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Enabling gradual access to EU institutions with the Staged accession model

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Summary. *The paper explores the potential for institutional participation of candidate countries in EU bodies during the pre-accession period, aiming to create a more gradual and merit-based approach to enlargement in line with the Staged accession model. The premise is that opening the doors would contribute to the effectiveness of the accession process by incentivising reforms and facilitating early socialisation. Accordingly, the paper explores the operating procedures of EU institutions, including the Council of the EU, European Council, European Parliament, Comitology, European Commission's Expert Groups, and EU consultative bodies and agencies. The paper draws a conclusion that the EU can facilitate greater institutional access for candidate countries without treaty changes, provided there is political will from EU institutions and member states. In doing so, however, the "principle of autonomy in decision-making" must be upheld, as the Council's Legal Service has repeatedly reaffirmed that this principle is fundamental to fulfilling policy-making and decision-making responsibilities. To enable candidate countries' presence in meetings while preserving autonomy, temporary removal of professional secrecy obligations would be necessary, with*

invitees leaving the room once the subject has been discussed. Moreover, prior presence on a particular subject does not create a right to be invited on that subject in the future, thus reaffirming the possibility of reversing the acquired institutional benefits in case the necessary accession reforms are missing. This logic particularly applies to the Council of the EU, European Council, European Parliament, and Comitology, whereas a more flexible approach would apply to European Commission's Expert Groups, EU consultative bodies and EU agencies, as they have been more welcoming to third-state participation thus far. Meanwhile, to capitalise on the expected benefits, any attempt to introduce a regime of graduation through stages of institutional participation would need to be based on preparedness for membership in a fully merit-based process, following the principle "more-for-more, less-for-less". This approach could also be applicable to other candidate countries, such as Ukraine, Moldova, and potentially Georgia. By leveraging past experiences and lessons learned, the EU can effectively navigate the candidates' path to membership, ensuring that the enlargement policy remains a transformative tool for change at times of changing geopolitical realities.

I Introduction

Highlighting the importance of breaking away from the present binary 'in' or 'out' approach to enlargement, the Template for Staged Accession to the EU outlined, among other things, how candidates can gain access to EU institutions already during the accession process in a gradual, predictable, and merit-based manner.¹ By insisting on the importance of creating avenues for institutional cooperation, the aim was twofold: firstly, to increase the accession process's effectiveness by incentivising the implementation of reforms and fostering mutual understanding on policies of joint importance; and, secondly, to create a sense of belonging for the candidate states by reducing the asymmetry in their relationship with the EU and promoting socialisation across different administrative and political levels. In pursuit of this aim, the Template relied on the groundwork laid by the 2020 Revised enlargement methodology (REM), which opened a possibility for membership candidates to participate "as observers in key European Union meetings on matters of substantial importance to them."² Although the Template went on to propose a scheme for institutional participation per stage, it also allowed ample room for further examination of how exactly the EU's legal system at present can effectively accommodate the participation of third countries.

In light of this, the paper examines the operating procedures of the Council of the EU, the European Council, the European Parliament, the Comitology, the European Commission's Expert Groups, and EU consultative bodies and agencies.³ Following a comprehensive analysis of each institution, a key conclusion emerges that the EU can indeed enable greater institutional access to candidate countries without treaty changes, contingent upon the political will of EU institutions and member states. In addition, the authors acknowledge that based on this analysis, the original Template proposal may require certain adjustments. Accordingly, Template 2.0 will build upon the findings of this analysis and further refine the approach by outlining how institutional participation can be seamlessly integrated with other essential elements of the proposal. The aim is to establish a comprehensive framework that guarantees merit-based access to the EU policymaking arena throughout the accession journey.

1 Michael Emerson, Milena Lazarevic, Steven Blockmans, and Strahinja Subotic, "A Template for Staged Accession to the EU", Centre for European Policy Studies (CEPS – Brussels) and European Policy Centre (CEP – Belgrade), October 2021, available at: <https://cep.org.rs/wp-content/uploads/2023/01/A-Template-for-Staged-Accession-to-the-EU.pdf>

2 The European Commission, "Enhancing the accession process - A credible EU perspective for the Western Balkans", 5 March 2020, available at: https://neighbourhood-enlargement.ec.europa.eu/system/files/2020-02/enlargement-methodology_en.pdf

3 This analysis excludes the institutions such as the Court of Justice of the EU, the European Court of Auditors, and the European Central Bank. Although these institutions are highly important in practice, none of them was referred to during the conversation with relevant stakeholders since the Template's publication as potential sources of gradual institutional participation.

II Cracking open the EU institutions' doors

II.1 The Council of the EU

EU law permits granting observer status to third countries in the Council as long as the *principle of autonomy in decision-making* is preserved. As the Council's Legal Service clearly states, the mentioned principle is "fundamental to the fulfilment of the policy-making and decision-making responsibilities" conferred on it by the EU Treaties.⁴ Accordingly, in line with Article 16.2 TEU,⁵ *participation* in the proceedings of all Council configurations, "in the sense of making, shaping or influencing decisions", results from membership of the Council and is reserved to the members of the Council only.⁶ Although some exceptions are made to the rule in connection to other EU institutions,⁷ normally, "no other body is represented within the Council",⁸ as this kind of participation is directly linked to the *representation* of the governments of the member states in the Council.⁹ The Legal Service warns that "even the mere presence of a third party at meetings" may undermine the Council's decision-making autonomy, either by altering the direction of deliberations between the Member States or by inhibiting the Member States from expressing their positions freely.¹⁰ Consequently, the potential inclusion of third countries in the Council cannot mimic, in any shape and form, the participation in the discussions in a manner akin to that of a member of the Council.¹¹

Despite the above-presented strict reading, a glance at previous enlargements shows that the EU has already been successful in institutionally integrating newcomers prior to their formal accession while safeguarding the autonomy principle. In the eastward enlargement waves from 2004 to 2013, observer status was granted to the acceding states only during the "interim period", i.e., once they signed their respective accession acts until their entry into force.¹² The rationale was that these countries had accepted the Union *acquis* in its entirety so that its provisions had become binding on them despite their not having a say in its adoption.¹³ Although this kind of observer participation was deemed not to violate the autonomy principle, the right to observe the meetings was nevertheless bound by the Council's reserved "right to meet without the participation of acceding countries", as reflected in a statement agreed upon by the relevant Accession Conference.¹⁴

4 Council's Legal Service Contribution (CLS), 6566/20, article 14, Brussels, 16 March 2020, available at:

<https://data.consilium.europa.eu/doc/document/ST-6566-2020-INIT/en/pdf>

For more on how the EU law regulates the autonomy principle, see: CLS opinions 9463/11, points 2 to 4; 7893/95, point 3.

5 The article states: "The Council shall consist of a representative of each Member State at ministerial level, who may commit the government of the Member State in question and cast its vote." available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016M016>

6 Council's Legal Service Contribution, 6566/20, article 8

7 As the Legal Service points out in article 9, these exceptions are explicitly provided for in the Treaties themselves or result implicitly from the role assigned by the Treaties to a Union institution. For example, Article 284(2) TFEU provides, "The President of the European Central Bank shall be invited to participate in Council meetings when the Council is discussing matters relating to the objectives and tasks of the ECB". Moreover, In practice, the Commission is virtually always present at, and takes part in, Council meetings and meetings of Council preparatory bodies at all levels and in all fields of action.

8 Opinion of the Legal Service, 10962, 9 July 2018, Article 29, available at:

<https://data.consilium.europa.eu/doc/document/ST-10962-2018-INIT/en/pdf>

9 General Secretariat's comments on Council's Rules of Procedure, 2023, p.18, available at:

https://www.consilium.europa.eu/media/63469/20213371_pdf_qc0221838enn_002.pdf

10 Council's Legal Service Contribution, 6566/20, article 8

11 For more, see: Opinion of the Legal Service, 10962, 9 July 2018, Article 31(iv)

12 Whenever the EU refers to acceding states, be it in Rules of Procedure or any other relevant document, it always refers to those states that have already signed the Act of Accession and are undergoing the ratification procedure on their way to becoming full members.

13 General Secretariat's comments on Council's Rules of Procedure, 2023, footnote 54; and Council's Legal Service Contribution, 6566/20, Article 13.

14 Council's Legal Service Contribution, 6566/20, refers in Article 13 to the 2002 Accession Conference, which agreed on this matter (see point 8 of document 13569/02 of 13 November 2002 for details of the practical arrangements).

Despite this limitation, the described inclusion into EU institutions prior to membership was a pragmatic step that allowed newcomers to socialise with their peers and progressively prepare for participation in the EU's complex, multilevel decision-making processes.¹⁵

However, a different line of argumentation is needed to grant gradual access to EU institutions in line with the Template for staged accession. Simply relying on the experience with acceding states is not applicable to this case, as in the first two stages, the candidate countries would neither have accepted the *acquis* in its entirety nor would they have signed the accession act obliging them to apply the *acquis*. Furthermore, transitioning from one stage to another could take much longer than the typical two-year process of accession treaty ratification,¹⁶ thus potentially prolonging the period of observer status. It is, nevertheless, important to emphasise that granting observer status to acceding countries was also a result of wide political consensus among member states, as expressed in the aforementioned Accession Conference that extended the invitation. Without such political will, it is questionable whether the legal avenues to grant observer status to the acceding countries would have been automatically applied. In a similar vein, the implementation of any proposal for institutional participation in the Western Balkans relies on a strong commitment from the EU.

Given the identified constraints and differing contexts, the renewed proposal for institutional participation of candidate countries can be based on the right of “occasional presence”.¹⁷ In fact, the Council's General Secretariat distinguishes between the previously described institutional *participation* of acceding states in the Council meetings and the occasional institutional *presence* of third States.¹⁸ Although both options exclude voting rights, the latter one depends on assessing whether the presence of third states' representatives is “in the interest” of the Council.¹⁹ This, nevertheless, allows third countries to be “invited to attend certain meetings” at all Council levels “on an *ad hoc* basis”, as reaffirmed both by the Council's Legal Service and the General Secretariat.²⁰ This explains why even the Commission has insisted that “under the new enlargement methodology, the candidate states can take part in the work of the Council”.²¹ Introducing the previously non-existent incentive of this kind could be turned into a multifaceted venue for institutional cooperation whose level of intensity could be linked with a merit-based performance.

From a practical perspective, to enable the presence of candidate countries in Council meetings, the obligation of professional secrecy needs to be temporarily removed. Article 6.1 of the Council's Rules of Procedure states that the “deliberations of the Council shall be covered by the obligation of professional secrecy, *except* insofar as the Council decides otherwise.”²² Assuming agreement on this matter in the Council, the third country would then be invited to enter the meeting room to exchange views with and provide information to Council members only on a “specific item on

15 Numerous diplomats from different EU member states confirmed this understanding in discussions that preceded the write-up of this paper.

16 The ratification process lasts two years on average, although, in future enlargements, this may take longer due to the fact that ratification procedures have been made more demanding in some member states, most notably in France, where a referendum might be necessary.

17 Council's Legal Service Contribution, 6566/20, article 10; and General Secretariat's comments on Council's Rules of Procedure, 2023, p.56

18 General Secretariat's comments on Council's Rules of Procedure, 2023, pp.54-57

19 Ibid, p.57

20 Council's Legal Service Contribution, 6566/20, Article 10; and General Secretariat's comments on Council's Rules of Procedure, 2023, p.57

21 The Council's Legal Service Contribution 6566/20, in Article 3, refers to the Commission's 25 February 2020 presentation of its Communication on the new enlargement methodology to the General Affairs Council.

22 Rules of Procedure of the Council, Article 6.1, Official Journal L 325, 2009, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009Q1211%2801%29>

the agenda” and leave the room after the item has been discussed.²³ The General-Secretariat explains that this way, the third party “does not participate in the deliberations but only provides the Council with information that it can draw upon before taking a decision.”²⁴ Accordingly, the autonomy principle is safeguarded as the third party is prevented from being present when the Council deliberates “on the drafting of a Council act or on its adoption”.²⁵ In addition, prior presence on a particular subject does not create a right to be invited on that subject in the future.²⁶ These points showcase that any participation of the candidates would need to be planned and agreed upon in advance, reaffirming the possibility of reversing the acquired institutional benefits in case the necessary accession reforms are missing.

Assuming political will is generated to implement the proposals on gradual institutional participation, the Council Presidency would be the responsible body for organising the proceedings with candidate countries, taking care to preserve the Council’s decision-making autonomy. For the exchange of views to take place, the Presidency would need to communicate the intention to invite a third party well in advance, allowing any potential concerns to be voiced before the meeting.²⁷ After the Presidency indicates practical modalities of that participation,²⁸ the removal of professional secrecy would be put to a simple majority vote.²⁹ The only exception to that rule is if the invitation to a third party constitutes a political decision with a bearing on the CFSP; in this case, the decision has to be taken unanimously.³⁰ To preserve the autonomy even upon the removal of the mentioned obligation, the provisional agenda would explicitly mention the invitee.³¹ Once the third State exchanges its views with member states, it leaves the room once the deliberations on this item have ended or when requested to leave by the Presidency.³² Following this logic, it becomes clear that the Council Presidency’s level of engagement becomes crucial for the intensity and effectiveness of institutional cooperation with candidate countries.

Based on these findings, the analysis of the Council’s procedural rules suggests that this kind of occasional participation is somewhat narrower than the Template’s original participation scheme. Originally, the Template differentiated between a passive observer status granted at Stage I (right to attend meetings *without speaking*) and active observer status at Stage II (*speaking rights* included). However, the legal order of the EU seems to overcome this dichotomy, as any potential invitation of a third country to exchange views on a specific item necessarily implies speaking rights, whereas any potential passive observation of the Council deliberations is ruled out. Therefore, to adhere to the basic procedures and standard practice of EU institutions, graduation of access to EU institutions can take place only under the condition that speaking rights without the right to vote are guaranteed across the stages.

Nonetheless, the Template’s original proposal for selective observer participation from Stage I and broader access to Council configurations in Stage II remains valid and can inform the development

23 General Secretariat’s comments on Council’s Rules of Procedure, 2023, p.58

24 Ibid, p.59

25 Council’s Legal Service Contribution, 6566/20, Article 10

26 Prior presence on a particular subject does not create a right to be invited on that subject in the future. This enhances the credibility that the given institutional incentives could become a subject of reversal in case reforms stagnate or drop below a certain level of requirement per stage.

See: General Secretariat’s comments on Council’s Rules of Procedure, 2023, p.57

27 General Secretariat’s comments on Council’s Rules of Procedure, 2023, p.58

28 Opinion of the Legal Service, 10962, 9 July 2018, Article 31.iii

29 General Secretariat’s comments on Council’s Rules of Procedure, 2023, p.58; Opinion of the Legal Service, 10962, 9 July 2018, Article 31.iii

30 General Secretariat’s comments on Council’s Rules of Procedure, 2023, p.58

31 Ibid.

32 Opinion of the Legal Service, 10962, 9 July 2018, article 31.iv

of Template 2.0. By building upon the original foundations while accounting for the findings of the paper, the Western Balkan countries could be invited for an exchange of views already in Stage I, focusing on the configurations that correspond to areas where these countries have achieved the highest level of preparedness for membership according to the Commission's reports. For instance, as access to Stage I takes place upon acquiring a moderate level of preparedness across clusters (rating of 3), in practice, a country could acquire access to the Council configurations that cover areas with above-average scores, i.e., a good level of preparedness (rating of 4). Then, access to the Council could be maximally expanded in scope and intensity in Stage II. Assuming there is a political will to deepen ties with candidates that would be very close to fulfilling all membership conditions in Stage 2, this could involve ensuring the widest possible participation allowing for discussions to take place on all negotiated areas of mutual importance. Applying this or similar logic as a way forward can ensure that any attempt to introduce a regime of graduation through stages of institutional participation would be based on preparedness for membership in a fully merit-based process.

Upon agreeing on the formal procedures to involve candidate countries per stage, the institutional cooperation can be further expanded by including them in informal ministerial meetings. The Council Presidency, again, would have the discretion to make such a decision in all areas except CFSP, which the High Representative covers. How these meetings are organised was regulated by EUCO 1999 Conclusions, which stipulate that these meetings are “designed to permit as free as possible an exchange of views on topics of general scope” while adding that these do not constitute Council sessions and cannot replace the Council's normal activities.³³ The conclusions specify that a maximum of 5 informal Ministerial meetings may be held during any Presidency while adding that discussions must not require Council documents to be prepared before or after the meeting and that meetings cannot arrive at formal conclusions or decisions. As organising such meetings represents a standard practice of each Presidency, this could also be a valuable option to consider when boosting institutional cooperation with candidates. Yet, to ensure institutional participation remains an important *incentive* for candidate countries, the potential participation at informal meetings must only supplement the previously discussed occasional presence in official settings within various Council configurations.

II.2 The European Council

As with the Council, the official procedural rules regulating the work of the European Council (EUCO) offer possibilities for the participation of third parties. According to Article 4 of EUCO's Rules of Procedure,³⁴ meetings in the margins of the EUCO with representatives of third States “may be held in exceptional circumstances only, and with the prior agreement of the European Council, acting unanimously”. Following this rule, it would be up to the President of the EUCO, who facilitates the EUCO meetings together with the General Affairs Council (GAC), to launch the initiative and set the stage for the meeting to take place. Like in the case of the Council, the EUCO would need to revoke the obligation of professional secrecy.³⁵ Then, the discussion with the invitee would take the form of an “exchange of views”,³⁶ which would be set as a single point out of multiple points on the EUCO's overall agenda for the day. By rendering the invitee's stay only temporary, with the participant leaving once the specific item on the agenda has been exhausted, the EUCO would manage to abide by the principle of the autonomy of the decision-making process.

33 European Council, *Conclusions*, Helsinki, 10-11 December 1999, article 20, available at: https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/acfa4c.htm

34 Rules of Procedure of the European Council, 2009, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32009D0882>

35 Ibid, Article 11

36 Special European Council, *Provisional Agenda*, 9 February 2023, available at: <https://data.consilium.europa.eu/doc/document/ST-2-2023-INIT/en/pdf>

With the significant geopolitical shifts taking place, participation of third parties in the EUCO meetings has already become a normalised practice and a matter of high political importance. In February 2023,³⁷ Ukraine's President, Volodymyr Zelenskyy, participated as a guest at the special European Council one-day summit. This was, however, not a one-off invitation, as President Zelenskyy also joined the EU leaders in a video conference a month later.³⁸ In both cases, the leaders discussed the latest developments in relation to Russia's war of aggression against Ukraine and continued EU support for Ukraine. This practice also applied to non-candidate countries, such as the United States. In fact, US President, Joseph Biden, joined the discussion in March 2022 on transatlantic cooperation in the context of the Russian military aggression against Ukraine.³⁹ In each instance, the EUCO transparently noted in its Conclusions that it held an exchange of views. These examples showcase that when there is a political will to include third parties at the top EU-level institution, such as the European Council, there is also a way.

Similarly, to crack the EUCO's door open for the candidates from the Western Balkans solely hinges upon reaching a mutual consensual recognition that the ongoing geopolitical developments constitute "exceptional circumstances", representing a "new normal" and thus warranting more regular invitation to candidates. Reaching such an agreement is more likely than before, given the rising acknowledgement that tackling issues of mutual importance requires joint deliberation and action. Doing so would also be in line with EUCO's June 2022 Conclusions in which the member states emphasised the need "to further advance the gradual integration between the European Union and the region already during the enlargement process".⁴⁰ Furthermore, regularising the meetings at the highest level is in line with the Template's original proposal, which insisted, on the one hand, on policy dialogue ranging "between routine diplomatic exchanges of views through to negotiations and effective decisions on strategic issues"⁴¹ and on the other, on having this dialogue dependent on the progress made from one stage to another. Therefore, the accumulation of political will to enhance cooperation with the region, starting with regular invitations to those countries that achieve a certain level of membership preparedness per stage, would provide valuable and previously non-existing institutional access to the Western Balkan countries at the highest political level, without the need to change the EUCO's standard procedures, let alone introduce treaty change.

II. 3 The European Parliament

Among all the EU institutions, the European Parliament (EP) has so far sent the strongest signals in favour of granting observer status to the Western Balkan countries. Recognising the necessity to gradually integrate them with the EU already during the accession process, it called for the extension of the opportunities for candidate countries "to participate in and observe the work" of the EU institutions in its November 2022 "New EU strategy for enlargement".⁴² It added that it would consider ways to "bring forward the period when observers from candidate countries can take up

37 Special European Council, *List of Participants and Guests*, 9-10 February 2023, available at: <https://www.consilium.europa.eu/media/61950/trombinoscope-special-euco-9-10-02-2023-web.pdf>

38 UN Secretary-General, Antonio Guterres, was also invited. European Council, *Conclusions*, 23 March 2023, available at: <https://www.consilium.europa.eu/en/meetings/european-council/2023/03/23/>

39 European Council, *Conclusions*, 25 March 2022, available at: <https://data.consilium.europa.eu/doc/document/ST-1-2022-INIT/en/pdf>

40 European Council, *Conclusions*, 24 June 2022, article 16, available at: <https://www.consilium.europa.eu/media/57442/2022-06-2324-euco-conclusions-en.pdf>

41 Michael Emerson, Milena Lazarevic, Steven Blockmans, and Strahinja Subotic, "A Template for Staged Accession to the EU", Centre for European Policy Studies (CEPS – Brussels) and European Policy Centre (CEP – Belgrade), October 2021

42 European Parliament, *New Strategy for Enlargement*, 23 November 2022, point 1w, available at: https://www.europarl.europa.eu/doceo/document/TA-9-2022-0406_EN.pdf

their seats” in the EP.⁴³ Moreover, the fact the EP adopted a resolution in 2018, by which it placed in reserve 46 of the 73 seats that were freed up by the departure of the UK in the aftermath of Brexit “to accommodate potential future enlargements of the EU”,⁴⁴ demonstrated its long-term commitment to building institutional bridges with candidate countries.⁴⁵ These developments represent a unique opportunity for the Western Balkans to respond to the direct call by the EP and consider options for sending delegates during the accession process.

Although the EP is good-willed to invite the Western Balkans to the proceedings, current procedural rules place certain limits on the practicalities of this process. Namely, the EP’s Rules of Procedure clearly recognise the notion of observers, who have the right to participate in the proceedings of Parliament and the right to speak in committees without the right to vote.⁴⁶ Yet, this applies – similarly to the Council – only in cases “where a Treaty on the accession of a State to the EU has been signed”, i.e., for acceding states. Once the Treaty is signed, the EP President may, after obtaining the agreement of the Conference of Presidents, “invite the parliament of the acceding State to appoint, from among its own members, a number of observers” equal to the number of seats in the EP to be allocated to that State upon accession. This was applied, for example, to Croatia, whose 12 parliamentarians participated in the work of the EP from March 2012 until April 2013. Considering that the Model entails providing the observer status already during the pre-accession stages, the EP would need to go beyond the previous practice in order to realise its intentions in the case of the Western Balkan.

One way to overcome the above-described limitation is by amending the EP’s Rules of Procedure (RoP), as to extend the notion of observers and make it more encompassing than it currently is. The current RoP’s Article 237, in line with Article 232 TFEU,⁴⁷ states that “any Member may propose amendments to these Rules and to their annexes accompanied, where appropriate, by short justifications.” Once that step is taken, the committee responsible would then “examine them and decide whether to submit them to the Parliament”. Upon affirmative committee decision, and once the amendments reach the plenary, “a majority of the component Members of Parliament” would be required to change the RoP. Assuming different political groups in the EP reach an agreement on this matter, the notion of observers traditionally reserved for the acceding states could extend to all those who have already opened the accession talks and are currently on their way to becoming members. Such a scenario would ensure proper participation of the Western Balkan parliamentarians in the EP and allow for meaningful institutional ties to be built.⁴⁸

Alternatively, the EP could opt for a narrower approach to how it can engage with third parties. This entails relying on the EP’s RoP Rule 216.2, which leaves room for information exchange similarly to the solution proposed for the Council and the EUCO. While recognising that the Commission, the Council and other Union institutions may take the floor in committee meetings if invited to do so on behalf of a committee by its Chair, the Rule also adds that by decision of a committee, “any other person may be invited to attend and to take the floor at a meeting”. This is already applied in the case of the Western Balkans. For instance, the foreign affairs committee (AFET) held

43 Ibid, point 1bb

44 European Parliament, *Resolution on the Composition of the European Parliament*, 7 February 2018, available at: https://www.europarl.europa.eu/doceo/document/TA-8-2018-0029_EN.pdf

45 European Parliament Press, “Number of MEPs to be reduced after EU elections in 2019”, 2018, available at: <https://www.europarl.europa.eu/news/en/press-room/20180607IPR05241/number-of-meps-to-be-reduced-after-eu-elections-in-2019>

46 Rules of Procedure of the European Parliament, 2023, Rule 13.1-2, available at: https://www.europarl.europa.eu/doceo/document/RULES-9-2023-02-14_EN.pdf

47 Article 232 TFEU here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016E232>

48 For this to become implemented, it is necessary to examine whether the principle of preserving the EU’s institutional decision-making autonomy needs to be as strictly applied as in the case of the Council (see section II.1). Currently, there is no publicly available legal analysis on this matter by EU’s legal services from the EP’s perspective. The EP’s rules of procedure do not seem to contain an article akin to Council’s RoP.

an exchange of views as early as 2013 with the Serbian Prime Minister.⁴⁹ Moreover, it has held an exchange of views with those that have yet to receive a candidate status, such as Kosovo^{*50}, in 2023.⁵¹ Although more constraining due to its exclusion of access to the plenary, this option could be implemented without changing the EP's rules of procedure or harming the principle of institutional autonomy. Whether the EP will opt for this approach, or the more extensive one, will primarily depend on the level of the political will within the EP to stay committed to its pledge to the notion of gradual integration.

In the context of the Staged accession model, opening up the European Parliament, as the most democratic institution in the EU, could be used as an important institutional incentive for the Western Balkans. Originally, the Template proposed passive observer status in Stage I and active observer status in Stage II. As discussed in Section II.1, this dichotomy cannot be applied in the intended manner, as any time the delegates visit the EP, they are expected to contribute to the process of exchanging views. Noting this, Template 2.0 could instead propose providing a selective active observer status in Stage I to delegations that would reflect the composition of the national parliament – proportionally including, in practice, the opposition parties as well.⁵² The selectivity would encompass areas in which one country is making comparatively more notable progress (above the average score). Once fulfilling the requirements in Stage II, the country in question would gain access to all committees, allowing for all negotiated areas to become a subject of the exchange of views between MEPs and national delegates. Also, if MEPs extend the notion of observers, the candidates would be able to take up the “reserved seats” and participate in the plenary in Stage II as well. Such activities could fit well with the already existing *Friendship groups*, *Stabilisation and Association Parliamentary Committees* (SAPC), and the *Conference of Community and European Affairs Committees of the Parliaments of the EU* (COSAC),⁵³ as well as ongoing programmes.⁵⁴ Considering that the countries of the region are still faced with significant hurdles in the area of functioning of democratic institutions, finding a way to allow access to the EP already during the accession process in a merit-based manner could contribute to socialisation and democratic enhancement of the legislative branches of the Western Balkans.

49 European Parliament, *AFET Committee Meeting with Prime Minister of Serbia*, 29 May 2013, available at: https://multimedia.europarl.europa.eu/en/photo/afet-committee-meeting-with-prime-minister-of-serbia_20130529_prime_minister_of_Serbia_095

50 This designation is without prejudice to positions on status, and is in line with UNSC 1244 and the ICJ Opinion on the Kosovo Declaration of Independence.

51 European Parliament, *AFET Draft Agenda*, 28 February 2023, available at: www.europarl.europa.eu/meetdocs/2014_2019/plmrep/COMMITTEES/AFET/OJ/2023/02-28/1273111EN.pdf

52 The acceding countries' delegations reflected the composition of the national parliaments. The same logic is also applied in the context of the Staged accession.

53 For details on how the italicised bodies function in practice vis-à-vis a candidate country, see: Strahinja Subotić, “Serbia's Pursuit of Interests in the EU: Administrative, Financial, and Lobbying Capacities”, European Policy Centre (CEP), 2017, available at: <https://cep.org.rs/wp-content/uploads/2023/01/CEP-Study-Serbias-pursuit-of-interest-in-the-EU.pdf>

54 For instance, there is a programme of the European Parliament on gender equality Simone Veil, which prioritises the participation of the parliamentarians from the region. It can be highlighted as a positive example, especially since it concerns gender equality, as a crosscutting dimension of EU integration efforts. For mapping of the programmes, see: Nikoleta Pavićević, “Potentials of Early Integration of Montenegro into the Gender Equality Framework”, Institute Alternative, 2023, available at: <https://media.institut-alternativa.org/2023/03/Potentials-of-Early-Integration-of-Montenegro-into-the-EU-Gender-Equality-Framework.pdf>

II. 4 Comitology

Comitology, as an overarching institutional system of the EU, plays a crucial role in the implementation and maintenance of EU policies. With the practical rules and general principles to be followed laid down in Regulation (EU) No 182/2011 (the ‘comitology regulation’), it is a hybrid system that combines elements of supranationalism and intergovernmentalism, with the Commission actively engaging with and leading committees consisting of representatives from *all* Member States. In practice, the Commission must submit each draft implementing act to committees. The fact that thousands of acts go through the committees yearly speaks volumes of their importance for the overall functioning of EU policies and overall institutional order. Thus, taking advantage of the possibility to participate in different committees can be immensely significant for the Western Balkans’ socialisation process and gaining insight into how EU institutions function.

The Committee procedure recognises the possibility of inviting observers to attend meetings, distinguishing in practice between participation on the one side and occasional presence when it is in the EU’s interest, on the other. The *participation* option stems from clauses in committees’ RoP that explicitly refer to inviting the acceding countries – defined in the same way as in the cases of the Council and the EP – to attend the meetings. The option of *occasional presence* is more limited, as it focuses on the possibility of inviting representatives of other third parties to speak only on particular matters. Such logic applies in the same manner across different committees.⁵⁵ This indicates that, depending on the level of generated political will and objective necessity, the participation of the Western Balkan countries in the comitology system could either work by exploring the option to amend the RoP in *selected* committees as to extend the notion of observer status or by opting for a regularised tailoring of invitation to Western Balkan countries on matters of mutual importance. The sheer number of comitology committees implies that the inclusion of WB representatives as observers would require significant work to change the rules of procedure for each of them, which is why a more selective approach would probably be a more effective option. It would also allow the candidates to gradually build capacities for participation in an increasing number of committees.

In line with the Template’s original proposal, the level of selectivity of participation in the Comitology by candidate countries can vary from one stage to another. As the above-mentioned RoP indicate, inviting third countries would be possible upon the proposal of the committee chair. For such a proposal to be rejected, a simple majority of the component members of the committee would need to oppose the invitees’ participation in the meeting.⁵⁶ Moreover, in order to preserve the decision-making autonomy of the committee, the third countries’ representatives and experts must not be present, nor can they participate in the voting procedure. As Western Balkans already participate in selected committees,⁵⁷ exploring further possibilities for participation should follow a more intensive form based on principles of merit and reversibility. Finding a way to introduce the Western Balkan countries more systemically in the comitology system would essentially equate to inserting them into the EU’s bloodstream, thus making them an essential element of the EU’s governance system.

55 For illustration, see RoP Article 7 in IPA II committee as the most relevant one for the Western Balkans stipulate (the official Comitology Register provides no attachment of RoP of IPA III, and it is assumed that the RoP of IPA III is not substantially different from IPA II RoP, or the same article in Committee of pan-European importance such as European Citizens’ Initiative Committee and EU Digital COVID Certificate Committee. See: Comitology Register, *IPA II Committee*, European Commission, available at: <https://ec.europa.eu/transparency/comitology-register/screen/committees/C45400/consult?lang=en> *ibid*, *European Citizens’ Initiative Committee*, available at: <https://ec.europa.eu/transparency/comitology-register/screen/committees/C51500/consult?lang=en> *ibid*, *EU Digital COVID Certificate Committee*, available at: <https://ec.europa.eu/transparency/comitology-register/screen/committees/C82400/consult?lang=en>

56 *ibid*, Article 7

57 According to the information gathered from an interview conducted by the author with a person who has had experience with the comitology from the Serbian perspective.

II.5 Commission Expert Groups

The Commission expert groups, although less commonly discussed in the analysis of the EU's institutional setting, represent an important venue for institutional participation of the Western Balkan countries. The original Template also referred to them very briefly.⁵⁸ Formed by the Commission, their primary role is to provide specific advice and expertise to the Commission and its departments on a given subject and in light of a specific mandate. Unlike the comitology committees, the Commission and its departments maintain full independence when considering the views and expertise of their participants. Additionally, as they mainly deal with the preparation of legislative proposals, the defining feature of these groups is knowledge and expertise rather than discussion and negotiation of national positions. This renders it unnecessary for all member states to participate in all groups at the same time. For WB countries' administrations, which have a huge task of transposing the ever-evolving EU legislation into national law, participation in these groups can be highly beneficial for sharing knowledge, preparing for upcoming changes in EU law, and enhancing overall administrative capacities.

Among all EU institutions, the expert groups are frontrunners from the legal standpoint in terms of their openness to third-country participation. This is unsurprising considering the non-binding nature of the groups' working processes. The 2016 Commission Decision established horizontal rules for creating and operating these groups, with Article 7 specifying that expert groups may be comprised of other public entities, such as third countries' authorities, including *candidate countries' authorities*.⁵⁹ As *Type E members* (other public entities) in the expert group codebook, third countries do not require public calls for participation but can be invited by the Commission. They may be members of expert groups where, "for geographical or other objective reasons", the advice and expertise provided to the Commission would not be complete without their participation in the group.⁶⁰ Also, Type E members nominate their permanent representatives or appoint representatives on an *ad hoc* basis, depending on the meeting agenda of the group.⁶¹ The fact that the participation of candidate countries is so explicitly regulated can be used as a valuable example for other EU institutions to copy and follow.

In line with the inclusiveness of the rules to third-country participation, expert groups have already witnessed the participation of Western Balkan countries. As per the official Register of Commission Expert Groups,⁶² there exist 1.014 expert groups, with a total registration of 41 thousand members. Out of that number, there are 826 Western Balkan registries. With the exception of Kosovo*, the numbers show that countries from the region have a relatively similar number of experts participating in the expert groups: North Macedonia 184, Serbia 183, Montenegro 154, Albania 144, Bosnia and Herzegovina 120, Kosovo* 9. Although the exact number of expert groups in which these countries participate is unknown, their experts have contributed to a diverse range of topics, including but not limited to statistics, digital education, intellectual property rights, business, culture, sustainable consumption, environment, etc. For instance, a Serbian institution with the highest participation in the expert groups is its Statistical Office. As these groups are already open to the Western Balkans, there seems to be ample room to envision a more systemic and merit-based expansion of access to extended scope of committees from one stage to another.

58 Michael Emerson, Milena Lazarevic, Steven Blockmans, and Strahinja Subotic, "A Template for Staged Accession to the EU", Centre for European Policy Studies (CEPS – Brussels) and European Policy Centre (CEP – Belgrade), October 2021, p.10

59 European Commission, *Commission Decision establishing horizontal rules on the creation and operation of Commission expert groups*, 30 May 2016, available at: [https://ec.europa.eu/transparency/documents-register/api/files/C\(2016\)3301_0/de00000001029661?rendition=false](https://ec.europa.eu/transparency/documents-register/api/files/C(2016)3301_0/de00000001029661?rendition=false)

60 *ibid*, article 7.3

61 Register of Commission Expert Groups, *Expert groups explained*, European Commission, available at: <https://ec.europa.eu/transparency/expert-groups-register/screen/expert-groups-explained?lang=en>

62 Register of Commission Expert Groups, European Commission, available at: <https://ec.europa.eu/transparency/expert-groups-register/screen/home?lang=en>

II. 6 EU Consultative Bodies

Participation of candidate countries in consultative bodies can serve as an important attempt to decentralise the accession process and thus curb the “executive bias” that has characterised it. Think tanks from the region have previously warned that “the default format” of the EU integration process in which executive branches from the EU side engage in dialogue and negotiations with the executive branches from the EU aspirants has not had an affirmative effect on the consolidation of democracies in the region.⁶³ The provision of participation opportunities at different EU consultative bodies would serve as a form of intermediation between EU institutions and various stakeholders from the Western Balkans. These would include representatives of sub-national territories and local governments, civil society organisations and think tanks, industry representatives and employers, trade unions and employees, and academic experts. Effectively curbing the executive bias this way would allow for building a more substantive involvement of wider parts of society, allowing for an extension of ownership of reforms in candidate countries.

Recognising the importance of extending the dialogue beyond the core EU institutions such as the Council, European Commission, and the European Parliament, the Template insisted on the relevance of the European Economic and Social Committee (EESC).⁶⁴ The body’s goal is to ensure that EU policies and legislation tie in better with economic, social and civic circumstances on the ground.⁶⁵ Some cooperation exists already, such as the EU-Montenegro Joint Consultative Committee (JCC) meetings between EESC and WB CSOs.⁶⁶ These sometimes take place in Brussels and other times in the country in question. Yet, the issue is that these meetings take place just once a year⁶⁷ or up to twice.⁶⁸ In addition, the fact that the region has had an open door at the EESC has not been sufficiently utilised because the declarations and recommendations they adopt seem not to have been energetically advocated and communicated with the EU and domestic interlocutors,

63 The EU has traditionally considered the adoption of its norms primarily as an administrative exercise, thereby focusing its engagement with aspirant and candidate countries on the executive branch. As a result, all decisive stages of the process, including policy dialogue and intergovernmental conferences, have predominantly involved interactions with governments. However, this approach revealed significant shortcomings in the context of the Western Balkans, where the countries suffer from an imbalance of power in favour of the executive branch and lack robust enforcement and quality assurance mechanisms for public consultations. Consequently, think tanks have warned that the EU should move beyond merely accepting the adoption of policies and legislation as indications of positive progress and instead place greater emphasis on the quality of consultations and parliamentary debates leading to their approval.

For more: Milena Lazarevic and Sena Maric, “Curbing the Executive Bias in EU Enlargement Policy for a Stronger Democracy in Western Balkans”, Think for Europe Network (TEN), 2019, available at:

<https://www.thinkforeurope.org/wp-content/uploads/2020/04/Curbing-the-executive-bias-in-EU-enlargement-policy-for-a-stronger-democracy-in-the-Western-Balkans.pdf>

64 Michael Emerson, Milena Lazarevic, Steven Blockmans, and Strahinja Subotic, “A Template for Staged Accession to the EU”, Centre for European Policy Studies (CEPS – Brussels) and European Policy Centre (CEP – Belgrade), October 2021, p.12

65 It assists the European Parliament, Council and European Commission. It covers the following topics: Economic and Monetary Union; Economic and Social Cohesion; Single Market, Production and Consumption; Transport, Energy, Infrastructure and the Information Society; Employment, Social Affairs and Citizenship; Agriculture, Rural Development and the Environment; and External Relations.

For more, see the official website of EESC: <https://www.eesc.europa.eu/en>

66 In the case of Montenegro, the JCC’s mandate comes from Decision No 1/2011 of the EU – Montenegro Stabilisation and Association Council of 20 June 2011, amending Decision No 1/2010 adopting the rules of procedure of the Stabilisation and Association Council.

See: EESC, *The EU-Montenegro Joint Consultative Committee*, available at:

<https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-montenegro-joint-consultative-committee>

67 In Montenegro’s case, the meetings took place twice a year from 2016 until 2019. It is a worrying sign that the number of meetings per year has diminished.

See: EESC, *The EU-Montenegro Joint Consultative Committee - Related Events*, available at:

<https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-montenegro-joint-consultative-committee-jcc/events>

68 EESC continues to hold meetings of the EU-Serbia Joint Consultative Committee twice a year.

See: EESC, *The EU-Serbia Joint Consultative Committee - Related Events*, available at:

<https://www.eesc.europa.eu/en/sections-other-bodies/other/eu-serbia-jcc/events>

nor has the EU systematically utilised them to cross-check the government's progress.⁶⁹ Furthermore, there are no JCC's for Albania, Bosnia and Herzegovina, and Kosovo*.⁷⁰ Consequently, a more regularised and impactful participation of *all* WB countries in the EESC would represent a step forward; yet, unlike institutions covered in previous sections of the paper, this part need not be subject to reversibility, as CSOs and other bodies' work should not suffer as a consequence of the potential lack of reforms of the government in question.

The Template also insisted on the importance of the European Committee of the Regions (CoR), a body which advises on new laws that have an impact on regions and cities.⁷¹ Within it, the CIVEX Commission (Commission for Citizenship, Governance, Institutional and External Affairs) is responsible for the institutional position on EU enlargement policy. It consists of Joint Consultative Committees (JCCs) and Working Groups (WGs). Although both represent a form of cooperation with a candidate country's local and regional authorities, and meet twice a year, the former is more formalised as it has its own rules of procedure and co-chairmanship.⁷² Currently, the CoR's relationship with Montenegro, North Macedonia and Serbia is covered by separate JCCs, whereas Albania, Bosnia, Herzegovina, and Kosovo* are covered by the WG for the Western Balkans.⁷³ To arrive at more systematic cooperation, JCCs should be formed for all countries to the region.⁷⁴ The cooperation with CoR, however, should not stop there, as participation in other CoR commissions could also assist in furthering socialisation and knowledge sharing on matters that are of EU relevance.

II. 7 EU Agencies

The EU Agencies also represent a source of potential participation of candidate countries. These represent autonomous bodies set up to provide expertise in a certain field or to perform certain functions in a specific sector.⁷⁵ Assisting in the implementation of EU law and policy, providing scientific advice for both legislation and implementation, collecting information, providing specific services, adopting binding acts and fulfilling central roles in the coordination of national authorities, the number of agencies has grown to forty.⁷⁶ Considering their increasingly growing role in different policy areas, such as food and air safety, medicines, telecommunication, and border control, some even describe the ongoing developments as "agencification" of the EU executive.⁷⁷ In

69 This is drawn from a personal experience of an interviewee from Montenegro. In that context, she noted that the JCC allows civil society organisations from both sides to monitor the path of Montenegro towards the EU and to adopt recommendations for the attention of the government of Montenegro and the EU institutions. Civil society members from Montenegro are selected in line with the Government's procedure, but other participants can also participate in the discussions upon invitation. For instance, she discussed public administration reform as an invitee.

70 There is no data on their existence on the EESC official website, unlike in the cases of Montenegro, North Macedonia, and Serbia.

71 See the CoR official website: <https://cor.europa.eu/en/>

72 Unlike WGs that are formed via a decision of the CoR Bureau in accordance with the "CoR Rules of Procedure", JCCs are established either upon request from the government of the country concerned, based on the Stabilization and Association Agreement (SAA), or through an official declaration of the Stabilisation and Association Council.

73 Committees of the Region, *Enlargement countries*, available at: <https://cor.europa.eu/en/our-work/International-cooperation/Pages/Enlargement-countries.aspx>

74 For instance, in Opinion on the 2020 Enlargement Package, CoR pointed "to the urgency of setting up a joint consultative committee with Albania". Unclear, however, why the same did not apply to Bosnia and Herzegovina, and Kosovo. See: CoR, *Opinion of the 2020 Enlargement Package*, article 37, 2021, available at: <https://cor.europa.eu/en/events/Documents/CIVEX/6th-enlargement-day/CoR%20opinion%20on%20Enlargement%20Package%202020.pdf>

75 European Commission, *Preparing for the participation of the Western Balkan countries in Community programmes and agencies*, 2003, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52003DC0748>

76 Merijn Chamon, Herwig C.H. Hofmann and Ellen Vos, "Introduction: EU agencies going global", in book: Herwig C.H. Hofmann, Ellen Vos, and Merijn Chamon (eds), "The External Dimension of EU Agencies and Bodies: Law and Policy", 2019, p.1, available at: <http://bitly.ws/II2s>

77 Ibid.

fulfilling their roles, their cooperation with third states gains importance as well, also described as the “external dimension” of agencification.⁷⁸ Considering that the work of agencies is intended to shape the regulatory state both within and *beyond* EU’s borders,⁷⁹ they have an expected positive “impact on institution building and advancing the state capacity of third countries to bring their regulatory standards closer to the EU norms”, while further integrating them with the EU.⁸⁰ As the gap between internal and external dimensions is diminishing – particularly in the wake of cross-national challenges such as the migrant crisis, the COVID-19 pandemic, and the war in Ukraine – gradually streamlining Western Balkans’ participation in agencies’ work gains particular importance.

The founding acts of a number of agencies foresee the possibility for non-EU Member States to participate in their activities.⁸¹ In fact, the European Commission published as early as 2003 a Communication on *Preparing for the Participation of the Western Balkan Countries in Community Programmes and Agencies*.⁸² This was tied to the 2003 Thessaloniki Summit, which cemented the European perspective of the region while adding that the countries could “be allowed to participate in Community agencies” alongside programmes.⁸³ Interestingly, the Commission recommended “a gradual approach”.⁸⁴ Opening up these bodies during the pre-accession process, up to “full participation in the agencies’ work without voting rights”,⁸⁵ was seen as something that could give the Western Balkans “a firm symbolic, practical and operational foothold in the EU” while “facilitating the transfer of know-how and good practice, particularly in those areas of the *acquis* that will serve as a central reference point for the reform process in the Western Balkans”.⁸⁶ The same logic is valid today, particularly as the 2003 recommendation was never fully met in practice.

While the Template was at the time of writing calling for more research on this matter, the non-paper published under the auspices of the Czech presidency can be used as a valuable source for identifying or mapping the exact agencies to be included in the context of the Staged accession model. While the full list of agencies listed by the Czechs is presented in the Annex of this paper, it should be noted that the topics covered by the agencies in question are diverse, including border protection, asylum rights, the fight against drugs, disease prevention, environmental safety, police cooperation, food safety, etc.⁸⁷ While different agencies are involved in various regulatory sectors to different degrees,⁸⁸ some of the agencies on the list have nevertheless already opened up their doors. For example, all Western Balkan countries participate as observers at the Advisory Board

78 Ibid. 5.

79 Dovilė Rimkutė and Karina Shyrokykh, “Transferring the *acquis* through EU agencies: the case of the European Neighbourhood Policy countries”, in book: Herwig C.H. Hofmann, Ellen Vos, and Merijn Chamon (eds), “The External Dimension of EU Agencies and Bodies: Law and Policy”, 2019, p.183, available at: <https://scholarlypublications.universiteitleiden.nl/access/item%3A3188859/view>

80 Dovilė Rimkutė and Karina Shyrokykh, “Transferring the *acquis* through EU agencies: the case of the European Neighbourhood Policy countries”, 2019, p. 183.

81 Marja-Liisa Öberg, “Third countries in EU agencies: participation and influence”, in book: Herwig C.H. Hofmann, Ellen Vos, and Merijn Chamon (eds), “The External Dimension of EU Agencies and Bodies: Law and Policy”, 2019, p.205, available at: https://www.researchgate.net/publication/336802665_Third_countries_in_EU_agencies_Participation_and_influence

82 European Commission, *Preparing for the participation of the Western Balkan countries in Community programmes and agencies*, 2003.

83 EU-Western Balkans Summit Thessaloniki, *Thessaloniki Agenda for the Western Balkans: moving towards European integration*, 2003, available at: https://www.eerstekamer.nl/eu/documenteu/thessaloniki_agenda_for_the/meta

84 European Commission, *Preparing for the participation of the Western Balkan countries in Community programmes and agencies*, 2003, p. 10.

85 Ibid, p. 9.

86 Ibid p. 2.

87 Czech Presidency, *Non-paper on accelerated/gradual integration for COELA*, November 2022, see Annex

88 Dovilė Rimkutė and Karina Shyrokykh, “Transferring the *acquis* through EU agencies: the case of the European Neighbourhood Policy countries”, 2019, p. 202

of the European Food and Safety Authority (EFSA),⁸⁹ while Albania, North Macedonia, and Serbia hold observer status in the Management Board of the EU Agency for Fundamental Rights (FRA).⁹⁰ While it is encouraging that there are ongoing talks between EU and Western Balkan officials on furthering the cooperation, any attempt to equate participation in agencies with the notion of gradual institutional participation without opening up the doors of other EU institutions is unlikely to have a transformative and incentivising effect.⁹¹

III Conclusion

The EU's institutional framework offers ample opportunities for the Western Balkan countries to participate in EU bodies already during the pre-accession process. Participation in the EU Council and European Council would help Western Balkan governments gain a greater understanding of EU politics and policies, while allowing the same governments to contribute their national interests without exerting undue influence on member states' deliberations and decisions. Access to the European Parliament would strengthen inter-parliamentarian ties, potentially contributing to improving the functioning of democratic institutions and reassuring citizens that the EU's most democratic institution is duly considering their voices. The involvement of the Western Balkan countries in the Comitology can deepen their comprehension of EU policy implementation, whereas taking part in the Commission's expert groups can provide a valuable platform for exchanging knowledge and best practices on a wide range of topics. Participation in EU consultative bodies can assist in curbing the executive bias of the enlargement process, while access to the agencies can facilitate policy enforcement through cooperation with EU partners. Therefore, systemising candidate countries into the EU institutional framework could be hugely beneficial for both the EU and the candidates (see the Box below on how it would work in practice).

The EU's commitment to supporting the region's European path calls for sustained diplomatic efforts and constructive engagement between the EU and the Western Balkans, as well as among EU member states themselves, in order to assure progressive institutional participation. This brings benefits such as socialisation and knowledge transfer, strengthening administrative capacities, greater alignment with EU policies and values, and, ultimately, fostering a sense of belonging even before official membership. With the necessary political will and leadership, it is feasible to envision more selective access to institutions (Stage I) followed by a more systematic and comprehensive approach (in Stage II) as the pre-accession period nears its end. Assuming the EU adopts the Staged accession approach, it would then be for the heads of Council bodies, the Commission and other institutions to draw up guidelines for how different levels of institutional participation could be linked to Stages 1 and 2 as to guarantee fairness and predictability of the process. In this way, the Staged accession model would diminish the clear-cut and detrimental divisions between "us" and "them" – between EU member states and candidate countries.

Yet, for this approach to yield results, it needs to be applied in a merit-based manner. As the Model indicates, institutional participation and benefits are to be earned progressively based on the level of preparedness and adherence to membership criteria at each stage. Without making access to EU institutions contingent on a genuine commitment to reforms, the effectiveness and integrity of

89 European Food and Safety Authority (EFSA), *Advisory Forum members and observers*, available at: <https://www.efsa.europa.eu/en/partnersnetworks/eumembers>

90 EU Agency for Fundamental Rights (FRA), *Management Board members*, available at: <https://fra.europa.eu/en/about-fra/structure/management-board/members>

91 This conclusion is based on the author's own experience. On multiple occasions, he has had the opportunity to hear some EU officials arguing that the fact that the EU agencies are opening up to the Western Balkans proves that the revised enlargement methodology is being successfully operationalised. Although positive, a step in this direction, however, should be seen as just a small part of the greater institutional scheme needed for the incentives to be created.

the accession process would be compromised, diluting the incentive for candidates and member states to uphold their obligations, and potentially undermining the overall goals of EU integration. By engaging constructively and exploring innovative solutions, such as the Staged accession model, participation in EU institutions prior to membership could ultimately assist in streamlining reforms, enhancing the effectiveness of the process while strengthening the EU's own institutions and policies in the process.

Institutional participation will only achieve its full potential if the EU seizes the current (geo)political momentum and sets an indicative timeline by which the next enlargement will be possible.

Finally, although these ideas have initially been developed in the context of the accession process of the Western Balkans, they may very well represent an appropriate way forward for Ukraine, Moldova, and potentially Georgia. Notably, as 2023 commemorates the 20th anniversary of the Thessaloniki Summit, a pivotal moment which solidified the European perspective for the Western Balkans, the EU has a unique opportunity to draw from the lessons learned from its past engagement with the region. By leveraging this experience, the EU can navigate the path to membership for both “old” and “new” candidate countries more effectively, ultimately ensuring that the enlargement policy reemerges as a potent tool for transformative change.

Box: summary of possibilities for candidate states to participate in EU institutions**Council**

- occasional institutional presence of candidate countries possible, respecting the principle of autonomy in decision-making
- possible access to all configurations and levels to discuss a specific item on the agenda
- key role of presidencies in inviting the candidates and setting the agenda
- in line with Council's Legal Service's contributions/opinions
- participation in informal councils possible as a complementary option

European Council

- third country participation originally stipulated in exceptional circumstances only, while respecting the autonomy principle
- exchange of views currently becoming normalised practice, e.g. with presidents Zelensky & Biden
- key role of its President and the General Affairs Council (GAC) to facilitate the meetings

European Parliament

- candidates may be invited to committee meetings for exchanges of views
- further extension of the opportunities for candidates in line with its 2022 new strategy for enlargement
- participation can complement the friendship groups, Stabilisation and Association Committees (SAPC), and Conference of Parliamentary Committees for Union Affairs of Parliaments of the EU (COSAC), as well as ongoing programmes

Comitology

- selective invitations possible

Commission expert groups

- most open from the legal standpoint for third-country participation
- candidates have already registered their delegates at the official Register of Commission Expert Groups

Consultative bodies

- Joint Cooperation Committees (JCC) could be used more fully at the EESC and European Committee of the Regions (CoR)

Agencies

- various candidates do/can have an observer status or fuller participation
- access to some conditional on acquis compliance

Annex

List of Agencies as per the Czech 2022 non-paper

- a) *Engagement through formal cooperation agreements and IPA Funding* - European Border and Coast Guard Agency (EBCGA), EU Asylum Agency (EUAA), Europol, EU Agency for Law Enforcement Training (CEPOL), European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), Eurojust, EU Aviation Safety Agency (EASA);
- b) *Engagement through formal cooperation agreements with no IPA funding* – BEREC office;
- c) *Engagement through IPA programmes to prepare WB for future participation* – European Centre for Disease Prevention and Control (ECDC), European Environment Agency (EEA), European Chemicals Agency (ECHA), European Food and Safety Authority (EFSA), European Institute for Gender Equality (EIGE), European Medicines Agency (EMA), European Maritime Safety Agency (EMSA), EU Agency for Railways (ERA), European Agency for Safety and Health at Work (EU-OSHA), European Foundation for the Improvement of Living and Working Conditions (Eurofund);
- d) *Other Engagement* – EU Agency for Fundamental Rights (FRA).

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