of seats for current Member States.

Interestingly, the US has long experience, since an 1802 law, providing for territories that were not federal states to be represented by Delegates in the House of Representatives, but not the Senate, with rights of participation including being able to speak during House sessions, but without the right to vote. Throughout the 19th century this regime was used by territories that would later become federal states (Alabama, Florida etc.). The most recent cases of graduation from territories with delegates to full federal states are Hawaii and Alaska, both becoming federal states in 1959. Puerto Rico and various US island dependencies in the Pacific currently have non-voting delegates to the House. US federal law applies in Puerto Rico.⁷

Proposed regime:

- » Observer MEPs delegated by national parliaments in Stage I.
- » National parliamentarians delegated as MEPs, with speaking but without voting rights in Stage II.
- » Directly elected MEPs with full voting rights from Stage III.

⁷ While Puerto Rico does not have the status of a federated state of the US, its population has US citizenship and freedom of movement.

4.f Court of Justice of the European Union

Each Member State appoints one judge to the Court of Justice and two judges to the General Court. However, the number of Advocates General is limited to 11. The appointment of judges to the CJEU and the General Court would be one of the last institutional steps reserved for Stage IV. Even then a majority of new Member States will not immediately have the right to an Advocate General position, given their limited number.

Proposed regime:

- » Staff appointments from Stage II.
- » Appointment of judges and possibly an Advocate General from Stage IV.

4.g European Court of Auditors

The Court of Auditors is a further institution whose leadership consists of a college of one member per Member State. It is a reminder of the need for some limitation along the lines of the Lisbon Treaty's unimplemented Article 17.5 TEU.

Proposed regime:

- » Appointment of a member from Stage IV.

4.h Consultative bodies

Both the European Economic and Social Committee (EESC) and Committee of the Regions (CoR) are advisory committees with 329 members, with the same semi-proportional allocation of seats by Member State. The EESC members are organised under three groups, for employers, employees and independents. The CoR members are elected representatives of sub-national territories (e.g., mayors or regional presidents).

The EESC has an EEA Consultative Committee, bringing together EU and EEA social partners, which could serve as an initial model for applicant states (and with the Committee of the Regions).

Proposed regime:

- » Joint Consultative Committee(s) in Stages I and II.
- » Full participation from Stage III.

4.i Agencies

Over 40 in number, the agencies of the European Union are grouped into four categories (Annex E):

- Decentralised agencies
- Executive agencies
- Euratom agencies
- Independent bodies

Most of the decentralised agencies monitor or assist the implementation of EU policies. The limited participation of European non-Member States is already possible in many cases, conditional on compliance with the sector-specific *acquis*. Several agencies have training functions, suitable for applicant states.

There is a considerable body of literature on the experience of different categories of non-Member States with many of the EU's agencies⁸. A standard model of limited participation applies in many cases, namely full functional participation without voting rights. Progress by the Western Balkans states in taking up these possibilities needs to be further researched.

Proposed regime:

- » Limited participation from Stage I, conditional where appropriate on compliance with relevant EU acquis.
- » Full participation from Stage III.

4.j Schengen area

Standard conditions for acceding to the Schengen area are full application of the Schengen acquis in all areas concerned: land, air and sea borders, police cooperation, data protection, visas and the Schengen Information System.

There is already full participation in the Schengen Area for several non-Member States, notably Norway, Switzerland, Iceland and Liechtenstein. Institutionally, this functions through a Mixed Committee, which meets at ministerial, ambassadorial and working group levels. The non-Member States have limited participation in the governance bodies of the Schengen Area (Council, etc.) with the right to speak but not to vote. This limitation is itself not that significant as most decisions are adopted by consensus without a vote.

This regime could serve as a precedent for the applicant states, conditionally of course on compliance with the relevant EU legislation and high-quality implementation.

Three states of the Western Balkans (Albania, North Macedonia and Serbia) have for their part announced in August 2021 the formation of the 'Open Balkan Initiative' (a 'mini-Schengen') within the region. Its operational workings remain to be revealed.

Proposed regime:

- » Preparations for meeting conditions in Stage I and II.
- » Functional membership with limited participation in governance bodies from Stage III.
- » Full participation in Stage IV, on condition that all specific Schengen-related requirements have been met.

4.k European Central Bank (ECB)

All acceding Member States accept the obligation to join the eurozone, with the timing determined by when they meet the requisite conditions. There are four standard conditions for joining the eurozone, relating to price stability, sound and sustainable public finances, long-term interest rates, and participation in the Exchange Rate Mechanism (ERM II). In practice long delays of a decade or more are being observed after accession to the EU. Currently, Croatia and Bulgaria are preparing for membership, with both now participating in ERM II.

The ECB has developed governance mechanisms to handle the rising number of eurozone states and their varying economic weights. The Governing Council consists of an Executive Board of six members plus representatives of all 19 eurozone states. All members originally had voting rights, but after the number of Member States surpassed 18 in 2015, a system of rotating voting rights was introduced. Eurozone countries are divided into two groups according to the size of their economies and financial sectors. The five largest economies (Germany, France, Italy, Spain and

⁸ Michael Kaeding and Frederic Krull, 'Assessing the Potential of EU Agencies for the future of EU-Turkey relations, Part I: Turkey's full membership without voting rights in the EEA and EMCCDA', IPC-Mercator Policy Brief, September 2021.

the Netherlands) share four voting rights. The other 14 share 11 voting rights. The Governors take turns for voting rights on a monthly rotation basis. When the number of states surpasses 21 the system will be revised to allow for three groups in order of economic weight. The Executive Board members have permanent voting rights (one vote for each). France, Germany and Italy have always had a Board member, Spain usually, and other states occasionally.

An exceptional regime prevails for Montenegro and Kosovo, both of which use the euro as their currency (they have no currency of their own). Their adoption of the euro were unilateral actions, and as such carry no access to the monetary policy facilities or governance structures of the ECB. The operational experience of these two cases of unilateral use of the euro has been both stable and satisfactory.

Bosnia and Herzegovina maintains a fixed exchange rate system in relation to the euro, supported by a currency board regime⁹.

It can be anticipated that more applicant states will want to accede to the eurozone through the normal process, leaving the two unilateral cases as exceptions which may eventually be regularised at some point in the future.

The European microstates of Andorra, Monaco, San Marino, and the Vatican City have special monetary agreements that allow them to issue their own euro coins, and they are de facto part of the eurozone, using the euro as the general transaction currency through banknotes or bank accounts.

In 2009, a confidential International Monetary Fund (IMF) report suggested that in light of the ongoing global financial crisis, the EU Council should consider granting EU Member States that were having difficulty in complying with all five convergence criteria the option to 'partially adopt' the euro, along the lines of the monetary agreements signed with the microstates outside the EU. These states would gain the right to adopt the euro and issue a national variant of euro coins but would not get a seat in the ECB or the Eurogroup until they met all the convergence criteria. However, the EU did not agree to this alternative accession process.

Proposed regime:

- » In Stages I and II compliance with standard monetary policy conditions for eurozone accession can be prepared.
- » Accession to the eurozone becomes possible in Stage III on standard conditions for accession with access to financial mechanisms, and limited participation in the technical and governance bodies of the European Central Bank.
- » Full participation at the European Central Bank after conventional accession to the EU in Stage IV, on condition that all specific EMU requirements have been met.

Pre-accession funding for the Western Balkans is currently around 30 % of the level of the most recently acceding Member States (Croatia, Romania and Bulgaria) on a per capita basis, as set out in the current Multi-annual Financial Framework (MFF). These amounts should be built up progressively from stage to stage, conditionally on progressive improvement in compliance with the EU acquis, as assessed by the ratings system.

⁹ Under a currency board system the national currency is fully backed by foreign exchange reserves. For Bosnia and Herzegovina this in effect means being as close to the eurozone as is possible without abolishing the national currency. See IMF Country Report No. 19/316, 'Bosnia and Herzegovina – Technical assistance report', October 2019.

5. Citizenship

Currently only citizens of Member States can hold EU citizenship. In the present context EU citizenship would be obtained by the citizens of states entering Stage III, including the right to vote for their MEPs.

There are examples of EU citizenship being obtained by citizens of neighbouring states because of frontier changes over the past century, where the new frontiers were inconsistent with the historic territories of ethnic groups. In particular many Moldovan citizens have been able to acquire Romanian and thus EU citizenship. Similarly, but in smaller numbers, Ukrainians living in border regions with Romania have been able to do the same thing. Ethnic Croatian citizens of Bosnia and Herzegovina, who represent 16% of the total population, can acquire Croatian citizenship. Similarly, citizens of the ‘Serb Republic’ of Bosnia and Herzegovina can obtain Serbian citizenship.

Citizens of states reaching Stage II would be eligible for employment in all the EU institutions, which should however be only on a fixed-term contract basis (e.g., 3 to 5 years) so as not to cause brain drain, and on the contrary contribute to human capacity building in EU affairs for the home country when the individuals return home at the end of their contracts. Employment as regular civil servants (‘fonctionnaire’) would apply from Stage III.

Proposed regime:

- » Full EU citizenship rights from Stage III.
- » Citizens eligible for employment in all EU institutions, initially from Stage II on a fixed-term contract basis, and as regular civil servants from Stage III.

6. Funding

Pre-accession funding for the Western Balkans is currently around 30% of the level of the most recently acceding Member States (Croatia, Romania and Bulgaria) on a per capita basis, as set out in the current Multiannual Financial Framework (MFF). These amounts should be built up progressively from stage to stage, conditionally on progressive improvement in compliance with the EU acquis, as assessed by the ratings system (see below).

Proposed regime:

- » Stage I, [50%] of Stage III/IV.
- » Stage II, [75%] of Stage III/IV.
- » Stage III/IV, 100% of EUR per capita receipts under existing criteria for Member States.

For implementation of the Green Deal, large additional resources beyond the Multiannual Financial Framework (MFF) are being mobilised under the Covid-19 Recovery and Resilience Facility. A third of this Recovery and Resilience funding is to be allocated to climate action. At present, the extent to which the Commission’s Green Deal proposals will be agreed upon and the timeframe in which they’ll be implemented are unknown. It would be unrealistic to suppose that the acceding states could achieve the Green Deal targets with less financial support than the much richer existing Member States. Equivalent support for the acceding states should be worked out later when the Green Deal becomes more fully operational.

7. Ratings

Within Stages I to III, if average ratings fall significantly below the established norm, there would be reduced institutional participation and funding, decided by QMV of conventional Member States.

The European Commission's annual reports on the Western Balkans summarise most chapters with the qualitative ratings of some, or moderate, or good preparedness for membership. They also use less frequently early and very advanced as terms, without these being systematically defined. This usage should be clarified to avoid confusion. It may not be useful to distinguish the early from the some, of the good from the very advanced.

The Commission abstains from translating their analyses into quantified ratings, which could be the basis for aggregation and thus more explicit and transparent assessments. We advocate therefore that the Commission should take the extra step of adding quantitative ratings to their annual reviews of the chapters, including the filling out of such assessments for various chapters where the Commission is so far abstaining from any summary assessments.

Civil society should in any case engage in monitoring and undertaking quantified ratings independently of the Commission. The Commission should consult CSOs on a regular basis, in particular over its annual reports. For this, a scale of 0 to 5 may be used, with reference to the Commission's main summary assessment terms, as follows:

Proposed regime:

- 0 = no implementation of EU acquis
- 1 = Some implementation of EU acquis
- 2
- 3 = Moderate implementation of EU acquis
- 4
- 5 = Good implementation of EU acquis

'Good' should be interpreted as the respectable, normal performance of existing Member States, and not be exaggerated as requiring perfection. The term very advanced seems superfluous. Existing Member States, even the best governed among them, are found to be responsible for elements of non-compliance with the acquis by the Commission in their Annual Reports on monitoring the application of EU Law¹⁰.

The crucial passage from Stage II to Stage III for the new Member States, given especially their access to QMV voting rights in the Council and right to have elected MEPs with voting rights in the European Parliament, would require a Treaty of Accession based on Article 49 TEU.

¹⁰ Annual Reports on monitoring the application of EU Law, https://ec.europa.eu/info/publications/annual-reports-monitoring-application-eu-law_en

8. Reversibility

The problem of what to do in the case of a Member State not respecting the EU's fundamental political values as laid out in Article 2 TEU has become very real with Poland's current challenge to the supremacy of EU law and Hungary's illiberal democracy. In principle, Article 7 TEU addresses the problem with a procedure whereby one third of Member States, or the European Parliament, or the Commission may propose that the Council determine that 'there is a clear risk of a serious breach by a Member State of the values referred to in Article 2'. If there is such a determination, the Council may suspend 'certain of the rights' of the Member State in question, 'including the voting rights ... in the Council'. Such action requires unanimity in the European Council 'minus one' (i.e., excluding the state in question). However, in the outstanding cases concerning Poland and Hungary, each of these two countries has indicated they would support each other in blocking the process, thus frustrating the 'unanimity less one' provision.

For the staged accession process, the Article 7 suspension of voting rights in the Council could apply either to the veto powers enjoyed by Member States in Stage IV, or to QMV voting rights if these are agreed as part of Stage III. However, the wording of the text 'certain of the rights' allows for a broader application. This reversibility could also apply, beyond disrespect of EU values as in Article 2, to failure to implement EU law more generally, as measured by the ratings. Reversing a stage would entail the corresponding lower levels of institutional participation and funding. As there currently exists no expulsion clause in the EU Treaty, any reversal from Stage III would hinge on the voluntary withdrawal of a new Member State from the EU (Article 50 TEU). In the absence of such intentions by the backsliding country, new shades of grey would have to be developed to allow for regression within Stage III.

Proposed regime:

- » In Stage IV, activation of Article 7 TEU with suspension of voting rights in the Council in the case of non-respect of fundamental political values (reform of this article may be desirable but falls beyond the scope of the present study).
- » Within Stages I to III, if average ratings fall significantly below the established norm, there would be reduced institutional participation and funding, decided by QMV of conventional Member States.

9. Legal basis

The staged accession model directly builds upon Article 49 of the Treaty on European Union (TEU), which is the single provision in the treaties serving as the legal basis for accession. Stages I and II (i.e. the pre-accession stages) would be based on the existing Stabilisation and Association Agreements signed between the EU and individual Western Balkan countries. Stages III and IV (i.e. membership stages) would be based on the Accession Treaties, which would regulate the specific temporary regime for the new member states, as well as on the EU's founding treaties for all other matters. As the legal act of equal power, the Accession Treaty would thus, for each acceding country, temporarily derogate certain provisions of the founding treaties – most importantly those that regulate membership in the European Commission, and the Court of Justice, as well as voting rights in the Council of the EU.

The legal form of the proposed regime of staged accession will need thorough investigation.

Because there is only a single provision in the treaties serving as the legal basis for accession to the EU, the policy has developed over the past few decades through Commission opinions on the application for EU membership, strategy papers, annual ('progress') reports, accession and European partnerships, complemented by Presidency and Council conclusions. As such, the so-called 'Copenhagen criteria' for EU membership, have grown into a detailed body of conditions which, while remaining open for further development by the European Council, has been formally codified by the Treaty of Lisbon¹¹.

As the conditions for eligibility also cover the Union's own 'absorption capacity' (the fourth Copenhagen criterion which has been infamously used by Member States to delay enlargement), one might assume that, in legal terms at least, any pronouncement by the European Council about the institutional adaptations needed to the EU's own *modus operandi* to keep the integration process on track, would suffice to allow the aspirant members to graduate to Stage I and from Stage I to II. Other than those specific decisions, the relationship between the EU and each acceding country would remain governed by the existing Stabilisation and Association Agreements.

The crucial passage from Stage II to Stage III for the new Member States, given especially their access to QMV voting rights in the Council and right to have elected MEPs with voting rights in the European Parliament, would require a Treaty of Accession based on Article 49 TEU. The Treaty of Accession would provide a sufficient legal basis for the temporary limitations of the specified rights of new member states, given that it holds the same top level legal status as the EU's founding treaties, i.e. the status of a primary source of EU legislation.

The political and legal context for the passage to Stage IV could well change if there were decisions to enhance QMV voting through Treaty change and reduce the number of members of the Commission by activating the existing Article 17.5 TEU provision, effectively converging on the institutional provisions of Stage III. It should be clear that Stage III is intended to be a transitional arrangement, in support of the principle of the homogeneity of EU law.

Concerning changes in voting rules from unanimity to QMV in Stage IV, the European Council may (except for defence matters) make use of the so-called 'passerelle' clause of Article 48(7) TEU. This has the advantage of a simpler procedure for the adoption of legislative acts under the ordinary legislative procedure (i.e., avoiding ratification by national parliaments)¹².

Concerning the members of the Commission, the provision in Article 17.5 TEU to reduce the number to two-thirds of the number of Member States could be activated by a simple decision of the European Council, thus without a need for treaty change.

Moreover, the participation of aspirant members in specific policy frameworks of the Union which can be examined for Stages I and II would additionally require executive agreements or amendments to designated EU legal acts. This would be reminiscent of the provisions that allow for third country participation in, for instance, the Schengen area via an international agreement or PESCO projects via an administrative arrangement. Specific elements of EU legislation would also feature, as for example on main funding decisions. Adding such elements of differentiated deeper integration to this model otherwise based on the idea of horizontal progressive integration warrants further analysis.

11 See the last sentence of Article 49 TEU: 'Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union... The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.'

12 For a detailed review of this complex subject see: European Parliament, Research Service, 'Passerelle clauses in the EU Treaties Opportunities for more flexible supranational decision-making', November 2020, available at: [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659420/EPRS_STU\(2020\)659420_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/659420/EPRS_STU(2020)659420_EN.pdf)

A mix of these several possibilities would probably emerge as the most feasible basis for agreement. Overarching political declarations would probably start the process, with treaty level agreements at the end, but much in between (executive actions, amendments to specific legal acts, etc.).

10. Conclusions

This analysis shows that the EU's institutional structure could accommodate a regime of progressive, conditional and staged participation by states aiming at full EU membership. A typology of degrees of institutional participation is outlined and applied to each of the institutions. The specific arrangements would be individually tailored to each institution, with the Council and Commission as the most politically sensitive to increases in the number of Member States, but even here constructive arrangements could be devised. The main point is to revive and sustain the incentives for aspiring states to continue their European integration journey, which today has become stalled with an apparent impasse over accession prospects, while at the same time easing the most serious concerns held by existing Member States over further enlargement.

Accession to 'conventional membership' (Stage IV) is currently not foreseeable. However, the proposal for a Stage III entitled 'new Member States' would avoid the most serious institutional problems (veto powers in the Council, members of the Commission, etc.) currently preventing enlargement to conventional membership. With the new Member States endowed with QMV voting rights, but without veto powers or a member of the Commission, this regime could even be considered as having an avant-garde quality, being closer to progressive ideas about the future of European integration than the current regime for existing Member States.

Our proposal respects, as far as possible, the EU's permanent objective of maintaining the homogeneity of its legal order, which is important to minimise functional complications as well as a matter of legal doctrine. In particular, the proposed Stage III is basically identical to the regime enjoyed by existing Member States, while it also responds to vocal concerns by proposing a few key institutional exceptions, which should be temporary.

A good step to advance the process would be for the Western Balkans states to adopt a common position along the lines of the presented ideas. While this currently seems implausible, there was a precedent of this kind in 2011¹³. Civil society networks in the Western Balkans and the EU may for their part anticipate such initiatives, advocating what they would like to see done at the official level. However, the major initiative must come from political leaders in the EU institutions and Member States, to signal their interest in ideas such as these that could be the basis for a breakthrough out of the current impasse. A caucus of the most interested EU Member States could also be formed to push for such reforms of the enlargement process. The Commission would then assume its normal function to prepare a formal proposal.

13 A precedent for such an initiative was observed in April 2011 when ministers of Albania, Montenegro, (North) Macedonia and Serbia addressed a common proposal to the EU regarding pre-accession funding.

Annex A - Clusters of chapters in the enlargement process

1. Fundamentals

- 23 - Judiciary and fundamental rights
- 24 - Justice, Freedom and Security
- 5 - Public procurement
- 18 - Statistics
- 32 - Financial control
- + Economic criteria
- + Functioning of democratic institutions
- + Public administration reform

2. Internal market

- 1 - Free movement of goods
- 2 - Freedom of movement for workers
- 3 - Right of establishment and services freedom to provide services
- 4 - Free movement of capital
- 6 - Company law
- 7 - Intellectual property law
- 8 - Competition policy
- 9 - Financial services
- 28 - Consumer and health protection

3. Competitiveness and inclusive growth

- 10 - Information society and media
- 16 - Taxation
- 17 - Economic and monetary policy
- 19 - Social policy and employment
- 20 - Enterprise and industrial policy
- 25 - Science and research
- 26 - Education and culture
- 29 - Customs union

4. Green agenda and sustainable connectivity

- 14 - Transport policy
- 15 - Energy
- 21 - Trans-European networks
- 27 - Environment

5. Resources, agriculture and cohesion

- 11 - Agriculture and rural development
- 12 - Food safety, veterinary and phytosanitary policy
- 13 - Fisheries
- 22 - Regional policy and coordination of structural instruments
- 33 - Financial and budgetary provisions

6. External relations

- 30 - External relations
- 31 - Foreign, security and defence policy

Source: European Commission, Communication, *'Enhancing the accession process - A credible EU perspective for the Western Balkans'*, COM(2020)57 Final, 5.2.2020

Annex B: Council configurations

In addition to the European Council of heads of state and government, the legislative Council meets in 10 configurations, bringing together the relevant ministers from the Member States:

- General Affairs;
- Foreign Affairs;
- Economic and Financial Affairs;
- Justice and Home Affairs;
- Employment, Social Policy, Health and Consumer Affairs;
- Competitiveness (Internal Market, Industry, Research and Space);
- Transport, Telecommunications and Energy;
- Agriculture and Fisheries;
- Environment;
- Education, Youth, Culture and Sport

Annex C: Committees

Number of committees by procedure, in 2019

Directorate-General of the Commission	Type of procedure				TOTAL:
	Advisory	Examination	Regulatory with scrutiny	Operates under several proce- dures	
AGRI	0	6	0	5	11
BUDG	0	1	0	1	2
CLIMA	0	1	0	4	5
CNECT	0	4	0	5	9
DEFIS	0	3	1	2	6
DEVCO	0	2	0	3	5
DIGIT	0	1	0	0	1
EAC	0	1	0	1	2
ECFIN	0	0	0	1	1
ECHO	0	1	0	1	2
EMPL	0	0	2	3	5
ENER	2	6	1	5	14
ENV	0	7	4	16	27
ESTAT	0	0	0	2	2
FISMA	0	2	2	5	9
FPI	0	4	0	0	4
GROW	3	7	2	24	36
HOME	1	14	0	3	18
JUST	8	8	4	4	24
MARE	0	2	0	1	3
MOVE	4	10	4	14	32
NEAR	1	1	0	1	3
OLAF	0	1	0	0	1
REGIO	0	0	0	1	1
RTD	0	15	0	2	17
SANTE	0	12	0	22	34
SG	0	3	0	1	4*
TAXUD	1	10	0	15	26
TRADE	3	4	0	7	14
TOTAL:	23	126	20	149	318

Source: Report from the Commission to the European parliament and the Council on the working of committees during 2019, COM/2021/69 final

<https://eurlex.europa.eu/legalcontent/EN/TXT/?uri=COM%3A2021%3A69%3AFIN&qid=1613991728727>

Annex D: Committees of the European Parliament

Foreign Affairs

Subcommittee on Human Rights

Subcommittee on Security and Defence

Development

International Trade

Budgets

Budgetary Control

Economic and Monetary Affairs

Fiscal affairs

Subcommittee on Tax matters

Employment and Social Affairs

Environment, Public Health and Food Safety

Industry, Research and Energy

Internal Market and Consumer Protection

Transport and Tourism

Regional Development

Agriculture and Rural Development

Fisheries

Annex E: Agencies of the EU

Decentralised agencies

European Agency for Safety and Health at Work
European Centre for the Development of Vocational Training
European Foundation for the Improvement of Living and Working Conditions
European Environment Agency
European Training Foundation
European Monitoring Centre for Drugs and Drug Addiction
European Medicines Agency
European Union Intellectual Property Office
European Community Plant Variety Office
Translation Centre for the Bodies of the European Union
European Food Safety Agency
European Maritime Safety Agency
European Aviation Safety Agency
European Union Agency for Cybersecurity
European Centre for Disease Prevention and Control
European Union Agency for the Space Programme
European Railway Agency
European Fisheries Control Agency
European Chemicals Agency
European Institute for Gender Equality
European Defence Agency
European Institute for Security Studies
European Union Satellite Centre
European Union Agency for Law Enforcement Training
European Union Agency for Law Enforcement Cooperation
European Body for the Enhancement of Judicial Cooperation
European Fundamental Rights Agency
European Systemic Risks Board
Body of European Regulators of Electronic Communications
European Agency for the Cooperation of Energy Regulators
European Banking Authority
European Securities and Markets Authority
European Insurance and Occupational Pensions Authority
European Asylum Support Office
European Border and Coast Guard Agency
European Labour Authority
European Agency for the Operational management of Large-scale IT Systems in the Area of Freedom, Security and Justice

Executive agencies

[temporary agencies, not relevant]

Euratom agencies

Euratom Supply Agency
European joint Undertaking for ITER and the Development of Fusion Energy

Independent bodies

European Institute for Innovation and Technology
European Data Protection Supervisor
European University Institute
Authority for European Political Parties and European Political Foundations
European Public Prosecutors Office

References

Milena Lazarevic, "Away with the enlargement bogeyman – Reforming the EU Enlargement Policy for a prompt acceptance of the Western Balkans", Discussion Paper, July 2018, CEP, Belgrade, available at: https://cep.org.rs/wp-content/uploads/2018/07/Away-with-the-Enlargement-Bogeyman_CEP-1.pdf;

Michael Emerson, Steven Blockmans et al., "Balkan and Eastern European Comparisons - Building a New Momentum for the European Integration of the Balkan and Eastern European associated states", Policy Contribution, March 2021, CEPS, Brussels <https://3dcftas.eu/op-eds/building-a-new-momentum-for-european-integration-of-the-balkan-and-eastern-european-associated-states>;

Milena Lazarević, Strahinja Subotić, "The Future of the EU in the Western Balkans... and the Future of the Western Balkans in the EU", Civil Society & Think Tank Forum, 2021, Think for Europe Network (TEN), available at: https://wb-csf.eu/docs/CSF_Paper_WG-J.pdf.pdf

Pierre Mirel, 'Union européenne-Balkans occidentaux : pour un cadre de négociations d'adhésion rénové', 30/09/2019. <https://www.robert-schuman.eu/fr/questions-d-europe/0529-union-europeenne-balkans-occidentaux-pour-un-cadre-de-negociations-d-adhesion-renove>

Barbara Lippert, 'The Nexus Between Enlargement and Differentiation', IAI, 7 February 2017. https://www.iai.it/sites/default/files/eu60_2.pdf

Barbara Lippert, 'The EU after Brexit: Renewed Debate about Enlargement and Deepening', SWP, Comment 1 February 2021. <https://www.swp-berlin.org/en/publication/the-eu-after-brexit-renewed-debate-about-enlargement-and-deepening>

Milena Lazarevic, Strahinja Subotic, Simonida Kacarka, Sotirag Hroni, Arberesha Loxha Stublla, Anida Sabanovic, Stevo Muk, Steven Blockmans and Michael Emerson (TEN and CEPS), 'The Enlargement Impasse and Necessity of its Transformation'. <https://www.ceps.eu/ceps-news/overcoming-the-enlargement-impasse-some-ideas-for-the-slovenian-presidency/>

Frank Schimmelfennig, 'Is differentiation the future of European Integration?', in Bjorn Fagesten & Goran von Sydlow, eds., 'Perspectives on the Future of the EU', SIEPS, April 2019 <https://www.sieps.se/en/publications/2019/perspectives-on-the-future-of-the-eu/>

Documents of the EU institutions

European Commission, 'Report to the European Parliament and the Council on the working of committees during 2019', COM/2021/69 final

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A69%3AFIN&qid=1613991728727>

Regulation (EU) 182/2011, 'Laying down the rules and general principles concerning mechanisms for control by Member States



www.cep.org.rs
www.ceps.eu