

EU ENLARGEMENT AND SUCCESSFUL
INTEGRATION: IS THERE A WAY?

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MICHAL PETR



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APPENDIX

COUNTRY REPORTS

CHAPTER 1

CROATIA



PETAR BAČIĆ

Abstract

In this country report the author will take a closer look at the case of the Republic of Croatia, which had already started its journey towards EU membership in 2001 by signing the SAA Agreement. Croatia applied for EU membership in 2003, was confirmed as a candidate country by the European Council in 2004, participated in negotiation process from 2005 until 2011, and finally became the 28th EU member country on 1st July 2013. The author will give a detailed overview of the key steps in the accession process, the adopted EU legal measures for Croatia, as well as the selected official documents adopted by the public authorities of the Republic of Croatia and the institutions of the European Union from 2001 to 2013, related to the process of its accession to the European Union.

Keywords: Republic of Croatia, European Union, accession process, membership conditions, *acquis communautaire*, alignment

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1. Initial Requirements on Candidate Countries¹

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

(a) What conditions did your country need to satisfy before formally applying to join EU?

Accession of new member states to the European Union (EU) is governed by the Treaty on European Union (TEU) – according to the Art. 49 of the TEU a state that wishes to apply for membership of the Union must satisfy two conditions: (a) it must be a European state; (b) it must respect the values on which the EU is founded on and which are common values of the Member States as referred to in Art. 2 of the TEU, and undertake to promote them. It also must comply with political, economic and legal requirements, i.e. to have stable institutions guaranteeing democracy and the rule of law, a functioning market economy, and the ability to take on and carry out the obligations of the EU membership. In the process of the European Union accession, one of the first steps is the assessment of the potential candidate country, its capabilities and the possibility to undertake all the rights and obligations that would result from the membership.

(b) To your knowledge, were these conditions different from those applied in countries in a comparable position?

The specific and additional accession requirements for Croatia can be listed as follows: judicial reform and human rights, co-operation with the International Criminal Tribunal for the former Yugoslavia (ICTY), border disagreements, land ownership, and shipyard privatisation. Among the stated conditions, two accession requirements were unique and exceptional: cooperation with the International Criminal Tribunal for the former Yugoslavia, and solving border disagreements with Bosnia and Herzegovina, Montenegro and Slovenia after the disintegration of the Yugoslav federation.

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

Croatia applied for membership in 2003, and was in negotiation with the EU from 2005 until 2011. On 20th April 2004 the European Commission announced

1 The first section is concerned with the requirements laid upon the candidate countries before the accession process started and before they joined the EU. The text covers the following questions, but may be more extensive when necessary.

its positive opinion on the Croatian candidacy for the full membership in the EU and recommended the European Council to approve its status of a candidate and its entering into negotiations.² On 9th December 2011 political leaders from the EU and Croatia signed the accession treaty. The country became the 28th EU member country on 1st July 2013.

Country's path to becoming a member of the EU has in fact taken over twelve years. Croatia formally started the process in 2001 by signing the Stabilisation and Association Agreement, and then applied for membership in 2003. Croatia was granted candidate status in 2004, and in 2005 it began negotiations that were completed by June 2011. The Treaty of Accession of the Republic of Croatia to the European Union was signed in December of the same year.³ In January 2012 a referendum on accession was held as the second state referendum after the 1991 independence referendum, with 66% of citizens saying YES to Croatian membership in the European Union. Finally, in July 2013 after the Treaty of Accession had been ratified by all twenty-seven member states through their national parliaments, Croatia became a full member of the EU, thus achieving its strategic goal and one of the greatest successes in the field of foreign affairs since the establishment of the Croatian state.

Question No. 3

*What Conditions Did Your Country Need to Satisfy Before Joining the EU?
To Your Knowledge, Were These Conditions Different From Those Applied to Countries
in a Comparable Position?*

(a) What conditions did your country need to satisfy before joining the EU?

Any European country whose organisation is based on the principles of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights including the rights of minorities can apply for membership in the European Union. Initially, altogether three general criteria (the so-called 'Copenhagen criteria', 1993) have been set that all candidates must meet before becoming full members of the European Union: (1) political (democracy, stability of institutions that ensure democracy, rule of law, respect for human rights and minority rights, and acceptance of the Union's political goals); (2) economic (the existence of an effective market economy and the ability of market factors to cope with competitive pressures and market laws within the European Union); (3) legal (adoption of the entire legal *acquis* of the European Union).⁴ There is also a fourth criterion, adopted in Madrid in 1995: (4) administrative (the so-called 'Madrid criterion') concerning the adjustment of appropriate administrative structures with the aim of ensuring conditions for

2 The Croatian Parliamentary Parties' Joint Statement on the Beginning of Negotiations Between the Republic of Croatia and the European Union of 13 December 2004.

3 Accession Treaty: Treaty concerning the accession of the Republic of Croatia to the European Union, Official Journal of the European Union, L112/10 of 24.4.2012.

4 Hillion, 2004, pp. 2–3.

gradual and harmonious integration (strengthening of administrative capacity, the creation of an efficient state administration system with the aim of ensuring an effective process of adoption and the implementation of the *acquis* of the EU).⁵

(b) To your knowledge, were these conditions different from those applied to countries in a comparable position?

As a contracting state of the Stabilisation and Association Process, the Republic of Croatia had to respect certain additional conditions. Namely, the European Union had established special political criteria for the countries of the Stabilisation and Association Process, determining that they must achieve: (a) full cooperation with the International Criminal Court for the former Yugoslavia (ICTY); (b) visible progress in the return of refugees and the protection of minorities and minority rights; (c) progress in judicial reform; (d) full freedom of the media; (e) readiness for regional cooperation and the development of good neighbourly relations.

Therefore, one might argue that Croatia was as prepared as no country before it when it entered the European Union. Namely, no state before Croatia had the benchmarks for opening and closing chapters. Croatia's negotiations contained more chapters than any country had previously had to deal with. The screening of the Croatian legal system has passed through 35 chapters, instead of the 31 chapters that candidate countries in previous rounds of enlargement has experienced. Four new chapters were added, out of which the new Chapter 23 – Judiciary and Fundamental Rights - was by far the most important. It is important to highlight that in doing so, current third countries that will participate future enlargement rounds will be expected to adhere to standards and benchmarks that were created by the process that Croatia has undergone. Furthermore, Croatia has also created a basis for assessing the judicial situation of other Member States, which can be seen as a major contribution to the functioning of the European Union itself.

Question No. 4

Were There Any Specific Features of Your Member State's Accession to the EU, Compared to Other Countries in a Comparable Position?

Very briefly, it can be concluded that Croatia was working hard when it came to implementing the Stabilisation and Association Agreement (SAA) and adjusting to EU requirements.⁶ Crucial in this respect were problems in the sphere of public administration, judiciary in conjunction with the establishment and strengthening of the institutions essential for market liberalisation and implementation of the rule of law. This process has also shown, once again, that irrespective of developments within the EU itself and its attitude with respect to Croatia, the country needs to work on its own institutions, launch the necessary reforms as rapidly and thoroughly

⁵ Stafaj, 2014, pp. 1687–1701.

⁶ Rodin, 2001, pp. 87–105.

as possible, and achieve better results as it regards knowledge and education. In addition, the active participation of all those involved in the process is a matter of vital importance. The Croatian judiciary has faced many problems, such as a shortage of experience and knowledge, poor decision making, the impossibility of obtaining unbiased and fair trials for some categories of parties and cases. One of the greatest problems lies in the excessively long duration of court proceedings, or to put it another way, in the necessity to ensure a trial within an acceptable time period (reasonable time criteria).⁷

2. Institutions and Procedures of Accession⁸

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Until Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

(a) What was the legal framework of the accession procedure (since the application to join the EU till the accession)?

The Republic of Croatia received its international recognition on 15th January 1992, which also marked the beginning of the development of relations between Croatia and the European Union. These relations intensified towards the end of 1999 and particularly from the beginning of 2000, and on 29th October 2001 the Stabilisation and Association Agreement (SAA) was signed.⁹ Croatia was the second country to sign an SAA with the EU, which represented the first formal contractual

⁷ Uzelac, 2004, pp. 1–31; Uzelac, 2006, pp. 87–108.

⁸ The second section is concerned with legal aspects of the procedure of accession, including institutions set up for that purpose, legislative changes at national level and monitoring of the process by the EU institutions.

⁹ Law on the ratification of the Stabilization and Association Agreement between the Republic of Croatia and the European Communities and their Member States, Official Gazette Narodne novine – International Agreements, No. 14 of 27 December 2001; Law on the implementation of the Stabilization and Association Agreement between the Republic of Croatia and the European Communities and their Member States and the Interim Agreement on trade and related issues between the Republic of Croatia and the European Community, Official Gazette Narodne novine - International Agreements, No. 15 of 28 December 2001; Law on Confirmation of the Interim Agreement on Trade and Related Issues between the Republic of Croatia and the European Community, Official Gazette Narodne novine – International Agreements, No. 15 of 28. December 2001.

step in institutionalising its relationship with the EU.¹⁰ The agreement entered into force on 1st February 2005.¹¹

Following Croatia's application for membership of the European Union on 21st February 2003 in Athens, the Council of the EU asked the Commission to prepare an opinion on Croatia's application bid.¹² Based on a positive opinion by the European Commission regarding potential membership, the European Council granted Croatia the status of a candidate country.

In December 2004, the European Council set 17th March 2005 as the start date for negotiations, provided full cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY) was achieved. However, a confirmation of full cooperation with the ICTY was missing and that is why the date of opening negotiations was postponed.¹³ However a negotiating framework was adopted, meaning that negotiations would start when full cooperation with the ICTY was achieved. Upon receiving a positive report by the then ICTY Chief Prosecutor, the Council concluded that conditions for starting negotiations had been met. Accession negotiations were officially launched on 3rd October 2005.¹⁴

Since the negotiation process was completed successfully, on 30th June 2011, EU Member States decided to close the accession negotiations with Croatia. This step further allowed for the signature of the Accession Treaty on 9th December 2011. At the referendum held on 22nd January 2012, Croatian voters decided in favour of accession to the European Union. On 9th March, the Croatian Parliament unanimously ratified the Accession Treaty of the Republic of Croatia to the European Union. Following the ratification procedure in all EU Member States and Croatia, on 1st July 2013 Croatia became an EU Member State.

(b) What agreements were signed with the EU?

The responsibilities of Croatia (namely its own Parliament and Government) in the process of accession to the EU related to legal and political control over the integration process. Parliamentary scrutiny of the Government's activities was regulated by the Constitution of the Republic of Croatia and the Rules of Procedure of the

10 The Resolution on the Accession of the Republic of Croatia to the European Union, Official Gazette Narodne novine No. 153 of 20 December 2002.

11 Stabilisation and Association Agreement between the EU and the Republic of Croatia, Official Journal L 026, 28/01/2005 p. 0001–0002.

12 Communication from the Commission – Opinion on Croatia's Application for Membership of the European Union, COM/2004/0257 final.

13 The difference leadership makes – Lessons from Croatia's EU accession process, 2014, pp. 1–8.

14 The Declaration on the Fundamental Principles of Negotiations on Full Membership of the Republic of Croatia in the European Union, Official Gazette Narodne novine No. 12 of 24 January 2005; The Resolution on the Strategic Guidelines for Negotiations between the Republic of Croatia and the European Union, Official Gazette Narodne novine No. 122 of 19 October 2005; The Statement of the Croatian Parliament and the Government of the Republic of Croatia on Joint Actions in the Process of Negotiation for Membership of the European Union, Official Gazette Narodne novine No. 12 of 24 January 2005.

Croatian Parliament, while the process of Croatia's accession to the European Union was regulated by other relevant documents such as: the Resolution on the Accession of the Republic of Croatia to the European Union (2002), the Croatian Parliamentary Parties' Joint Statement on the Beginning of Negotiations Between the Republic of Croatia and the European Union (2004), the Declaration on the Fundamental Principles of Negotiations on Full Membership of the Republic of Croatia in the European Union (2005), the Resolution on the Strategic Guidelines for Negotiations between the Republic of Croatia and the European Union (2005) and the Statement of the Croatian Parliament and the Government of the Republic of Croatia on Joint Actions in the Process of Negotiation for Membership of the European Union (2005). Every year, Hrvatski Sabor debated the Government's annual program for EU accession, i.e. the programme for the assumption and implementation of the *acquis Communautaire*, and adopted the plan on the harmonisation of Croatian legislation with the *acquis*. The Croatian Parliament has participated in the process of Croatia's accession to the European Union through its working bodies.

(c) What legal measures adopted by the EU governed the proceedings?

As has already been noted, the establishment of relations between the Republic of Croatia and the European Union started on 15th January 1992, when the European Community and its Member States recognised the Republic of Croatia as an independent and sovereign state. From that moment, relations developed gradually through a series of steps. For example, in 2001 the Stabilisation and Association Agreement and the Interim Agreement were signed and the Joint Declaration of the Republic of Croatia and the European Union on the Political Dialogue was adopted. In July 2003 the European Commission handed its Questionnaire to the Republic of Croatia, while in April 2004 the European Commission gave a positive Opinion (Avis) on Croatia's application for membership of the European Union. These developments led to the most recent stage of the integration process, the negotiations for the accession of the Republic of Croatia to the European Union, which were opened on 3rd October 2005. In February 2006 the Council of the European Union adopted the Accession Partnership with Croatia, and after negotiations on individual chapters were finished, in December 2011 the European Parliament and the Council of the EU gave a green light for Croatia's EU accession. Finally, on 9th December 2011 Croatia signed the Accession Treaty with the European Union.

(d) Were there any national rules specifically governing the procedure of accession?

Public authorities of the Republic of Croatia over the years, more precisely from 2001 to 2013, adopted numerous documents related to the process of the accession of Croatia to the European Union. In a brief overview of the texts of such selected official documents, the following should be mentioned: the law on the ratification of the Stabilisation and Association Agreement between the Republic of Croatia and the European Communities and their member states of 27 December 2001; the resolution

on the accession of the Republic of Croatia to the European Union adopted by the Croatian Parliament on 20th December 2002; national programs of the Republic of Croatia for joining the European Union, adopted by the Croatian Government in 2004, 2005, etc.; plans for harmonising the legislation of the Republic of Croatia with the *acquis* of the European Union, adopted by the Croatian Parliament in 2007, 2008, etc.; programs for taking over and implementing the *acquis* of the European Union, adopted by the Croatian Government in 2010, 2011, etc.; the plan (and revised plans) for the fulfilment of the remaining obligations from the negotiations on the accession of the Republic of Croatia to the European union, adopted by the Croatian Government, etc.

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both EU and National Level?

On 1st July 2013 Croatia became a full-fledged EU member, assuming all of the rights and obligations stemming from the membership, while certain competences were transferred to the EU institutions pursuant to the Treaty on the European Union and the Treaty on the Functioning of the European Union, as well as the provisions of the Constitution of the Republic of Croatia, heading VIII.¹⁵ It was precisely for the purposes of efficient state functioning that different acts and decisions were, defining the obligations and competences of various institutions and state administration bodies.

The Act on Cooperation between the Parliament and the Government of the Republic of Croatia in European Affairs stipulates that the Parliament shall monitor the Government's work within EU institutions, review EU documents and Croatia's positions and reach conclusions on them, participate in putting forward Croatian candidates for the EU institutions and bodies, take part in cooperation between national parliaments, and cooperate with the European Parliament etc.¹⁶ An Interdepartmental Working Group for European Affairs has also been established, tasked with reviewing and preparing position proposals which Croatia's representatives would advocate in the process, and then submitting them to the Croatian Government's Coordination Body for Foreign and European Policy.

The European Integration Committee, established in 2000, monitored the harmonisation of the Republic of Croatia's legal system with that of the European Union. It also monitored the exercise of the rights and commitments of the Republic of Croatia that ensued from international treaties pertaining to the Council of Europe,

15 The Constitution of the Republic of Croatia (consolidated text), Official Gazette Narodne novine, No. 85/10 of 9 July 2010, 7/14.

16 Act on Cooperation between the Parliament and the Government of the Republic of Croatia in European Affairs, Official Gazette Narodne novine No. 81/2013.

monitored European Union aid and co-operation programs, and co-operated and exchanged experiences with bodies in the European integration processes.

The Croatia-EU Joint Parliamentary Committee was established under the Stabilisation and Association Agreement. The Committee was established in 2004 following decisions by the Croatian Parliament and the European Parliament. Following the decision of the European Parliament, the individual approach principle was realised. The members of the Committee met twice a year to mainly exchange their experiences concerning the most important issues of the Croatian accession, as well as the efficient functioning and future development of the EU. The Committee would meet once a year in Brussels/Strasbourg and once a year in Croatia. At the end of each meeting the Committee adopted joint declarations and recommendations. The Joint Parliamentary Committee held 17 meetings during its lifespan, and the last one was held in Split on the 29th and 30th April 2013.¹⁷

The National Committee was established as a special working body tasked to monitor the negotiations on the accession of the Republic of Croatia to the European Union (2005 – 2011). The competences of the National Committee were to politically supervise and evaluate the course of negotiations. It was comprised of representatives from all parliamentary parties and the decisions were reached by consensus. The Committee also represented a forum for consultations and discussion between parliamentary parties and the Government. It also presented relevant information on the European Union and strengthened public awareness on European issues.

Regarding European affairs, the European Parliament established the Committee for European Affairs. It monitors and supervises the work of the Government in the institutions of the European Union, the implementation of reforms and obligations towards the European Union, and the application of the *acquis* of the European Union. On the other hand, the Government regularly sends the European Parliament a list of all proposals for legislative acts and documents from the European Union, all the established positions of the Republic of Croatia, informs the European Parliament about proceedings conducted against the Republic of Croatia due to violations of European Union law, and, at the request of the European Parliament, all other documents and information.

If the competent Parliamentary Committee for European Affairs renders a conclusion on the position of the Republic of Croatia, the Government is obliged to act upon it or inform the European Parliament if it deviates from it. Just before the meetings of the European Council, the Government sends to the Committee the European Council agendas, and after the meetings of the European Council, the Prime Minister presents a written report to Parliament. At the invitation of the Speaker of Parliament, the Prime Minister presents the position of the Republic of Croatia for meetings of the European Council or reports on European Council meetings that have been held. Furthermore, the Government submits reports on candidates from the Republic of Croatia for institutions of the European Union to the European

17 Šurina, 2017.

Parliament, and after hearing the candidates the Committee discusses them and renders opinions, which the Government takes into consideration when making its final decision.¹⁸

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in Comparable Position?

(a) What legal criteria was your country obliged to satisfy before joining the EU?

The very process of negotiations on accession took over seven years (2005–2011). The screening of the Croatian legal system passed through 35 chapters. After that, the negotiators predominantly worked on dictation and transcription of existing European Union law into the Croatian legal system. As rightfully concluded by B. Smerdel, constitutional issues were rarely mentioned by either side during this period. Year after year, on the grounds of new chapters and new insights, further changes to the recently accepted legislation have been required and urgently passed through parliamentary procedure. As expected, the crucial problems had been concentrated around the reform of the judiciary and fundamental rights, justice, freedom and security and a financial responsibility. The *acquis communautaire* itself was over 100,000 pages. Therefore, one can easily agree with the conclusion that very little could have actually been the subject of a negotiation. Still, each year the public had an impression that they would never end and expectations from membership were gradually yet dramatically reduced. The financial crisis that the Union suffered certainly contributed a great deal to that effect.¹⁹ By joining the EU, Croatia entered a new alignment stage in which it changes its laws alongside other member countries, highlighting the European Parliament's role in the process.

(b) To your knowledge, were these criteria different from those applied to countries in comparable positions?

Firstly, the negotiation process lasted longer than that of any of the other countries which joined the EU in 2004 and 2007. Furthermore, the Croatian negotiations proceeded on the basis of a different and more strict methodology criteria than were used in previous enlargements. The number of chapters was increased from 31 to 35, and a new instrument of opening and closing benchmarks (of which there were 127 in total) was introduced. As Šeperić points out, despite all the shortcomings of the accession process on the Croatian side, this should theoretically have made the country and its institutions more prepared to join the EU and the common market.²⁰

18 Bačić, 2019, pp. 53–70.

19 Smerdel, 2014, pp. 51–66.

20 Šeperić, 2011, pp. 463–480.

Although the stricter criteria which applied to Croatia caused certain frustrations and a sense of unfair treatment, we can agree with the conclusion that it could hardly be argued that a softer approach on the EU side would be more beneficial towards the country. The accession process definitely strengthened the Croatian institutions as well as the rule of law in general.

Question No. 8

What Procedures on EU Level Were There in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

(a) What procedures on the EU level were there in place to monitor the fulfilment of the accession criteria?

Accession negotiations with Croatia were closed, with the agreement of all Member States in June 2011, as a result of Croatia fulfilling all the benchmarks set in the negotiating chapters. On this basis, the Accession Treaty was signed by the Member States and Croatia, and thus Croatia became a Member of the European Union. The Accession Treaty was subject to ratification by the Hrvatski Sabor as a national parliament. During the negotiations, Croatia had agreed to a number of commitments, which had to be implemented at the latest by the date of accession, unless specific transitional arrangements had already been agreed.

By signing the Accession Agreement on 9th December 2011, Croatia accepted to be closely monitored by the European Commission which would then issue six-monthly assessments of all the commitments undertaken.²¹ These particularly refer to competition policy, judiciary and fundamental rights. In successive Reports the Commission repeatedly recommended that Croatia should put more effort into human resources planning, and in strengthening independence, accountability, impartiality and professionalism of the judiciary. The Commission then advocated the improvement of handling of domestic war crime cases, organised crime, conflict of interest and corruption cases, protection of minorities, refugee return issues, protection of human rights, as well as the continuation of cooperation with the ICTY.

(b) Were there any comparable specific domestic monitoring procedures?

The conclusion and implementation of the Stability and Association Agreement and the launch of the formal accession negotiations between the EU and the Republic of Croatia in 2005 required the comprehensive modification of Croatian legislation covering the *acquis communautaire* described in 35 negotiation chapters. Each stage of the negotiation process was verified and closely monitored by the European Commission. The progress in acceptance, transposition, implementation and enforcement of the EU *acquis* was analysed and evaluated in periodic monitoring reports. It

²¹ Accession Treaty: Treaty concerning the accession of the Republic of Croatia to the European Union, Official Journal of the European Union, L112/10 of 24.4.2012.

seems that the more ‘problematic’ areas (mostly associated with the protection of fundamental rights and peaceful post-war reintegration, sanctioning of war crimes, reform of the judiciary, etc.) were under tighter control than other areas, primarily regarding the capacity and efficiency of institutions to properly enforce the accepted commitments.

Art. 36 of the Act of Accession required the Commission to closely monitor all commitments undertaken by Croatia in the accession negotiations, particularly focusing on competition policy, judiciary and fundamental rights, justice, freedom and security. As an integral part of its regular monitoring, the Commission has been issuing six-monthly assessments on the implementation of Croatia’s commitments in these areas.

The Commission adopted a Monitoring Report on Croatia’s accession preparations in April 2012 and a Comprehensive Monitoring Report in October 2012 with Croatia adopting an action plan to follow up on their recommendations. In line with Art. 36, this final Monitoring Report assessed the progress made by Croatia in its preparations for accession in the period between 1st September 2012 and 28th February 2013. This assessment was based on information gathered and analysed by the Commission, including input provided by Croatia, peer assessment missions, as well as information shared by the Member States, international and civil society organisations, in their regular correspondence with the Commission. The assessment was also based on the findings of the updated half-yearly Monitoring Tables; a working tool aimed at following up in detail all commitments undertaken by Croatia during the accession negotiations.²²

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission’s or Council’s Working Groups, Participation of Your Representatives at the Commission’s or Council’s Meetings etc.)?

After the European Council decided to open negotiations and to convene the bilateral Intergovernmental Conference on accession, negotiations were formally opened on 3rd October 2005 at the first session of the Intergovernmental Conference between EU Member States and the Republic of Croatia, where the exchange of General Positions of the European Union and the Republic of Croatia took place.

After the formal opening of the negotiating process, the analytical overview and evaluation of the degree of harmonisation of national legislation with the *acquis communautaire* followed. This was the process of screening. The main purpose of the screening process was to determine the differences that exist between the national legislation and the *acquis communautaire* for every chapter with which the

22 European Commission, Communication from the Commission to the European Parliament and the Council – Monitoring Report on Croatia’s accession preparation, COM 2013 171 final, Brussels, 26.3.2013.

national legislation needed to be harmonised before the date of accession. On the basis of the conducted analysis, the candidate country was required to state whether it would be able to fully harmonise national legislation with the *acquis communautaire* in individual chapters or if it would require transition periods for the complete harmonisation with, and implementation of the *acquis communautaire*. Screening was conducted individually for each separate chapter. The duration of the screening process for individual chapters depended on the extent and the amount of the *acquis communautaire* for the respective chapter and could last from one day to several weeks. Overall, the screening process usually lasts for a year.

After screening was completed, the decision on the opening of negotiations for individual chapters, depending on the evaluated readiness of the candidate country, was made by the Member States within the Council of the European Union. With the opening of negotiations for individual chapters decided, the substantive phase of the negotiations could begin. During this phase, the subject of negotiations was the conditions under which the candidate country would adopt and implement the *acquis communautaire* in the respective chapter, including transitional periods which the candidate country might have requested. Negotiations were conducted on the basis of the negotiating positions of the European Union and the candidate country which prepared for each negotiating chapter after the screening results.

Regarding Croatia in particular, during the whole negotiating process the European Parliament and the National Committee for Monitoring the Accession Negotiations of the Republic of Croatia to the European Union were regularly briefed on the course of the negotiations and the progress that had been made.²³

Question No. 10

Has Your Country Experienced any Particular Difficulty in Meeting Some of the Accession Criteria?

Firstly, the accession process was taking much longer than expected. Slovenia had blocked progress due to a bilateral conflict around the Bay of Piran. Furthermore, the news was overshadowed by corruption allegations against former prime minister Ivo Sanader. Luckily, the then-prime minister Jadranka Kosor continued with determination, the reforms needed in order to comply with the conditions required by the accession process.²⁴ Compliance with the first set of conditions, specifically the rule of law, was the most difficult in the case of Croatia. The same probably applies for all or at least most candidate countries. One also has to take into account that most of those countries, Croatia of course included, were ex-socialist countries with little experience when it came to the separation of powers, functioning of stable and democratic institutions, genuine independence of judiciary, i.e. the functioning

²³ Republic of Croatia Ministry of Foreign and European Affairs, no date.

²⁴ Vandoren, 2023, p. 1.

of the rule of law in general. Therefore, meeting some of the accession criteria back then was indeed a challenging task.²⁵

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. Constitutional Court)?

(a) In what way was the constitution of your country changed in order to accede the EU?

The main objective of the 2010 constitutional revision was to create and strengthen the constitutional basis for Croatia's full membership in the European Union. That was part of its process of fulfilling the strategic goals of joining the Euro-Atlantic integrations which were proclaimed in the Historical Foundations (Constitution's Preamble) as early as in 1990 at the time of the adoption of the Constitution. As Smerdel points out, all these amendments have preserved the baseline for the constitutional order: democracy, human rights, and the rule of law, which are the fundamental values of the Republic of Croatia in the context of European and international integrations. It is possible to classify the set of important constitutional amendments that were adopted and promulgated on 16th July 2010 pursuant to a decision of the Croatian Parliament into the following categories: (a) amendments required by accession negotiations with the European Union, (b) amendments required for the adaptation of the legal system to (a future) membership in the EU, (c) amendments declaring the intention to correct injustices, (d) amendments to the political decision making system; (e) amendments aimed at the reform of the judiciary, (f) amendments strengthening human rights and fundamental freedoms.²⁶ Different amendments were adopted at the request of European negotiators in order to facilitate the accession. There were constitutional issues that arose from individual chapters of negotiations with the European Union, such as constitutional status and independence of the Croatian National Bank²⁷ and the State Audit Office,²⁸ the abandonment of the principle of non-extradition of own citizens to foreign states and the effective implementation of the European Arrest Warrant,²⁹ etc. Constitutional provisions that referred to the modalities of accession, the functioning of the Republic of Croatia in the EU and the adaptation of the Croatian legal system to new requirements stemming from final stage of European integration process were inserted in a separate, new Chapter VIII of the Constitution named 'The European Union'.³⁰ The first of these four provisions, each of which has its own separate title, provided the legal basis for

²⁵ Thibault and Levy, 2013, pp. 1–6.

²⁶ Smerdel, 2014.

²⁷ Art. 53.

²⁸ Art. 54.

²⁹ Art. 9.

³⁰ Arts. 143–146.

membership and the transfer of constitutional powers to the Union's institutions.³¹ Another three provisions encompassed the participation of citizens and government bodies in decision-making within the EU institutions,³² the application of the EU law and its supremacy over Croatian law,³³ and the rights of the EU citizens within the Republic of Croatia.³⁴ These constitutional provisions (together with Art. 9 para. 2 pertaining to the execution of a decision on extradition or surrender in compliance with the *acquis communautaire* of the European Union and Art. 133 para. 4 regarding the right to local and regional self-government for EU nationals in compliance with law and EU *acquis communautaire*), did not enter into force on the day of its promulgation, but on the day when Croatia became an EU Member State.

As a member state of the European Union, Croatia was obliged to align its national legislation with the *acquis communautaire*. The European *acquis* is constantly evolving and national regulations have to be accordingly harmonised.³⁵ The prevalent majority of these reforms had been done by the legislation, and only some of them were later brought in accordance to the Constitution (Minority rights (2002), namely the Freedom of Information Act (2003), Anti-discrimination law (2008), Independent regulators (2006), Independent National bank (2008), Independent Accountant Office (2008), and the Prevention of the conflict of interest (2011).³⁶

(b) Was the accession legally challenged (e.g. constitutional court)?

The Constitutional Court issued a decision: U-VIIR-474/2012 January 30th 2012 (NN 15/2012), establishing that the national referendum on Croatia's entry into the European Union on January 22nd 2012, in which more than 66 percent of Croatian voters voted in the referendum for joining the Union, was held in accordance with the Constitution and laws. The Government was obliged to send the Treaty on the Accession of the Republic of Croatia to the European Union to the Croatian Parliament for confirmation. The Constitutional Court also announced, that it rejected all 22 received requests for an assessment of the constitutionality and legality of the held referendum deeming them unfounded or inadmissible.

... the Constitutional Court issued a Decision establishing that the state referendum held on January 22, 2012 was conducted in accordance with the Constitution of the Republic of Croatia, the Constitutional Law on the Constitutional Court of the Republic of Croatia and the relevant provisions of the Law on Referendum and other

31 Art. 143.

32 Art. 144.

33 Art. 145.

34 Art. 146.

35 Rodin, 2001, pp. 87–105.

36 Smerdel, 2013, pp. 1–16.

forms personal participation in the exercise of state power and local and regional self-government.³⁷

Question No. 12

Was There a Referendum in any Stage of the Accession Procedure?

Yes. The referendum on joining the European Union was mandatory and binding. According to the Art. 142 of the Constitution,³⁸ it was called by the Croatian Parliament in December 2011, just after signing the Accession Treaty. The accession referendum was held on 22nd January 2012, and it delivered an overwhelming 'yes' vote. The referendum question was straight and simple: 'Are You in favour of the membership of the Republic of Croatia in the EU?'. Almost two million Croatian citizens voted in the referendum, meaning that the turnout of voters was 43.5 percent. The EU accession referendum passed with 66.2 percent votes cast in support, while 33.1 percent voted against joining the EU; there were 0.60% invalid or blank votes. It is interesting to point out that the referendum passed in all Croatian counties. The greatest support for the referendum was recorded in Međimurje and Brod-Posavina counties, at 75.73% and 72.61% respectively. The lowest support for EU accession was recorded in Dubrovnik-Neretva County, where 42.22% of votes were cast against the proposal. The average official turnout for the referendum was 43.51%; the highest official turnouts were recorded in the city of Zagreb and in Varaždin County at 55.13% and 53.66% respectively. The 2012 Croatian EU accession referendum was the first national referendum held in Croatia since the Croatian independence referendum that was held more than 20 years earlier, in 1991.

Question No. 13

In Addition to the Above, Were There any Noteworthy Legal Aspects Concerning the Negotiation and Ratification of the EU Accession Agreement in Your Country?

The fact of state membership in the European Union, from early the stages of accession, requires an undertaking of a serious, comprehensive legal reform from the national legal systems. Croatia's path towards the EU had already started in 2000 when negotiations were opened for the Stabilisation and Association Agreement (SAA). After signing the SAA Croatia started the process of harmonisation with EU law. The SAA between Croatia and the EU was signed in October 2001, and the Interim Agreement entered into force on 1st May 2002. During the period between its entry into force, and until Croatia's accession to the EU, the SAA constituted a legal basis for the regulation of relations between the EU and Croatia, and at the same time, marking a shift from the voluntary phase to the phase of mandatory harmonisation

37 Constitutional Court Decision: U-VIIR-474/2012 of 30 January 2012 (Official Gazette Narodne Novine No. 15/2012).

38 Chapter VII, Part 2 – Association and Dissociation.

of national legislation with the *acquis communautaire*. One of the most important elements of this process unfolded in the area of constitutional law.³⁹ During Croatia's EU membership negotiations, on 16th June 2010, the Croatian Parliament (*Hrvatski sabor*) adopted amendments to the Constitution of the Republic of Croatia. Constitutional amendments of 2010 created the constitutional and legal basis for Croatia's membership in the EU and ensured new constitutional grounds for the application of EU law. However, new constitutional provisions concerning the 'European affairs', entered into force on the day when Croatia became a full member of the Union.

3. Legal and Economic Support for Candidate Countries⁴⁰

Question No. 14

Before the Accession, Was There Any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

One may agree with the conclusion that the *acquis communautaire* itself represents an important galvanising and influence-inducing mechanism in the hands of EU foreign policy makers. According to the provision of Art. 69 of the Croatian SAA – 'Croatia will endeavor to ensure gradual harmonization of existing laws and future legislation with the *acquis*'. As it regards the requirement of 'legal harmonisation' of domestic legislation with EU law, for all SEE countries and especially for their courts during the EU pre-accession process a major challenge was the question of whether the ongoing 'legislative harmonisation' should go hand in hand with 'judicial harmonisation'. The so-called 'EU friendly' approach towards the application and interpretation of domestic law before the courts was widely adopted. The SAA was generally considered by the Republic of Croatia to be an international agreement *sui generis*. As such, it was the framework for relations with the EU throughout the whole pre-accession period and it has been directly applicable by national courts as well as other authorities, according to the Art. 141. of the Constitution of the Republic of Croatia that deals with the application of international law. The Constitutional Court of the Republic of Croatia also accepted the 'EU friendly approach'.⁴¹

39 Bačić, 2023, pp. 105–133.

40 The third section concentrates on the support provided to the candidate countries by the EU.

41 Rules of Procedure of the Constitutional Court of the Republic of Croatia, Official Gazette Narodne novine, No. 181/03, 16/06, 30/08, 123/09, 63/10, 121/10.

Question No. 15

Did Your Country Benefit From Any Funds Providing Financial Support in Relation to EU Accession Immediately After the EU Accession?

As with all other Member States, Croatia also benefits from being part of the Single Market, a shared approach to the common challenges of migration, terrorism and climate change, and concrete gains such as a better transport infrastructure, modernised and digitalised public services and cutting-edge medical treatment.⁴² EU membership is one of the most significant events in Croatia's history, together with NATO membership, which had been achieved four years previously and had been its main foreign policy goal since its independence. Soon after Croatia became the 28th member of the European Union, it started using funds providing financial support and experiencing the financial benefits of membership. EU membership has provided Croatia with access to various funds and financial support mechanisms designed to promote economic development and convergence. The country has benefited from structural and cohesion funds, enabling investments in infrastructure, innovation, research, and regional development. These funds have played a pivotal role in supporting the growth and competitiveness of Croatian businesses, particularly of small and medium-sized enterprises (SMEs).

Question No. 16

Were There Any Other Noteworthy Aspects of EU Support Provided to Your Country Before the Accession?

Prior to the full EU membership, Croatia had funding from the Instrument for Pre-Accession Assistance (IPA) at its disposal. IPA funding was used to finance projects for the harmonisation of national legislation with the *acquis communautaire*, the application of harmonised legislation, as well as to prepare for the implementation of EU cohesion and agricultural policies. The IPA had a key role in the development of the management and control system for the use of EU funds. The financial value of the IPA towards Croatia for the 2007-2013 period was 997.6 million euro.

The Ministry of Regional Development and European Union Funds was responsible for the overall coordination of the IPA programme, while the Ministry of Finance was responsible for financial management. A special operational structure was established for the implementation of each of the five IPA components, consisting of managing authorities and implementing agencies. The five IPA components were: (a) assistance for Transition and Institution Building; (b) Cross-border Cooperation; (c) Regional Development – Transport, Environment, Regional Competitiveness; (d) Human Resources Development; and (e) Rural Development (IPARD). Priorities within the components were defined in accordance with the needs of each participating country, with the aim of maximal adaptation to the country's specifics.

42 European Union, 2025.

A management structure consisting of the management authority and the implementing agencies responsible for tendering and contracting procedures was established for each component.

The EU pre-accession funds were a sound investment for the future of both Croatia as enlargement region and the EU. These funds support beneficiaries to implement the necessary political and economic reforms, preparing them for the rights and obligations that come with EU membership. Those reforms will provide their citizens with better opportunities and allow the development of standards, equal to the ones other citizens of the EU enjoy. The pre-accession funds also help the EU reach its own objectives including a sustainable economic situation, energy supply, transport, the environment and climate change, and stability.

The Instrument for Pre-accession Assistance (IPA) was the instrument by which the EU has been supporting reforms in the enlargement region with financial and technical assistance since 2007. IPA funds build up the capacities of the beneficiaries throughout the accession process, resulting in progressive, positive developments in the region. For the period 2007-2013, the Instrument for Pre-accession Assistance (IPA) had a budget of €11.5 billion. Its successor, IPA II, was allocated €12.8 billion for the period 2014-2020.⁴³

The EU pre-accession funds available to Croatia as an EU candidate country played an important role in its adjustment towards membership. For instance, as a candidate country, Croatia used the Special Pre-Accession Program for Agriculture and Rural Development and the Instrument for Pre-Accession Assistance – Rural Development, one of the goals of which was to strengthen the competitiveness of businesses in the agriculture and food production sectors. The usage period covered two EU programming periods, as well as a recession period in Croatia that lasted from 2009 to 2014. The IPA was a form of continuation of the first generation of EU funds, namely CARDS, PHARE, ISPA and SAPARD, and at the same time it was a preparation for the implementation of ESI funds. The deadline for the implementation of contracts signed under IPA was 2018 (IPA 2012) and January 2019 (IPA 2013). Payments for projects implemented within these programmes were completed by the end of 2019 and the beginning of 2020.⁴⁴

In IPA I 2007-2013 period commitments & payments to Croatia were as follows: Allocated: 813,387,940/Paid: 730,474,435.⁴⁵

43 European Commission, Croatia's accession to the EU Memo, Brussels, 28 June 2013; Ivandić, 2013, pp. 53–71.

44 Wankiewicz, 2023, pp. 1–9.

45 Croatia on the Road to the European Union, 2009, pp. 1–44.

4. Specific Rules Applicable to Candidate Countries Before and After Their Accession⁴⁶

Question No. 17

After the Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

Regarding the general obligations for all countries that wish to join the European Union (EU), specific political and economic criteria must be met and the EU's laws and standards must be incorporated into national law. As from the date it was expected to join on 1st July 2013, the EU *acquis*, or the body of EU laws and standards, applied to Croatia in the same way that it is binding for all Member States.

The European Union and Croatia negotiated specific arrangements in certain areas, all in order to enable the country's smooth integration into the EU. The most important of these relate to the freedom of movement for workers, the free movement of capital, competition policy, financial services, transport and internal borders. In cases where transitional periods have been agreed, they are limited in time and scope. The duration of these arrangements is different for different policy areas and are detailed in the answers to questions below.

However, Croatia did not negotiate any specific exemptions from the EU accession procedure. Instead, its accession process adhered to the standard framework established for all candidate countries. As already noted, negotiations began in October 2005, following the resolution of issues related with the International Criminal Tribunal for the former Yugoslavia (ICTY). This cooperation was a prerequisite for starting negotiations. The negotiations involved screening 35 chapters of the *acquis communautaire* which Croatia had completed by October 2006. Notably, four additional chapters were included due to concerns over potential difficulties in areas like agriculture, etc. So, Croatia's accession to EU was characterised by an adherence to established protocols without any negotiated exemptions. The process culminated in its official membership on July 1st 2013.⁴⁷

⁴⁶ The final section is concerned with any country-specific exemptions from the general approach, adopted by the candidate countries, both during the pre-accession period and after the actual accession.

⁴⁷ Thibault and Levy, 2013, pp. 1–6.

Question No. 18

What Country-Specific Provisions Were Contained in the EU Accession Agreement of Your Country?

The Treaty of Accession between the EU and Croatia (2011) outlines specific provisions for Croatia's entry into the European Union. Key provisions, i.e. main elements of the Agreement were as follows: (a) Integration into the EU Framework: Croatia was required to adopt and implement the *acquis communautaire*, the body of EU laws and regulations, as part of its obligations upon accession; (b) Transitional Periods: the Treaty allowed Croatia to request transitional periods for certain chapters of the *acquis*, enabling it to gradually align its national legislation with EU standards without disrupting free market competition; (c) Financial Contributions: Croatia's financial contributions to the EU budget were specified, including adjustments based on its economic capacity and needs; (d) Judicial and Institutional Reforms: provisions mandated reforms to strengthen the independence and efficiency of Croatia's judiciary, improve anti-corruption measures, and ensure human-rights protection, reflecting requirements similar to those imposed on previous accession countries such as Bulgaria and Romania; (e) Representation in EU institutions: the Treaty included provisions for integrating Croatian representatives into various EU institutions, with certain transitional arrangements until each new election could be held (for example, in accordance with the Accession Treaty Croatia had to implement first direct elections for the members of the European Parliament in the interim period until the regular European elections in 2014; Croatia thus saw its first elections for the European Parliament just a few months before joining the European Union, on the 14th of April 2013); (f) Monitoring mechanism: unlike Bulgaria and Romania, the Treaty did not establish a monitoring mechanism by the EU Commission post-accession to oversee Croatia's compliance with reforms; (g) Adaptations to existing EU Legislation: annexes to the Treaty listed necessary adaptations to existing EU legislation to accommodate Croatia's membership, covering areas such as intellectual property rights, financial services, agriculture, and fisheries; (h) Enactment: the Treaty required ratification by all existing EU member states and Croatia itself, which was completed by 21st June 2013.

Question No. 19

Were There Any Country-Specific Transitory Provisions?

Croatia's accession to the European Union included specific transitional provisions designed to facilitate its integration into the EU framework. These provisions were essential for allowing Croatia to align its national legislation with the EU's *acquis communautaire*: (a) Request for Transitional Periods: during the accession negotiations Croatia was able to request transitional periods for certain chapters of the *acquis*. This meant that Croatia could take additional time to harmonise its national laws with EU regulations in specific areas after joining the EU. Such requests were subject to limitations

in time and scope, ensuring they did not disrupt free market competition or affect the internal market of the EU; (b) Duration and Scope: the Accession Treaty stipulated that Member States could implement transitional arrangements for a period of up to seven years following accession. This flexibility allowed Croatia to gradually adapt to EU standards while minimising immediate economic disruptions; (c) Specific Legal Framework: the legal framework governing these transitional provisions was outlined in the Act concerning the conditions of Croatia's accession. This included provisions for the application of existing treaties and agreements, as well as specific rules regarding the Schengen *acquis*, which would only apply once Croatia met certain criteria; (d) Monitoring and Compliance: the European Commission was tasked with closely monitoring Croatia's compliance with its commitment during the transition period, ensuring that the country adhered to agreed-upon timelines and standards.

Question No. 20

Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?

Croatia did not negotiate any permanent exemptions from EU law during its accession process. Instead, it committed to harmonise its legislation within the EU's legal framework. This extensive process involved screening and adapting Croatian laws to meet EU standards across various sectors including agriculture, environment and labour. Croatia faced specific challenges, such as border disputes with Slovenia that temporarily hindered negotiations. The negotiations included addressing issues similar to those faced by other candidate countries, where temporarily measures or transitional arrangements might have been discussed but did not result in permanent exemptions from EU law. In summary, Croatia's EU accession was characterised by its commitment to comply to EU laws rather than securing permanent exemptions. Since 1st July 2013, the Croatian Parliament has adopted legislation harmonised with the *acquis* following the procedure established in the pre-accession period, according to which all legislative proposals that are aligned to Croatian legislation with the *acquis* bear the designation 'P.Z.E.' and are adopted under urgent procedure if so sought by the proposer.⁴⁸ The Parliament adopts the annual legislative alignment plan, which is an integral part of the Government's programme for incorporating and implementing the *acquis*, and is the basic document in the process of incorporating and implementing EU law in Croatian legislation. Croatia is obliged to implement the notification procedure i.e. to notify the European Commission in a timely manner of the measures for the transposition of new directives into Croatian legislation as well as to properly implement the adopted legislation. The EU *acquis* is available in

48 Standing Orders of the Croatian Parliament, Official Gazette Narodne novine no. 81/13, 113/16, 69/17, 29/18, 53/20, 119/20, 123/20.

the Croatian language, which is one of the official languages of the Union, thereby providing Croatian citizens with equal access to European legislation.⁴⁹

Question No. 21

To Your Knowledge, Were There Any Notable Differences in the Content of Your Country's EU Accession Treaty From Other Countries in a Comparable Position?

Croatia's accession to the European Union, formalised through the Treaty of Accession (2011), presents several notable differences compared to the accession treaties of other countries in similar positions.⁵⁰ Below are the key aspects that distinguish Croatia's Treaty: (a) Transitional arrangements: Specific Provisions – The treaty included explicit transitional arrangements regarding agricultural land market, allowing for a gradual liberalisation process. This was a tailored response to Croatia's unique agricultural landscape and economic conditions; Absence of Monitoring Mechanism – Unlike Bulgaria and Romania, which had a monitoring mechanism established to ensure compliance with EU standards post-accession, Croatia's Treaty did not include such provisions. This reflects a shift in the EU's approach, as it was perceived that Croatia had made sufficient reforms prior to accession; (b) Length and Complexity: Length of the Treaty – The Treaty of Accession is approximately 290 pages long and includes numerous annexes detailing Croatia's commitments and adaptations to EU laws (the *acquis communautaire*). This complexity is somewhat consistent with other accession treaties but highlights the extensive negotiations that took place for over a decade; (c) Political Context: Historical Context – Croatia's accession was influenced by its recent history as a former Yugoslav republic, which involved significant political and social upheaval. The treaty addressed specific historical grievances and border disputes, particularly with Slovenia, which delayed the accession process; (d) Legal Framework Adaptations: Amendments to Founding Treaties – The Treaty contained provisions that amended the EU's founding treaties to accommodate Croatia as a new member state. This included adjustments to ensure Croatian representation in the EU institutions, and compliance with existing treaties; Charter of Fundamental Rights – While not explicitly stated in the Treaty, Croatia became bound by the Charter of Fundamental Rights through its accession, similar to other member states but with an emphasis on ensuring adherence due to its post-conflict status; (e) Economic Contributions: Financial Commitments – The Treaty outlined Croatia's financial contributions to the EU budget and specific commitments related to economic reforms necessary for integration into the single market. These financial aspects were closely scrutinised given Croatia's economic situation at the time of accession.⁵¹

49 Croatia on the Road to the European Union, 2009, pp. 1–44.

50 European Commission, 2013; European Union, 2025.

51 Croatia on the Road to the European Union, 2009, pp. 1–44.

In summary, while many elements of Croatia's accession treaty align with those of other nations entering the EU, its unique transitional arrangements, historical context, absence of post-accession monitoring mechanisms, and specific legal adaptations set it apart from previous accession experiences in Central and Eastern Europe.

Question No. 22

Are There Any Other Noteworthy Exemptions From the Application of the EU Law in Your Country?

Noteworthy exemptions from the application of EU law in Croatia primarily relate to VAT regulations, competition law and restrictive measures. Here follows a short overview: (a) VAT exemptions: Export of goods – Passengers or purchasers without permanent residence in the EU can claim a VAT refund on goods exported from Croatia if certain conditions are met, including a minimum purchase value of 100 Euros and proof of export; E-learning activities – Supplies related to education provided by public bodies or verified private educators are exempt from VAT. However, there is no specific guidance on the VAT treatment of e-learning activities; Gambling activities – Lotteries, casino games, and betting are exempt from VAT under Croatian law. This exemption extends to online gambling but lacks comprehensive regulatory guidance. (b) Competition Law Exemptions: Croatia's competition network operates under both national and EU rules. While the Croatian Competition Agency (CCA) applies national laws, it also adheres to EU competition laws.⁵² This dual application can lead to exemptions in certain cases where local interpretations may diverge from EU standards. (c) Restrictive Measures: Following its accession to the EU, Croatia is bound by EU sanctions and restrictive measures. However, it also has its own Law on Restrictive Measures (LRM) that outlines exemptions in certain cases where local interpretations may diverge from EU standards. LRM outlines procedures for implementing these measures domestically. This law allows for certain exemptions based on international obligations and specific circumstances defined by Croatian legislation. These exemptions illustrate how Croatia navigates its obligations under EU law while maintaining specific national regulations that address local contexts and needs.⁵³

⁵² Arts. 101, 102 TFEU.

⁵³ mvcp.gov.hr, no date.

5. Concluding Remarks

The fact is that Croatia's path to the EU lasted for over twelve years, as well and its process of negotiations on accession also lasted for a long time, as they took approximately seven years. Furthermore, it is true that the negotiating framework specifically set up for Croatia was more demanding than for any previous country that had accessed to the EU, as no state before Croatia had more chapters to negotiate nor had any country previously had benchmarks for opening and closing chapters. Therefore, one might also conclude that Croatia set standards and benchmarks for countries to participate in future enlargement rounds. Nevertheless, at the time of writing, Croatia is still the most recent state to have joined the EU, and the only country from the Western Balkan group of seven states that successfully completed its journey to EU membership. Although the European Union recently managed to activate the stalled accession process in the region, rebuilding the credibility of the whole enlargement project in the Western Balkan countries will constitute a formidable challenge.

The overall Croatian experience of EU membership, despite some obvious shortcomings and the need to undertake certain decisive social and institutional reforms in the foreseeable future, should however be seen as positive example of integration and serve as an incentive for further EU enlargement in the region.

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CHAPTER 2

CZECH REPUBLIC



EVA ZORKOVÁ

Abstract

The Czech Republic joined the European Union in 2004, as part of the so-called Eastern enlargement. The accession process can be seen as the final stage, preceded by many years of hard work and preparation. This study aims to comprehensively evaluate the accession process of the Czech Republic to the EU, primarily from a historical perspective, with a focus on legal, economic, administrative, and political issues.

Keywords: Czechia, EU accession procedure, candidate country, initial requirements, specific exemptions, negotiation process

1. Introduction

The Czech Republic joined the European Union in 2004, as part of the so-called Eastern enlargement. The accession process can be seen as the final stage, preceded by many years of hard work and preparation. The study aims to comprehensively evaluate the accession process of the Czech Republic to the EU, primarily from a historical perspective, with a focus on legal, economic, administrative, and political issues.

This report presents some of the features of this process. The report is divided into 22 questions across four sections. The first section deals with the initial requirements for Czechia to be considered a candidate country prior to the accession process (Questions 1–4). The second section concerns the legal aspects of the accession

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procedure, including the institutions set up for that purpose, legislative changes at the national level and monitoring of the process by the EU institutions (Questions 5–13). The third section concentrates on the support provided to Czechia by the EU (Questions 14–16) and the final section discusses any country-specific exemptions adopted by Czechia from the general approach, both in the pre-accession period and after the accession (Questions 17–22).

2. Initial Requirements on Candidate Countries

The first section concerns the requirements laid upon the candidate countries prior to their accession process and joining the EU. Responses should cover the questions but may be more extensive when necessary.

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

The first signed contract was The European Agreement establishing an association between the Czech Republic, and the European Communities and their member states (the so-called Association Agreement), which was signed in 1993. It was a key agreement regulating the relations between Czechia and the EU in the period before accession. It was a basic legal framework for relations between Czechia and the European Communities that did not guarantee Czechia's future membership in the EU. The Agreement entered into force in February 1995.¹

The Association Agreement envisaged the creation of a free trade zone in industrial products between Czechia and the European Commission (hereinafter referred to as EC) by January 2002 (abolition of customs duties as of January 2001 and abolition of quotas as of January 2002). In addition to the creation of a free trade zone, the agreement committed both parties to economic, cultural and financial co-operation within areas such as energy, telecommunications, small and medium-sized businesses, economic competition, education, etc. The agreement also obliged the Czech Republic to gradually align its legal order with the *acquis communautaire*.²

- 1 Communication from the Ministry of Foreign Affairs on the negotiation of a European agreement establishing an association between Czechia, and the European Communities and their member states, February 1995, No. 7/1995 Coll.
- 2 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2024a.

Regarding the differences from other countries, the Agreement was called ‘European’ because it belonged to the so-called third generation agreements, qualitatively higher than similar association agreements, such as with Turkey, Malta and Cyprus. An important part of the Agreement that distinguished it from similar agreements negotiated earlier (for example, with Poland or Hungary) was the so-called non-implementation or suspensive clause. This allowed one contracting party to suspend the implementation of the agreement, even in the absence of mutual consultation, in the event of a serious breach of essential contractual obligations by the other party. An equally important part of the agreement was its Art. 6, which defined respect for human rights as a basic element of Czechia’s association with the EC. However, Art. 6 was not a reaction to any unfavourable development in the field of human rights in Czechia, but followed the declaration of the Council of the EC of 11 May 1992, by which a similar clause regarding respect for human rights must be included in all newly concluded cooperation and association agreements between the EC and third countries.³

Furthermore, in 1995, Czechia received a document from the European Commission called ‘White Paper – Preparation of the associated countries of Central and Eastern Europe and integration into the internal market of the Union’ and proceeded according to it.⁴

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

The Czech Republic applied for membership in the European Union on 17 January 1996 through its Prime Minister, Václav Klaus.⁵

Question No. 3

*What Conditions Did Your Country Need to Satisfy Before Joining the EU?
To Your Knowledge, Were These Conditions Different From Those Applied to Countries
in a Comparable Position?*

In 1993, concurrent with its declaration in favour of the future integration of Central and Eastern Europe countries, the European Council met in Copenhagen to lay down the criteria that a state must meet to join the EU.

(a) Political criteria: stable institutions that guarantee democracy, the rule of law, human rights and respect for and protection of minorities. (b) Economic criteria: a market economy and the ability to cope with competitive pressure and market forces. (c) Administrative and institutional capacity: effective implementation of the Union

³ Ibid.

⁴ See Question No. 7 for more details on the White Paper.

⁵ Zenkner, 2024.

acquis (collection of common rights) and the ability to satisfy the obligations arising from EU membership.⁶

To our knowledge, these conditions were common to all candidate's countries in a comparable position. Candidate's countries that joined the EU in 2004 were all experiencing economic, political, and social transformations in line with changes in Central and Eastern Europe at the end of the 1980's and the early 1990's related to the collapse of communism, the fall of the Berlin Wall, and the emergence of newly independent or created states in Europe.

Question No. 4

Were There Any Specific Features of Your Member State's Accession to the EU, Compared to Other Countries in a Comparable Position?

There was a specific feature related to unexpected division of the Czechoslovak Federation – essentially, the peaceful division of the state. Czechoslovakia's interest in membership in the European Communities was conveyed soon after the Velvet Revolution, which took place in November 1989. A mere year after the revolution and changes in the country's political structure, in December 1990, Czechoslovakia began talks with the European Communities on concluding an association agreement. The following year, Czechoslovakia (along with Hungary and Poland) signed 'the first' association agreement. However, because of the breakup of Czechoslovakia at the end of 1992, the ratification process has paused. Subsequently, in January 1993, the officially independent Czech Republic was established, and Czech diplomacy (under the leadership of former Minister of Foreign Affairs Josef Zieleniec) attempted to make up for lost time. In 1993, both parties signed 'the second' agreement establishing an association between the Czech Republic on the one hand, and the European Communities and its member states on the other (the Association Agreement). The Agreement came into force in February 1995.⁷

3. Institutions and Procedures of Accession

The second section concerns the legal aspects of the accession procedure, including the institutions set up for that purpose, legislative changes at the national level and monitoring of the process by the EU institutions.

6 Belgian Presidency of the Council of the European Union, 2024.

7 Zenkner, 2024.

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Until Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

In July 1997, the European Commission published material called Agenda 2000 – an action programme of the EU whose main objectives were to reform the Common Agricultural Policy and Regional policy, and establish a new financial framework for the years 2000–2006, taking into consideration the upcoming Eastern Enlargement of the EU. Agenda 2000 addressed two key issues: preparedness of the EU for enlargement, and preparedness of candidate countries to join the EU.

Agenda 2000 also included the so-called zero assessment of the candidate countries' progress in their preparation for EU accession, after which the Commission conducted regular annual assessments in November wherein it informed the European Council about individual candidate countries' progress as part of the Assessments on the Readiness of all candidate countries.⁸ Subsequently, as part of its assessment, the Commission recommended starting membership negotiations with Czechia,⁹ Hungary, Poland, Estonia, Slovenia and Cyprus (the so-called Luxembourg group). A year later, the Luxembourg group was expanded to include Slovakia, Romania, Malta, Bulgaria, Latvia and Lithuania (the so-called Helsinki group), whereby the differentiation of candidate countries was eliminated.¹⁰

The legal framework for the enlargement process was formulated in the Accession Partnership in 1998 with the aim to strengthened pre-accession strategies. The framework included all the activities implemented for the purpose of joining the EU in the candidate countries. The document aimed to mobilise the candidate countries and focus their activities. The EC determined the activities separately for each candidate country. Simultaneously, Czechia presented the National Program for the Preparation of Czechia for EU Membership, which was then published in 1999, 2000 and 2001.¹¹

Regarding the agreements signed during this period, the Agreement on the ISPA Program was signed by Minister of Finance Pavel Mertlík and the head of the EC Delegation in Czechia, Ramiro Cibrian. On the basis of this agreement, five projects were to be launched in 2001 – three in transport and two in ecology. In 2001, several agreements related to financing were signed; for example, in February, an agreement on the financing of the SAPARD Program (worth 154 million euros) was signed, and subsequently 5 financial memoranda for the ISPA Program (worth 70 million euros) were signed. In November 2001, Minister of Finance Jiří Rusnok signed a

8 European Commission, 2000.

9 European Commission, 1997.

10 Agency Europe, 2020.

11 Zenkner, 2024.

loan agreement of 170 million euros from the European Investment Bank for the construction and modernisation of the highway network.

In the final phase preceding Czechia's accession to the EU, in April 2003, the Treaty on the Accession of the Czech Republic to the European Union was signed in Athens. On behalf of Czechia, the Treaty was signed by President Václav Klaus and Prime Minister Vladimír Špidla.¹²

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both EU and National Level?

Concerning Czechia, in November 1994, the first institutions were established to manage European affairs. From January 1995, the Government Committee for European Integration (GCEI) and the Working Committee for the Implementation of the European Agreement came into function. The GCEI comprised ministers and the Prime Minister and had regular meetings. A working committee, composed of high-ranking officials led by the Deputy Minister of Foreign Affairs, procured and presented documents to the GCEI. The Working Committee could convene working groups of experts to solve specific thematic problems. At first, both authorities were mainly concerned with the implementation of the European Association Agreement and, after 1996, with the preparation of the country for full integration into the EU. In preparation for Czechia's EU membership, the GCEI was transformed into the Government Council for European Integration in 2001. The main tasks of this newly created Council were coordination, observation, implementing initiatives and subsequent evaluation in all matters related to EU membership. The post of vice-chairman was held by Jan Kavan.¹³

Regarding the institutional provisions of the pre-accession period in individual ministries, the Ministry of Foreign Affairs played a significant role not only during the period when Czechia's membership in the EU was negotiated but also in subsequently. In 2000, several new departments were created within the Secretary of State's Section for European Integration. In addition to the existing Department for the Coordination of Relation with the European Union, whose main task was to control the implementation of the European Accession Agreement, the Department of Communication Strategies was also created. The position of Political Director was also newly created – subordinate to the Department of the European Union and Western Europe – to deal with bilateral relations of the Czech Republic and the Department of Security Policy. Both positions were subordinate to the Secretary of

12 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2024b.

13 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2020.

State for European Affairs, namely, the First Deputy Foreign Minister who, at the time, was Pavel Telička.¹⁴

The Ministry for Regional Development and the Ministry of Finance, which mainly dealt with the coordination and use of European pre-accession aid, also played a significant role. European departments were created in most ministries, with the exception of the Ministry of Defence. An important link of the pre-accession coordination structure was the Department of Compatibility with EU Law, which dealt with the compatibility of Czech and EU legislation; in 1999, the department became part of the Government Office, and thus the central unit for all state administration institutions. Overall, the preparation of Czechia for future membership in the EU was tackled by many authorities. From the mid-1990s, it was already a centrally coordinated system with the Ministry of Foreign Affairs in a strong position. The political role of the Prime Minister should not be underestimated either, as head of the GCEI who discussed European affairs with the leadership of various ministries.¹⁵

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in Comparable Position?

First, Czechia, similar to the other candidate states, had to ensure the compatibility of the existing legal order with EU law. In 1994, a resolution of the Government stipulated the tasks of a specialised body for the European legislation, which became an independent unit for compatibility with EC law under the Office for Legislation and Public Administration (OLPA). The Vice Prime Minister assigned to manage OLPA assumed responsibility for the coordination and procedures of the activities related to the approximation of Czechia laws with EC law, so as to fulfil Czechia's obligations in the Association Agreement. The OLPA's responsibilities, including the independent unit for compatibility with EC law, were assigned to the Ministry of Justice and in 1997, the independent unit for compatibility with EC law was transformed to the Department for Compatibility with EC Law, which became part of the Office of the Government of the Czech Republic in March 1999. Thus, the department could better fulfil its role of coordination and consultation for the whole public administration. Until 1998, the Department for Compatibility comprised two units: Unit of Analysis and Consultations, and Unit for Information on Compatibility with EC Law. In 1998, a new unit named the Coordination and Revision Centre was established.¹⁶

14 Galušková, 2012.

15 Ibid.

16 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2020.

As for the highest norm of the Czech legal order, the Czech Constitution was a markedly national constitution, and in the period when Czechia was preparing for accession to the EU, it was necessary to amend the Constitution so as to enable the transfer of certain powers and competences to the European Entity. Therefore, the Constitutional Act No. 395/2001 Coll. (hereinafter Euro-Amendment) was adopted and came into effect on 1 June 2002. The Euro-Amendment entirely reformulated Art. 10 and newly added Art. 10a.¹⁷

Art. 10a, para. 1 generally enabled the transfer of certain powers of Czech state bodies to international organisations and institutions. Czechia thus joined the group of states whose constitution does not expressly refer to the EU or EC. This approach was adopted because of the anticipated development of the European Entity's legal personality.¹⁸

Moreover, the Euro-Amendment added a new para. 2 to Art. 89, which introduced a new procedure to the Constitutional Court's jurisdiction. The Constitutional Court was newly allowed to determine whether the manner in which a referendum on Czechia's accession to the EU was held was in harmony with the constitutional rules or not. The Euro-Amendment also added para. 3 to Art. 89, which expanded the jurisdiction of the Czech Constitutional Court to the a priori or preventive control of the constitutionality of Treaties.¹⁹

As for changes in common Czech laws, the European Commission prepared instructions on how to approximate and implement internal market rules. In 1995, Czechia received the document of the European Commission called 'White Paper – Preparation of the associated countries of Central and Eastern Europe and integration into the internal market of the Union' and began to proceed in accordance. The scope and priorities of the legislation approximation were summarised in the White Paper. For Czechia to achieve its goals, it was necessary to transform approximately 133 Community Laws into Czech legal order, primarily in the form of Directives. This default number assumes the adoption of roughly 250 new laws and over 800 pieces of other legislative. Such a high number was because of the necessity to incorporate European technical standards into Czech technical standards. The legislative changes spanned a wide range of economic areas (e.g. agriculture, environment, telecommunications, consumer protection, etc.). Approximation or harmonisation of law took place in the legislation related to the functioning of companies, competition law, banking, protection of intellectual and industrial property, social policy and other areas. Legal arrangements for external relations, such as agricultural markets and trade, were also necessary, as well as removal of tariff and non-tariff barriers to trade, technical and safety rules of industrial products, mutual recognition of professional qualifications, and so on.²⁰

17 Varga Zs. and Berkes, 2023.

18 Wágnerová, 2006.

19 Ibid.

20 Preininger, 2001.

To our knowledge, these conditions were more or less the same for all candidate's countries in comparable positions.

Question No. 8

What Procedures on EU Level Were There in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

First, the process of preparation for membership was continuously monitored by the European Commission, which since 1998 issued Regular Reports annually on the progress of candidate countries in preparations for the EU membership. The Commission's first evaluation report in 1998 was very critical of Czechia, especially in the areas of state administration and the judiciary. This led the government to speed up the legislative process of adopting EU law.²¹ The Commission's second report in 1999 remarked positively on the adoption of the government document Economic Strategy for Accession to the EU – a joint assessment of economic policy priorities that represented a significant shift in the liberalisation of capital movements and the adoption of basic rules for promoting regional policy.²² Nevertheless, the overall result of the implementation of the Accession Partnership was considered unsatisfactory. Among other things, the situation of the Roma people in Czechia was heavily criticised. The Commission's 2000 report rated Czechia much better than the previous ones, especially on the accelerated adoption of legislation.²³

As an opposing perspective, Czechia regularly published the National Program of Acceptance Acquis in connection with the assessment of Accession Partnership and screening results. The first version was completed in connection with the evaluation of Czechia in Agenda 2000. Subsequently, the National Program of Acceptance Acquis was updated every year. It contained a preamble and 26 chapters, which covered the issue of the *acquis communautaire* and corresponded to the chapters of the Commission's opinion on the Czech application on EU membership. In summary, it can be considered a sort of 'mirror' document to the Accession Partnership.²⁴

The Commission's ratings began to improve with the arrival of the new millennium; for instance, the report from 2002 evaluated Czechia significantly more positively, especially in the area of a functioning market economy.²⁵ A constant problem was the situation of the Roma people and the reform of state administration. In 2002, the issue of the so-called Beneš Decrees was addressed. Based on the analysis, the Commission issued a report that the decrees do not represent any obstacle to the accession of Czechia from the perspective of the *acquis*.

21 European Commission, 1998.

22 European Commission, 1999.

23 European Commission, 2000.

24 Zenkner, 2024.

25 European Commission, 2002.

The Commission issued its last evaluation report in November 2003,²⁶ called the Summary Monitoring Report on Czechia's Preparations for Membership. In its assessments, the Commission proposed expanding the Union by ten new countries including Czechia.

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission's or Council's Working Groups, Participation of Your Representatives at the Commission's or Council's Meetings etc.)?

Associated countries gained the right to participate in regular multilateral meeting with the member states at the highest level (at the European Council) and at the ministerial level (at the EU Council) with the aim of closer cooperation in the areas of the second and third pillars – the structured dialogue. The instruments for achieving these goals were European agreements, structured dialogue, the PHARE program and the White Paper.²⁷

In December 1997, the European Council adopted the Commission's proposal to create a pre-accession strategy. Structured dialogue was dropped from the original instruments of the pre-accession strategy and its modification became the European Conference, which was a regular dialogue of member states with all the applicants for membership in the form of a discussion forum on issues of common interest: foreign and security policy, justice and internal affairs. The first conference took place in March 1998 in London. The purpose of participating in EU programmes, agencies and committees is to help enlargement countries become familiar with EU policies and instruments, and to enhance co-operation before accession. As mentioned above, the principle of participation was agreed upon by the European Council in December 1997 for candidate countries, and in 2003 for Western Balkan countries. Participation is decided on a case-by-case basis for each programme, agency and committee.²⁸

In April 2001, ministers from all candidate countries were invited to the regular monthly meeting of the Ecofin Council of Ministers held in Sweden. Concurrently, the Foreign Ministers of EU member states debated the future of the EU with their counterparts from the candidate countries for the first time.²⁹

EU also provides specific support to candidate countries, usually in a form of twinning. Twinning aims to help candidate countries in creating a modern and efficient administration. It is a long-term assistance (lasting at least 12 months) of placing foreign experts in state institutions of the candidate countries (e.g. German

²⁶ European Commission, 2003.

²⁷ Preininger, 2001.

²⁸ European Commission, 2024.

²⁹ Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2024b.

expert at the Czech Ministry of Finance, or French expert at the Czech Ministry of Agriculture, etc.).³⁰ To our knowledge, twinning was amply used before the accession. For instance, Czechia was the recipient of several twinning projects in the environmental sector. Twinning was also used within ministries, for instance by the Ministry for Regional Development and the Ministry of Finance.

Question No. 10

Has Your Country Experienced any Particular Difficulty in Meeting Some of the Accession Criteria?

A specific problem was ensuring the protection of the Roma minority, and minority rights issues in general. Czechia is one of the EU countries wherein the problem of segregation of Roma in housing remains an issue. In the past, Roma children were disadvantaged in education, resulting in social exclusion, associated unemployment and higher crime rates. Consequently, Czechia (along with Hungary, Poland and Slovakia) is among the minority of EU member states that collect and evaluate information on racially motivated violence and crimes even today.

Nevertheless, in relation to its accession to the EU, Czechia undertook several interventions to address these issues. As one of the main tools for improving their situation, the Council of the Government for the Affairs of the Roma Minority was established. This Council is a permanent, consultative and initiatory government body for issues of Roma integration. It was established in 1997 as the Interdepartmental Commission for the Affairs of the Roma Community, and in 2001, transformed into a Council. The concept of Roma integration was adopted in the form of a government resolution that sets down the main goals in the field. This Concept was annually updated from 2000 to 2005, before being replaced by the Principles of the Long-term Concept of Roma Integration, which remains valid in 2025.³¹

In early 90s, the Bratink's Report in the early 1990s was the first on the state of Roma communities after the Velvet Revolution. The report provided an analysis of the overall situation of the Roma community, and explained the causes of negative consequences. It proposed certain measures to improve the Roma situation, which were considered by the government resolution and later shared with individual ministries. It represented the government's first major attempt to improving the situation of Roma people in Czechia.³²

30 European Commission, 2024.

31 Studnička, 2012.

32 Ibid.

Question No. 11

*How Was the Constitution of Your Country Changed in Order to Accede the EU?
Was the Accession Legally Challenged (e.g. Constitutional Court)?*

In June 2002, Constitutional Act No. 395/2001 Coll., known as the ‘Euro-Amendment to the Constitution’, entered into force. This constitutional act introduced the constitutional provisions necessary for the country’s future accession to the EU. The ‘Euro-Amendment’ stipulates (within Art. 10 of the Constitution) that all promulgated treaties – the ratification of which Parliament has given its consent, by which Czechia is bound – form a part of the legal order; if a treaty provides something other than that which a statute provides, the treaty shall apply.

The ‘Euro-Amendment’ further enabled the transfer of some powers of the authorities of Czechia to an international organisation or institution (i.e. the EU), thereby creating a constitutional space for accession to the EU. Thus, a tool was incorporated in Czech constitutional law in response to a basic element of European integration comprising the transfer of some powers of the member state to a supranational entity. However, the changes in the Constitution were rather generally formulated (because of political negotiation and subsequent political compromise) and did not provide a clear answer on which legal basis the EU law was supposed to be applied within the Czech legal order, or how any conflicts between national law and EU law should be resolved.³³ Therefore, the Constitutional Court of the Czech Republic provided answers in its ruling in a case called Sugar Quotas III.³⁴

According to the opinion of the Czech Constitutional Court, Art. 10a of the Constitution is the basic norm determining the relations between Czechia and the EU and, at the same time, the relationship between the national law and EU law. As such, Art. 10a forms the normative basis for the transfer of powers, thus acting as the provision that opens the national legal order to EU law.³⁵

There was no explicit definition of the relationship between European and National law within the Czech constitutional law. Therefore, the Czech Constitutional Court determined the preferential application of EU law in case of a conflict with a national norm. The Constitutional Court explicitly recognised the principle of priority as a basic attribute of EU law and accepted its application within the Czech legal system.³⁶

Even if the Constitutional Court did not explicitly state that European law takes precedence over national law, such a conclusion can be drawn from its argumentation. However, the Constitutional Court added that it does not intend to accept the doctrine of absolute priority of EU law because it does not consider this delegation of powers to be permanent and unlimited. Conversely, it states that the delegation of

33 Varga Zs. and Berkes, 2023.

34 Case Pl. ÚS 50/04, Cukerné kvóty III, ECLI:CZ:US:2006: Pl.US.50.04.

35 Ibid.

36 Varga Zs. and Berkes, 2023.

part of the powers of Czech national authorities can last as long as these powers are exercised by the EU in a manner compatible with the preservation of the foundations of Czechia's state sovereignty and does not threaten the very essence of the material rule of law.³⁷

The Constitutional Court expressed itself in a similar way in another case called the Lisbon Treaty 1³⁸, where it said that it follows from Art. 10a, par.1 of the Czech Constitution, which states that an international treaty can transfer powers of the Czech authorities to an international organisations or institution, but only to a certain extend. The transfer of powers can never go so far as to disrupt the very essence of the Czech Republic as a sovereign and democratic legal state based on respect for the rights and freedoms of man and citizen, and establish a change in the essential requirements of a democratic legal state. However, the Constitutional Court leaves a free path in the future for taking back powers and preventing the effects of EU law adopted in violation of the inviolable foundations of Czech constitutionalism.

Question No. 12

Was There a Referendum in any Stage of the Accession Procedure?

Because of the accession of Czechia to the EU, the only national referendum in the history of Czechia thus far took place. On 13 and 14 June 2003, voters decided on the country's entry into the European Union. Specifically, voters had to answer the question 'Do you agree that Czechia should become a member state of the European Union in accordance with the Treaty on the Accession of the Czech Republic to the European Union?'

The results found that 77.3% voted for an integration into the European Community and the total voter turnout exceeded 55% of the population. To approve the entry of Czechia into the EU, a majority of the voters in favour was considered sufficient. The referendum was legally enshrined in the Constitutional Act n. 515/2002 Coll., on the Referendum on the Accession of Czechia to the EU, and remains part of the Constitutional order of Czechia.³⁹

Question No. 13

In Addition to the Above, Were There any Noteworthy Legal Aspects Concerning the Negotiation and Ratification of the EU Accession Agreement in Your Country?

In 1999, reservations were expressed regarding the compatibility of the Beneš Decrees (which some of which are still a part of Czech legal order) with the *acquis communautaire*. A group of legal experts assembled by the Commission dealt with the

37 Case Pl. ÚS 50/04, Cukerné kvóty III, ECLI:CZ:US:2006: Pl.US.50.04.

38 Case ÚS 19/08, Lisabonská smlouva 1, ECLI:CZ:US:2008: Pl.US.19.08.1, p. 97.

39 České Noviny, 2023.

issue of the Beneš Decrees.⁴⁰ The issue of the Beneš Decrees and the Amnesty Law⁴¹ became a sensitive topic in the Czech process of accession to the EU. It was primarily a possible inconsistency with Art. 6 par. 1 TEU, which establishes the principles of freedom and democracy common to all member states. The European Parliament began to deal with the question of whether the Beneš Decrees were in conflict with these requirements, mainly in the debate on EU enlargement on March 2002.⁴²

Several Czech legal experts have commented on the question of the Beneš Decrees and their compatibility with the *acquis communautaire* in past. Notably, other member states, such as Austria, France and Italy, have similar laws as well, but have not repealed them. By repealing this law, Czechia could become disengaged from its opposition to the Nazis and to the Third Empire as the aggressor.⁴³

Regarding the political aspects of this issue, in April 2002, EU Enlargement Commissioner Günter Verheugen visited Prague and signed a joint statement with the former Czech Prime Minister Miloš Zeman wherein they expressed regret for the suffering caused by the Second World War. Simultaneously, they declared that the very essence of European integration is to move forward and not to look back. To the presidential Decrees, the statement says that some of these Decrees, as well as other measures taken by other European countries at the times, would not stand up to today's standards and that they belong to history. According to the statement, the Beneš Decrees were not part of the entry negotiations and should not have any influence on them; moreover, the Beneš Decrees on property and citizenship do not have any legal consequences today.

Consequently, the European Parliament announced in May 2002 that it wanted to draw up a legal opinion on the issue of the Beneš Decrees, which was later accompanied by two other legal studies. In addition to these three opinions and studies, the European Commission also conducted debates with Czech legal experts, on the basis of which it issued a final analysis in October 2002, called The Czechoslovak Presidential Decrees in light of the *acquis communautaire*.⁴⁴

Based on these extensive and detailed analyses, all four legal opinions concluded that the Beneš Decrees and the Amnesty Law did not prevent Czechia from joining the EU and that they did not contradict the *acquis communautaire*, thus granting Czechia a green card to join the EU.

Nevertheless, these results had an impact on the request of the European Parliament to cancel all Decrees and Laws concerning the expulsion of individual ethnic groups, which was passed in April 1999 – as a result of the legal assessments mentioned above, it was not complied with.

40 Kuklík, 2003, p. 57.

41 Law No. 115/1946 Coll.

42 Domnitz, 2007, p. 32.

43 Pavlíček, 2009, pp. 111–114.

44 European Commission, 2002.

Regarding the request for the annulment of the decrees from their origination (*ex tunc*), the opinion stated that the government of Czechia considers the Beneš Decrees to be the basis of the legal regulations of post-war Czechoslovakia, and that this request could, in fact, call into question the foundations of post-war Czechoslovak legal order. Besides, the annulment of Beneš Decrees with *ex tunc* effects was prevented by the human rights principle of protection of rights acquired in a good faith, and considered redundant as the Decrees do not contradict the EU legal order, thus rendering the annulment a mere symbolic gesture.⁴⁵

4. Legal and Economic Support for Candidate Countries

The third section concentrates on the support provided to the candidate countries by the EU.

Question No. 14

Before the Accession, Was There Any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

There was a screening or analytical examination of the *acquis* as a preparatory phase of accession negotiations. The screening process is carried out jointly by the Commission and each of the candidate countries. This process allows the candidate countries to familiarise themselves with the *acquis* and, subsequently, to indicate their level of alignment with EU legislation and outline plans for further alignment. Another purpose of the screening is to identify areas of the *acquis* wherein progress is needed because the candidate country's legislation is incompatible with the EU rules. These areas are divided into chapters; there are 31 chapters related to *acquis*.⁴⁶

The screening process of the Czech legal order commenced in March 1998 in Brussels. In December 1997, at its summit in Luxembourg, the EU decided to start the 'accession process' with 11 candidate's countries, and starting in March 1998 six of them (including Czechia) would conduct initial talks while the other candidate countries would prepare. Deputy Minister of Foreign Affairs Pavel Telička was appointed to lead the Czech negotiating team.⁴⁷

In the beginning of March 1998, the government discussed the position papers of the individual departments, which took a fundamental position on the preparation for accession. The Czech government was focused on the harmonisation of Czech

45 Kuklík, 2003. p. 57.

46 European Commission, 2022.

47 Zenkner, 2024.

legal order with EC law, the creation of appropriate institutions, and ensuring the enforceability of adopted rules.

By the end of March 1998, the European Commission's initial talks with the first wave of applicants (Czechia, Poland, Hungary, Slovenia, Estonia and Cyprus) officially commenced.⁴⁸

In April, the Czech government discussed and handed over the National Program for the Czech Republic's preparation for EU membership to the European Commission. Prepared by individual departments, it captured the main tasks arising from the adoption of the *acquis*. A few days later, the screening of domestic legislation began.

In September 1998, position papers on the chapters Science and Research, Telecommunications and Information Technology, Education, Vocational Training, Youth, Culture and Audiovisual, Industrial Policy, Small and Medium Enterprises and Common Foreign and Security Policy were handed over to the EU authorities. Later, in October 1998, the first round of negotiations between Czechia and the European Union on the terms of Czechia's accession to the EU took place. In December 1998, position papers were handed over to the EU authorities on the following chapters: Law of Commercial Companies, Statistics and Fishing. In January 1999, position papers were handed over on Free Movement of Goods, External Relations, Customs Union, Competition Policy, Consumer Protection. In May 1999, position papers on the following chapters were handed over: Social Policy and Employment, Economic and Monetary Union, Traffic Policy. In June 1999, the following position papers were handed over: Energy, Environment, Free Movement of Services, Free Movement of Capital and Taxes.⁴⁹

From 2001, Czechia gradually closed individual chapters of the negotiations; for example, in June 2001, Czechia closed a total of six chapters under the Swedish presidency. In October, Czechia closed the chapters on Financial Control and Free Movement of Persons. In April 2002, Czechia closed the Tax chapter. The related transition period was agreed upon, and subsequently, Czechia closed the Competition Policy chapter in October. In December 2002, the Summit of the European Council took place in Copenhagen, which concluded the pre-accession negotiations and closed all chapters.⁵⁰

48 Ibid.

49 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2024d.

50 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2024b.

Question No. 15

Were There Any Other Noteworthy Aspects of EU Support Provided to Your Country Before the Accession?

Czechia availed the pre-accession Community policy programs, which support the necessary economic, political and administrative reforms in countries that are preparing to join the EU. The programs primarily contribute to the implementation of EU legislation and its harmonisation with the legislation of the candidate countries. They help reduce the economic differences between the countries and the EU, and in building the institutions necessary for the functioning of the candidate countries within the EU.

The activity of the transition instruments is mostly limited by the accession of the candidate country to the EU. Czechia used several programs focused on pre-accession assistance. The first among these was the Phare program (*Pologne-Hongrie: Assistance pour la Restructuration Économique*), which provided funds to ten candidate countries in Central and Eastern Europe. The Phare Fund was originally established in 1989 for Poland and Hungary, but gradually, other acceding countries gained access to this fund. Its main goal was to help fulfil the conditions set for joining the EU. The Phare program also financed social and economic cohesion projects aimed at raising the standard of living in the poorest regions. Gradually, the projects were more focused on building institutions and financing investments. The Phare budget for all candidate countries for the period from 1989 to 1999 exceeded eleven billion euros. For the period from 2000 to 2006, a budget of over ten billion euros was prepared for the programme.⁵¹

Another program that Czechia availed was the ISPA, which was aimed at supporting investment projects in the area of environmental infrastructure and trans-European transport networks. Within the framework of the environment, assistance was provided in the areas of water pollution, air pollution and waste management. In the field of transport infrastructure, the program provided investments in reconstruction, construction and linking of national transport networks in Europe. The support was distributed among the candidate countries on the basis of specific criteria (population, GDP, size of the country, readiness to use the fund). A prerequisite for effective participation in the program was the quality preparation of projects and ensured co-financing by the states that submitted the project. Projects for which the European Commission approved funds signed a financial memorandum, which determined the principles of financing between Czechia and the European Commission.⁵²

51 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2024c.

52 Ibid.

The annual funds for all candidate countries amounted to 1.04 billion euros. In the period from 2000 to 2006, around seventy million euros was allocated annually for Czechia.

Third was the SAPARD program, which provided investments in agriculture and rural development. Its aim was to focus the candidate states on the common priorities, such as agricultural policy and rural development, and teach them the financial procedures and control mechanisms practiced in the EU. The EU released 520 million euros annually for the SAPARD program from the European Agricultural Guarantee and Guidance Fund (EAGGF) for all ten candidate countries. About 22 million euros were allocated annually to Czechia for the agricultural and rural development sectors.

Czechia prematurely withdrew from the SAPARD program in 2005, when the allocation of 92.8 million euros was exhausted, which had been provided by the Community for use until the end of 2006. The main feature of the program was the support for a larger number of smaller projects. Recipients of financial support were small and medium-sized municipalities and entrepreneurs in the field of agricultural and food production.⁵³

Additionally, before joining the EU, Czechia also participated in community programs, wherein candidate countries can participate under the same conditions as member states. Specifically, they must share the costs; however, this share could be partially financed using pre-accession aid programs, such as Phare. These included the Socrates, Leonardo da Vinci and Youth for Europe Educational Programs from 1997, and the Raphael, SAVE II and SME (Small and Medium-Sized Enterprises) programs from 1998. From 2000, Czechia participated in the SME 3rd, Equal Opportunities, SAVE II, Socrates II, Leonardo da Vinci II, and Youth programs. The second phase of the project Leonardo da Vinci II was launched for the period from 2000 to 2006. After Czechia joined the EU, a new pre-entry assistance program was created for the period from 2007 to 2013. The IPA program (Instrument for Pre-accession Assistance) replaced previous instruments, such as Phare, ISPA and SAPARD program.⁵⁴

Question No. 16

Did Your Country Benefit From Any Funds Providing Financial Support in Relation to EU Accession Immediately After the EU Accession?

After Czechia joined the EU in 2004, it continued to participate in the community programs listed above. To elaborate, each of the pre-accession assistance programs were replaced by another similar program post accession, from which Czechia could continue to receive financial support. For example, after accession to the EU, the Phare program was replaced by the European Regional Development Fund and the

⁵³ Ibid.

⁵⁴ Ibid.

European Social Fund. The role of the ISPA program was taken over by the Cohesion Fund, and the SAPARD program was replaced by the European Agricultural Support and Guarantee Fund.⁵⁵

5. Specific Rules Applicable to Candidate Countries Before and After Their Accession

The last section concerns any country-specific exemptions from the general approach adopted by the candidate countries, both in the pre-accession period and after accession.

Question No. 17

After the Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

In April 1998, the first talks on the Czech Republic's accession to the EU began in Brussels – the 'screening' phase involving the analytical comparison of the legislation of the candidate countries with EU law. After preliminary technical negotiations, the actual negotiations on the accession of the Czech Republic to the EU began in November 1998 at the ministerial level. For screening purposes, the *acquis* was divided into thirty-one chapters. Before starting negotiations on each chapter, the European Council always proposed a joint negotiating position of the Union, which was approved by the Council and presented by the presiding country. Opinions on all thirty-one chapters were also drawn up by all the candidate states, which were presented by the chief negotiator and his team during negotiations. On January 1998, Deputy Minister of Foreign Affairs Pavel Telička was appointed to head the Czech negotiation team. He commented on the complex and often demanding negotiations thus:

The negotiations were unprecedented, in terms of complexity, substantive scope, technical difficulty and also political importance. It is hard to compare them with anything in our history so far. The fact that on some issues the European Union has significantly narrowed our negotiating space and defined the conditions to a large extent, does not change anything.

⁵⁵ Ibid.

The chief negotiator of the European Commission was Klaus van der Pas; the negotiating team solely responsible for Czechia was headed by Michael Leigh and since 2000, by Rutger Wissels.⁵⁶

During the negotiation process, the EU significantly narrowed Czech negotiating space and defined the conditions to a large extent, rendering it hard to change anything and negotiate permanent exemptions. As Pavel Telička once said, Czech politicians did not take the accession to the EU seriously enough. Although it is almost forgotten nowadays, the indecisiveness or, on the contrary, the intransigence of the Czech political representation could have significantly hindered Czechia in the initial negotiations.⁵⁷

Question No. 18

What Country-Specific Provisions Were Contained in the EU Accession Agreement of Your Country?

Czechia managed to negotiate several transitory provisions that can be divided into specific areas. Regarding the Free Movement of Capital, Czechia negotiated a transitory period for agricultural acquisition land and forests for 7 years for those who do not have permanent residence in the territory of the Czech Republic. After three years of joining the EU, this rule could have been revised. Possible change (i.e. shortening or cancelling the transitory period) would have to be approved by the Council of the EU on the basis of a unanimous decision. Other transitory provisions were negotiated regarding the acquisition of real estate intended for secondary housing for foreigners (EU citizens) within 5 years since the accession of Czechia into the EU.

Regarding Agriculture, Czechia negotiated a transitory period until the end of 2006 on achieving full harmonisation of hygienic parameters with conditions valid in the EU for 52 processing enterprises; and a transitory period until the end of 2009 for already used unenriched cage systems for laying hens that do not meet the technical requirements of EU secondary law.

The third largest group of specific provisions was related to Taxation. A transitory period was in effect to maintain the reduced rate value added tax on thermal supplies energy until the end of 2007, for construction supplies work for housing purposes until the end of 2007, and for maintaining lower rates of consumption taxes on cigarettes and tobacco products by the end of 2006 to reach 57% taxation, and a one-year transitory period (until the end of the year 2007) to adapt to the new acquis in this area. The exemption of persons with a turnover of less than 35,000 euros (derogation) from registration as a VAT payer was also significant, as was a special adjustment (derogation) of consumption tax from alcohol in small distillers in order to preserve the traditional domestic production of fruit distillates.

⁵⁶ Zenkner, 2024.

⁵⁷ Bryś, 2024.

In the field of Energy, a transitory period was negotiated for the creation of full mandatory emergency stocks of oil and oil products until the end of 2005 and a transitory period until the end of 2004 related to the liberalisation of the gas market. Regarding the environment, a transitory period until the end of 2005 was negotiated for the area of waste management, and for achieving target values for recycling and reuse of packaging; a transitory period was sought until 2010 for water quality in connection with municipal water treatment and practical implementation of the requirement for the construction of wastewater treatment plants in municipalities from 2,000 to 10,000 inhabitants. There was also a transitory period until the end of 2007 for the implementation of the restriction directive emissions of pollutants into the air from large combustion devices (or for fulfilling the specified emission limits).

Furthermore, a transitory period of five years was negotiated for the gradual start of contributions to the share capital and reserves of European Investment Bank, as the first payment was supposed to happen in the second half of 2005 at the earliest.⁵⁸

Question No. 19

Were There Any Country-Specific Transitory Provisions?

The EU asserted its requirements for transitory periods concerning several areas. The most important was the free movement of persons, followed by transport and agriculture. Regarding the free movement of persons, the EU enforced a transitory period of up to 7 years to limit the free movement of workers. However, during the validity period, old member states and new member states could sign bilateral agreements if they agreed on the liberalisation of workforce movement. The EU also requested a transitional period regarding political sensitivity, and although Czechia did not consider this request to be justified, it was accepted (other candidate countries in the Central European region also did) under the threat of complete blocking of the negotiation process by Germany.

The transitory period was set for a maximum of 7 years from the date of Czechia's entry into the EU, and after 2 years, a review of its justification needed to be conducted. After 5 years, a Member State could only maintain restrictions in the event of demonstrable serious damage to its labour market or the threat of such. It was generally assumed that most Member States would not apply a transition period of more than 2 years. The Netherlands, Ireland, Sweden, Denmark and Great Britain immediately declared that they were waiving the transition period which meant that Czech citizens could exercise their right to move freely and work in these countries immediately after joining the EU. Czechia managed to enforce the principle of equal

58 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2024d.

rights to apply restrictions to new members in the same way as existing member states.⁵⁹

Regarding transport, a transitory period of up to 5 years on domestic road transport was determined. However, carriers from old member states and new member states could sign bilateral agreements if they agreed on full market liberalisation during the transitory period. Regarding agriculture, a transitory period for the gradual onset of direct payments were applied in the following two phases: first phase – direct payments were introduced in the new member countries at 25% in 2004; subsequently, direct payments were further increased annually by 5%, that is, 30% in 2005, 35% in 2006 and 40% in 2007. Concerning the second phase – starting in 2007, direct payments were gradually increased by 10% until 2013, when the 100% level would be reached.

However, the EU granted Czechia the possibility of direct payments (so-called top-up) with the use of funds for rural development, or from national resources, up to the level of 55% in 2004, 60% in 2005 and 65% in 2006. After 2007, this level could be increased annually by 10% until the 100% level of direct payments was reached. Furthermore, commodities for which national support in 2003 was higher than that proposed, Czechia had the option of increasing the level of 2003, subsequently increased by 10% increments. For example, in the case of potato starch, Czechia negotiated an exception for matching the 100% EU level.⁶⁰

Question No. 20

Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?

A permanent exemption was negotiated for the reduced rate of VAT on the products of alcohol made by burning for small scale growers. It is a service wherein the grower's distillery burns a fruit distillate from the fruit or kvass of small-scale growers. The distillate produced in this way is then favoured by a preferential consumption tax that distinguishes it from other types of alcohol. However, the amount of brandy that the grower can burn in the distillery is limited to sixty litres of 50% brandy per household and distillery year.⁶¹ The exemption of persons with a turnover of less than 35,000 euros from registration as a VAT payer was also significant.⁶²

59 Informační centrum Evropské unie, 2018.

60 Department of Communication on European Affairs of the Office of the Government of the Czech Republic, 2024.

61 Informační centrum Evropské unie, 2018.

62 Ibid.

Question No. 21

To Your Knowledge, Were There Any Notable Differences in the Content of Your Country's EU Accession Treaty From Other Countries in a Comparable Position?

Each of the 'expansion waves' in the integration process since the 1970s has certain unique features, and this was certainly the case with the big or eastern enlargement as well. The eastern enlargement was not based on partial agreements concluded by the union states with each candidate country separately, but on a joint accession agreement – a single act containing the conditions of entry for all newly acceding states. While the European Commission and the European Parliament commented on the admission of new countries individually, the ratification of the common accession treaty in the member and candidate states no longer allowed blocking of the accession process for any of the affected countries separately.⁶³

The Treaty of Accession, with all its annexes, contains approximately 5,000 pages. Its basic content is short, as the Accession Agreement itself contains only three articles, of which the first two are of three paras. each. It further refers to a not very extensive Act on accession as an integral part of the contract. The Act of Accession only sets out the conditions in the basic framework. The detailed adjustment is then contained in 17 Annexes and amendments to them, and further in nine protocols, to which the Act of Accession also refers.⁶⁴

Question No. 22

Are There Any Other Noteworthy Exemptions From the Application of the EU Law in Your Country?

After Czechia joined the EU, the Czech Constitutional Court left the door open for the potential future 'taking back of powers' to prevent violation of the inviolable foundations of Czech constitutionalism. The Czech Constitutional Court considers itself the final arbiter called to review European legislation. In the case that the EU exercises powers that were not granted to it by the Czech sovereign, their activity cannot be defended by characteristics that the Court of Justice of the European Union recognises in European law, and therefore, EU law cannot be prioritised over the Czech law.⁶⁵

In January 2012, an important decision of the Czech Constitutional Court was handed down in the case of Slovak pensions XVII.⁶⁶ In this decision, the Constitutional Court directly opposed the opinion of the Court of Justice of the European Union in case *Landtová*⁶⁷ and used the opportunity to disregard the principle of primacy of EU

63 Varga Zs. and Berkes, 2023.

64 Informační centrum Evropské unie, 2018.

65 Stehlík, Hamulák and Petr, 2017.

66 Case PL. ÚS 5/12 Slovenské důchody XVII, ECLI:CZ:US:2012: PL.US.5.12.1.

67 Case C-399/09 Landtová, ECLI:EU:C:2011:415.

law. The core of the conflict between the Czech Constitutional Court and the Court of Justice of the European Union is an insight into the issue of matching pensions to Czech citizens who, before the division of Czechoslovakia, worked for employers based in Slovakia; this rule contradicts the prohibition of discrimination on the basis of nationality, as stipulated by European law. In its rich experience concerning the Slovak pensions issue, the Czech Constitutional Court has repeatedly asserted the right of the Czech Republic citizens – who, before the breakup of the Czechoslovak Federation, were employed by an employer based in Slovakia – to an equalisation allowance up to the amount of the theoretical pension that they would have received if all insurance periods from the time of the common state were counted as Czech times. The main argument is the need to maintain the same treatment between Czech citizens who worked in the Czech part of the federation and those who worked in Slovak part of the federation, regardless of the historical event in the form of the division of the federation, because until the end of 1992, in the former Czechoslovakia, there was only one social security system.

On the other hand, according to the Court of Justice of the European Union's opinion, expressed in the *Landtová* judgment, the rule introduced by the Czech Constitutional Court is contrary to the EU law, specifically contrary to the key prohibition of discrimination on the basis of nationality, since pensions are granted only to citizens of the Czech Republic with permanent residence in Czechia. The Constitutional Court argued that the matching of pensions is a tool for protecting equal treatment between citizens of Czechia, which results from the specifics of the Czechoslovakian past. With this, the Constitutional Court opposed the opinion of the Court of Justice of the European Union, and explicitly accused the Court of Justice of acting outside of the powers transferred by Czechia to the European Union. Thus, for the first time in history, the Czech Constitutional Court used the reservation formulated in its previous 'European' rulings and decided to disregard the principle of primacy of EU law.⁶⁸

6. Conclusion

Despite of the split of Czechoslovakia in the early 1990's, and subsequent difficulties related to economic, political, and other transformations of society, the newly established Czechia clearly showed an interest in the future direction of the country, and the desire to integrate into 'Western' structures, including EU membership.

During the negotiation process, the EU significantly narrowed Czech negotiating space and defined the negotiation conditions to a large extent, making it difficult to change anything and negotiate permanent exemptions. Moreover, Czech politicians

68 Stehlík, Hamulák and Petr, 2017.

did not take the accession to the EU seriously enough. However, twenty years after joining the Union, the membership of Czechia in the EU can be considered successful and beneficial. While Czechia's membership in the EU is surrounded by both successes and controversies, at least half of the Czech population is satisfied with it. According to the latest research, approximately 15% of the population (represented by rather younger people) are very satisfied with the EU membership. This is of particular importance because young people's opinions are the future of the EU and Czechia's participation in it.

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CHAPTER 3

HUNGARY



GYÖRGY MARINKÁS

Abstract

The aim of the current study is to elaborate on certain country-specific issues and the retrospective thoughts of those who participated actively in the accession negotiations from the Hungarian side and who recall the process as important and decisive. Thus, reaching the final compromise was the result of hard negotiation and the agreement marked a milestone. Therefore, the author first elaborates on the initial steps, with special attention to the Europe Agreement, the institutions set up by the agreement for the negotiations, and parts of the Agreement that required legislative harmonisation. Then, in the second part of the work, the author elaborates on the actual negotiations that commenced on 31 March 1998 and the Association Partnership, as well as the requirements Hungary had to meet. In the third part, the author elaborates on the legal and economic support that Hungary received before, throughout, and shortly after the accession process. Finally, the author introduces the derogations that were allowed for Hungary under the Accession Treaty.

Keywords: enlargement, Hungary, Europe Agreement, free movement of capital, free movement of workers, agricultural land

1. Initial Requirements for Candidate Countries

The first section is concerned with the requirements laid upon the candidate countries before the accession process commenced and before they joined the

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European Union (EU). The text should cover the following questions but may be more extensive when necessary.

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

As Endre Juhász – who, among his other assignments related to the integration process,¹ was the Chief Negotiator for the accession of the Republic of Hungary to the EU (1998–2003) and Minister without portfolio for the coordination of matters of European integration right before the accession (2003–2004) – recalled in his retrospective speech, for the future membership of Hungary in the then European Communities, the negotiations on the Association Agreement between the European Communities and Hungary² (hereinafter, Europe Agreement) had to be concluded. However, the negotiators on the European Communities' side refused to include the words 'accession' or 'membership' into the text. Instead, the parties agreed to include a sentence in the preamble, which can be deemed as a compromise: 'Having in mind that the final objective of Hungary is to become a member of the community and that this association, in the view of the parties, will help to achieve this objective [...]'.³

The request for application was submitted by the Boross government on the 31 March 1994 based on authorisation from the Hungarian National Assembly (Országgyűlés) by Resolution No. 16/1994 (III.31.).³

Question No. 3

What Conditions Did Your Country Need to Satisfy Before Joining the EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

The 1993 Copenhagen European Council decided on the possibility of enlarging the EU eastwards, and at the same time, defined the basic political, economic and legal criteria that the applicant countries of Central and Eastern Europe had to fulfil

- 1 Based on the bibliography available at the CJEU's website. See: Court of Justice of the European Union, no date.
- 2 Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and the Republic of Hungary, of the other part. See: EC – Hungary Association Agreement, 1991; Resolution of the National Assembly 10/1993 (III.5.) on the implementation of the Europe Agreement.
- 3 8002/1999. (IK.10.) sz. IM tájékoztató a jogharmonizációs ügyek intézéséről (hereafter, IM, 1999), p. 4.

to join the EU.⁴ On 31 March 1994 – that is, shortly after the entry into force of the Europe Agreement on 1 February 1994 – the Government submitted Hungary's application for accession to the EU on the basis of the mandate given by the National Assembly in Resolution 16/1994 (III.31.). The European Commission's opinion called 'Agenda 2000 – Vol. I: For a stronger and wider Union'⁵ published in July 1997 hit a positive tone and stated that Hungary fulfilled the political criteria set by the Copenhagen European Council and that it would be able to meet the economic, institutional, and legal criteria for membership in the medium term by continuing the processes already underway. In its communication, the Commission evaluated how the different candidate states implemented the *acquis* based on three criteria: (a) the obligations set out in the Europe Agreement, particularly those relating to the right of establishment, national treatment, free circulation of goods, intellectual property, and public procurement; (b) the progress in transposition and effective implementation of the measures set out in the White Paper,⁶ particularly key Single Market directives in areas such as taxation, public procurement, and banking; (c) the progressive transposition and implementation of the other parts of the *acquis* – for example, the environment, energy, agriculture, industry, telecommunications, transport, social affairs, customs administration, and justice and home affairs.

Based on the assessment of the Central and Eastern European (CEE) candidate states, the Commission ranked the members states in the following order (starting with the best performer): Hungary, Poland, Romania, Slovakia, Latvia, Estonia, Lithuania, Bulgaria, the Czech Republic, and Slovenia.⁷

At its meeting in Luxembourg in December 1997,⁸ the European Council decided to launch the enlargement of the EU to the east and open accession negotiations with Hungary, Poland, the Czech Republic, Estonia, Slovenia, and Cyprus in spring 1998.

- 4 Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities, the existence of a functioning market economy, as well as the capacity to cope with competitive pressure and market forces within the Union. Presidency Conclusions of the Copenhagen European Council, 21–22 June 1993, point 7/A (III).
- 5 The Commission Agenda 2000 – Vol. I: For a stronger and wider Union. Brussels, 15.07.1997 COM (97) 2000 final.
- 6 European Commission, White Paper: Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union, Brussels, 03.05.1995 (COM (95) 163 final).
- 7 This fact is also mentioned in the report of the Foreign Minister, 1999, para. 1.3.
- 8 European Council, 1997.

Question No. 4

Were There Any Specific Features of Your Member State's Accession to the EU, Compared to Other Countries in a Comparable Position?

These issues are introduced in part 4 of the country report, when the author introduces the derogations granted for Hungary.

2. Institutions and Procedures of Accession

The second section is concerned with legal aspects of the procedure of accession, including institutions set up for that purpose, legislative changes at the national level, and monitoring of the process by EU institutions.

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Until Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both EU and National Level?

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in Comparable Position?

Question No. 8

What Procedures on EU Level Were There in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

2.1. Legal and Institutional Framework Based on the Europe Agreement, Before the Actual Accession Negotiations Commenced

Before the negotiations on accession started in 1998, the Europe Agreement regulated the institutional framework of dialogue with the states that wished to become a candidate. According to Art. 3(2) of the Europe Agreement, the political dialogue took place within the Association Council at the ministerial level. The Association

Council served as a general discussion forum for every matter that the Parties wished to address. Based on Art. 4, other procedures and mechanisms for political dialogue could be set up by the Parties in the following forms: (a) meetings at the level of political directors between Hungarian officials, on the one hand, and the Presidency of the Council of the European Communities and the Commission of the European Communities, on the other; (b) taking full advantage of all diplomatic channels between the parties, including appropriate contacts in the bilateral as well as the multilateral field, such as the United Nations, Conference on Security and Co-operation in Europe meetings, and elsewhere; (c) providing regular information to Hungary on European political cooperation, which shall be reciprocated as appropriate; (d) any other means that would contribute to consolidating, developing, and stepping up political dialogue.

Arts. 104–112 of the Agreement contained rules on the Association Council, Association Committee, and the Parliamentary Association Committee.

Arts. 7–66 of the Agreement contained provisions for the gradual lifting of all barriers in the way of the four basic freedoms.

Chapter III of Title V of the Europe Agreement contained explicit rules on the approximation of legislation. Under Art. 67 of the Europe Agreement, Hungary was obliged to a unilateral and full implementation of Community law to the possible extent. The obligation was unilateral, because the progressive alignment of the two legal systems meant alignment of Hungarian law with Community law. It was also unilateral, because the Europe Agreement has not established an institutional and procedural framework under which Hungary could have participated in the preparation and adoption of the Community legislation to which it had to adapt its own legislation. It was a full implementation, as it covered the Hungarian legal system as a whole: it covered all the legislation in force at the time of the signature or entry into force of the Europe Agreement and all the legislation adopted afterwards by the European Coal and Steel Community (ECSC), European Economic Community (EEC), and Euratom. The fact that Art. 68 contained an explanatory list of certain community regulations did not change this fact. As was mentioned above, legislative harmonisation had to take place to the possible extent. This expression allowed Hungarian decision makers to take account of the country's economic, financial, and other interests in the timing and implementation of harmonisation. However, the room for manoeuvre was not without limitations. As the Europe Agreement was an international treaty, the assessment of the 'extent to which approximation of laws is possible', in the absence of a specific definition, was not the sole responsibility of one of the parties. A possible dispute could even have led to the application of Art. 107(2) or (4) of the Agreement, that is, the referral of the dispute to the Association Council or other platforms of arbitration.⁹

⁹ IM 1999, pp. 2–3.

The European Council meeting in Cannes in June 1995¹⁰ approved the European Commission's White Paper¹¹ on the preparation of CEE countries for integration into the internal market of the Union. The White Paper was part of the pre-accession strategy for the associated CEE countries adopted by the Essen European Council in December 1994.¹² Its aim was to guide these countries in their adaptation to the requirements of the Single Internal Market. The White Paper therefore did not affect the bilateral contractual relationship of association established by the Europe Agreement; it served as a useful guide – without any legally binding force – to the implementation of the rights provided for in the Europe Agreement. The White Paper established – the still functioning – ‘Technical Assistance and Information Exchange’ (TAIEX) instrument of the European Commission to support public administration regarding the approximation, application, and enforcement of EU legislation, as well as facilitating the sharing of EU best practices. On the Hungarian side, the State Secretariat for Integration of the Ministry of Foreign Affairs was appointed as the contact for the TAIEX.

2.2. Institutional Framework After Negotiations on the Accession Commenced

The opening event of the enlargement process was the European Conference on Pan-European Issues on 12 March 1998. Accession negotiations started in Brussels on 31 March 1998 in the framework of bilateral intergovernmental conferences with the ‘5+1’ countries, including Hungary.

On the EU side, the Commission ‘Agenda 2000 – Vol. I: For a stronger and wider Union, Vol. II: The challenge of enlargement’ set the criteria for the candidate countries: they had to take on the rights and obligations of membership arising from the *acquis* as it existed at the time of accession; they were expected to apply, implement, and enforce the *acquis* upon accession; in particular, the measures necessary for the extension of the Single Market had to be applied immediately.¹³

In line with the vision outlined in the Commission's Communication ‘Agenda 2000’, the Council adopted a Regulation on assistance to the applicant countries in the framework of the pre-accession strategy, including the establishment of Accession Partnerships. Art. 1 of Council Regulation (EC) No 622/98¹⁴ stated that as part of the enhanced pre-accession strategy, Accession Partnerships shall be established for CEE

10 European Council, 1995a.

11 European Commission, White Paper: Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union, Brussels, 03.05.1995 (COM (95) 163 final).

12 European Council, 1994.

13 The Commission ‘Agenda 2000 – Vol. I: For a stronger and wider Union’. Brussels, 15.07.1997 COM (97) 2000 final.

14 Council Regulation (EC) No 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships (OJ L 85, 20.3.1998, pp. 1–2).

applicant states. Each Accession Partnership provided a single framework. Under Art. 2, based on the proposal by the European Commission, the Council of the European Union was empowered to decide by qualified majority on the principles, priorities, intermediate objectives and conditions contained in the individual Accession Partnerships.

In line with the said Regulation, the Council Adopted Decision 98/259/EC, which in its Annex specific to Hungary set out the objectives, principles, priorities and intermediate objectives, programming and conditionality of financial aids, and monitoring of the execution of the Accession Partnership for Hungary. The latter two were performed within the framework of the Europe Agreement. The Accession Partnership was revised twice by the Council of the EU in Decision 1999/850/EC¹⁵ and Decision 2002/87/EC.¹⁶

The screening of the Hungarian legal system through the lens of the *acquis* started on 27 April 1998 and lasted until 2 July 1999. Before substantive negotiations on the chapters could have begun, three criteria had to be met: (a) the screening of the chapter in question; (b) the adoption and transmission of the negotiating position of the candidate country for the chapter in question; and (c) the establishment of a common position of the Member States of the EU.

Hungary consistently took the view that the substantive phase of accession negotiations should not wait for the full completion of the screening process; instead, it should have been initiated parallel with the screening process, regarding chapters that had already been screened. Having succeeded in winning the support of the vast majority of EU Member States, including Austria – the then president of the Council of the EU – in the second half of 1998, the transition to the substantive phase of accession negotiations became possible in the case of seven screened chapters. Consequently, by March 1999, 15 negotiating proposals were sent to the EU.¹⁷ By the end of the year, 23 chapters were placed on the agenda of the inter-governmental conference.¹⁸

To briefly summarise the practice of the negotiations, the chief negotiators prepared draft agreements for each chapter, which could be provisionally closed at the ministerial level by the representatives of the two sides. Chapters were provisionally closed, because no agreement was considered final until the accession negotiations were fully concluded, which required a decision of the Intergovernmental Conference – consisting of the heads of states and governments of the Member States and

15 1999/850/EC: Council Decision of 6 December 1999 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Hungary (OJ L 335, 28.12.1999, pp. 1–7).

16 2002/87/EC: Council Decision of 28 January 2002 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with Hungary (OJ L 44, 14.2.2002, pp. 37–44).

17 Report of the Minister of Foreign Affairs Report of the Minister of Foreign Affairs on the Accession Negotiations 1999 (hereafter: Report of the Minister of Foreign Affairs 1999).

18 Report of the Minister of Foreign Affairs, 2000.

the candidate states and representatives of the EU institutions in December 2002. The chief negotiator's work was supported by a permanent negotiating delegation, including the head of the State Secretariat for Integration of the Ministry of Foreign Affairs and expert representatives of the most relevant ministries. The negotiator for the EU was the permanent representative of the Member State fulfilling the role of president of the Council of the EU. The members of his delegation were the permanent representatives of the Member States. The negotiation rounds always took place in Brussels. The negotiations at the ministerial level took place under the aegis of the General Affairs Council of the EU. During the negotiations, the Member States were represented by their foreign ministers. At the end of the EU Presidency of a Member State, the negotiations always took place in the capital of the country that was to pass on the Presidency.

As Egon Dienes-Oehm – the then deputy of the head of the State Secretariat for Integration of the Ministry of Foreign Affairs¹⁹ – recalled, the negotiations on the individual chapters of the accession negotiations were closed in the following pace: (a) 1998 (Austrian Presidency): three chapters; (b) 1999 (German and Finnish Presidencies): five chapters; (c) 2000 (Portuguese and French Presidencies): five chapters; (d) 2001 (Swedish and Belgian Presidencies): 11 chapters; (e) 2002 (Danish Presidency): seven chapters.

The latter took place at the level of the Intergovernmental Conference, at which the then prime minister Péter Medgyessy led the Hungarian delegation.²⁰ The Treaty of Accession was signed in Athens on 16 April 2003 by Péter Medgyessy and the then minister of foreign affairs, László Kovács.

At this point, however, one must step back in time, until 1998, the starting of the negotiations, to examine how the Hungarian State created its institutional order responsible for the accession and how legislative harmonisation was achieved. In the case of Hungary – where general parliamentary elections took place in May 1998 – this meant that the newly formed Orbán I. cabinet²¹ was in place to determine the legal and institutional framework of the accession negotiations on the Hungarian side and enforce the above requirements set by the EU. This job was executed during the summer and early autumn months of 1998.

The inauguration of the new government brought new internal working groups:

- (a) In the National Assembly, the Committee for European Integration Issues (*Európai Integrációs Ügyek Bizottsága*) was established as a standing Committee according to Resolution No. 39/1998 (VI.29.) of the National Assembly. Some standing committees have set up subcommittees on European integration issues.
- (b) The Cabinet for European Integration (*Európai Integrációs Kabinet*) was abolished according to Resolution 1108/1998 (VIII.13.) of the Government.

19 In office: 1998–2003.

20 Orbán, 2014.

21 In office: 1998–2002.

However, the system of government responsibility for the management of European integration-related matters created by Government Resolution No. 1093/1994 (X.7.) remained in force with modifications. According to the said decision, the Government regularly reviewed the state of the integration process at least once a year and was to identify the main tasks to be performed. In doing so, the Government approved the negotiating directives for the Hungarian delegation to the EU.

- (c) The governmental management of accession negotiations was governed by Government Resolution No. 2084/1998 (8 April 1998), as amended by Government Resolution No. 2211/1998 (30 September 1998) and No. 2093/1998 (IV.22.). Government Resolution 2084/1998. (IV.8.) laid down the principles and main objectives to be pursued in the accession negotiations. In accordance with the abovementioned three resolutions, the position to be taken during the negotiations in the screening process was determined in the form of a government resolution after administrative consultation: the proposal was submitted to the Government by the person in charge of the relevant negotiating chapter, the Minister of Justice, together with the Minister of Foreign Affairs, Minister of Finance, and Minister of Economy.²²
- (d) Government Decree 152/1994 (XI.17.) as amended by Government Decree No. 160/1998 laid down the integration-related functions and powers of the Minister for Foreign Affairs.²³ Section 6 of the decree stated that to promote Hungary's accession to the EU and unify the preparatory works, the Minister for Foreign Affairs had to direct and coordinate relations between Hungary and the EU based on the integration strategy and policy defined by the Government in the form of resolutions. Within this framework, the minister managed the entire accession process, representing the Government in the Association Council.
- (e) In the Parliamentary Association Committee, the country was represented by the Head of the State Secretariat for Integration of the Ministry of Foreign Affairs (*Külgügyminisztérium Integrációs Államtitkársága vezetője*).²⁴ The minister was responsible for the uniform implementation of integration policy in external relations via the State Secretariat for Integration of the Ministry of Foreign Affairs (*Külgügyminisztérium Integrációs Államtitkársága*), as well as for coordinating government activities and the integration-related activities of the ministries aimed at the uniform preparation for accession negotiations and membership. Government Decree No. 64/1996 (V.3.) specified these tasks of the State Secretariat for Integration of the Ministry of Foreign Affairs. The State Secretariat was established to promote accession and coordinate

22 Report of the Minister of Foreign Affairs, 1999, Point 3.1.

23 During the first Orbán government: János Martonyi (1998–2002).

24 During the first Orbán government: Péter Gottfried (1998–2002), his deputy was Egon Dienes-Oehm (1998–2003).

the preparation for EU membership. It was under the authority of the Minister for Foreign Affairs.

- (f) Another important forum for government coordination was the Interministerial Committee on European Integration (*Európai Integrációs Tárcaközi Bizottság*, EITB) established by Government Resolution 1093/1994 (X.7.). The EITB's tasks were to coordinate the decision-making process of the government related to the implementation of the Europe Agreement, support the preparation of Hungary for accession to the EU, ensure the continuity of government intentions, coordinate the integration activities of the ministries, and discuss technical issues related to the PHARE programme. To carry out these tasks, the EITB has set up inter-ministerial working groups to deal with specific aspects of the preparation for accession and develop comprehensive proposals on cross-ministerial issues.
- (g) Coordination of the PHARE programme – to be introduced in part 3 of the country report – was carried out by a Minister without portfolio according to Government Decree No. 164/1998 (IX.30.).
- (h) Mention should also be made of Section 8 of the Government Decree No. 152/1994 (XI. 17.) as amended by Government Decree No. 160/1998 (IX. 30.) and point '3a' of the Government Resolution 1093/1994 (X.7.) – also amended – and point 2 of the latter, which further stipulated that the Minister and the heads of the bodies with national competence are responsible – in their respective areas of responsibility and competence – for the implementation of the tasks arising from European integration and for the organisation and management of their professional relations in the field of integration.

The inauguration of the new government also brought new order for the harmonisation of legal regulations: the abovementioned three government resolutions, namely No. 2084/1998 (8 April 1998), as amended by Government Resolution No. 2211/1998 (30 September 1998) and No. 2093/1998 (IV.22.), covered the field of legislative harmonisation as well.

The legislative harmonisation programme for the period up to the presumed date of accession to the EU – that is, 31 December 2001²⁵ – was set out in the Annex to Government Resolution No. 2212/1998 (IX.30.). This comprehensive legislative harmonisation programme was adopted by the Government as the basic document of the pre-accession legislative harmonisation activities, as stated in point 1 of the Decision.²⁶ The said decision repealed the previous government decisions on legislative harmonisation. Consequently, the programme of domestic legislative harmonisation and the reporting obligations and other tasks related to the implementation of the programme were comprehensively and uniformly laid down in Government

25 The Presidency Conclusions of the Helsinki European Council (10 and 11 December 1999) postponed it to somewhere between 1 January 2002 and 1 January 2003.

26 The said decision repealed the previous government decisions on legislative harmonisation.

Resolution 2212/1998 (IX.30.). The new legislative harmonisation programme was structured according to the themes of the working groups of the EITB and within them, by years from the second half of 1998 to 31 December 2001. The latter date was the original target date set by the Government to the accession. The legislative harmonisation programme contributed to the planning of domestic legislation. However, every derogation from the legislative harmonisation programme had to be well reasoned; it was neither a concrete legislative plan nor a government agenda. In contributing to the planning of legislative harmonisation – as the tasks of approximation of legislation and institution building should be coordinated – the legislative harmonisation programme in the Annex to the Government Resolution 2212/1998 (IX.30.) referred to whether the task to be implemented is included in the National Programme for the Adoption of the *acquis communautaire* – approved in Point 3 of Government Resolution 2084/1998 (IV.8.) – and whether it is identified there as a short or medium-term priority.²⁷

Legislative harmonisation was also covered by point 2 of Government Resolution No. 1093/1994 (X.7.) that was applicable to legislative harmonisation as well. Ministers and the heads of national authorities were responsible for the implementation of the tasks arising from European integration within their respective areas of responsibility and competence. As the Community institutional and legislative system did not reflect – and still does not reflect – the traditional structure, organisation, and functioning of the national government and legal system, Hungarian decision makers had to take particular care for when they assigned a minister responsible for preparing national legislation, to ensure conformity with Community law.²⁸ It was set in Government Decision No. 2212/1998 (IX.30.). If a harmonisation task fell outside the programme, the responsible persons were to be determined by inter-ministerial agreement, involving the State Secretariat for Integration and the Ministry of Justice, preferably within the EITB.²⁹

According to Section 8(1) of Government Decree No. 157/1998 (IX.30.), the Minister of Justice was responsible for the coordination of the preparation of the Hungarian legal system for accession to the EU. This task involved drawing up a programme for legislative harmonisation in preparation for accession to the EU – with the involvement of the ministers concerned – and monitoring and promoting the implementation of this programme, as well as ensuring the coherence of the harmonisation activity in principle and methodology. Points 3, 4, 6, and 7 of Government Resolution No. 2212/1998 (IX. 30.) contained related tasks. According to Section 8(2)(3), the Minister of Justice had to give an opinion on the draft law – submitted by either the government or members of the Parliament – and international treaties to be signed, as to their compatibility with the *acquis*.

27 IM, 1999, pp. 6–8.

28 It was set in Government Decision No. 2212/1998 (IX.30.).

29 IM, 1999, pp. 11–13.

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission's or Council's Working Groups, Participation of Your Representatives at the Commission's or Council's Meetings etc.)?

The Europe Agreement did not establish any institutional and procedural arrangement under which Hungary could contribute to the preparation and adoption of Community legislation to which it would have to adapt its own legislation.³⁰ The situation remained unchanged based on the Association Partnership: it was only after the closing of the Accession Negotiations – more precisely, from April 2003 – that the representatives of the candidate states could participate in the work of the European institutions as observers, without voting rights.³¹

The cooperation on the field of Common Foreign and Security Policy (CFSP) between Hungary and the EU was institutionalised in 1994. Cooperation took the form of contacts through Political Directors and European Correspondents meetings, CFSP working groups, participation in EU external actions offered, and diplomatic missions accredited in third countries and international organisations. In October 1998, a decision was taken to establish a CFSP communication system directly linking the EU Council Secretariat in Brussels and the Ministries of Foreign Affairs of the associated countries. This deepened the cooperation and helped to better understand the requirements for cooperation from the date of membership.

Hungary cooperated with the EU in several financial programs early on, but this did not mean participation in the decision-making process leading to the adoption of those programs. The programmes are introduced in point 3 of the current country report.

Question No. 10

Has Your Country Experienced any Particular Difficulty in Meeting Some of the Accession Criteria?

Transition to the market economy according to the Copenhagen criteria was a demanding procedure after 30 years of remaining in a 'comfortable' socialist economy, which provided everybody with a job and certain goods and services were available under fixed price – due to intensive state dotation – and it proved to be challenging for the Hungarian population and economic operators. In this regard, it is worth mentioning the so-called Bokros package³² – named after the then minister of finance – which was aimed at saving the country from bankruptcy, and which imposed serious

30 IM, 1999, p. 2.

31 Report of the Minister Responsible for European Affairs Without Portfolio on Integration related matters 2005 (hereafter: Report of the Minister Responsible for European Affairs) para. III/2.

32 Government Resolution 1023/1995 (III. 22.) on the 1995 adjustment measures for economic stabilisation; for a detailed analysis in Hungarian language, please see: Molnár, 1995.

restrictions on state budget and at the same time supported the restructuring of the economy. While the Bokros package was necessary for the accession as well, as it contributed to the creation of a well-functioning market economy – the process which was started earlier by the Antall government³³ – the official communication of the measures did not mention this. This connection was only established subsequently and only in a vague manner by scientific literature.³⁴ The most probable reason was that the decision makers did not want to ‘taint’ the awaited accession to the EU – seen as a land of promise back then – by making connections with the hardships and struggles ordinary citizens had to endure because of the Bokros package.³⁵

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. Constitutional Court)?

With a view to accession, Section 1 of Act LXI of 2002³⁶ inserted Art. 2/A to the then Hungarian Constitution – Act XX of 1949³⁷ – which read as follows:

The Republic of Hungary may, in order to participate in the European Union as a Member State, based on international treaty, exercise some of its powers arising from the Constitution – to the extent necessary for exercising the rights and fulfilling the obligations stemming from the treaties founding the European Union and the European Communities (hereinafter called the European Union) – jointly with the other Member States; the exercise of these powers may take place individually, via the institutions of the European Union.³⁸

Certain findings of the Hungarian Constitutional Court (*Alkotmánybíróság*, HCC) in Decision No. 30/1998³⁹ surely served as a reference point for the drafters of the abovementioned EU clause of the then Hungarian Constitution – namely that in the absence of an explicit constitutional mandate, the National Assembly is not entitled to extend the principle of territoriality beyond the exclusive jurisdiction of the supreme sovereign; furthermore, the State is not entitled to make constitutional amendments via international treaties.⁴⁰ As a conclusion, the HCC stated the following:

33 Szabó, 2015.

34 Várhegyi, 2000; Köves, 1995, pp. 249–266.

35 As an acquaintance of mine demonstrated it with a witty example: ‘We were seeking to join the regatta as soon as possible, just first had to pump out water from our sinking ship’ – Dr. Zoltán Nagy (currently, financial planning and analysis manager at Zealand Pharma).

36 Act LXI of 2002 amending Act XX of 1949 on the Constitution of the Republic of Hungary.

37 Ineffective since 31 December 2011.

38 Translation by András Jakab. See: Jakab, 2010, p. 7.

39 HCC, Decision No. 30/1998 (VI.25.).

40 HCC Decision No. 30/1998 para. V/2 (The authors own translation and summary of the content).

[...] the sovereignty of the people the constitutional rights deriving from the principle of the rule of law and the democratic constitutional requirement that public authority in the Republic of Hungary may be exercised only on the basis of democratic legitimacy.⁴¹

It is worth mentioning that the activism⁴² of the HCC in the first years – in other words, during the ‘Sólyom era’⁴³ – contributed to the fulfilment of the Copenhagen criteria relating to democracy and the rule of law.⁴⁴

As the 1999 IM summary on legislative harmonisation⁴⁵ stated, HCC Decision No. 30/1998 meant that Hungarian law enforcement authorities were not allowed to directly apply Community law before Hungary’s accession to the EU. The decision of the HCC also implied that it would have been inappropriate, and constitutionally questionable, to attempt to approximate Community law by merely listing – by title or otherwise – the Community legislation ‘applicable’ in the Republic of Hungary. While this harmonisation technique was used in certain Member States after the accession, it was not considered appropriate there either, due to the issues this technique implied. Thus, prior to accession, approximation to Community law could not be achieved by this solution, which would have been based on a reference approach (i.e. a simple reference to the applicable EU law).⁴⁶ Similarly, it was not held appropriate for a Member State to rely solely on administrative practice (and its documents; e.g. circulars, transcripts). Such a practice would not have provided the legal certainty necessary for the fulfilment of harmonisation obligations, as it could have been changed at the mere discretion of the public authority and would not have been sufficiently known by the public. This type of practice has also been condemned by the HCC in its Decision No. 60/1992 (XI.17.) based on Art. 2(1) of the Constitution containing the principle of legal certainty, which is part of the principle of the rule of law declared in Art. 2(2) of the Constitution. Further, based on the case-law of the Court of Justice of the European Union (CJEU), Member States can usually fulfil their harmonisation obligations through binding national rules: all binding national rules, which do not suffer from the shortcomings listed above, may be an appropriate form of harmonisation. According to the Hungarian legal conception, every central legislative act met these requirements: therefore, the question of the choice between a law, a government decree, and a ministerial decree had to be made based on

41 HCC Decision No. 30/1998, para. VII/1.

42 In his concurring opinion to Decision No. 23/1990 (X.31.), László Sólyom introduced the notion of the ‘láthatatlan alkotmány’ (‘invisible constitution’), which served as a sure measure of constitutionality above the Constitution, which at that time was amended often for daily political ends and was regarded as temporary.

43 László Sólyom was the first president of the newly established HCC between 1990 and 1998.

44 For details, see the written version of László Sólyom’s academic address delivered on 10 December 2013. See: Sólyom, 2013.

45 IM, 1999.

46 IM, 1999, p. 13.

internal law, with special regard to the Hungarian hierarchy of sources of law, and the appropriate level of legal act for harmonisation.⁴⁷

As for the primacy of EU law – something that new Member States had to accept upon accession – the HCC tried to avoid the confrontation with the CJEU both before and after the country's accession⁴⁸ to the EU.⁴⁹ In Decision No. 1053/E/2005, the HCC marked its chosen path related to primacy when it stated that '[...] despite their treaty origin, [the HCC]⁵⁰ does not intend to treat the founding and amending treaties of the European Union as international treaties'.⁵¹ Not much later, in another decision, the HCC added the following:

[...] these Treaties, as primary sources of law, and the Directive, as a secondary source of law, are part of internal law as Community law, since the Republic of Hungary has been a member of the European Union since 1 May 2004. For the purposes of the jurisdiction of the Constitutional Court, Community law does not constitute international law within the meaning of Art. 7(1) of the Constitution.⁵²

The approach described above, as Nóra Chronowski named it, is the 'two-pronged' system, in which community law is part of domestic law, while international law is a distinct system, which is subject to a differentiated constitutional approach. The nature of the Founding Treaties as an international treaty was never called into question. They are international treaties of course, and their 'reclassification' was only technical in nature.⁵³

Question No. 12.

Was There a Referendum in any Stage of the Accession Procedure?

The referendum on acceding to the EU was held on 12 April 2003 based on Section 10 of Act LXI of 2002, the same act that enacted the 'Europe clause' into the Hungarian constitution. While the voter turnout was only 45.6%, those who attended the vote approved the accession with an 83.8% majority.⁵⁴

Based on the reports of the minister of foreign affairs (1999, 2000, 2001), preparing the citizens and the economic operators to accession was an important issue

47 IM, 1999, p. 15.

48 For an analysis of the early case law, please see: Sajó, 2004, pp. 171–190

49 As Chronowski writes between 2004 (accession to the EU) and 2012 (the entry into force of the Fundamental Law), the HCC mostly stated that it lacks the competence to judge the question. Chronowski, 2019, para. 8

50 Interpretative insertion by the author.

51 HCC, Decision, No. 1053/E/2005 (2006.06.16), para. III/2

52 HCC, Decision, No. 72/2006. (XII.15.), para. 11

53 Chronowski, 2019, para. 20.

54 Nohlen and Stöver, 2010, p. 912.

throughout the pre-accession stage. These campaigns were financed mainly from PHARE sources (see below).

Question No. 13.

In Addition to the Above, Were There any Noteworthy Legal Aspects Concerning the Negotiation and Ratification of the EU Accession Agreement in Your Country?

While not country-specific, it is worth mentioning that at its meeting in Madrid, the European Council⁵⁵ stressed the need for the candidate countries to adjust their administrative structures to ensure the harmonious operation of Community policies after accession and at Luxembourg,⁵⁶ it stressed that, ‘Incorporation of the *acquis* into legislation is necessary but is not in itself sufficient; it will also be necessary to ensure that it is actually applied’. That is, as Péter Gottfried emphasised, for the first time ever, not only was legislative harmonisation checked but its practical implementation too.⁵⁷

One may also have to mention the regional cooperation: to avoid pointless and unnecessary rivalry, the members of the 5+1 group have continuously assessed among themselves, in the conciliation meetings held in their countries, the progress of the accession negotiations and have coordinated the positions to be taken therein.⁵⁸ The smaller Visegrád (V4) group also played a part in coordinating how these countries would represent their interests.⁵⁹

3. Legal and Economic Support for Candidate Countries

The third section concentrates on the support provided to the candidate countries by the EU.

Question No. 14.

Before the Accession, Was There Any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

Question No. 15.

Did Your Country Benefit From Any Funds Providing Financial Support in Relation to EU Accession Immediately After the EU Accession?

55 European Council, 1995b.

56 European Council, 1997.

57 Becsky, 2004, p. 14.

58 Orbán, 2014.

59 Martonyi, 2021, p. 142.

Before the Partnership Associations were established between the EU and candidate countries, the programme 'Poland and Hungary: Assistance for Restructuring their Economies', abbreviated as PHARE – meaning lighthouse in French – was in place. The programme was later expanded to cover the other candidate countries too. Between 1990 and 1999, Hungary gained 1 billion € from the PHARE, that is, 100 million € per year. From 1997 onwards, PHARE's primary objective in the candidate countries has been to support preparation for accession. By the end of the programme, assistance focused on the following main areas: (a) institutional development for the adoption of the *acquis* (including the so called twinning⁶⁰ programme): 40%–50%; (b) regional development model programmes: 20%–30%; (c) cross-border cooperation programmes: 20%; (d) support for participation in EU Community programmes: 10%–15%.

After the accession negotiations started, new programmes were launched by the EU based on the decision of the Berlin European Council.⁶¹ Both the 1999 and 2000 reports⁶² of the Hungarian minister of foreign affairs placed an emphasis on participating in the newly launched Special Accession Programme for Agriculture and Rural Development (SAPARD)⁶³ and Instrument for Structural Policies for Pre-Accession (ISPA)⁶⁴ initiatives.⁶⁵ The monetary assets of the abovementioned two novel programmes became available from 2000. According to the decision of the Berlin summit, the 10 candidate countries received approximately 520 million € in the form of non-reimbursable aid from the EU through the SAPARD for the period 2000–2006 to help them adopt the Common Agricultural Policy (CAP) and improve the adaptability of their rural areas. Hungary received 38.04 million € annually.⁶⁶ SAPARD was the first EU pre-accession fund for which the European Commission delegated the management of the entire fund to the candidate countries, including the project selection phase and the payment of aid to the beneficiaries. In turn, the EU wished to obtain guarantees that Community funds were used and disbursed in accordance

60 Twinning (inter-institutional cooperation), whereby the Member State concerned sends at least one long-term expert to Hungary to assist the institution in preparing for EU accession for at least one year in the implementation of a legal and institutional harmonisation project.

61 European Council, 1999.

62 Report of the Minister of Foreign Affairs, 1999; Report of the Minister of Foreign Affairs, 2000.

63 Council Regulation (EC) No 1268/1999, OJ L 161, 26.6.1999, p. 87.

64 Council Regulation (EC) No 1267/1999, OJ L 161, 26.6.1999, p. 73.

65 Report of the Minister of Foreign Affairs, 1999, para. 2; Report of the Minister of Foreign Affairs, 1999; para. I.

66 Based on the 2005 report of the Report of the Minister Responsible for European Affairs, without portfolios, a total of 8827 applications were received under the SAPARD Programme, with the total aid requested amounting to HUF 217.5 billion. The MVH decided on 2761 applications and the total amount of aid granted was HUF 65.5 billion. The remaining applications were rejected due to a lack of available funds or ineligibility. By the deadline of 30 September 2004, a total of 2750 contracts had been signed. In terms of payments, the SAPARD Programme has made ex-post payments; 15.8 billion forints had been paid out by the MVH by 31 December 2004 and successful payments for the winning projects were made by the end of 2006; para. III/5.

with EU standards. As one element of these guarantees, Hungary established the 'SAPARD Agency'.⁶⁷

For the 10 candidate countries, ISPA⁶⁸ offered a yearly amount of 1 billion € between 2000 and 2006. The ISPA assistance for each country was determined by the European Commission on the basis of the country's population, GDP per capita in purchasing power parity, and the size of its territory. The average annual amount of assistance for Hungary was 7%–10% of the total allocation, which translates to 72–108 million €. ⁶⁹ Gaining finance from the abovementioned programmes was conditional on fulfilling the obligations under the Europe Agreement, meeting the Copenhagen criteria, and the specific priorities of this Accession Partnership.

As part of its preparation for accession to the EU, Hungary had to prepare and submit a National Development Plan (NDP) to the EU to receive assets from the Structural and Cohesion Funds. NDP preparation and implementation were financed by ministries, social and economic partners, organisations, and regional institutions.⁷⁰

It is worth noting that while these sums seem to be high, if one compares them to sums allocated to the earlier 'cohesion countries' – Greece, Spain, and Portugal – it becomes clear that the 2004 countries received significantly lower amounts of financial support, as noted by Egon Dienes-Oehm.⁷¹

Other programmes were launched by the EU in which Hungary tried to participate actively, because Hungarian decision makers saw the participation in Community programmes as an important part of preparing for the accession and therefore aimed to participate in the programmes in as many domains and as early as possible. Around half of the costs of participation in these programmes needed to be financed from the national budget, whereas the rest was covered by PHARE funds.

Based on the Additional Protocol to the Europe Agreement,⁷² in 1997, Hungary was the first to join the human resources programmes for education and vocational training (Leonardo, Socrates, Youth for Europe) with success: the willingness of Hungarian educational institutions to apply for funding and their success rate was close to the average among Member States. Towards the end of 1998, Hungary was allowed to access the public health and social policy programmes, the SME programme to support small and medium-sized enterprises, and the cultural programmes to promote artistic and cultural cooperation (Raphael, Ariane, Kaleidoscope). In the first half of 1999, the SAVE II programme for rational energy management, the Karolus and Fiscalis, Mattheus for upstream market preparation, Média II for the audiovisual sector, and the R&D Framework Programme V providing a framework for Community research and technological development, were in the process of being

67 Government Resolution No. 2188/2000 (VIII.31.) ordered the establishment of the SAPARD Agency within the organisational framework of the Ministry of Agriculture and Rural Development.

68 The domestic rules for the ISPA were laid down in Government Resolution 2034/2001 (II.23.).

69 Report of the Minister of Foreign Affairs, 2001, para. I.7.

70 Report of the Minister of Foreign Affairs, 2001, para. II.3.

71 Orbán, 2014.

72 Agreement signed on 13 July 1995.

opened; as such, Hungarian researchers were able to participate from the first calls under the same conditions as applicants from other Member States.⁷³

Question No. 16

Were There Any Other Noteworthy Aspects of EU Support Provided to Your Country Before the Accession?

As Juhász Endre recalled in his 2019 writing, at the time, Hungarian farmers received approximately 70,000 HUF per hectare of arable land from the EU budget annually. While this seems natural today, when the negotiations started, a key question was whether Hungarian farmers – and farmers of the newcomer countries – would be eligible for any financial aid, as the EU's initial position was that new Member States should be excluded from the budget. To understand the EU's position, it is necessary to recall that some of these were so-called compensatory payments in the EU, which compensated the farmers for the losses arising from the reduction of guide prices under the common agricultural policy. As it was to be expected that these prices would not fall in Hungary, but rise instead, compensation was not deemed necessary. According to the Hungarian delegation, it was true that these payments were originally introduced for compensation, but they have gradually become a permanent feature of the common agricultural policy. Thus, their absence in the new Member States would have resulted in a serious and unjustified competitiveness gap in the short and long term. Furthermore, as the Hungarian Chief Negotiator emphasised to Franz Fischler – the then Austrian Commissioner responsible for agricultural policy – the rejection of the direct payments system probably resulted in the end of the common agricultural policy: if the system was not introduced, and Hungarian agriculture survived, those Member States that persistently wanted to abolish the common agricultural policy – the UK and Sweden – would have used this fact to prove their right. Namely, if certain Member States' agriculture was proved to be viable without subsidies, what would have justified the subsidies for France or Italy? Juhász believed that these arguments have had an impact, as the Commission subsequently proposed the introduction of a transitional period on direct payments.⁷⁴

On the basis of the possibility provided for in the Accession Treaty,⁷⁵ Hungary opted to join the so-called Single Area Payment Scheme (SAPS), which was supplemented from the national budget (top-up).⁷⁶ In practice, Hungary could only introduce

73 Report of the minister of foreign affairs, Point 5.4.

74 Which, in proportion to the aid to the old Member States, was as follows: 2004: 25%, 2005: 30%, 2006: 35%, 2007: 40%, 2008: 50%, 2009: 60%, 2010: 70%, 2011: 80%, 2012: 90%, 2013: 100%. See Juhász, 2019, pp. 4–7.

75 Treaty of Accession of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia (OJ L 236, 23.9.2003, p. 17–930 (BG, ES, CS, DA, DE, ET, EL, EN, FR, GA, IT, LV, LT, HU, MT, NL, PL, PT, RO, SK, SL, FI, SV)).

76 Report of the Minister Responsible for European Affairs without portfolio, 2005, para. III/5.

it in 2009 due to the non-conformity of the information and control system.⁷⁷ While the SAPS and its successor, the Basic Payment Scheme (BPS), had a ‘legitimate aim’ – namely, to ensure greater income stability for farmers and to let them better adopt to market demand – a 2018 report of the European Court of Auditors highlighted that a standard amount of support per hectare, by its very nature, does not take account of the specific conditions of the farm (e.g. operational costs, income, profitability) – and what is worse, the BPS tends to favour larger farms regardless of the productivity. Putting it bluntly, the system encourages hoarding of arable land instead of enhancing productivity. As such, the area-based payments are not linked to real socio-economic needs.⁷⁸

4. Specific Rules Applicable to Candidate Countries Before and After Their Accession

The final section is concerned with any country-specific exemptions from the general approach, adopted by the candidate countries, both during the pre-accession period and after the actual accession.

Question No. 17

After the Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

Yes, see below for details.

Question No. 18

What Country-Specific Provisions Were Contained in the EU Accession Agreement of Your Country?

In multiple areas, the most important aspect was the free movement of persons and the free movement of capital (see below for details).

⁷⁷ See Csák and Olajos, 2008, p. 31; Szilágyi, 2007, p. 719.

⁷⁸ European Court of Auditors, Basic Payment Scheme for farmers – operationally on track, but limited impact on simplification, targeting, and the convergence of aid levels. Special Report No.10/2018., paras. 70, 72; see also: Rude, 2008, pp. 457–471.

Question No. 19

Were There Any Country-Specific Transitory Provisions?

Yes, for example, in the sector of wine production (alcohol volume and names). The Annex on Hungary contains this information.

Question No. 20

Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?

No.

Question No. 21

To Your Knowledge, Were There Any Notable Differences in the Content of Your Country's EU Accession Treaty From Other Countries in a Comparable Position?

The free movement of persons and the free movement of capital (secondary residence, agricultural lands) were regulated very similarly in the CEE region.

Question No. 22

Are There Any Other Noteworthy Exemptions From the Application of the EU Law in Your Country?

The European Council decided to launch the negotiation process with the CEE countries at the December 1997 Luxembourg summit.⁷⁹ To conduct successful negotiations resulting in agreements that served the national interest of Hungary, it was important to determine what exactly the national interest was.

After the national interest was identified, it was time to enforce it during the negotiations. Endre Juhász identified six plus one fields – that is, seven out of the 31 chapters of the negotiation process – in which differences between the delegation of Hungary and the EU came to light and the negotiations proved to be tougher than in other fields, namely: (a) free movement of persons; (b) free movement of capital (the acquisition of agricultural land by nationals or legal entities domiciled in the EU Member States); (c) issues related to agricultural dotation; (d) structural and cohesion politics; (e) competition; and (f) the implementation of the ‘Schengen acquis’ and the exact determination of Hungary’s external and internal borders (that is, which neighbouring countries will enter the Schengen area with Hungary).⁸⁰

⁷⁹ Presidency Conclusions of the Luxembourg European Council, 12 and 13 December 1997.

⁸⁰ Juhász, 2019, pp. 4–8.

The additional issue was the conformity of the existing nuclear power plant (Paks I) with the safety rules of the Community.⁸¹

Ultimately, Hungary was allowed to temporarily derogate from EU law requirements in nine fields, namely: (1) Freedom of Movement for Persons; (2) Freedom to Provide Services; (3) Free Movement of Capital (agricultural lands); (4) Competition Policy; (5) Agriculture; (6) Transport policy; (7) Taxation; (8) Environment; and (9) Customs Union.

While derogation ‘No. 1’ was in favour of the old Member States, derogation ‘3’ was in favour of Hungary. The author introduces these derogations in a more detailed way, as in his view, these were the most important derogations related to the country.

According to the former Hungarian chief negotiator, the initial Hungarian position regarding the free movement of workers was that Hungarian citizens should have been granted complete freedom of movement without restrictions. While the first responses from the ‘old’ Member States were only aimed at ‘cooling the heat’ – by stating that this being a sensitive issue, it should be discussed later – they subsequently gave a straightforward answer: in a speech in November 2000, German Chancellor Gerhard Schröder stated that a seven-year, EU-wide transition period was needed. The Hungarian delegation did not oppose the derogations as Hungary had very substantial requests for a transition period in the area of free movement of capital; however, the Hungarian delegation tried to reduce the time limit and scope of the derogations applicable to the free movement of persons as much as possible. The so-called 2+3+2 formula was the compromise: Member States were allowed to maintain restrictions for two years, to extend them for a further three years, and even for an ‘extra’ two years, but only if a serious disturbance in the labour market or a threat thereof were present. The obligatory review and the review that could have been requested by new Member States allowed earlier liberalisation. Further, the possibility of the voluntary liberalisation by ‘old’ Member States was granted and the United Kingdom, Ireland, and Sweden immediately applied this – ensuring immediate access to their labour market – to the new Member States. Restrictions were maintained for the full seven years – that is, until 2011 – in Germany and Austria.⁸² Here, it is worth mentioning the Martin Meat case,⁸³ which concerned these derogations allowed for Germany and Austria and which concerned Hungarian workers,

81 Fortunately, Hungary – unlike Slovakia and Lithuania – did not have to undertake to shut down its nuclear power plant. See: European Commission, Comprehensive monitoring report of the European Commission on the state of preparedness for EU membership of the Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, and Slovakia. (COM (2003) 675 final, Brussels, 5.11.2003).

82 Juhász, 2019, pp. 4–5.

83 C-586/13, Martin Meat, Judgment 18 June 2015.

and in which the CJEU provided a wide interpretation of the derogation.⁸⁴ Turning our attention from workers to the free movement of capital, one must ask, why was the exemption under the free movement of capital so important for Hungary? The applicable interpretation of the EU law nowadays is – just like it was back then – that agricultural lands fall under Art. 63 of the Treaty on the Functioning of the European Union (TFEU), which guarantees the free movement of capital. This is advocated by the European Commission⁸⁵ and supported by the case-law of the Court of Justice of the EU.⁸⁶ At the time of the accession negotiations, Hungarian decision makers foresaw a situation where the relatively cheap Hungarian agricultural lands may be bought up by western investors – which happened in a neighbouring Member State.⁸⁷ According to Juhász, the Hungarian delegation successfully avoided this situation by reaching a favourable compromise with the possibility of a 7+3 year-long derogation period. The derogation was enacted into Act LV of 1994 on Agricultural Land by Act XXXVI of 2004.⁸⁸ The derogation period provided the Hungarian legislation enough time to elaborate a regulation, which ensures the Hungarian interest of keeping the agricultural land in Hungarian hands and also conforms to EU law.⁸⁹ However, there is still a debate between Hungary and the European Commission: while the Hungarian legislator seeks to maintain certain restrictions mainly on the acquisition of arable land by foreign legal persons, which is not acceptable in the Commission's view, the sustainability of the current market-oriented regulation of the EU is also questioned in scientific literature:⁹⁰ many argue that it would be better if the Member States had a larger space to manoeuvre, so that they can decide on

84 The operative part of the judgment reads as follows: 'Chapter 1, para. 2, and para. 13, of Annex X to the Act concerning the conditions of accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic and the adjustments to the Treaties on which the European Union is founded, must be interpreted as meaning that the Republic of Austria is entitled to restrict the hiring-out of workers on its territory, in accordance with Chapter 1, para. 2 of that annex, even though that provision does not concern a sensitive sector, within the meaning of Chapter 1, para. 13, thereof'.

85 European Commission Interpretative Communication on the Acquisition of Farmland and European Union Law (2017/C 350/05).

86 C-370/05, *Festersen*, Judgment, 25 January 2007, paras. 21-23, C-452/01, *Ospelt*, Judgment, 23 September 2003, para. 24.

87 Anghel, 2017, pp. 77–104.

88 According to the new wording of Section 7 of the 1994 Law: '(1) Foreign individuals and legal persons may not acquire ownership of agricultural land, except as provided in para. (2). (2) The rules applicable to a domestic individual shall apply to a national of a Member State who wishes to establish himself/herself in Hungary as a self-employed farmer and who has been continuously and legally resident and engaged in agricultural activity in Hungary for at least three years'.

89 Juhász, 2019, pp. 5–6.

90 Szilágyi and Szinek-Csütörtöki, 2023, pp. 318–334; Szilágyi, 2018, pp. 189–212; Szilágyi, 2017, pp. 1055–1072.

the conditions of trading in their arable lands,⁹¹ because the significant differences in the price of arable land among Member States still causes a problem that is worth the attention of decision makers.⁹²

‘There was a bright optimism’ – as Ferenc Bartha⁹³ recalled regarding professionals’ opinion around the Millennium on the possibility of introducing the Euro soon after Hungary’s EU accession.⁹⁴ However, as Péter Gottfried reiterated, the issue was soon surpassed, as it became clear that Hungary was far from fulfilling the Maastricht criteria around the proposed date of accession to the EU – originally in 2002; thus, the country was scheduled to enter as a Member State with a derogation under the Founding Treaties – currently Art. 139(1) of the TFEU.⁹⁵

As Endre Juhász recalled, the implementation of the Schengen system was a delicate and difficult task, both politically and technically, not because of the Schengen rules in general: rather, the issue of external borders was hard to predict. In its official positions, the EU repeatedly demanded that Hungary reinforce its external borders; however, at that moment, nobody knew where they will be at the time of accession. As the chief negotiator did not receive an answer from the EU partners, he decided to prepare a written proposal, a working hypothesis, to which the Union would respond. The dilemma was the issue of Slovakia’s and Romania’s entry into the Schengen system. At that time, Slovakia was lagging behind in the negotiations compared with Hungary and other CEE candidate countries and it was an open question whether it would be included in the first group of accession. If one looks at the map, a single Schengen area in the CEE region could not have been created without Slovakia. The situation was different for Romania. The official and unofficial Hungarian aspiration, both from the government and – one could say – the citizens, was to ensure that relations with Hungarians living in neighbouring countries were maintained to the maximum.⁹⁶ However, it became clear that Romania was not prepared to fulfil the Schengen obligations at that time and it was predicted that it will take a long time for the country to comply.⁹⁷ The working hypothesis suggested that Hungary would have external borders with Croatia, Serbia, Romania, and Ukraine,

91 ECOSOC, NAT/632, Brussels, 21 January 2015; Directorate-General for Internal Policies of the Union: Extent of Farmland Grabbing in the EU, 2015; EP: Report on the state of play of farmland concentration in the EU: how to facilitate the access to land for farmers; Szilágyi, 2015, pp. 96–102.

92 See for details: Marinkás, 2022, pp. 25–53.

93 The last governor of the HCB prior to the change of regime (1988–1990) and the member of the Medgyessy Government’s governmental working group mandated to prepare the introduction of the Euro.

94 Kenessey, 2022.

95 Consolidated version of the Treaty on the Functioning of the European Union (OJ C 326, 26.10.2012, pp. 47–390).

96 As the former Minister of Foreign Affairs emphasised in his ‘Memoires’ – however, the book is called in ‘*Lieu of Memoirs*’ – it is a peculiar Hungarian and one may say CEE characteristic that the notion of nation and country do not coincide. Martonyi, 2021, p. 31.

97 These predictions were proven right by life: the country became a full member of the Schengen area only on 1 January 2025.

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while maintaining internal borders with Austria, Slovakia, and Slovenia. The EU did not react to this at first, but then gradually made it known to the Hungarian delegation that it had accepted this arrangement.

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CHAPTER 4

MOLDOVA



TEODOR PAPUC

Abstract

The relationship between the Republic of Moldova and the European Union (EU) dates back three decades. It began in 1994 with the signing of the Partnership and Cooperation Agreement between the European Communities, their Member States, and Moldova. In 2014, Moldova took a significant step forward by signing an Association Agreement with the EU and the European Atomic Energy Community, establishing a foundation for deeper political association and economic integration. On 3 March 2022, Moldova officially submitted its application for EU membership. Following a recommendation from the European Commission to grant Moldova candidate status and a clear path toward EU accession, the European Council approved its candidacy. Recognising Moldova's significant progress in meeting EU membership criteria – especially the political standards set by the Copenhagen European Council in 1993 – the European Council also decided to initiate accession negotiations. This decision aligns with Moldova's commitments under the EU-Moldova Association Agreement, including the Deep and Comprehensive Free Trade Area. A Negotiating Framework has been adopted, and Moldova is now actively working to align its laws and standards with EU regulations, striving to become a full member of the EU.

Keywords: Moldova's accession to the EU, accession criteria, fulfilment of the accession criteria, domestic institutions, referendum

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1. Initial Requirements on Candidate Countries

The first section is concerned with the requirements laid upon candidate countries before the accession process starts and before they join the European Union (EU). The text should cover the following questions but may be more extensive when necessary.

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

The EU is currently cooperating with the Republic of Moldova in the framework of the European Neighbourhood Policy and its eastern regional dimension, the Eastern Partnership. It aims to bring Moldova closer to the EU.

Although it differs in intensity depending on the party or parties in government, European integration remains a fundamental desire for the internal and external policy of the Republic of Moldova.

Relations between the Republic of Moldova and the EU are not new. They started on 28 November 1994 with the signing of the Partnership and Cooperation Agreement between the European Communities and their Member States and the Republic of Moldova.¹ The Agreement entered into force on 1 July 1998 for an initial period of 10 years. It established the legal framework of bilateral relations between the Republic of Moldova and the European Communities in the political, commercial, economic, legal, and cultural-scientific fields. It had as its objectives the support for the Republic of Moldova to consolidate democracy and the rule of law with respect for human and minority rights by ensuring the framework corresponds to the political dialogue and to develop the economy and the completion of the transition process towards the market economy by promoting commercial exchanges, investments, and harmonious economic relations.

Later, in February 2005, a Moldova-EU Action Plan² was developed within the framework of the European Neighbourhood Policy. This Action Plan established the strategic cooperation aims for a period of three years. The period was eventually extended.

- 1 Council and Commission Decision of 28 May 1998 on the conclusion of the Partnership and Cooperation Agreement between the European Communities and their Member States, of the one part, and the Republic of Moldova, of the other part.
- 2 Ministry of Foreign Affairs and European Integration, Plan no. 402 of 22 February 2005, EU-Moldova Action Plan.

The Moldova-EU Action Plan was replaced in 2014 by the 2014-2016 Association Agenda,³ accepted based on the Moldova-EU Association Agreement.⁴ This Agreement provides the foundations for stronger political association and economic integration between the EU and Moldova. On the trade side, the Deep and Comprehensive Free Trade Area makes it easier to export to and import from Moldova and reduces tariffs. It makes customs procedures more efficient and speedier. Additionally, the Agreement enhances trade by progressively aligning Moldovan legislation, regulations, and procedures, including standards, with those of the EU.

The implementation of the Association Agreement is regularly monitored through Association Implementation Reports.⁵ It was reviewed in several bilateral dialogue formats provided for under the Association Agreement: (a) the EU-Moldova Association Council on 7 February 2023; (b) the EU-Moldova Association Council on 28 October 2021; (c) the EU-Moldova Association Committee on 17 June 2022; (d) the EU-Moldova Association Committee in Trade Configuration on 29 November 2022 and various sub-committees, including the Sub-committee on Justice, Freedom, and Security, as well as an annual Human Rights Dialogue.

An Association Agenda was approved for the period 2017-2019,⁶ containing reform actions that should have been addressed as a matter of priority by the Moldovan authorities. The 2017-2019 Association Agenda established four fields of action: (1) strengthening institutions and good governance; (2) economic development and market opportunities; (3) connectivity, energy efficiency, environment, and climate action; and (4) mobility and people-to-people contacts.

The priorities across these fields of action were structured as follows:

- (a) **Judicial Independence:** Strengthening the independence of the judiciary by enforcing laws that ensure impartiality, integrity, professionalism, and efficiency within the judicial system, including the prosecution service. Efforts also focused on eliminating corruption and preventing unethical conduct.
- (b) **Combating Corruption and Financial Crimes:** Implementing the Law on Integrity and legislation on proportionate sanctions for corruption and money laundering. Enhancing anti-corruption strategies in line with EU standards, improving coordination among relevant agencies, and establishing legal protections for whistleblowers.

3 European Commission, Annex to the Joint Proposal for a Council Decision on the Union position within the Association Council established by the Association Agreement between the EU, the European Atomic Energy Community and its Member States, of the one part, and the Republic of Moldova, of the other part, regarding the adoption of the EU-Republic of Moldova Association Agenda.

4 Association Agreement between the EU and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part.

5 European Commission, 2021.

6 Recommendation No 1/2017 of the EU-Republic of Moldova Association Council of 4 August 2017 on the EU-Republic of Moldova Association Agenda [2017/1489].

- (c) Asset Recovery and Financial Fraud Investigations: Investigating the large-scale banking fraud from 2012-2014 and setting up a robust national asset recovery service.
- (d) Public Administration Reform: Advancing the implementation of the 2016 Public Administration Reform Strategy, developed with OECD/SIGMA and international donors, to improve public financial management and institutional efficiency.
- (e) Media Freedom and Pluralism: Adopting a new Audiovisual Code in compliance with European and OSCE recommendations to align Moldova's legislation with the EU's Audiovisual Media Services Directive. Addressing media ownership concentration, monopolisation of the advertising market, and reforming the national broadcaster.
- (f) Human Rights and Gender Equality: Implementing the National Human Rights Action Plan with a focus on vulnerable groups, ensuring adequate budget allocation, and enforcing European Court of Human Rights judgments. Strengthening parliamentary oversight and integrating gender equality as a cross-cutting priority.
- (g) Transnistrian Conflict Resolution: Developing a sustainable resolution framework based on Moldova's sovereignty and territorial integrity, granting Transnistria a special status that ensures political, economic, and social rights for its population while fostering engagement with Transnistrian authorities.
- (h) Macroeconomic Stability: Implementing economic, tax, and financial policies in alignment with the International Monetary Fund (IMF) reform program.
- (i) Agriculture and Rural Development: Applying the General Law on Subsidising Agriculture and Rural Development to enhance policy execution, boost competitiveness in high-export-value sectors, improve rural employment and living conditions, and promote sustainable land and water resource management.
- (j) Trade Facilitation and Regulatory Alignment: Using OECD trade facilitation indicators as benchmarks, enhancing cooperation with EU regulatory bodies, aligning Moldova's customs legislation with the EU Customs Code, and improving customs administration efficiency, transparency, and integrity. Harmonising the legislation of the Republic of Moldova to facilitate its accession to the Convention on the Common Transit Procedure.
- (k) Energy Independence and Regulation: Strengthening the independence of Moldova's National Agency for Energy Regulation by depoliticising director appointments and budget-setting processes. Adopting a new Energy Law through a transparent and inclusive process and implementing electricity and natural gas sector reforms in line with EU directives.
- (l) Transport and Aviation Sector Reform: Restructuring the railway sector, accelerating the implementation of EU aviation legislation to optimise the Common Aviation Area Agreement, and ensuring fair competition in aviation. Measures included introducing non-discriminatory access clauses in the

Chisinau airport concession and restoring competition in ground handling services.

- (m) Environmental Protection and Climate Action: Advancing administrative reforms to enhance Moldova's ability to implement the environmental and climate action chapters of the Association Agreement. Key priorities included adopting legislation on air protection, chemical substance management, and industrial emissions, as well as enforcing regulations on strategic environmental assessments and waste management.
- (n) Education Reform: Improving the implementation of Moldova's new Education Code at all educational levels while reinforcing the administrative capacity of the Ministry of Education and its affiliated institutions.
- (o) Vocational Training and Labor Market Alignment: Advancing vocational education and training (VET) reforms in line with the 2013-2020 VET Development Strategy to better align with labour market demands. Establishing a legal framework for Sector Committees and promoting stakeholder participation (businesses, social partners) in lifelong learning and professional development.
- (p) Youth Sector Development: Implementing the National Strategy for Youth Sector Development to improve opportunities and engagement for young people.

The 2017-2019 Association Agenda also outlined short- and medium-term priorities for each action area. Some were obligations of result (requiring tangible outcomes), while others were obligations of diligence (focusing on ongoing efforts and processes).

An updated EU-Moldova Association Agenda for the period 2021-2027 was adopted on 22 August 2022.⁷ It comprises jointly agreed priorities on further implementation of the Association Agreement and sets a programme of reforms. The updated agenda fixes the detailed priorities under the following categories: rules and institutions guaranteeing democracy; human rights and fundamental freedoms; public administration reform, including public financial management; freedom of expression; ill-treatment and torture; civil society cooperation; rights of the child; gender based violence; equal treatment; trade union rights and core labour standards; terrorism, non-proliferation of weapons of mass destruction, and illegal arms transfers; the Transnistrian conflict; independence of the judiciary; prevention of and fight against fraud and corruption; ensuring asset recovery; anti-money laundering and Countering Terrorism Financing and combating financial crime; prevention and fight against organised crime; police/law enforcement; illicit drugs; trafficking of human beings;

⁷ European Commission, the proposal for a Council Decision on the position to be taken on behalf of the EU in the Association Council established under the Association Agreement between the EU and the European Atomic Energy Community and their Member States, of the one part, and the Republic of Moldova, of the other part, Brussels, 28.2.2022 COM (2022) 69 final 2022/0049 (NLE).

cybercrime; cybersecurity; data protection; mobility, migration, asylum, and border management; legal cooperation; climate action; environment; digital economy and society; education, training youth, and sport; public health; economic development and market opportunities; corporate law, accounting, auditing, and governance; employment, social policies, and equal opportunities; consumer rights protection; statistical systems; taxation and customs regulations; industrial and enterprise policy; agriculture and rural development; fisheries and maritime policy; energy; transport; tourism; regional development; civil protection; research and innovation; culture, audio-visual policy, and media; and public outreach and visibility.

In some cases, the 2021–2027 Agenda establishes terms for the realisation of the priorities, varying from 3–4 years to 7 years. For example, the Republic of Moldova must ratify Protocol no. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms on anti-discrimination within 3-4 years and the Optional Protocol to the Convention on the Rights of Persons with Disabilities within 7 years.⁸

The conditions set up for the Republic of Moldova in the Association Agenda do not differ, in essence, from those established for Georgia in the 2021–2027 EU-Georgia Association Agenda⁹ or for Ukraine in the EU-Ukraine Association Agenda,¹⁰ especially in matters like judicial independence, human rights protection, or anti-corruption policies. The problems in these three countries seem to be closely related due to their common Soviet past and similar mentalities.

Question No. 2.

When Did Your Member State Formally Apply to Join the EU?

On 3 March 2022, the Republic of Moldova submitted its application for EU membership to the Council amid Russia's war of aggression against Ukraine.

The application was signed by the President of the Republic, the speaker of the Parliament, and the Prime Minister. In a press conference, the President of the Republic mentioned

Today, we are signing the application for the accession of the Republic of Moldova to the European Union. It is addressed to Mr. Emmanuel Macron, President of France, the country that currently holds the Presidency of the Council of the European Union.¹¹

8 Moldova ratified the Optional Protocol through Law no. 162 of 4 November 2021.

9 Recommendation no. 1/2022 of the EU-Georgia Association Council of 16 August 2022 on the EU-Georgia Association Agenda 2021–2027.

10 EU-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement as endorsed by the EU-Ukraine Association Council on 16 March 2015.

11 The text of the application is not published in the Official Gazette. See Zdg.md, 2022.

One day later, the separatist authorities of Transnistria¹² reacted, saying

the submission of the application for membership in the European Union by the leadership of the Republic of Moldova as a geopolitical decision leading to a change in international borders and spheres of influence in the regional space and radically changing the circumstances of the final settlement of Moldovan-Transnistrian relations. [...] In the new circumstances that have arisen, including those created by the actions of the Moldovan leadership, we call on the Moldovan side to begin a dialogue with Transnistria with the aim of a final civilised settlement of relations based on the peaceful, good-neighbourly existence of two independent states by signing a comprehensive interstate treaty.

2. Institutions and Procedures of Accession

The second section is concerned with legal aspects of the procedure of accession, including institutions set up for that purpose, legislative changes at the national level, and monitoring of the process by the EU institutions.

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Until Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

The main steps Moldova completed since its application to join the EU are as follows:

- (a) Moldova applied to the Council (EU Member States) on 3 March 2022.
- (b) The European Commission submitted an Opinion on the application.

The Council of the EU asked the European Commission to provide its Opinion on the application. This request was later supported by EU Heads of State and Government during an informal meeting in Versailles on 11 March 2022.¹³ Moldova received two questionnaires: the first, focusing on political and economic criteria, was delivered on 11 April 2022, and the second, addressing the EU *acquis* chapters, was sent on 19 April 2022. The country submitted its responses on 22 April and 12 May, respectively. On 17 June 2022, the European Commission issued its Opinion on Moldova's application for EU membership, recommending that the European Council grant Moldova a Eu-

¹² Ministry of Foreign Affairs of the Republic of Moldova, 2022a.

¹³ European Council, 2022b.

ropean perspective and candidate status, conditional on the implementation of specific reforms.

- (c) EU Member States decided unanimously to grant the country candidate status.

On 23 June 2022, the European Council adopted conclusions addressing a range of topics, including Wider Europe, Ukraine, the membership applications of Ukraine, the Republic of Moldova, and Georgia, as well as matters related to the Western Balkans, economic issues, the Conference on the Future of Europe, and external relations.¹⁴

The European Council granted candidate country status to both Ukraine and the Republic of Moldova. Additionally, it requested the European Commission to provide updates on Moldova's progress in meeting the conditions outlined in the Commission's Opinion on its membership application as part of its regular enlargement reports.

The European Commission closely monitored Moldova's implementation of these steps and provided detailed assessments of the country's advancements in its reports. Its Analytical Report of 1 February 2023¹⁵ completes the Commission's Opinion on the Republic of Moldova's application for membership to the EU on 17 June 2022. This analytical report provides a structured evaluation based on the criteria established by the European Council in Copenhagen in 1993, as well as subsequent conclusions from the European Council. It draws on insights and expertise accumulated through the EU's extensive and long-standing collaboration with Moldova, alongside Moldova's responses to the comprehensive questionnaires it received on 11 and 19 April 2022.

The Association Agreement, which includes a Deep and Comprehensive Free Trade Area, encompasses a significant portion of the EU *acquis*. It also establishes a robust institutional framework for bilateral dialogue and for monitoring the progressive alignment of Moldova's legislation with the EU *acquis*. Since 2016, Moldova's progress in implementing the EU *acquis* has been documented in the EU's annual 'Association Implementation Reports'. This analytical report specifically examines Moldova's legal alignment with the *acquis* across the 33 *acquis* chapters, excluding areas thoroughly addressed in the Opinion. Following the adoption of the revised enlargement methodology of the EU's enlargement policy,¹⁶ the EU *acquis* is further structured around six thematic clusters: Fundamentals; Internal market; Competitiveness and inclusive growth; Green agenda and sustainable connectivity; Resources, agriculture, and cohesion; and External relations. The 'Fundamentals' cluster serves as a key driver in the process. The revised enlargement methodology

14 European Council, 2022a.

15 European Commission, 2023.

16 European Commission, 2020a.

seeks to revitalise the accession process by enhancing its predictability, credibility, and dynamism while ensuring stronger political oversight. This approach is grounded in objective criteria, rigorous application of both positive and negative conditionality, and reversibility.¹⁷

On 8 November 2023, the European Commission communicated another report on the Republic of Moldova,¹⁸ assessing the implementation of the nine steps specified in its 17 June 2022 Opinion. Based on the analysis outlined in this report, the Commission recommended that the Council initiate accession negotiations with Moldova. Additionally, the Commission advised that the Council adopt the negotiating framework once Moldova achieves the following: (1) sustain significant progress in appointing vetted Supreme Court Justices and members of judicial and prosecutorial self-governance bodies, as well as the nomination of a new Prosecutor General through a merit-based and transparent process; (2) allocate sufficient resources and establish appropriate structures for Moldova's Anticorruption Prosecutor's Office; (3) advance further measures on de-oligarchisation, including the implementation of relevant regulations, such as those addressing cash payments and financial flows.

- (d) After establishing the conditions had been met, Member States (unanimously) agreed to open the accession negotiations.

The European Council approved the launch of accession negotiations with Moldova.¹⁹ Negotiations commenced based on Moldova's adherence and commitment to upholding the fundamental values of the Union, as outlined in Art. 2 TEU, including respect for human dignity, freedom, democracy, equality, the rule of law, and human rights, including the rights of minority groups.²⁰ Adherence to these values is a prerequisite for accessing all the rights associated with EU membership. Moldova has demonstrated a significant level of alignment with the membership criteria, particularly the political criteria established by the Copenhagen European Council in 1993, as well as the

17 European Council, 2024, p. 8. See also: European Commission, 2020b: '[T]he revised methodology is based on the same, well-established criteria to join the EU. These were defined already in 1993 at the European Council in Copenhagen: need to have stable institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; a functioning market economy and the capacity to cope with competition and market forces in the EU; the ability to take on and implement effectively the obligations of membership. [...] There are no shortcuts to membership. It is true that the accession process today is more demanding than in the past. But this is because the process has been made more rigorous to help the countries tackle the more difficult challenges they face in their reform efforts'. See also Cenusă, 2023, pp. 5–6.

18 Commission staff working document, Republic of Moldova 2023 Report, Brussels, 8 November 2023, SWD (2023) 698 final.

19 European Council, 2023.

20 The Council referred to the Commission's Opinion on the Republic of Moldova's application for membership of the EU. See: Communication from the Commission to the European Parliament, the European Council, and the Council. Commission Opinion on the Republic of Moldova's application for membership of the EU, COM (2022) 406 final, Brussels, 17 June 2022.

objectives of political association and economic integration outlined in the EU-Moldova Association Agreement, including the Deep and Comprehensive Free Trade Area.

- (e) The Commission proposed a draft negotiating framework as a basis for the talks. Accession negotiations formally started once Member States agreed on the Negotiating Framework.

On 21 June 2024, the Council approved the Negotiating Framework for negotiations with Moldova.²¹ The inaugural intergovernmental conference, which officially initiated the accession negotiations, took place in Luxembourg on 25 June 2024.

- (f) Throughout the negotiations, which are organised into clusters and chapters, Moldova shall implement EU laws and standards.

After submitting the application to join the EU, Moldova had ratified 25 agreements with the EU.

Some agreements regard the participation of the Republic of Moldova in the Employment and Social Innovation strand of the European Social Fund Plus; the participation of the Republic of Moldova in the Digital Europe programme (2021–2027); the participation of the Republic of Moldova in the Union Civil Protection Mechanism; the participation of the Republic of Moldova in the Union programme Single Market Programme; the participation of the Republic of Moldova in ‘Customs’, the Union programme for cooperation in the field of customs; the participation of the Republic of Moldova in ‘Fiscalism’, the Union programme for cooperation in the field of taxation; the participation of the Republic of Moldova in the Union programme LIFE, the Programme for the Environment and Climate Action; or the participation of the Republic of Moldova in the Union programme Connecting Europe Facility.

Other agreements suspend Moldova’s obligation to pay a financial contribution in the context of its association with Union programmes; establish the status of the EU Partnership mission in Moldova; provide financing for the Interreg programme (Interreg VI-B) NEXT Black Sea Basin, the Interreg programme (Interreg IV-B) Danube Region programme, and the Interreg programme (Interreg VI-A) NEXT; and under EU Resilience and Governance programme.

Some other agreements provide for the association of the Republic of Moldova with the EU4Health programme, the operational activities carried out by the European Border and Coast Guard Agency in the Republic of Moldova, or the mutual recognition of the authorised economic operator programme of the Republic of Moldova and the authorised economic operator programme of the EU. An agreement concerns the carriage of freight by road.

21 European Council, 2024.

The remaining agreements concern the EU's financial assistance for the Republic of Moldova.²²

On 17 November 2022, the Parliament of the Republic of Moldova approved, through Law no. 315, the National Strategy of Development 'European Moldova 2030' adopted by the Government.²³ The strategy serves as a national long-term strategic vision document, outlining the development pathways for the country and society. It aligns the priorities, objectives, indicators, and targets of the international commitments made by the Republic of Moldova – notably the Association Agreement with the EU, the European Atomic Energy Community, and their member states – with the national context. Additionally, it incorporates commitments stemming from Moldova's status as a candidate country for the EU accession, including the 2030 Sustainable Development Agenda. The strategy outlines national priorities set by the Government, and its structure and components serve as the foundation for the national strategic planning framework, highlighting the vision, priorities, objectives, and key long-term action areas.

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both EU and National Level?

Since 2005, the Ministry of Foreign Affairs has been denominated as the Ministry of Foreign Affairs and European Integration.²⁴ One of its main domains of activity was 'the European integration process'. It had a Directorate of European Integration. A Government's Decision of 13 March 2024 changed the denomination of the Ministry in the Ministry of Foreign Affairs.²⁵

22 Addendum No. 2 to Financing Agreement between the Republic of Moldova and the European Commission on development of rural areas in the Republic of Moldova; Addendum to the Memorandum of Understanding between the Republic of Moldova and the EU on macro-financial assistance for the Republic of Moldova; Addendum to the Grant Agreement between the Republic of Moldova and the EU on macro-financial assistance for the Republic of Moldova; Addendum to the Loan Facility Agreement between the Republic of Moldova, the National Bank of Moldova, and the EU on macro-financial assistance for the Republic of Moldova; Macro-financial assistance for the Republic of Moldova MFA Grant Agreement between the Republic of Moldova and the EU; Memorandum of Understanding between the EU and the Republic of Moldova of providing macro-financial assistance to the Republic of Moldova; Loan Facility Agreement between the Republic of Moldova, the National Bank of Moldova, and the EU on macro-financial assistance for the Republic of Moldova.

23 Law no. 315 of 17 November 2022 on approval of the national strategy of development 'European Moldova 2030'.

24 Government's Decision no. 1156 of 4 November 2005 on the approval of the Rules of the Ministry of Foreign Affairs and European Integration.

25 Government's Decision no. 179 of 13 March 2024 on the restructuring of some public authorities and the amendment of some Government's decisions.

On 22 April 2022, the President of the Republic of Moldova issued a decree regarding the establishment of the National Commission for European Integration.²⁶ The Commission is composed of the President of the Republic, the Prime Minister, the President of Parliament, the Government's ministers, other high officials of the Moldovan authorities, and some representatives of professional organisations and NGOs. The declared aim of the Commission is to ensure the coordination of activities necessary to achieve the reforms and European integration priorities assumed by the Republic of Moldova through the documents and partnership agreements with the EU. This Commission approved, on 4 August 2022, an action plan for implementing the measures proposed by the European Commission in its Opinion on the application for the accession of the Republic of Moldova to the EU.²⁷

On 14 December 2022, the Government issued a Decision²⁸ regarding the approval of the Coordination Mechanism of the European integration process of the Republic of Moldova and the composition of the working groups involved in ensuring the implementation of the Coordination Mechanism. The Decision approved the composition of the Governmental Commission for European Integration of the Republic of Moldova. The tasks of the governmental Commission comprise:

- (a) approving the elaboration criteria and the final contribution of the Republic of Moldova to the Annual Expansion Package of the EU;
- (b) overseeing the development and preparation of necessary planning documents to facilitate the accession process, including the implementation of the Association Agreement between the Republic of Moldova and the EU, the European Atomic Energy Community, and their member states. This also encompasses monitoring the execution of Recommendation No. 1/2017 by the EU-Republic of Moldova Association Council regarding the EU-Republic of Moldova Association Program [2017/1489], as well as other relevant documents and agreements between the Republic of Moldova and the EU;
- (c) addressing and resolving competence conflicts that emerge among authorities within the sectoral working groups and clusters responsible for the negotiation chapters concerning Moldova's EU accession;
- (d) approving, if necessary, the position of the Republic of Moldova for high-level political meetings with the EU.

26 President's Decree no. 441 of 22 April 2022 on the establishment of the National Commission for European Integration.

27 Ministry of Foreign Affairs of the Republic of Moldova, 2022b.

28 Government's Decision no. 868 of 14 December 2022 on the approval of the Coordination Mechanism for the European Integration Process of the Republic of Moldova and the composition of the working groups involved in ensuring the implementation of the Coordination Mechanism for the European Integration Process of the Republic of Moldova and on the amendment of Government's Decision No. 679/2009 on the approval of the nominal composition of the Government Commission for European Integration of the Republic of Moldova.

The above-mentioned Decision was repealed by Decision no. 180 of 13 March 2024²⁹ regarding the coordination mechanism of the process of accession of the Republic of Moldova to the EU and the way of organisation and operation of the negotiation team within this process. The national coordination mechanism for the Republic of Moldova's accession process to the EU defines the framework for coordinating the European integration process, including the responsible authorities, coordination levels, and the organisation and functioning of the Working Groups for accession negotiations, as well as the negotiation team. This mechanism stipulates that strategic coordination at the highest political level for Moldova's EU accession is carried out by the National Commission for European Integration, established by the President of the Republic.

Within the State Chancellery of the Government, two general directorates were established:³⁰

- (a) the Office for European Integration, which ensures, in collaboration with the Ministry of Foreign Affairs and European Integration, the organisational and informational support of the Deputy Prime Minister, and the Minister of Foreign Affairs and European Integration, the coordination of the activity of public administration authorities and other institutions to achieve the priority strategic objective of the European integration of the country; and
- (b) the Centre for Harmonisation of Legislation, which carries out the compatibility expertise of draft normative acts aimed at harmonisation with EU legislation and issues declarations of compatibility, as well as ensures the legal compliance of draft normative acts to be approved by the Government, issued by the Prime Minister, as well as draft normative acts of the State Chancellery.

Question No. 7

*What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU?
To Your Knowledge, Were These Criteria Different From Those Applied to Countries in
Comparable Position?*

In the Negotiating Framework approved on 21 June 2024, for negotiations with Moldova, the Council affirmed that the accession negotiations will be guided by Art. 29 of the Treaty on EU³¹ and will consider all relevant European Council conclusions, including the Joint Statement of the European Council Members from March 2020,

29 Government's Decision no. 180 of 13 March 2024 on the coordination mechanism of the accession process of the Republic of Moldova to the EU and the organisation and functioning of the negotiation team within this process.

30 Government's Decision no. 888 of 22 November 2023 on the amendment and repeal of some Government's decisions (structural reorganisation of some public authorities).

31 Art. 29 of the Treaty on EU: The Council shall adopt decisions which shall define the approach of the Union to a particular matter of a geographical or thematic nature. Member States shall ensure that their national policies conform to Union positions.

which endorsed the revised enlargement methodology, the renewed consensus on enlargement established by the December 2006 European Council, and the conclusions of the 1993 European Council in Copenhagen. The Negotiating Framework draws on the lessons learned from previous enlargements and current accession negotiations while also considering the evolving EU acquis. It appropriately reflects Moldova's unique merits and specific characteristics. The negotiations are designed to ensure that Moldova fully adopts, implements, and enforces the EU acquis. The framework incorporates the revised enlargement methodology, which places greater emphasis on fundamental reforms throughout the accession process. The negotiation chapters are structured into thematic clusters. In the event of I) significant or prolonged stagnation or regression in the implementation of reforms within the fundamentals cluster,³² or II) if progress in the fundamentals cluster lags significantly behind developments in other areas, leading to an overall imbalance in the enlargement negotiations, and after all other measures have been exhausted, the Commission may, either on its own initiative or at the justified request of a Member State, propose suspending its recommendations to open and/or close other negotiating clusters and chapters. The preparatory work related to these clusters and chapters may also be adjusted as necessary until the stagnation, backsliding, or imbalance is resolved. Consequently, Moldova must fully commit to and continue implementing reforms in critical areas, including the rule of law, fundamental rights, strengthening democratic institutions, public administration reform, and meeting economic criteria. Particular focus should be placed on judicial reform, combating corruption, and ensuring the protection and non-discriminatory treatment of minority groups. To guarantee the irreversible nature of progress in these areas and ensure their full and effective implementation, the Commission will conduct close monitoring and provide regular reports to the Council. Additionally, effective law enforcement cooperation with Member States' authorities is essential to safeguard internal security.

Regarding the criteria applied to other countries in a comparable position, in the Negotiating Framework³³ approved on 21 June 2024 for the negotiations with Ukraine, the Council stated that Ukraine must fully adopt and continue implementing reforms in areas such as the rule of law and fundamental rights, strengthening democratic institutions and public administration, as well as meeting economic criteria. Particular attention is to be given to judicial reform, the fight against corruption, as well as the protection and non-discriminatory treatment of persons belonging to national minorities.

Both countries will be required to apply the acquis as it stands at the time of accession. The acquis is constantly evolving and includes, in particular, the content, principles, values, and political objectives of the Treaties that form the foundation of the Union; legislation adopted by Union institutions under the Treaties, as well

32 The cluster on fundamentals includes the rule of law, economic criteria, and public administration reform.

33 European Council, 2024b.

as the case law of the Court of Justice of the EU; and any other acts, whether legally binding or not, adopted within the Union framework, such as inter-institutional agreements, resolutions, statements, recommendations, and guidelines. It also covers international agreements concluded by the Union, jointly with its Member States, and those made by Member States among themselves concerning Union activities.

Both countries will be required to terminate all existing bilateral agreements between them and the Union, as well as any other international agreements they have concluded that are incompatible with the obligations of EU membership.

Question No. 8

What Procedures on EU Level Were There in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

According to the Negotiating Framework for Moldova, the European Commission will conduct a formal screening process to familiarise Moldovan authorities with developments in the EU acquis, assess Moldova's readiness to open negotiations in specific areas, and identify key issues likely to arise during negotiations. This process will also highlight areas for accelerated integration, to be agreed upon by the EU and Moldova for follow-up within the framework of the Association Agreement, including the Deep and Comprehensive Free Trade Area (DCFTA), where applicable. During the screening, the Commission will identify anti-corruption reform priorities and evaluate administrative capacity.

In line with the revised EU enlargement methodology, the acquis is organised into six thematic clusters: Fundamentals; Internal Market; Competitiveness and Inclusive Growth; Green Agenda and Sustainable Connectivity; Resources, Agriculture, and Cohesion; and External Relations. The screening will be conducted cluster by cluster, resulting in proposed opening benchmarks that outline key reforms for each cluster, where applicable. It will also identify potential areas for accelerated integration, along with the conditions Moldova must meet to ensure high compliance with the acquis. Based on this, the Council, acting unanimously on a Commission proposal, will establish and assess opening benchmarks for each cluster and agree on areas for accelerated integration, following applicable rules and procedures.

As part of the merit-based accession process, the implementation of steps outlined in the Commission's recommendations of 8 November 2023 will be closely monitored. Given the critical importance of reforms in the fundamentals cluster, negotiations on this cluster will be opened first and closed last, following a specific procedure. Other clusters, however, may be opened and closed simultaneously. Based on the screening report, the Commission will propose that Moldova prepare a roadmap for the rule of law chapters (Judiciary and Fundamental Rights, and Justice, Freedom, and Security) and a roadmap for public administration reform. These roadmaps, developed through a transparent consultation process involving relevant stakeholders, including civil society, will serve as opening benchmarks.

The Council, acting unanimously on a Commission proposal, will establish and assess these benchmarks.

Moldova will be invited to develop and adopt a roadmap for reforming democratic institutions and public administration, with guidance provided by the Commission in the screening reports. The implementation of these roadmaps will be closely monitored and regularly reviewed at Intergovernmental Conferences (IGCs). Once the Council, following a Commission assessment, determines that the opening benchmarks for the fundamentals cluster have been met, it will decide to open the cluster and set interim benchmarks for the rule of law chapters. These benchmarks will focus on legislative adoption, strengthening administration, and establishing a track record, aligned with milestones in the roadmap. No chapter will be provisionally closed until these interim benchmarks are achieved. Once the Council is confident that the closing benchmarks for the fundamentals cluster have been met, it will decide on the provisional closure of the cluster.

Progress in meeting the economic criteria will also be monitored and regularly discussed at IGCs based on the Commission's periodic reports and assessments of Moldova's Economic and Reform Programmes. Targeted policy recommendations to achieve economic benchmarks will be introduced within the framework of the annual Economic and Financial Dialogue. The Commission will report to the Council at least twice a year on progress in the fundamentals cluster, particularly regarding the Judiciary and Fundamental Rights, as well as the Justice, Freedom, and Security chapters.

Once the fundamentals cluster is opened and the Council is satisfied that the opening benchmarks for other clusters have been met, it will decide to open those clusters, with closing benchmarks established for each chapter individually. Clusters will be opened as a whole, with all chapters within a cluster launched simultaneously. If significant reforms are already in place prior to opening, the timeframe between opening a cluster and closing individual chapters should be limited, preferably to one year. This will depend on the progress of reforms and whether interim benchmarks for the rule of law chapters are met.

Closing benchmarks for each chapter will be established by the Council, acting unanimously on a Commission proposal based on screening results, regular Commission reports, Council conclusions, and third-party indicators. These benchmarks will focus on legislative alignment, implementation track records, and commitments under the Association Agreement, including the DCFTA. Once the Council is satisfied that the closing benchmarks for a chapter have been met, it will decide on the provisional closure of the chapter. Each cluster, except for the fundamentals cluster, will be automatically provisionally closed once all its chapters are closed.

Moldova's progress in fighting corruption, including investigations and convictions, will be closely monitored, with anti-corruption policies mainstreamed across all relevant chapters. A chapter will not be provisionally closed until sufficient anti-corruption measures are implemented. If issues arise during negotiations, the Council, acting unanimously on a Commission proposal, may update benchmarks or

roadmaps as needed. Chapters may also be revisited or re-opened if new acquis elements are introduced or if negotiations span a considerable period.

Moldova will be required to report on its progress in meeting benchmarks, provide reliable statistical data, and ensure the correct transposition and implementation of the acquis. The Commission will monitor progress using all available tools, including on-site reviews, the Association Agreement dialogue, and third-party indicators. The Commission will regularly inform the Council of Moldova's progress, which will guide decisions on further negotiation steps.

The IGC will provide political oversight and a forum for dialogue on the reform process, with at least one ministerial-level meeting per year, supplemented by additional meetings as needed. Negotiations will remain centralised at ministerial and deputy levels, with working parties established only if objectively necessary, operating under clear terms of reference and timelines.

At the domestic level, the Parliament, on 27 October 2023, adopted Decision no. 829 regarding the approval of the National Action Plan for the years 2024–2027 for the accession of the Republic of Moldova to the EU.³⁴ According to the Decision, the ministries and other responsible public authorities will ensure, according to their competences, the implementation of the measures included in the Plan. The Ministry of Foreign Affairs and European Integration will ensure the general coordination of the implementation of the Plan. The ministries and other public authorities have the obligation to present the reports on the implementation of the measures included in the Plan by the dates of January 15, March 15, May 15, and August 15. The State Chancellery, through the Centre for the Harmonisation of Legislation, will present to the Ministry of Foreign Affairs and European Integration, by January 25 and August 25, information on the implementation of the transposition measures from the perspective of their level of alignment with the EU acquis. The Ministry of Foreign Affairs and European Integration shall present to the Government, by 28 February, the annual evaluation report on the implementation of the National Plan for accession for the previous year, which will be examined by the Government.

The Plan is updated annually by integrating the recommendations and reference criteria established in the annual progress reports published by the European Commission regarding the EU Enlargement Package, as well as depending on other developments in the official relations of the Republic of Moldova with the EU. On 30 October 2024, the European Commission issued a report on the Republic of Moldova.³⁵

34 Government's Decision no. 829 of 27 October 2023 on the approval of the National Action Plan for the accession of the Republic of Moldova to the EU for the years 2024–2027.

35 Commission staff working document, Republic of Moldova 2024 Report, Brussels, 30 October 2024, SWD (2024) 698 final.

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission's or Council's Working Groups, Participation of Your Representatives at the Commission's or Council's Meetings etc.)?

The progress of the Association Agreement is consistently monitored through Association Implementation Reports³⁶ and evaluated through various bilateral dialogue mechanisms established under the Agreement. These include: (a) The EU-Moldova Association Council (most recent meeting held on 7 February 2023, and prior to that on 28 October 2021); (b) The EU-Moldova Association Committee (latest meeting on 17 June 2022); (c) The EU-Moldova Association Committee in Trade Configuration (last convened on 29 November 2022); (d) Several Sub-committees, such as the Sub-committee on Justice, Freedom, and Security, alongside an annual Human Rights Dialogue.

Additionally, on 18 March 2022, the EU-Moldova High-Level Political and Security Dialogue was initiated to enhance collaboration within the framework of the Common Security and Defense Policy.³⁷

Question No. 10

Has Your Country Experienced any Particular Difficulty in Meeting Some of the Accession Criteria?

On 7 February 2023, the EU and the Republic of Moldova convened the seventh meeting of the Association Council under the EU-Moldova Association Agreement. During the meeting, the EU commended Moldova for adopting a comprehensive justice sector reform strategy and for taking significant steps toward its implementation. This included the initiation of a vetting process for candidates seeking top positions within the judiciary and prosecution bodies. A stage of justice reform, which started in 2021, involved adopting certain laws regarding the evaluation of the ethical and financial integrity of judges and prosecutors. The entire process is called vetting³⁸ and represents a commitment assumed by Moldova at the national and international levels. Moldova reaffirmed its dedication to progressing with the implementation of this strategy and its associated action plan. The EU urged Moldova to ensure that the reform of the Supreme Court of Justice, as well as the ongoing vetting of high-ranking officials in the judiciary and prosecution, align with

³⁶ European Commission, 2020a.

³⁷ The decision to launch this dialogue was taken on 28 October 2021 at the last Association Council between the EU and the Republic of Moldova in Brussels. See: Delegation of the EU to the Republic of Moldova, 2022.

³⁸ The notion of 'vetting' is used by the Venice Commission, for example, since 2016. See European Commission for Democracy through Law (Venice Commission), Albania, draft Amicus Curiae brief for the Constitutional Court on the Law on the transitional re-evaluation of judges and prosecutors (the Vetting Law), CDL (2016)040, Strasbourg, 25 November 2016.

the recommendations of the Venice Commission. The EU also emphasised that the quality and sustainability of reforms should take precedence over the speed of their implementation. Moldova pledged to continue its reform efforts in accordance with European standards and in close consultation with international partners, including the EU and the Venice Commission of the Council of Europe.

Till present, top positions in the judiciary and prosecution office have not been vetted.

At the meeting, the EU reaffirmed its steadfast support for Moldova's sovereignty and territorial integrity. It emphasised its unwavering commitment to promoting a comprehensive, peaceful, and lasting resolution to the Transnistrian conflict.³⁹ This resolution would be grounded in the sovereignty and territorial integrity of Moldova within its internationally recognised borders while granting a special status to the Transnistrian region. The EU also urged ongoing dialogue between the parties to foster confidence-building measures and prevent any potential destabilisation.

It seems that the Transnistrian conflict will not be settled only through negotiations between the authorities in Chişinău and the Transnistrian leaders since the regime there has a high level of dependency on Russian support. There is a strong indication that the Russian Federation continues to exercise effective control and a decisive influence over the Transnistrian 'authorities'.

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. Constitutional Court)?

On 9 April 2024, 46 deputies submitted to the review of the Constitutional Court a draft decision of the Parliament regarding the holding of a republican constitutional referendum based on the draft law for the amendment of the Constitution. The draft decision mainly established the question that would be addressed to the participants in the referendum: 'Are you in favour of the accession of the Republic of Moldova to the EU?' However, at this stage, the Court could only approve the initiative to revise the Constitution, not the question intended to be asked in the referendum.

The draft law to amend the Constitution supplemented the Preamble of the Constitution with the following words:

Reconfirming the European identity of the people of the Republic of Moldova and the irreversibility of the European course of the Republic of Moldova, declaring integration into the European Union as a strategic objective of the Republic of Moldova.

39 Although Moldova has no effective control over Transdnistria, the region is recognised under public international law as part of Moldova's territory. This breakaway region, called by its 'authorities' the 'Moldavian Republic of Transdnistria', can only continue to exist and withstand Moldovan and international efforts to resolve the conflict and establish democracy and the rule of law in the region due to Russian military, economic, and political support.

It also introduced a new article (Art. 140¹) with the following content:

Accession to the constitutive treaties and to the revision acts of the constitutive treaties of the European Union (1) The accession of the Republic of Moldova to the constitutive treaties of the European Union, as well as to the revision acts of the constitutive treaties of the European Union, shall be established by the Parliament through an organic law. (2) As a result of the accession, the provisions of the constitutive treaties of the European Union, as well as the other binding legal acts of the European Union, have priority over the contrary provisions of the internal laws, in compliance with the provisions of the act of accession.

In its Opinion no. 1 of 16 April 2024,⁴⁰ the Court held that the initiative to revise the Constitution of the Republic of Moldova through a referendum corresponds to the revision time limits established by Arts. 63, para. (3)⁴¹ and 142, para. (3)⁴² of the Constitution. The Court also held that the initiative to revise the Constitution of the Republic of Moldova by referendum did not exceed the material limits of revision of the Constitution established by Art. 142, paras. (1) and (2)⁴³ of the Constitution and that it may be presented to Parliament for consideration.

Question No. 12

Was There a Referendum in any Stage of the Accession Procedure?

After the Court delivered its Opinion, the Parliament adopted Decision no. 121 of 16 May 2024.⁴⁴ In this Decision, the Parliament declared that, on 20 October 2024, a republican constitutional referendum would be held. The draft Law for the amendment of the Constitution of the Republic of Moldova was submitted to the referendum, preceded by the question: ‘Do you support the amendment of the Constitution in view of the accession of the Republic of Moldova to the EU?’

At the republican constitutional referendum of 20 October 2024, 3,020,814 voters were included in the electoral lists, of which 2,711,615 were registered in the basic electoral lists and 309,199 were registered in the additional electoral lists. Of

40 See Constitutional Court’s Opinion no. 1 of 16 April 2023.

41 Art. 63, para. (3) of the Constitution: ‘The mandate of the Parliament shall be prolonged until the legal convocation of the newly elected composition. During this period no amendment may be brought to the Constitution and no organic law may be adopted, amended or repelled’.

42 Art. 142, para. (3) of the Constitution: ‘(3) The Constitution may not be revised under a state of national emergency, martial law or war’.

43 Art. 142, paras. (1) and (2) of the Constitution: ‘(1) The provisions regarding the sovereignty, independence, and unity of the state, as well as those regarding the permanent neutrality of the State, may be revised only by referendum with the vote of the majority of the registered citizens with voting rights. (2) No revision shall be performed if it implies the infringement of fundamental rights and freedoms of citizens or their guarantees’.

44 Parliament’s Decision no. 121 of 16 May 2024 regarding the holding of the constitutional republican referendum.

them, 1,532,264 voters (50.72%) received ballots, i.e. more than 1/3 of the number of voters registered in the electoral lists. Regarding the question ‘Do you support amending the Constitution in view of the accession of the Republic of Moldova to the EU?’, followed by the text of the Law on amending the Constitution by republican constitutional referendum, a number of 1,488,874 votes were validly cast, of which 749,719, i.e. the majority, were for the ‘yes’ option, and 739,155 for the ‘no’ option.

The Constitutional Court held,⁴⁵ when asked to confirm the results of the referendum, that the draft law on amending the Constitution of the Republic of Moldova was adopted by referendum on 20 October 2024 and that the law will enter into force when the Court’s judgment of confirming the results will be published in the Official Gazette.

3. Legal And Economic Support for Candidate Countries

Question No. 16

Were There Any Other Noteworthy Aspects of EU Support Provided to Your Country Before the Accession?

At the request of the Republic of Moldova, the European Commission proposed a Macro-Financial Assistance (MFA) programme on 4 January 2022, amounting to up to €150 million. This included €30 million in grants and €120 million in medium-term loans under favourable terms. The assistance, to be disbursed in three instalments, complements Moldova’s IMF programme approved in December 2021. The European Parliament and Council adopted the decision on 6 April 2022, and it came into force on 18 July 2022.

In response to the severe economic impact of Russia’s war against Ukraine on Moldova and the ongoing energy crisis since October 2021, the Commission proposed an additional €145 million in January 2023. This increase included €100 million in concessional loans and €45 million in grants. The decision was approved by the European Parliament and Council on 14 June 2023,⁴⁶ raising the total MFA support to €295 million, with €75 million in grants. The additional funds will be disbursed in two instalments before the final tranche of the original MFA amount.

Between 2022 and 2024, the EU has allocated €926 million in humanitarian aid to support civilians affected by the war in Ukraine, including €66 million specifically for Moldova.

⁴⁵ See JCC no. 24 of 31 October 2024.

⁴⁶ Decision (EU) 2023/1165 of the European Parliament and the Council of 14 June 2023 amending Decision (EU) 2022/563 regarding the amount of macro-financial assistance to the Republic of Moldova.

On 28 April 2023, the Council established a new framework for targeted restrictive measures,⁴⁷ enabling the EU to impose sanctions on individuals or entities undermining Moldova's sovereignty, independence, democracy, rule of law, stability, or security. This framework, requested by Moldova, allows sanctions against those obstructing democratic processes, attempting to overthrow the constitutional order, engaging in serious financial misconduct, or facilitating the unauthorised export of capital. The sanctions regime currently applies to 13 individuals and one entity and has been extended until 29 April 2025. Measures include asset freezes, prohibitions on funding, and travel bans to the EU for sanctioned individuals.

47 Council Regulation (EU) 2023/888 of 28 April 2023 concerning restrictive measures in view of actions destabilising the Republic of Moldova, 22 February 2024 version.

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CHAPTER 5

POLAND



GREGORZ PASTUSZKO

Abstract

This report aims to provide a synthetic description of the mechanism and course of accession negotiations effected by Poland with the European Union in order to become a member of this organisation. The author discusses the genesis and development of the negotiation process, the conditions necessary for both parties to meet, the legal and institutional framework, and also – which is a particularly important element of this study – the difficulties and problems related to Poland's adaptation to the requirements set by the 'Old Union' countries. The report is divided into two parts: (1) the requirements laid upon the candidate countries before the accession process started and before they joined the EU; (2) the legal aspects of the procedure of accession, and is prepared in the form of questions and answers. Its main research assumption aims to show the specificity of Polish accession negotiations.

Keywords: EU accession, candidate countries, conditions for EU accession, compliance of Polish law with EU law, harmonisation of national law

1. Initial Requirements From Candidate Countries

The first Sec. deals with the requirements laid upon the candidate countries before the accession process started and before they joined the EU. The text should cover the following questions, but may be more extensive when necessary.

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Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join The EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

The accession process aimed at introducing Poland to the group of countries constituting the European Union was initiated in the final phase of native communism. This was concretely achieved by establishing diplomatic relations with the European Economic Community (EEC) in September 1988.¹ This step was a clear announcement of the reorientation of national policy towards a pro-Western one, and created the basis for taking further actions to bring Poland closer to Europe. In the face of this challenge, the priority of the Polish authorities was to launch reforms that were to lead to breaking with the old economic and political model and replacing it with a model typical of liberal democratic countries. For this reason, taking into account the pro-Community aspirations of the Polish people, a deep systemic transformation was initiated in 1989 aimed at adopting Western models. The beginning of this process coincided with the fall of communist rule and the commencement of discussions at the so-called Round Table.

At that time, it was clear that Poland needed to meet several conditions to join the community structures. It was widely understood that achieving this goal would take time, and the application for membership itself would have to be preceded by a series of efforts aimed at modernising the country. Ultimately, the structural and economic differences remaining between Poland and the Community countries were too great, and the adjustment processes too complicated, for the scale of the needs of the post-communist state to be met in the short term.

In addition, it is worth pointing out that the same problems concerned other countries in the region, such as Czechoslovakia (later transformed into the Czech Republic and Slovakia) and Hungary. For this reason, already in 1991, these countries concluded an informal agreement called the Visegrad Group. Its creators intended it to be an additional instrument stimulating work aimed at preparing accession talks. This intention has been fully confirmed by history, as the Visegrad Group undoubtedly became an important forum for shaping pro-accession policy in the early 1990s.

The conditions that Poland was faced with even before the official presentation of its candidacy concerned various issues, with economic and political-systemic issues coming to the fore. Their fulfilment affected the Polish authorities' ability to submit an application for membership.

The conditions included in the Europe Agreement, the document concluded on December 16, 1991, which established an association between the Republic of Poland and the European Communities and their Member States, were undoubtedly of significant importance. The agreement's main goal was to legally regulate the principles

1 Chruściel and Kloc, 2013, p. 91.

of economic cooperation of its signatories and created the basis for political dialogue to be conducted by Poland and the European Community. It was formally ratified in February 1994, although its provisions regarding the liberalisation of the flow of goods, and subsequently that of services, people and capital, became effective in March 1992.²

Basically, the creators of the agreement in question decided to embark on the path of liberalisation and the creation of a common market, while adopting specific restrictions in particular areas. This involved concessions on the Polish side (and on the Community side as well) and thus the need to adapt its legislation regarding issues covered by the consensus. As Arkadiusz Domagała writes,

under the Association Agreement, Poland undertook to take the necessary steps to ensure compliance of its legislation with Community law. Both sides recognised that this is an important precondition of Poland's economic integration with the Community. Provisions relating to competition rules, company law, customs law, and the protection of commercial, industrial and intellectual property were particularly important. The agreement also provided for the opening of public purchasing markets.³

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

Poland submitted an application for accession to the European Union through the Minister of Foreign Affairs of the Republic of Poland in Athens on April 8, 1994. Accession negotiations formally began on March 31, 1998.

Question No. 3

*What Conditions Did Your Country Need to Satisfy Before Joining The EU?
To Your Knowledge, Were These Conditions Different From Those Applied to Counties
in a Comparable Position?*

The key conditions that Poland had to meet in order to join the European Union were defined at the summit in Copenhagen, held on June 21–22, 1993, i.e. before submitting the application for membership. The Copenhagen criteria – as this is the title under which these conditions came to history – were intended to set out the general framework for bilateral dialogue between the Member States (including Poland), and consequently to establish modernisation priorities in the policies pursued by countries aspiring to membership.

Due to their general nature, they did not provide a clear starting point for the national authorities, but only an incentive to continue efforts to develop a free market and democracy. Taking into account the objective criterion, they could be divided

² Chruściel and Kloc, 2013, p. 93.

³ Domagała, 2011, p. 59; see also: Duda, 2004, pp. 28–31.

into political criteria and economic criteria. The former included: the existence of institutions guaranteeing stable democracy, the rule of law, respect for human rights, and respect for minority rights. The second is the existence of a market economy ready to face competition and the free market, the ability to adopt the *acquis communautaire* and the ability to face political, economic and monetary union.

It should be emphasised that the Copenhagen criteria, when created, applied not only to Poland, but also to countries with similar political and economic experiences of the so-called Visegrad Group, i.e. the Czech Republic, Slovakia and Hungary.⁴ Poland, therefore, faced the same challenges and had to meet the same requirements as the ones imposed on the indicated countries. In its case, however, this was particularly difficult as, according to authoritative data, the country's economy was in the worst situation. It stood out in a particularly negative way compared to the Czech and Hungarian economies.⁵

Question No. 4

Were There any Specific Features of Your Member State's Accession to the EU, Compared to Other Countries in a Comparable Position?

2. Institutions and Procedures of Accession

The second Sec. focuses on the legal aspects of the procedure of accession, including institutions set up for that purpose, legislative changes at national level and monitoring of the process by the EU institutions.

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Till the Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Where There Any National Rules Specifically Governing the Procedure of Accession?

The accession negotiation process, launched as a result of the application submitted by the Polish authorities on April 8, 1994, took place in subsequent stages and was based on legal acts and other documents in force in the European Union and Poland.⁶

4 Wallas, 2023, p. 147.

5 See Kowalski, 2009, pp. 253–254.

6 I refer to the documents indicated in: *Integracja Polski z Unią Europejską. Dokumenty i Kalendarium 1988–2002*, p. 9.

When it comes to the Union, the key role was obviously played by the existing treaties, i.e. the Maastricht Treaty (providing the institutional basis for the inclusion of countries from Central and Eastern Europe into the European Union)⁷ and the Treaty of Amsterdam (setting quite precisely the legal and time frames for the admission of new members).⁸ In addition, documents adopted on an ongoing basis were also important, as they determined the legal and political course of the ongoing talks. The most important ones include: (1) the strategy for preparing the countries of Central and Eastern Europe for EU membership (the so-called pre-accession strategy) adopted at the meeting in Essen by the European Council, (2) the White Paper of the European Commission entitled 'preparation of the associated countries of Central and Eastern Europe for integration with the Single Internal Market of the European Union from 1995', (3) The Response Questionnaire, presented by the European Commission, among others. Poland on April 26, 1996, to which Poland responded with a document of July 26, 1996, (4) Opinions (Avis) presented by the European Commission to the European Parliament on applications for membership in the European Union submitted by the associated countries of Central and Eastern Europe and Cyprus, (5) Agenda 2000 – package submitted to the European Parliament by the European Commission on July 16, 1997 reforms, which included, among others, the issue of negotiations with 10 countries of Central and Eastern Europe, including Poland, on the accession to the European Union, (6) Council Regulation No. 622/98 of 16 March 1998 regarding assistance granted to candidate countries under the pre-accession strategy, (7) decision concerning the Poland Council of 30 March 1998 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership for the Republic of Poland.

In turn, when it comes to Poland, the legal framework for the negotiations was determined primarily by legal acts such as the Constitution of 1997, the Act of August 8, 1996 on the Council of Ministers and the regulations of the Sejm and Senate. At the same time, these issues were regulated in more detail by the Regulation of the Council of Ministers of March 24, 1998 on the establishment of the Government Plenipotentiary for Negotiations for the Membership of the Republic of Poland in the European Union (Journal of Laws of 1998, No. 39, item 225) and Order No. 19 of the President of the Council Ministers of March 27, 1998 (establishing the Negotiating Team for the Negotiations for the Membership of the Republic of Poland in the European Union), later amended by Order No. 129 of the Prime Minister of October 31, 2001.

During the accession negotiations between the European Union and Poland, a number of international agreements subordinated to future accession were concluded. These were partly agreements enriching the provisions of the above-mentioned Europe Agreement: (1) Additional Protocol to the Europe Agreement initiated on December 23, 1994 on the opening – towards Poland – of Community programs

⁷ Wensierski, 2003, p. 227.

⁸ Wensierski, 2003, p. 228.

and (2) Additional Protocol to the Europe Agreement establishing a trade agreement on certain fish and fishery products. Partially, however, also other international agreements regulating various thematic areas. These were: (1) Agreement on the liberalisation of trade in agricultural goods (in accordance with the so-called double zero option) of September 26, 2000, (2) Agreement of January 22, 2001, under which Poland joined the Academy of European Law in Trier, (3) Agreement of October 19, 2002 on the liberalisation of trade in processed agricultural products, (4) Joint Declaration on Poland's accession to the European Union signed by the signatories of the Pact for Democracy of November 20, 2002.

Of course, the negotiation efforts culminated in the conclusion of the Accession Treaty, also known as the Treaty of Athens, signed on April 16, 2003. This act became the legal basis for the accession of 10 countries of Central and Southern Europe, including Poland.

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both the EU and National Level?

On the Polish side, the bodies that carried the political burden of conducting accession negotiations were the Council of Ministers and its President. Their obligations in this respect resulted from the adopted constitutional regulations and were related to the implementation of the government's systemic mission in the field of managing state policy.

The Sejm and Senate, which constitute the Polish Parliament, also took part in the talks and were kept informed about the negotiation progress. This information was presented to both houses by the Chief Negotiator, by participating in parliamentary debates, but also by sending appropriate letters to the speakers of the chambers and the chairmen of the relevant committees (in the Sejm these were the Committee on European Integration and the Committee on Foreign Affairs, in the Senate the Committee on Foreign Affairs and European Integration).⁹ The knowledge obtained in this way allowed the Sejm and Senate to indirectly influence the course of negotiations and at the same time made it possible to enforce political responsibility towards the government and its members for actions taken in this field¹⁰.

Additionally, several other institutions were created for the purposes of talks with the Community, including the accession negotiations formally conducted from 1998 on. These include:

- (1) Government Plenipotentiary for European Integration and Foreign Assistance, appointed by the Council of Ministers by Resolution No. 11 of January 26, 1991 as a consequence of signing the Europe Agreement with the Euro-

⁹ Trzeciak, 2010, pp. 95–96.

¹⁰ Domagała, 2011, p. 148.

pean Union in December 1990. In terms of legal status, the Plenipotentiary remained embedded in the structure of the Office of the Council of Ministers. His tasks included coordinating Poland's integration with the EU and obtaining and using foreign aid. The implementation of these tasks was handled by an Office created especially for this purpose.

- (2) Committee for European Integration, established by the Act of 8 August 1996 on the Council of Ministers (Journal of Laws 1996, No. 106, item 492). This body, gaining the status of the supreme government administration body, replaced the Government Plenipotentiary for European Integration and Foreign Aid and took over its functions. The committee was chaired by the Prime Minister himself or one of the ministers. The permanent members of the Committee were the ministers of foreign affairs, internal affairs, economy, labour, public finances, state treasury, environment, agriculture, infrastructure, health and justice. Additionally, the Committee included a maximum number of 3 people nominated by the Prime Minister, whose experience and functions could be important for the implementation of the committee's tasks. The tasks of the Committee included: (a) coordinating Poland's adaptation and integration processes with the European Union and initiating, organising and coordinating activities shaping these processes, especially in the economic and social sphere, (b) initiating and coordinating adjustment works in the field of legal institutions and giving opinions on draft legal acts as to their compliance with European Union law, (c) cooperation with the European Commission in the implementation of an individual integration requirements programme, (d) coordinating projects related to obtaining and using funds from foreign aid, (e) assessing the course of adjustment processes, (f) taking actions aimed at preparing information, conceptual and human resources for integration processes, (g) cooperation with local government organisations aimed at the participation of these organisations in various institutional structures of the European Union, (h) performance of tasks in the field of state defence and security, in accordance with the competences specified in separate regulations, (i) performance of other tasks entrusted by the President of the Council Ministers or resulting from separate regulations.
- (3) Government Plenipotentiary for Negotiations for the Membership of the Republic of Poland in the European Union, appointed by regulation of the Council of Ministers of March 24, 1998 on the establishment of the Government Plenipotentiary for Negotiations for the Membership of the Republic of Poland in the European Union, entrusted in particular with: (a) preparing a work schedule for negotiations, (b) initiating and conducting work related to the preparation of draft legal acts and organisational projects related to negotiations, (c) participating in the process of preparing draft negotiation instructions provided for in separate regulations, (d) coordinating the prepa-

ration of the treaty on the membership of the Republic of Poland in the European Union.¹¹

- (4) Negotiating Team for the Membership of the Republic of Poland in the European Union, established pursuant to Order No. 19 of the Prime Minister of March 27, 1998, as amended by Order No. 129 of the Prime Minister of October 31, 2001. This team comprised a total of 18 members, including negotiators and the Government Plenipotentiary for Negotiations for Poland's Membership in the European Union, who served the chairman and the team included the secretaries of state from the Ministry of Foreign Affairs and the Office of the Committee for European Integration as deputies, along with representatives from key ministries holding the positions of secretaries or undersecretaries of state. These members were specifically appointed by the President of the Council Ministers.
- (5) Interministerial Team for the Preparation of Accession Negotiations (originally called the Interministerial Team for the Preparation of Documentation for the Negotiations for Poland's Membership in the European Union), established in 1997 to assist the Negotiation Team and responsible for the preparation of various analyses and documents. This team consisted of 38 thematic sub-teams composed of experts from individual ministries in the position of undersecretaries and secretaries of state, as well as presidents of relevant offices.

On the EU side, the institution involved in the negotiations was the Task Force for Accession Negotiations, created especially for this purpose in 1997. This team, functioning as an organizational unit of the European Commission, was transformed in 1999 into the Directorate-General for Enlargement (DG ENLARG). The scope of the body's tasks included, among others: (a) managing the negotiation process with EU candidate countries, (b) helping candidate and potential candidate countries meet the 'Copenhagen criteria' – defined in the Treaty and the European Council – and monitoring their progress, (c) managing the EU's bilateral relations with candidate and potential candidate countries, (d) coordinating the review of the law, (e) seeking solutions to problems arising during negotiations with candidate countries, (f) coordinating work on draft common EU positions.

At the same time, the Commissioner for EU Enlargement – a member of the European Commission – acted as a negotiator, whose task was to coordinate the negotiations on behalf of the Community.

11 Regulation of the Council of Ministers of March 24, 1998 on the appointment of the Government Plenipotentiary for Negotiations for the Membership of the Republic of Poland in the European Union (Journal of Laws 1998, No. 39, item 225).

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in a Comparable Position?

Poland was obliged to adopt the entire *acquis communautaire* before joining the European Union. The harmonisation of national law with EU law was to be based on the already mentioned Copenhagen criteria, which – let us recall – included the existence of: institutions guaranteeing stable democracy, the rule of law, respect for human rights, respect for minority rights, a market economy ready to face competition and a free market, the ability to adopt the *acquis communautaire* and the ability to cope with political, economic and monetary union. In this respect, Poland's situation did not differ from that of other candidate countries.

Question No. 8

What Procedures on the EU Level Were in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

The model for monitoring the fulfilment of the accession criteria adopted at the European Union level assumed primarily the active participation of the European Commission in this area. The Commission, which did not itself conduct the negotiations, was responsible for presenting draft common positions,¹² as well as issuing opinions and preparing reports on the progress of the adjustment process. It is worth recalling the opinion delivered by the Commission on Poland's application (also by other countries seeking accession) in a key document published in July 1997 on the development of the European Union and the conditions governing the accession of new Member States. It is also worth mentioning its special report on each applicant country, focusing on its ability to meet the 1993 Copenhagen criteria, in which it confirmed that Poland displays the characteristics of a democracy with stable institutions guaranteeing the rule of law, respect for human rights and respect for, and the protection of, minorities; in this report, the Commission indicated that in the medium term full participation by Poland in the internal market will be possible, provided that extra efforts are made to meet the criteria of the *acquis* in the areas of agriculture, the environment and transport.¹³

The Directorate-General for Enlargement also played an important role within the Commission in monitoring the adjustment process. One of its basic tasks was to

¹² Trzeciak, 2010, p. 99.

¹³ Briefing No 12, Note on Poland's Political and Economic Situation and its Relations with the European Union with a View to Accession, The Opinions Expressed in this Document are not Necessarily Those Held by the European Parliament as an Institution, see: European Parliament, 2000.

help candidate and potential candidate countries meet the ‘Copenhagen criteria’ – defined in the Treaty and the European Council – and to monitor their progress.

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission’s or Council’s Working Groups, Participation of Your Representatives at the Commission’s or Council’s Meetings, etc.)?

The structure of the accession negotiations assumed the joint operation of Polish and EU working groups at several levels.

Firstly, negotiations in this formula were conducted at the level of the Council of the European Union, where the participants of the talks on both sides had the opportunity to confront the agreed positions of the EU countries and the ministers of foreign affairs of the Member States or their deputies. The official forum for talks held within the Council was the Intergovernmental Accession Conference. During the conference, the meeting was chaired by the minister from the country holding the presidency,¹⁴ conducting the deliberations, on the one hand, among the heads of delegations of the member and candidate countries, who were the ministers of foreign affairs, and on the other hand, among the deputy heads of delegations – ambassadors of the Member States (COREPER), as well as the main negotiators from the candidate countries.

Secondly, negotiations of this type were also carried out on the forum of the Association Council – a body established by the provisions of the Europe Agreement, creating conditions for maintaining permanent contacts, exchanging opinions, and partly for making joint decisions by both parties. The Association Council meets once a year to examine the problems inherent in bringing Polish legislation into line with Community legislation. Members of parliament (12 from the European Parliament and 12 from the Sejm/Senate) meet twice a year in the Joint Parliamentary Committee.

Question No. 10

Has Your Country Experienced Any Particular Difficulty Meeting Some of the Accession Criteria?

The negotiations between Poland and the EU encountered particular difficulties in several thematic areas.

Firstly, the issue of direct payments to farmers was controversial. From the very beginning, representatives of the European Union maintained a clear distance from the idea of providing this type of support not only to Poland, but also to other candidate countries, claiming that it would contribute to disrupting the functioning of the economies of the EU countries, and at the same time would deprive the candidate

¹⁴ Trzeciak, 2010, p. 99.

countries of their determination in reforming their agriculture. In response, the Polish side argued that agriculture could not be modernised without additional money and at the same time emphasised that the conditions offered to Spain and Greece were much more favourable.¹⁵

Secondly, the issue of purchasing real estate by foreigners has also become a bone of contention. The parties seeking a compromise in this regard, wishing to ensure the implementation of one of the fundamental EU freedoms: the free movement of capital between the Member States and Poland, had to face the resistance of the Polish public opinion, the vast majority of which expressed concerns about the prospect of the then envisaged mass purchase of Polish lands by citizens, the so-called Old Union, especially the Germans. The negotiations undertaken therefore required breaking the barrier of negative Polish resentments that had their origins in World War II (specifically, in the fact that Poland, as part of the post-war division of Europe, was enriched with the so-called Reclaimed Territories, which were once part of German territory) and related to the belief that the too far-reaching ease of purchasing real estate by foreigners will threaten the territorial integrity of Poland and at the same time will lead to limited opportunities on the market for the poorer Polish people.¹⁶ The decisions were supposed to serve this purpose.

Thirdly, the issue that caused divergent opinions was the problem of the free movement of workers between Poland and EU countries. It was based on strong fears of old EU members that the mass inflow of workers from less developed countries of Central and Eastern Europe, especially Poland, which has nearly 40 million citizens, would reduce the competitiveness of their labour market and, as a result, limit the professional development opportunities of the local population. When presenting this point of view, the EU side had to take into account the expectations of Polish society, which insisted on the possibility of freely taking up employment, studying and living in other countries as one of the main values of Poland's accession to the European Union¹⁷.

Fourthly, difficulties arose in the area of environmental protection. They resulted '(...) from the discrepancies between the actual standards in force in Poland and the European Union'.¹⁸

Fifthly, a number of problems emerged during negotiations on internal affairs, especially the issues of migration, asylum, protection from securing external borders, organised crime, terrorism, etc. This ensued from the fact that the Member States attached the greatest importance to the so-called area of freedom, justice and security that was being created within the EU at that time (...) and, not wanting to allow for a deterioration of the security situation in the EU, they demanded credible

15 See Trzeciak, 2010, p. 115.

16 See Trzeciak, 2010, p. 164.

17 See Trzeciak, 2010, pp. 201–202.

18 Wensierski, 2003, p. 243.

confirmation by Poland, the largest acceding country, responsible for the protection of the external eastern border of the EU, of the fulfilment of all commitments in this respect.¹⁹

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. the Constitutional Court)?

Poland's accession to the European Union was possible thanks to the application of Art. 90 of the Constitution. This provision was introduced in the original version of the Constitution of 1997 due to the prospect of Poland's membership and the further process of European integration. According to it: (1) The Republic of Poland may, on the basis of an international agreement, transfer the competences of state authorities in certain matters to an international organisation or international body; (2) An act expressing consent to the ratification of the international agreement referred to in Sec. 1, is adopted by the Sejm by a 2/3 majority of votes in the presence of at least half of the statutory number of deputies and by the Senate by a 2/3 majority of votes in the presence of at least half of the statutory number of senators; (3) Consent to ratification of such an agreement may be adopted in a nationwide referendum in accordance with the provisions of Art. 125 on national referendum; (4) The resolution on the choice of the mode of expressing consent to ratification is adopted by the Sejm by an absolute majority of votes in the presence of at least half of the statutory number of deputies.

In the post-accession period, an attempt was made to question the Accession Treaty of April 16, 2003. This initiative was supported by a group of MPs who, in their motion of April 30, 2004, formulated a number of allegations pointing to the lack of compliance of the Treaty with the Constitution. They argued that (1) Art. 1, Secs. 1 and 3 of the Accession Treaty and Art. 2 of the Act concerning the conditions of accession are inconsistent with the Preamble to the Constitution in the part relating to the sovereignty of the Polish Nation under Art. 8, Sec. 1, Art. 91, Sec. 3, Arts. 188 and 235 of the Constitution, (2) Art. 234 of the EC Treaty – in the part in which it imposes the obligation on courts of last instance and tribunals to present questions on the validity and interpretation of Community provisions also in the event these provisions are inconsistent with the Constitution, and establishes that Polish courts and tribunals are bound by the position of the Court of Justice when this position requires the issuance of a judgement inconsistent with the Constitution, and inconsistent with Art. 8, Sec. 1, Art. 174, Art. 178, Sec. 1, Art. 188 and Art. 195, Sec. 1 of the Constitution.

The consequence of the application in question was the judgement of the Constitutional Tribunal of May 11, 2005.²⁰ The Tribunal ruled that the accession treaty

¹⁹ Harasimowicz, 2005, p. 100.

²⁰ Decision on 11 May 2005, no. K 18/04.

as a whole and the individual challenged provisions of the treaty do not violate the provisions of the Constitution of the Republic of Poland referred to by the applicants. Justifying its ruling, the Tribunal put forward several key theses. It emphasised in particular that:

(1) (...) the recognition of the Constitution as the ‘supreme law of the Republic of Poland’ (Art. 8(1)) is accompanied by the Polish legislator’s respect for the provisions of international law properly formed and existing in the territory of the Republic of Poland (Art. 9 of the Constitution),

(2) Pursuant to Art. 91, Sec. 1 of the Constitution, a ratified international agreement, after its publication in the Journal of Laws, is a component of the legal system of the Republic of Poland and is directly applicable, unless its application depends on the issuance of an act. Provided for in Art. 90, Sec. 1 of the Constitution, international agreements on the transfer of competences of state authorities ‘in certain matters’ to an international organisation or international body constitute one of the categories of international agreements subject to ratification. However, ratification of such an agreement is carried out in accordance with a procedure with clearly stricter requirements compared to the procedure for ratification of other agreements (Art. 90(2–4) of the Constitution). These safeguards apply to all cases of transfer of competences to bodies of the European Communities or the European Union.

(3) (...) Under Art. 90 of the Constitution, the subject of the transfer may be competences belonging to various segments of state power – legislative, executive and judicial. However, in none of these areas can there be a transfer of competences that would undermine the existence and functioning of state bodies and create a situation in which an international organisation would become the sovereign. Transfer of competences pursuant to Art. 90 of the Constitution cannot deprive the state of the ability to act independently, as this would mean a violation of the principles expressed in Art. 4 (‘The supreme power in the Republic of Poland belongs to the Nation’) and Art. 5 (‘The Republic of Poland protects its independence’). The Constitution therefore prevents the transfer of competences to the extent that the Republic of Poland will lose the status of a sovereign state.

(4) Poland’s accession to the European Union does not undermine the status of the Constitution as the ‘supreme law of the Republic of Poland’ (Art. 8(1)).

(5) On the territory of the Republic of Poland, the Constitution has primacy of validity and application, also in relation to all international agreements binding on Poland, including agreements transferring the competences of state authorities to international organisations, and even more so in relation to the norms of secondary Community law. Provided for in Art. 91, Sec.s 1 and 3 of the Constitution, the priority of application of a ratified international agreement, as well as the law established by

an international organisation on the basis of such an agreement over the Polish Act, in no case means their priority over the Constitution,

(6) After Poland's accession to the European Union, we are dealing with the parallel existence of two autonomous legal orders – the Polish and EU law. This does not exclude their mutual influence and, a possible conflict between European law and the Constitution. In the event of such a conflict, the sovereign decision of the Republic of Poland would be to either amend the Constitution accordingly, or cause changes to Community regulations, or – ultimately – withdraw from the European Union,

(7) The Constitutional Tribunal did not agree with the applicants' arguments pointing out the impossibility of reconciling the competences of the Court of Justice of the European Communities (ECJ) specified in the treaty with the principles of the sovereignty of the Republic of Poland and the supremacy of its Constitution in the Polish legal order, as well as with the systemic position of the Constitutional Tribunal. The Tribunal noted in particular that the ECJ is the legitimate, but not the only, depositary of the correct understanding of the treaties. The interpretation of Community law by the ECJ should be within the scope of the competences and functions assigned to it by the Member States and respect the principle of mutual loyalty of the Community institutions and the institutions of the Member States. This principle implies an obligation for the ECJ to respect national legal systems, and for EU Member States, an obligation to maintain the highest standard of respect for Community norms.

Question No. 12

Was There a Referendum in any Stage of the Accession Procedure?

The national referendum on Poland's accession to the European Union took place in the last phase of the accession process and served to enable the head of state to ratify the Accession Treaty. This was held on June 7–8, 2003 and was carried out on the basis of Art. 90, Sec. 3 in connection with Art. 125 of the Constitution. According to Art. 90, Sec. 3, expressing consent to the ratification of an international agreement, on the basis of which the international agreement transfers the competences of state authorities in certain matters to an international organisation or an international body, may be adopted in a nationwide referendum in accordance with the provisions of Art. 125. In turn, pursuant to Art. 125, a nationwide referendum may be held on matters of particular importance to the state. The Sejm has the right to order a national referendum by an absolute majority of votes in the presence of at least half of the statutory number of deputies, or the President of the Republic of Poland with the consent of the Senate expressed by an absolute majority of votes in the presence of at least half of the statutory number of senators. If more than half of those entitled to vote took part in the national referendum, the referendum result is binding. The validity of the national referendum is confirmed by the Supreme Court.

According to the official data of the National Electoral Commission, the turnout is 58.85%, i.e. 17,586,215 people out of 29,868,474 entitled to vote took part in the voting. The subject of the referendum was Poland's accession to the European Union and the adoption of the Treaty of Athens. Those taking part in the referendum were asked the following question: 'Do you consent to Poland's accession to the European Union?' The positive answer was given by 77.45% of the voters, i.e. exactly 13,516,612 people, and the negative answer was given by 22.55% of them, i.e. 3,936,012. The vast majority therefore believed that accession is a good future prospect for Poland.

Question No. 13

In Addition to the Above, Were There Any Noteworthy Legal Aspects Concerning the Negotiation And Ratification of the EU Accession Agreement in Your Country?

3. Legal and Economic Support for Candidate Countries

The third Sec. concentrates on the support provided to the candidate countries by the EU.

Question No. 14

Before the Accession, Was There any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

In the process of the approximation of the legal order of Poland from the EU, the European Commission provided Poland with key support.

Even in the period preceding the actual negotiations, the European Commission applied the previously known screening procedure. As part of these activities, it prepared the legal acquis of the community into 31 thematic chapters and presented it to the candidate countries, including Poland. Thus, the indicated countries were obliged to review and verify their own compliance with the *acquis communautaire*.

During the screening procedure, the European Commission organised multi-lateral (with the participation of all candidate countries) and bilateral (with the participation of Poland) law review sessions, during which specific findings were made, particularly identifying areas where the implementation of EU law could pose negotiation challenges and outlining the consequences this might entail.²¹

The end of the *screening procedure* in the most important areas meant that proper substantive negotiations could begin. This finally happened in November 1998.²²

²¹ Domagała, 2011, p. 145.

²² Chruściel and Kloc, 2013, p. 96.

In 1995, the European Commission released a White Paper entitled ‘preparing the associated countries of Central and Eastern Europe for integration with the Single Internal Market of the European Union’. In this document, it presented an overview of the *acquis communautaire* in the area of the single market, thus creating a guide for Poland and other candidate countries when it comes to adapting their own legislation in this respect.

In 1996, the Commission submitted a questionnaire which obliged Poland and other candidate countries to provide extensive and comprehensive answers to individual questions. These answers then became the basis for the Opinions (Avis) presented by the European Commission to the European Parliament on applications for membership in the European Union. Both the Questionnaire and the Opinions were shaped according to the Copenhagen criteria. Both documents served to show the extent to which Poland and other candidate countries meet these criteria.²³

Question No. 15

Did Your Country Benefit From Any Funds Providing Financial Support in Relation to EU Accession Immediately After the EU Accession?

Immediately after accession, in the years 2004–2006, Poland received financial support under a number of EU programmes. The support programmes were specified in detail in the National Development Plan 2004–2006. These were specifically: (1) Integrated Operational Programme for Regional Development (European Regional Development Fund – EUR 2,530.4 million, European Social Fund – EUR 438.4 million), (2) Sectoral Operational Programme Human Resources Development (EUR 1,470 million), (3) Sectoral Operational Programme Increasing the Competitiveness of Enterprises (EUR 1,251.1 million), (4) Sectoral Operational Programme Transport (EUR 1,163.4 million), (5) Technical Assistance Operational Programme (EUR 28.3 million), (6) Sectoral Programme Operational Restructuring and modernisation of the food sector and development of rural areas (EUR 1,192.7 million), (7) Sectoral Operational Programme Fisheries and fish processing (EUR 201.8 million), (8) Cohesion Fund, allocation of EUR 4,178.6 million, support equally for both sectors, i.e. projects in the field of transport and environment, (9) EQUAL – promotion of equal opportunities for women and men (allocation of EUR 133.9 million), (10) INTERREG III (jointly with neighbourhood programmes) – cross-border, transnational and interregional economic cooperation of regions (allocation of EUR 221.36 million).²⁴

Question No. 16

Were There Any Other Noteworthy Aspects of the EU Support, Provided to Your Country Before the Accession?

23 Domagała, 2011, pp. 68–69.

24 The presented data can be found on the website: European Funds Portal, 2020.

4. Specific Rules Applicable to Candidate Countries Before and After Their Accession

The final Sec. deals with any country-specific exemptions from the general approach, adopted by the candidate countries, both during the pre-accession period and after the actual accession.

Question No. 17

After The Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

After submitting the application to join the EU, Poland for the first time acknowledged the significance of EU law, which importantly reflects on its implications within Polish realities, emphasising its importance. This was served by the preparations carried out earlier, preceding the accession negotiations, which consisted of a review of Community law and familiarisation with Polish law. As a result of its public release, Poland presenting its own negotiating position, submitted a declaration on making the EU *acquis* in a specific technology available before the extension of membership. If the analyses were conducted, it was believed that harmonising the original regulations with Polish regulations would not occur. Instead, either a transitional period was proposed, or a so-called derogation was established, which allows for a permanent application of European Union law.²⁵

Question No. 18

What Country-Specific Provisions Were Contained in the EU Accession Agreement of Your Country?

Annex XII of the Accession Treaty referred directly to Poland, which contained provisions ensuing from negotiations, regulating specific thematic areas, including those indicating transition periods. Protocol No. 8, regulating the issue of restructuring the Polish iron and steel industry, concerned Poland in a similar way. Moreover, Poland submitted three declarations included in the Final Act to the Treaty of Accession to the European Union. These were namely Declaration 38 on the competitiveness of Polish production of certain fruits. It stated that

Poland draws attention to the fact that the application of the EU common customs tariff in Poland may have an immediate negative effect on the competitiveness of Polish producers of soft fruit, cherries and apples. If, after accession, serious difficulties appear in these sectors and may persist, Poland will request the urgent

²⁵ See Sejm Rzeczypospolitej Polskiej, 2002, p. 12.

application of the general safeguard clause and the adoption of instruments to permanently eliminate distortions of competitiveness in the soft fruit, cherry and apple sector.

Declaration 39 on public morality. According to this document:

The Government of the Republic of Poland understands that nothing in the provisions of the Treaty on European Union, the Treaties establishing the European Communities and in the provisions of treaties amending or supplementing these treaties shall constitute an obstacle to the Polish State in regulating matters of moral importance, as well as matters relating to protect human life.

Declaration 40 on the interpretation of the derogation from the requirements laid down in Directive 2001/82/EC and Directive 2001/83/EC. According to the declaration: 'Poland considers that the pharmaceutical products included in the list in Appendix A to Annex XII to this Act, which have a marketing authorisation, may be placed on the market in Poland'.

Question No. 19

Were There Any Country-Specific Transitory Provisions?

The accession treaty contained a number of country-specific transitory provisions that were intended to protect Polish interests, and in some cases also the interests of European Union countries. As an example, the provisions regarding: (1) the right to purchase real estate by foreigners (5 years from obtaining membership in relation to the so-called second homes – with the exception of recreational properties, purchased for the purpose of running a business and 12 years – in relation to agricultural and forestry), (2) fat content in drinking milk and the minimum volume of raw tobacco produced required for the recognition of producer groups (3 years), (3) qualification of beef from specific breeds of cows (3 years), (4) application of specific VAT rates in the national tax system (from 4 to 5 years, depending on the case), (5) exemptions from business tax granted before January 1, 2001 on the basis of the Act on Special Economic Zones of 1994 (subject to the following conditions: for small enterprises (8 years), for medium-sized enterprises) (7 years), (6) the weight limit of the reserved postal services area reduced to 100 g (3 years), (7) the obligation to maintain minimum stocks of crude oil and liquid fuels (5 years)²⁶, (8) freedom to take up work in a given country (up to a maximum of 7 years in all Member States), (9) direct subsidies for agricultural production for new Member States from the EU budget (it was assumed that these subsidies will reach 25% of the full level in 2004, 30 % in 2005, 35% in 2006, 40% in 2007 and in the following years will increase by 10%), (10) certificates issued by the Institute of Medicines for medical devices

26 Information on the indicated transition periods can be found in: Domagała, 2011, pp. 173–180.

defined as ‘medical materials’ (2 years) (11) marketing authorisations for certain pharmaceutical products (5 years).

Question No. 20

Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?

During the accession negotiations, Poland obtained exemptions in some areas of EU law. This concerned, for example, the area of freedom to provide services. In this respect, it was negotiated that the provisions of Directive 77/780/EEC, the so-called First Banking Directive, would not apply to certain Polish institutions. The institutions were specifically: *Spółdzielcza Kasa Oszczędnościowo-Krednościowo* (SKOK) and Bank Gospodarstwa Krajowego (BGK). In addition, due to the nature of their activities, the Export Credit Insurance Corporation was also excluded from the operation of EU law (Art. 2 of Directive 73/239/EEC).²⁷

Another area in which permanent exclusions from the operation of Community law were negotiated was fishing. Despite joining the EU fishing policy, which is a Community responsibility, Poland retained its previous catch quotas resulting from previously concluded bilateral agreements with third countries.²⁸

It is also worth noting that the Polish government attached Declaration No. 39 to the Accession Treaty, in which it declared that

nothing in the provisions of the Treaty on European Union, the Treaties establishing the European Communities and in the provisions of treaties amending or supplementing these treaties constitutes an obstacle for the Polish State to regulate matters of moral importance, as well as matters relating to the protection of human life.

Question No. 21

To Your Knowledge, Were There Any Notable Differences in the Content of Your Country's EU Accession Treaty From Other Countries in a Comparable Position?

At the time of Poland's accession to the European Union, it was widely believed that the transitional periods it had obtained regarding the purchase of real estate by EU citizens (let us recall: 5 years for the so-called second homes and 12 years for agricultural and forest real estate) were the best among similar privileges granted to the other candidate countries.²⁹

It was also believed that Poland stood out from other negotiating countries due to the particularly large number of transitional periods in the area of veterinary and

²⁷ See Sejm Rzeczypospolitej Polskiej, 2002, pp. 21–22.

²⁸ See Sejm Rzeczypospolitej Polskiej, 2002.

²⁹ Trzeciak, 2010, p. 190.

phytosanitary issues. These solutions allowed Polish farmers and food processing plants to be included in the functioning within the EU single market.³⁰

It is also worth mentioning the inclusion in the Accession Treaty, thanks to the initiative of the Polish side, of a clause protecting domestic agriculture, which could be activated in the event of serious and long-term difficulties in the functioning of the agricultural sector, causing a significant deterioration in the situation in that sector.³¹

Question No. 22

Are There Any Other Noteworthy Exemptions From the Application of the EU Law in Your Country?

The only exemptions from the application of the EU law in Poland is provided in the so-called British Protocol – Protocol No. 30³² annexed to the Treaty of Lisbon, which is an opt-out clause limiting the application of all the provisions of the Charter of Fundamental Rights to citizens of Great Britain and Poland.

It follows from the text of the Protocol that the Charter does not extend the ability of the Court of Justice of the European Union or any court or tribunal of Poland or the United Kingdom to find that any laws, regulations or administrative provisions, practices or administrative actions of Poland or the United Kingdom are incompatible with fundamental rights, freedoms and the principles confirmed therein.³³ In particular, and for the avoidance of doubt, nothing in Title IV of the Charter creates rights enforceable in court applicable to Poland or the United Kingdom, except where Poland or the United Kingdom has provided for such rights in its national law.³⁴ Where a provision of the Charter refers to national laws and practices, it applies to Poland or the United Kingdom only to the extent that the rights and principles contained in that provision are recognised by the laws or practices of Poland or the United Kingdom.³⁵

30 See Sejm Rzeczypospolitej Polskiej, 2002, p. 18.

31 See Sejm Rzeczypospolitej Polskiej, 2002.

32 *Wersja skonsolidowana Traktatu o funkcjonowaniu Unii Europejskiej – PROTOKOŁY – Protokół (nr 30) w sprawie stosowania Karty praw podstawowych Unii Europejskiej do Polski i Zjednoczonego Królestwa*, 12008E/PRO/30, *Dziennik Urzędowy* 115, 09/05/2008 P. 0313 – 0314.

33 Art. 1(1).

34 Art. 1(2).

35 Art. 2.

4. Conclusions

Poland belongs to the group of Central European countries that made their first efforts to join the European Union immediately after the fall of the communist regime, and the start of official accession negotiations – in the late 1990s. This process required the creation of an appropriate institutional framework and substantive preparation. It took place in an atmosphere of mutual understanding, but not without certain difficulties. Both sides were forced to make significant compromises many times and ‘play into the hands’ of negotiators sitting on the opposite side. Sometimes, however, they set tough conditions, persuading their partners to seek compromise. Negotiations devoted to the issue of the amount of agricultural subsidies, as well as protection periods for the purchase of real estate by foreigners and the possibility of employment of Polish nationals in Member States were particularly problematic. In these cases, the talks lasted the longest and required a lot of energy. Ultimately, the negotiations were successful and – as is commonly known – resulted in Poland gaining membership in the European Union in 2004.

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CHAPTER 6

ROMANIA



ZSOLT KOKOLY

Abstract

Based on a draft questionnaire, the present study offers a national report on the EU accession procedure of Romania (2007), focusing on both the historical trajectory of the Romanian accession path and its milestone events, as well as on the specific features that distinguish it from the integration process of countries in a comparable situation. This paper presents in detail the key elements that helped reverse the initial negative opinion of the Commission on Romania's European accession (1997), as well as institutions and procedures of accession and their activity. An examination of the legal criteria the country was obliged to satisfy, as well that of the country-specific provisions contained in the EU Accession Agreement of Romania is also offered, the study being concluded with a chapter dedicated to the special provisions on facilitating the smooth accession and simultaneously, the safeguarding of the proper functioning of EU policies and institutions (the Cooperation and Verification Mechanism, setting out benchmarks to provide the framework for monitoring progress in the areas of judicial reform and the fight against corruption).

Keywords: Romania, EU enlargement, country reports and monitoring reports, EU accession, Cooperation and Verification Mechanism

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1. Initial Requirements on Candidate Countries

The first section is concerned with the requirements laid upon candidate countries before the accession process started and before they joined the EU. The text should cover the following questions but might be more extensive where necessary.

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

There were no conditions proffered to Romania before its formal application to join the EU was submitted. However, Romania had a unique situation of having had relations with the EEC long before the communist regime had ended in 1989, and before the Community had established ties with the any other countries from this region. Romania could be seen as the only communist country that benefited from preferential treatment, as in 1973 the country obtained a trading status from the EEC.

Following the Romanian revolution in December 1989 and the overthrow of the totalitarian Communist regime, the first diplomatic relations between Romania and the European Union were established on January 7th 1990, when the new Romanian government had officially declared the willingness of the country to cooperate with EEC (European Economic Community). In October 1990, the Trade and Cooperation Agreement with the EEC¹ was signed, which came into force in 1991. Although this type of agreement was fixed for ten years, Romania could only sign it for five years. The agreement was applied to all products originating from the European Community, apart from coal, steel and agricultural products.

The second phase in the pre-application period began after Romania and Bulgaria had signed, on 1st February and 8th March 1993 respectively, the Association Agreements that established the legal framework for their gradual integration into the European Union. In particular these Agreements provided for the gradual establishment of a free-trade area, the maintenance of regular political dialogue, and an approximation of legislation and economic, financial and cultural cooperation. The Agreements entered into force on 1st February 1995.

1 91/159/EEC: Council Decision of 4 March 1991 on the conclusion, on behalf of the European Economic Community, of an Agreement between the European Economic Community and the European Atomic Energy Community, of the one part, and Romania, of the other part, on trade and commercial and economic cooperation. OJ L 79, 26.3.1991, p. 12.; 91/160/Euratom: Commission Decision of 5 March 1991 concerning the conclusion on behalf of the European Atomic Energy Community of the Agreement between the European Economic Community and the European Atomic Energy Community and Romania on trade and commercial and economic cooperation. JO L 79, 26.3.1991, p. 30.

This Treaty offered an important judicial framework for closing the gap between the Romanian state and the civilisation area represented by the European organisation. The CEE offered to support Romania towards a new economic and political system which would respect the rules of state law and human rights, including minority group's rights, would practice a multiparty system based on free and democratic elections, and would build a market economy.

The objectives of the Europe Agreement of 1994, concluded between the Community and its Member States on the one part, and Romania on the other part were established as follows: (a) to provide an appropriate framework for political dialogue between the Parties allowing the development of close political relations, (b) to promote the expansion of trade and harmonious economic relations between the Parties and thus to foster economic development in Romania, (c) to provide a basis for economic, social, financial and cultural cooperation, (d) to support Romania's efforts to develop its economy and to complete the conversion into a market economy, and consolidate its democracy, (e) to set up institutions suitable of making the association effective, (f) to provide a framework for Romania's gradual integration into the Community.²

Romania was offered the support of the White Paper drafted in 1994,³ and addressed to the six countries which already had association agreements (Poland, Hungary, the Czech Republic, Slovakia, Bulgaria and Romania). As part of pre-accession strategy for the associated countries of central and eastern Europe, its purpose was to provide a guide to assist the associated countries in preparing themselves for operating under the requirements of the European Union's internal market.

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

The official application for EU membership was presented by Romania on June 22nd 1995, with the European Commission in Madrid accepting it on December 15th 1995.

Question No. 3

*What Conditions Did Your Country Need to Satisfy Before Joining the EU?
To Your Knowledge, Were These Conditions Different From Those Applied to Countries
in a Comparable Position?*

- 2 Europe Agreement establishing an association between the European Economic Communities and their Member States, of the one part, and Romania, of the other part. Official Journal of the European Communities No L 357/2. 31.12.94
- 3 White Paper Preparation of the Associated Countries of Central and Eastern Europe for Integration into the Internal Market of the Union. Brussels, 03.05:1995 COM(95) 163 final.

The overall enlargement process to encompass all countries that wished to join the union confirmed that the accession process, comprising of the ten Central and East European countries plus Cyprus, would be based on the same criteria and would entail an equal footing process.

According to the Treaty on European Union, certain conditions⁴ and principles⁵ must be met by any country wishing to become a member of the European Union (EU). Romania and all other candidates had to meet the membership requirements laid out in the Copenhagen criteria: the political criteria, the economic criteria and the ability to assume the obligations of membership, strengthened by the institutional requirement adopted by the Madrid European Council in 1995.

The Copenhagen European Council of 21st and 22nd June 1993 laid down the criteria to be met by all the associated countries of Central and Eastern Europe in order for them to be able to accede to the European Union⁶ (these criteria were strengthened by the Madrid European Council in 1995⁷). They are as follows: (a) political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; (b) economic: a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; (c) the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the '*acquis*'), and adherence to the aims of political, economic and monetary union.

The accession criteria were the same for all states applying for membership. Throughout the whole accession process, the country in the most comparable position to Romania has been its southern neighbour Bulgaria (both countries transforming from former totalitarian Communist regimes to market economies, officially applying for EU membership in 1995, excluded from the 2004 wave of accession and becoming full members in 2007).

Both Romania and Bulgaria experienced major problems in putting the reforms needed to meet the Copenhagen criteria in place. The economic reforms undertaken were not sufficient to establish a competitive market economy, and the existing administrative structures did not allow for the acceptance of the Community *acquis*.

A specific feature in the history of European enlargement was the fact that this time, *acquis communautaire* had to be adapted before accession. The need to have the *acquis* adapted and applied was motivated by the European Commission as a prerequisite in the best interests of the acceding countries. The *acquis* to be adapted by Romania amounted to over 80,000 pages, making it a challenge both as far as quantity,

4 Art. 49.

5 Art. 6(1) must be met by any country wishing to become a member of the European Union.

6 Presidency Conclusions. 15917/02, POLGEN 84. Brussels: Council of the European Union, 29.01.2003.

7 Conclusions of the Madrid European Council (15 and 16 December 1995), pp. 52–58. Bulletin of the European Union. December 1995, No. 12. Luxembourg: Office for Official Publications of the European Union.

as well as quality was concerned, because the process of implementation was marked by various deficiencies: incongruence and weak interinstitutional collaboration, incoherent and sometimes solely automatic adaption, as well as the adaption of different mechanisms without any basis or real content.

Question No. 4

Were There Any Specific Features of Your Member State's Accession to the EU, Compared to Other Countries in a Comparable Position?

An initially negative trajectory in the accession project has marked both Romania and Bulgaria. In July 1997, the European Commission issued an initial negative opinion on the accession applications submitted by Romania and Bulgaria.⁸ In its view, the two countries were on their way to fulfilling the political criteria, and it emphasised the progress that they had made in order to fulfil the economic criteria.

Nevertheless, the Commission deemed the reforms carried out to be insufficient and noted that both countries were experiencing serious problems in transposing the Community *acquis* into national law. Accordingly, it concluded that accession negotiations should be begun once both countries had made sufficient progress towards fulfilling the conditions for accession. Consequently, when the Luxembourg European Council met on 12th and 13th December 1997, Bulgaria and Romania were not part of the first group of countries with which accession negotiations were to begin in 1998.

The generally unfavourable situation was successfully overcome by Romania, mainly as a result of two trends. Firstly, in late 1996, political changes in Romania and Bulgaria resulted in a gradual improvement in the situation, with the new President of Romania, Emil Constantinescu, implementing a policy of change and declaring that accession to the European Union was a political priority. These new reforms were recognised and supported by the European Union. The second aspect concerned the first NATO military action in 50 years, organized in 1999. Romania's involvement and its help to NATO by denying Russia's access to its airspace in the conflict between NATO and Serbia over the Milosevic regime in Kosovo facilitated its inclusion in the European integration project.

All of the above contributed to a shift in the image of Romania, so that in its Monitoring Report published in October 1999,⁹ the Commission finally recommended the opening of accession negotiations with Bulgaria and Romania. The Helsinki European Council of 10–11 December¹⁰ accepted this recommendation and decided to

8 Agenda 2000 – Commission Opinion on Romania's Application for Membership of the European Union. DOC/97/18 Brussels, 15th July 1997.

9 Commission Report COM(1999) 510 final Not published in the Official Journal.

10 Presidency Conclusions Helsinki European Council: 11/12/1999 Nr: 00300/1/99. Council of the European Union.

organise, in February 2000, bilateral intergovernmental conferences with a view to opening negotiations on the terms for their accession to the European Union with each applicant country. In addition to Romania and Bulgaria, the Helsinki group comprised of Latvia, Lithuania, Malta and Slovakia. However, the accession negotiations with Bulgaria and Romania did not progress at the same rate as those with the other acceding countries. The delay in the progress of the negotiations resulted, in particular, from the problems that the two countries were experiencing in creating the administrative and legal systems required to transpose the *acquis* into national law and to bring the requisite economic reforms to a successful conclusion.

2. Institutions and Procedures of Accession

The second section is concerned with legal aspects of the procedure of accession, including institutions set up for that purpose, legislative changes at national level and the monitoring of the process by EU institutions.

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Until Accession)?

The Helsinki European Council (December 1999) decided to start accession negotiations with Romania. In 2000, the Negotiation Strategy was oriented mainly to the chapters not presuming efforts to relate to the *acquis* and thus lagging behind in fulfilling the EU accession criteria. Important themes for fulfilling the criteria for a functioning market economy, that is the economic and market chapters, did not have a clearly delineated position of Romania, neither for the internal nor for the external environment. Thus, the Government of Romania (following the general elections at the end of 2000), was compelled to focus in 2001 on the preparation and official forwarding of the Position Papers for all chapters of negotiation until the end of that year. That objective was accomplished and related to the accelerated process of the legislative harmonisation and implementation of the *acquis*, as well as with the internal modernisation process, of unrolling economic reforms. In this sense, the principal base was established and the sectoral objectives in the accession negotiations were determined.¹¹

The Copenhagen European Council of 12th and 13th December 2002 concluded negotiations with ten countries applying to accede to the European Union, and fixed the date of their accession for May 1st 2004. In the case of Bulgaria and Romania, the European Council followed the road map drawn up by the Commission in October in

11 Puşcaş, 2003. p. 16.

agreement with the two countries and set itself the objective of welcoming them as Member States in 2007.

The accession negotiations with Bulgaria were finally concluded in June 2004, while those with Romania ended six months later, in December 2004.

On 22nd February 2005, the European Commission issued a favourable opinion on the applications submitted by Bulgaria and Romania for accession to the European Union, this opinion being supported by the European Parliament on 13th April.

On 25th April, the Council of the European Union accepted the two countries' applications for accession, and, on the same day, the representatives of Bulgaria and Romania signed the Treaty of Accession to the European Union in Luxembourg¹². However, the Treaty included several safeguard clauses providing, in particular a one-year delay in accession if the requisite commitment to the reforms was not demonstrated and if the countries were not in a position to fulfil the conditions for accession. In the case of some sectors, the safeguard clauses actually remained applicable after the two countries had acceded. Accordingly, the Commission's Monitoring Reports assumed crucial importance. Particular attention was paid to combating corruption, ensuring the independence of the judicial system, combating organised crime (in the case of Bulgaria), respecting human rights and protecting minorities, as well as to ensuring food safety.

On 26th September 2006, the Commission published its final Monitoring Report¹³ on the state of preparedness for accession in Bulgaria and Romania. Although the Commission listed a number of areas that continued to pose problems, it concluded that Bulgaria and Romania were in a position to assume the rights and obligations associated with their accession as of 1st January 2007. The Commission therefore allowed the two countries to continue the required reforms from within the European Union and in so doing, avoided the threat of uncertainty that could have ensued from a further postponement of their accession.

There was, however, a condition for the timely accession of Romania (as well as of Bulgaria), namely the acceptance of a Cooperation and Verification Mechanism, as a safeguard against certain shortcomings still that existed in both countries.

Following Council approval on 17th October 2006, the accession of Bulgaria and Romania came into effect on 1st January 2007.¹⁴

What Agreements Were Signed With the EU?

On February 1st 1993, Romania signed the Treaty of Association to the European Union, which provided an important legal framework for overcoming the gap between the Romanian state and the countries represented by the European

12 Treaty Concerning the Accession of the Republic of Bulgaria and Romania to the European Union Accession Protocol and its Annexes, signed in Luxembourg on 25 April 2005.

13 Monitoring Report of May 2006 from the Commission COM(2006) 214 final – SEC(2006) 596.

14 cvce.hu, no date.

organisation. The European Economic Community committed to support Romania on its journey towards a new political and economic system that would respect the rule of law and the rules of fundamental human rights, including the rights of minorities, that would practice a multiparty system based on free and democratic elections, and that would build a free market economy.

In its 'Agenda 2000' communication, the European Commission set out a range of proposals for strengthening the pre-accession strategy for all the candidate countries of Central and Eastern Europe (CEEC). The general objective of this strategy was to offer a coherent programme to prepare these countries for membership of the European Union, and more particularly: (a) to bring together the various forms of aid offered by the European Union within a single framework, the accession partnerships; and (b) to familiarise applicants with the European Union's procedures and policies by offering them the opportunity to participate in Community programmes.

The Accession Partnership signed in 2005 was intended to help the Romanian authorities in their efforts to meet the accession criteria. It covered the priorities for Romania's accession preparations in detail, particularly the implementation of the *acquis*, and formed the basis for programming pre-accession assistance from Community funds such as the Phare programme. On 25th April 2005, Romania signed the Treaty of Accession to the European Union, with the objective being its ratification, so that Romania could become a Member State of the European Union on 1st January 2007.

What Legal Measures Adopted by the EU Governed the Proceedings?

In December 2003, the European Council in Brussels established the schedule for Romania's accession to the European Union, the main milestones of which were the completion of negotiations in 2004, the signing of the Accession Treaty as early as possible in 2005, and effective accession to the European Union in January 2007. In its conclusions, the European Council asserted that Romania and Bulgaria's accession represented the common goal of the European Union with 25 members. For the first time, a document of the European Council stated the objective of signing the Common accession Treaty with Romania and Bulgaria in 2005, as well as the European Union's support for this plan.

In June 2004, the European Council in Brussels¹⁵ reconfirmed Romania's accession schedule in the intervals marked by the 2004, 2005, and 2007 milestones. On October 6th 2004, the European Commission presented the annual report on Romania for 2004, as well as the Strategy Document concerning perspectives on the enlargement process. The documents asserted the firm support of the European Commission for the conclusion of the accession negotiations with Romania (and Bulgaria) by the end of 2004.

15 Presidency Conclusions Brussels European Council: 9048/04, Polgen 20 Concl1. Brussels, 19 May 2004.

The conclusion of the accession negotiations from the technical point of view within the Ministerial Accession Conference was confirmed on December 14th 2004.

On April 13th 2005, Romania received the assent of the European Parliament for the signing of the Accession Treaty. According to the procedure (Art. 49 TEU), the European democratic forum has voted on April 13th in the plenary session, on the basis of the Progress Report initiated by the EP rapporteur for Romania, Pierre Moscovici. The result of the vote in plenary was: assent – 497 votes for, 93 against and 71 abstentions. Moscovici reported: 564 vote for, 59 against and 41 abstentions.

On April 25th the Accession Treaty to the European Union of Romania and Bulgaria was signed in Luxemburg, being gradually ratified by member states over the next two years (Slovakia being the first to ratify it on June 21th 2005 and Germany the last to ratify it on November 24th 2006).

On October 25th the European Commission issued the Comprehensive Monitoring Report on Romania, together with the Composite Paper for Romania and Bulgaria, the documents confirming the important progress in the internal preparation and indicating the measures to be undertaken in order to enable accession on 1st January 2007.

Were There Any National Rules Specifically Governing the Procedure of Accession?

After formally applying for membership in June 1995, Romania developed the Snagov Declaration, signed by most of the Romanian political community. This declaration makes a statement for Europeanisation, comprising also the National Strategy for Romania's EU Accession Preparation.

The Snagov Declaration stated that

the crux of this project is the creation of a smooth-functioning market economy, consistent with EU principles, norms, mechanisms, institutions and policies. The national strategic objective of putting in place such an economy serves as a real catalyst that helps Romania's political and social forces to develop solidarities and to find areas of convergence. While the long-, medium-, and short-term actual development of the national economy is still caught in the vicious circle of self-perpetuating and ever increasing gaps in productivity and living standards compared to those of the EU members, the priorities envisaged provide the Romanian people a historic opportunity to promote, in a broader international framework, its goals and primary interests, its identity and tradition, narrow and eventually eliminate, through its own efforts backed by international co-operation, the gaps versus the advanced economies, to achieve Romania's modernization in line with the requirements of transition to a culture and information-based economy in which education capital should play the key role in the social and economic development. The convergences that have been reached in the area of fundamental options, macro and micro-economic objectives, principles and policies rely on a realistic assessment of resources

and opportunities, of the domestic and international environment. They allow us to face the twofold challenge to complete the transition to a market economy and to prepare for Romania's EU membership, taking the historic opportunity to start accession negotiations, as decided by the European Council in Helsinki in December 1999. We also appreciate that in drafting the Strategy a close co-operation has been established with experts of the European Commission, the EU member states, the IMF and the World Bank.¹⁶

Following the European Commission's largely unfavourable conclusion from 1997, outlining that Romania could not cope with the economic constraints and obligations of membership in the medium term, Romania responded in the same year by launching the revised version of National Programme for the Adoption of the *Acquis Communautaire*,¹⁷ supported by all political parties and formations. It set out a timetable for achieving priorities and intermediate objectives, based on the first Accession Partnership, as well as necessary administrative structures and financial resources.

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both EU and National Level?

The Association Agreement from 1995 has created an institutional framework suited for the development of close relations between Romania and the EU, consisting of The Council of Association (political-national level) and The Parliamentary Committee of Association (which was created as a Commission for the European Integration of Romania) and The Association Committee. The latter is made up of high ranking officials from the Romanian government, the European Council and the European Commission, and it supports the Association Council. The new dialogue framework between Romania and the EU allowed for a constructive dialogue between both parties at all levels, improved access for Romanian products on the community market, the involvement of the Romanian state in all trans-European infrastructure network development project, which include transport, communications, energy, participations in community programs (research, industrial cooperation, energy, environment protection, trans-border cooperation, support in the training and improvement of personal).

In 1995, an independent institutional system was created in Romania specifically for the purpose of European integration. The newly created Secretariat of Interministerial Commission for European Integration comprised three pillars: the Department

¹⁶ Snagov Declaration.

¹⁷ *Hotărâre nr. 114 din 26 februarie 1999 privind actualizarea Programului național de aderare a României la Uniunea Europeană. Publicat în Monitorul Oficial nr. 98 din 8 martie 1999.* Published in the Official Gazette No. 98 from 8 March 1999.

of European Integration, the Ministry of Foreign Affairs and the Ministry of Industry and Trade.¹⁸

The Department of European Integration acted as a specially designed body for the central public administration, operating under the Government and having the legal personality to ensure the coordination of policies and technical processes pertaining to accession, and to fulfil its responsibilities in the decision making and position taking process of the accession. Its activities were carried out by 30 employees (although the number was supposed to double by 1998, but remained the same).¹⁹

The Ministry of Foreign Affairs, also established in 1997 was a specialised structure in the form of an EU Directorate, staffed with 12 diplomats, which continued to control communication channels with the Permanent Mission in Brussels.

As the Department of European Integration and the EU Directorate operated under different political patronages, friction between the two bodies was acute and their collaborations remained mostly strained during their functioning.

The third pillar in the central organism was the EU Directorate set up by the Secretariat for Trade of the Ministry of Industry and Commerce, destined to handle commercial aspects of the association process.

Before the negotiation process started in 2000, the Department for European Affairs was created, by merging the Department of European Integration with three diplomatic missions of the Ministry of Foreign Affairs. The mission of the newly created Department was to monitor the implementation of the European Act and the Association Act, to coordinate the monitoring process and the financial assistance, to conduct and coordinate negotiations on accession and to ensure a political dialogue with the institutions of the European Union, as well as with member states and candidate states.

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in Comparable Position?

The European Commission's Composite Paper on the reports about progress towards Accession by each of the Candidate Countries detailed specific conditions regarding the accession of Bulgaria and Romania:

(a) in view of the paramount importance of nuclear safety, the opening of negotiations with Bulgaria should be conditional on a decision by the Bulgarian authorities before the end of 1999 on acceptable closure dates for units 1-4 in the Kozloduy nuclear

18 *Hotărâre nr. 119 din 9 martie 1998, privind elaborarea Programului național de aderare a României la Uniunea Europeană. Publicat în Monitorul Oficial nr. 112 din 12 martie 1998.* Published in the Official Gazette No. 112 from 12 March 1998.

19 Ivan, 2004, pp. 73–78.

power plant and upon a confirmation of the significant progress accomplished in the economic reform process;

(b) the opening of negotiations with Romania should be conditional on the confirmation of effective action announced by the Romanian authorities to provide adequate budgetary resources and to implement structural reform of child care institutions before the end of 1999. It is also conditional upon a further assessment of the economic situation before negotiations are formally opened, in the expectation that appropriate measures will have been taken to address the macro-economic situation.²⁰

Question No. 8

What Procedures on EU Level Were There in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

On the basis of Agenda 2000, the Commission presented a multiple series of regular country reports, starting in 1998 and continuing until 2004 in the case of Romania,²¹ as well as monitoring reports on the state of preparedness for EU membership.²²

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission's or Council's Working Groups, Participation of Your Representatives at the Commission's or Council's Meetings etc.)?

During the accession process, Romania and Bulgaria were gradually getting implicated in the work of EU institutions. For example, between February 2002 and June 2003, the two countries were already participating in the work of the European

- 20 European Commission's Composite Paper on the reports on progress towards Accession by Each of the Candidate Countries. EC Cons Doc 12053/99, 1999, 31.
- 21 Commission Report COM(98) 702 final Not published in the Official Journal; Commission Report COM(1999) 510 final Not published in the Official Journal; Commission Report COM(2000) 710 final Not published in the Official Journal; Commission Report COM(2001) 700 final – SEC(2001) 1753 Not published in the Official Journal; Commission Report COM(2002) 700 final – SEC(2002) 1409 Not published in the Official Journal.; Commission Report COM(2003) 676 final – SEC(2003) 1211 Not published in the Official Journal; Commission Report COM(2004) 657 final – SEC(2004) 1200 Not published in the Official Journal.
- 22 Comprehensive Monitoring Report from the Commission COM(2005) 534 final – SEC(2005)1354; Monitoring Report of May 2006 from the Commission COM(2006) 214 final – SEC(2006) 596; Communication from the Commission of 16 May 2006 'Monitoring report on the state of preparedness for EU membership of Bulgaria and Romania' COM(2006) 214 final Not published in the Official Journal; Report From The Commission To The European Parliament And The Council on Romania's progress on accompanying measures following Accession. Brussels, 27.6.2007 COM(2007) 378 final.

Convention, and in 2003, they established Permanent Representations to the European Union in Brussels.

Following the signature of the Accession Treaty with Bulgaria and Romania in Luxembourg on 25th April 2005, European Parliament President Josep Borrell welcomed 18 observers from Bulgaria and 35 from Romania on 26th September 2005 in Strasbourg, as it is conventional for countries acceding to the European Union to send observers to the European Parliament in advance.

The first European Council in which Romania participated in its new capacity as observer took place between June 16th and 17th 2007.

Question No. 10

Has Your Country Experienced any Particular Difficulty in Meeting Some of the Accession Criteria?

Since the Commission had concluded in its 1997 Opinion that Romania fulfilled the political criteria for accession, the country has worked further to consolidate and deepen the stability of its institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities.

The regular country reports on Romania have mentioned several additional improvements: the last commission report from 2004 lists a reduction in the use of emergency ordinances, the full implementation of laws covering freedom of information and transparency in the legislative process, the improvement of the policy-making and legislative process, the strengthening of local and regional governance with a view to ensuring proper implementation of the *acquis*, the improvement of court cases management and the quality of judgments, the effective implementation of anti-corruption laws, additional efforts to ensure the independence, effectiveness and accountability of the National Anti-Corruption Prosecution which should concentrate its resources on investigating high-level corruption, efforts to guarantee media independence, as many media organisations' economic situation remains precarious, a more speedy approach to further the restitution of buildings and religious property, and the vigorous implementation of a structural reform programme so that Romania's functioning market economy should cope with competitive pressure and market forces within the Union.²³

The justice system reform has been one of the toughest of the reforms expected from Romania and along with anti-corruption measures, a key-point in ensuring EU membership.

The reform of the judicial system imposed itself as the justice sphere was marked by inefficiency, corruption among the judges and a dependency on the political sphere.

23 Commission Report COM(2004) 657 final – SEC(2004) 1200 Not published in the Official Journal, 147–149.

One of the first decisions of the Ministry of Justice in this sense was to initiate public debate on the National Anti-corruption Strategy of 2005-2007 (SNA) and on an essential package of three laws: the Law on the Superior Council of the Magistracy (CSM), the Law on the Organisation of the Judiciary (JO) and the Law on the Statute of Magistrates (SM). The National Anti-Corruption Strategy of 2005-2007 took into consideration systemic problems within the Romanian judiciary, aiming at guaranteeing the independence of justice, ensuring the quality and efficiency of the act of justice and accountability for the act of justice.

The modifications proposed by the Ministry of Justice introduced two essential principles: efficiency of the justice act and accountability for the justice act.

The representatives of the European Council and of the European Commission repeatedly indicated that National Anti-Corruption Prosecutor's Office (PNA) comprised an inefficient structure. The anti-corruption legislation was publicly advertised as a success by the former Government, although from its inception serious criticism had been levied about the inefficiency of its enforcement in the absence of sanctions, narrow definitions, and inefficient structures. There was a lot of vagueness in the formulations, as well as an unwillingness to investigate.

In relation to the principle of freedom of expression, reports have revealed that special treatment given by fiscal control bodies to media companies has resulted in a de facto editorial self-censorship within TV stations, most notably during the 2004 coverage of the electoral campaign.

Reports also touched upon the issue of minorities and anti-discrimination as the institutions charged with safeguarding minority rights often proved weak and indecisive, and legislation continued to include discriminatory provisions or to offer inadequate protection. In 2003 and 2004 the anti-discrimination law was amended, and due to the sustained advocacy of several NGOs with the Human Rights Commission of the Senate, and in spite of some opposition expressed by the National Council for Combating Discrimination, several improvements were made.²⁴

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. Constitutional Court)?

The Constitution of Romania was amended in 2003 in light of the ongoing EU accession negotiations, in order to encompass changes in several areas.

One such amendment referred to the equality of rights of Romanian and EU citizens regarding the right to vote and to be elected in local public administrations, as well as the right to take public office, apart from high officials. The 1991 version of the Constitution of Romania provided that the public offices and dignitaries, civil or military, could only be taken by Romanian citizens and only Romanian citizens with a right to vote (aged 18 years, vote day included) could do so. The alteration became

24 Dill and Motoc, 2025.

necessary within the context of the negotiations for chapter 2 – Free Movement of Persons and chapter 30 – Institutions.

Another provision in need of amendment was the requirement of having Romanian citizenship for land acquisition, conflicting with the right of establishment provided by the Treaty of Amsterdam which enables the acquisition of land and use of agricultural land within the territory of a Member State by the inhabitant of another Member State. The harmonisation of this provision was to be made within the negotiation for chapter 4 – Free Movement of Capital.

In the position paper for chapter 24 – Justice and Home Affairs, the alteration of the Constitution Art. referring to the interdiction to extradite Romanian citizens was envisaged, for the Convention on extradition between EU Member States cannot be refused on the grounds that such a person who may be the object of an extradition is a citizen of the Member State which solicited the extradition. In 1997, Romania ratified the European Convention on extradition, reserving that Romanian citizens and the persons granted asylum in Romania could not be extradited. The proposed amendment to the constitutional provision entailed the withdrawal of the reserve held in 1997.

Romania committed under chapter 28 – Financial Control, to introduce to its Constitution a provision regarding the independence of the Court of Accounts, observing the provisions of The International Organisation of Supreme Audit Institutions (INTOSAI), of which Romania is a party.

One last aspect related to the revision of the Constitution that was discussed under chapter 11 – Economic and Monetary Union, refers to the alteration of the Article providing that the national currency is the Leu, the subdivision of which is Ban. An alteration was therefore needed, so that Romania could join the Eurozone in the future.²⁵

Was the Accession Legally Challenged (e.g. Constitutional Court)?

The European project was not legally challenged in Romania. The principles of Euro-Atlantic integration became a part of the 2003 Constitution of Romania, with Art. 148 of Title VI (Euro-Atlantic integration) dedicated to Integration into the European Union.

TITLE VI – Euro-Atlantic integration

Art. 148 – Integration into the European Union

(1) Romania's accession to the constituent treaties of the European Union, with a view to transferring certain powers to community institutions, as well as to exercising in common with the other member states the abilities stipulated in such treaties, shall be carried out by means of a law adopted in the joint sitting of the

²⁵ Pușcaș and Meerts, 2003, p. 187.

Chamber of Deputies and the Senate, with a majority of two thirds of the number of deputies and senators.

(2) As a result of the accession, the provisions of the constituent treaties of the European Union, as well as the other mandatory community regulations shall take precedence over the opposite provisions of the national laws, in compliance with the provisions of the accession act.

(3) The provisions of paras. (1) and (2) shall also apply accordingly for the accession to the acts revising the constituent treaties of the European Union.

(4) The Parliament, the President of Romania, the Government, and the judicial authority shall guarantee that the obligations resulting from the accession act and the provisions of para. (2) are implemented.

(5) The Government shall send to the two Chambers of the Parliament the draft mandatory acts before they are submitted to the European Union institutions for approval.²⁶

Question No. 12

Was There a Referendum in any Stage of the Accession Procedure?

There were no referendums in Romania and Bulgaria. Romanian national law did not require this type of consultation for the accession. Full commitment to become a member state had been expressed in the Snagov Declaration of 1995, which was a general agreement from Romania's political sphere, signed by 14 political parties. Such a declaration of support towards Europeanisation is a unique feature in the path of accession of new member states.

Furthermore, the 2003 amendment of the Constitution comprised the principles of EU and NATO adherence, and the Romanian Parliament was fully aligned in this direction, while support for EU accession was extremely high among the population.

By voting on the amendment of the Constitution in 2003 (the Law on revision of the Constitution), the citizens of Romania manifested their solid adherence regarding joining NATO and the European integration project. The Law on revision of the Constitution expressly stated that the objective of the amendments was to create the adequate constitutional framework and legal basis for the Euro-Atlantic integration of Romania, the harmonisation of constitutional provisions with the legal norms of the European Union, and the right of Romanian citizens to vote in representatives as well as to be voted in as a representative in the European Parliament.

26 Constitution of Romania.

Question No. 13

In Addition to the Above, Were There any Noteworthy Legal Aspects Concerning the Negotiation and Ratification of the EU Accession Agreement in Your Country?

The accession of Bulgaria and Romania became far more contested at national parliamentary and general public levels in several major EU member states – for example Germany, France, and the Netherlands. At that point in history there were increasing political and popular concerns about the enlargement and, hence, additional provisions were necessary to ensure that this enlargement would neither cause damage to the EU nor run counter to public opinion. This is the reason why the EU Accession Agreement includes a postponement clause, added to the usual safeguard clauses, stating that the accession of each one of the two countries could be postponed for one year.

The clause provided a provision for a delay of entry of one year ‘if serious shortcomings have been observed in the fulfilment by Romania of one or more of the commitments and requirements’ relating to four specific items of the competition chapter and seven of the justice and home affairs chapter (including ‘the acceleration of the fight against high-level corruption’, which had meanwhile been included as an item in the *acquis* to reinforce its legal power’).

3. Legal and Economic Support for Candidate Countries

The third section concentrates on the support provided to the candidate countries by the EU.

Question No. 14

Before the Accession, Was There Any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

Romania benefited from pre-accession aid. In 2000, aid for agricultural and rural development (SAPARD) and a structural instrument (ISPA) giving priority to measures in the transport and environmental sectors were introduced. The Regulation coordinating aid under PHARE, SAPARD and ISPA, adopted in June 1999, enabled the Commission to carry out a posteriori monitoring of contracts where it considered the financial control in the partner country to be deficient.

The total amount of financial aid made available between 2000 and 2002 was EUR 1.890 billion, of which EUR 242 million was sent via Phare, EUR 150 million via SAPARD; and between EUR 208 and EUR 270 million via ISPA. SAPARD 2003 allocated around EUR 162.2 million to Romania. The envelope agreed under ISPA for the same year was EUR 255.1 million.

The Community allocated EUR 158.7 million for the implementation of the SAPARD programme in Romania in 2004. The main focus of the 2004 SAPARD programme was to increase the absorption and especially the use of the 2000 financial allocations, since any unused funds were due to be decommitted by the end of 2004. In December 2003 the SAPARD Agency was accredited for the implementation of the following three additional measures: (a) Investments in agricultural holdings; (b) Development and diversification of economic activities, multiple activities and alternative income, and (c) Improving vocational training. With this accreditation the Agency was to manage 80% of the amount available for Romania under the programme.²⁷

ISPA programming was governed by the national strategy papers for transport and the environment, which the Romanian authorities finalised in 2000 and the strategies for these two sectors were revised. The strategic objectives in the field of transport were intended to address serious weaknesses in the network of roads and railways and placed focus on the modernisation of the trans-European corridors crossing the country. Other priorities were dealing with increased traffic levels around urban areas and the development of the use of waterways. In 2004, a total commitment of EUR 272.3 million was approved, in support of both transport (EUR 149.6 million) and environmental projects (EUR 122.7 million).

Question No. 15

Did Your Country Benefit From Any Funds Providing Financial Support in Relation to EU Accession Immediately After the EU Accession?

The objective of the Accession Partnership (adopted in March 1998 and amended in December 1999, January 2002 and May 2003) was to build a legislative framework, designed to contain and support the working priorities set out in the road map and the Commission's 2003 Regular Report on progress towards accession, the financial resources available to help Romania implement these priorities, and the conditions which apply to this aid. This partnership underpins a range of instruments to support candidate countries in the accession process.

These instruments include a national programme for adopting the Community *acquis*, the joint evaluation of medium-term economic priorities, a pact against organised crime, the national development plan and other sectoral programmes required for participation in post-accession structural funds, and the pre-accession implementation of the ISPA and SAPARD. In 2002, the Accession Partnership served as the starting point to prepare an action plan to reinforce the administrative and judicial capacity of Romania.

The implementation of the Accession Partnership was monitored under the Europe Agreement between the European Union and Romania.

27 The Accession Partnerships with Romania.

The Accession Partnership priorities were reviewed in December 1999 and a final revision was published in May 2003 (Decision 2003/397/EC). The revised priorities formed the basis of the Commission's evaluation in its 2003 report.

The revised Accession Partnership defined the priorities which Romania should wholly or largely achieve from 2003-2004. They were jointly defined by the EU and Romania. The level of aid granted to Romania depended upon the implementation of these priorities.

Romania has addressed the priorities set out in the revised Accession Partnership. Overall, it has made progress, including the launch of major reforms in the fields of public administration, the fight against corruption, and the judicial system, which are all intended to strengthen democracy and the rule of law. Further progress was expected to be made in the area of human rights and the protection of minorities, although attention should be focused on the implementation of these reforms and on the enforcement of existing legislation. Structural reforms included major privatisations in industry and in the energy sector, but further efforts were still needed in order to tackle the accumulation of arrears and reluctance to initiate bankruptcy procedures. Romania has made satisfactory progress with the adoption and implementation of the *acquis*. However, considerable efforts are still needed to ensure effective implementation and enforcement of the legislation arising from the commitments made in the negotiations. Overall, more legislative alignment and greater administrative capacity are needed to meet these commitments.

Support from the Phare programme and other pre-accession instruments was a focus on the Accession Partnership priorities, comprising a financial framework. The total volume of pre-accession assistance available to Romania for 2004 (around EUR 825 million) was substantial: EUR 405.3 million for the national PHARE programme, EUR 158.7 million for SAPAR and between EUR 289 million and EUR 343 million for ISPA.

Under the PHARE program, Romania received EUR 2.1 billion for the period 1992-2003, of which EUR 283 million was allocated for 2003. The economic and social cohesion subprogramme of the 2004 National Phare programme allocated the amount of about EUR 160 million, about 40% of the total PHARE budget in 2004, marking an increase on the 2003 allocation of EUR 48 million.

The 2004 Phare programme focused on the following priorities:

- Political criteria: emphasis is put on multiannual programmes to strengthen administrative and judicial capacity, support minorities and civil society, fight corruption and fraud, improve prison conditions and strengthen police cooperation (EUR 50 million)
- Economic criteria: further substantial assistance is provided for the creation of a unified, efficient and adequate land registration system as a basis for Community support (e.g. in agriculture), and also to ensure the safety of investments (EUR 4.5 million). Meeting the obligations of membership: twinning, technical assistance and investment projects are carried out principally in four priority areas, namely public finance, agriculture, environment and

border management, also subject to multiannual programming. Further areas will be covered specifically under the 2004 budget: internal market, competition, statistics, social policy and employment, energy, transport, consumer protection, justice and home affairs and the audiovisual sector (EUR 155.4 million).

- Economic and social cohesion: support is provided in close conjunction with the three-year National Development Plan (NDP) adopted by the Romanian Government in December 2003 (EUR 160.1 million).

In addition, EUR 28 million of the programme was devoted to cross-border cooperation programmes on Romania's borders with Hungary (EUR 5 million), Bulgaria (EUR 8 million), Moldova (EUR 5 million), Serbia & Montenegro (EUR 4 million) and Ukraine (EUR 6 million).

Question No. 16

Were There Any Other Noteworthy Aspects of EU Support Provided to Your Country Before the Accession?

In January 1991, the European Commission granted Romania the statute of special observer to the European Community. Romania was also included in the PHARE programme, which had initially been created for Hungary and Poland. Though the negotiations aimed at the conclusion of an association act were halted for a couple of months due to the miners' strikes and the fall of the government led by Petre Roman, they resumed later in the same year.

In 1992, the EEC granted an aid amounting of ECU 80 million to sustain the balance of payments. In its decision on 20th June 1994, the Council of the European Community decided to grant Romania a medium-term balance of payment loan for a maximum amount of ECU 125 million, to be disbursed in two tranches. While the first tranche was disbursed in November 1995, by 1997 it was not possible to send the second tranche due to persistent malfunctioning of the foreign exchange market and lack of progress on structural reforms.

4. Specific Rules Applicable to Candidate Countries Before and After Their Accession

The final section is concerned with any country-specific exemptions from the general approach, adopted by the candidate countries, both during the pre-accession period and after the actual accession.

Question No. 17

After the Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

There were no requests from Romania to negotiate exemptions from the accession procedure.

Nevertheless, there were requests for extensions on the time necessary for implementing and applying the *acquis*. In this sense, Romania has arranged for 50 periods of transit, as well as transitory arrangement, a unique feature among the states of the fifth enlargement (the longest extension amounting to 12 years – in the chapter of Environment).

Question No. 18

What Country-Specific Provisions Were Contained in the EU Accession Agreement of Your Country?

Country-specific provisions are comprised in Art. 39 of the Act of Accession, under the Annex: Specific commitments undertaken, and requirements accepted, by Romania at the conclusion of the accession negotiations on 14th December 2004 (referred to in Art. 39 of the Protocol).

In relation to Art. 39(2): To implement without further delay the Schengen Action Plan, amended in line with the *acquis* and in accordance with the deadlines agreed upon.

In order to ensure a high level of control and surveillance at the future external borders of the Union, speed up considerably efforts in terms of modernising equipment and infrastructure at the green border, blue border and at border crossing points, and to further enhance the capacity of operational risk analysis, one single multi-annual investment plan reflecting these points needed to be tabled no later than March 2005, which had to allow the Union to measure progress on a yearly basis and until the decision referred to in Art. 4(2) of the Protocol was taken with respect of Romania. In addition, Romania would have to considerably step up its plans to recruit 4,438 border police agents and officers, ensuring, in particular that a staffing level as close as possible to 100% would already be reached along the borders with Ukraine, Moldova and at the Black Sea coast upon accession. Romania would have to also implement all necessary measures to effectively combat illegal immigration, including strengthening cooperation with third countries.

Romania was required to develop and implement an updated and integrated Action Plan and Strategy for the Reform of the Judiciary including the main measures for implementing the Law on the Organisation of the Judiciary, the Law on the Status of Magistrates and the Law on the Superior Council of Magistracy entered into force on 30th September 2004. Both updated documents would have to be submitted to the Union no later than March 2005; adequate financial and human resources for

the implementation of the Action Plan would have to be ensured and it would have to be implemented without further delay and according to the time schedule set. Romania would also have to demonstrate by March 2005 the full operationability of its new system for the random distribution of cases.

Romania was required to considerably step up the fight against corruption and in particular against high-level corruption by ensuring the rigorous enforcement of the anti-corruption legislation, the effective independence of the National Anti-Corruption Prosecutors' Office (NAPO), and by submitting on a yearly basis as of November 2005 a convincing track-record of the activities of the NAPO in the fight against high-level corruption. The NAPO would have to be given the staff, financial and training resources, as well as the equipment necessary for it to fulfil its vital function.

Romania was also required to conduct an independent audit of the results and the impact the current National Anti-Corruption Strategy had generated; to reflect the conclusions and recommendations of this audit in the new multi-annual anti-corruption strategy which had to be comprised of one comprehensive document, in place no later than March 2005, accompanied by an action plan with clearly defined benchmarks to be reached and results to be obtained, as well as adequate budgetary provisions. The implementation of the Strategy and Action Plan would be overseen by one existing, clearly defined, independent body; the strategy would include the commitment to revise the protracted criminal procedure by the end of 2005 to ensure that corruption cases would be dealt with in a swift and transparent manner, in order to guarantee adequate sanctions that would have a deterrent effect. Finally by the end of 2005, it would have to contain steps to considerably reduce the number of bodies having powers to prevent or investigate corruption, so that overlapping responsibilities would be avoided.

Romania was required to ensure a clear legal framework by March 2005 for the respective tasks of, and cooperation between, gendarmerie and police including the implementation of legislation, and the development and implementation of a clear recruitment plan by the middle of 2005 for both institutions, with the aim of having made considerable progress in filling the 7,000 police vacancies and the 18,000 gendarmerie vacancies by the date of accession.

Romania was required to develop and implement a coherent multi-annual anti-crime strategy including concrete actions to curb its status as a country of origin, transit and destination of victims of human trafficking and to submit on a yearly basis, as of March 2005, reliable statistics on the manner in which this crime phenomenon was being tackled.

In relation to Art. 39(3): Romania was required to ensure the effective control by the Competition Council of any potential State aid, including State aid foreseen by means of deferrals of payments to the State budget of fiscal or social liabilities or deferrals of liabilities related to energy supply.

Romania was required to strengthen the State aid enforcement record without delay and to ensure a satisfactory enforcement record in the areas of both anti-trust and State aid thereafter.

Romania was also required to submit to the Commission by mid-December 2004, a revised steel restructuring plan (including the National Restructuring Programme and the Individual Business Plans), in line with the requirements set out in Protocol 2 on ECSC products to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part, as well as with the conditions set out in Annex VII, Chapter 4, Section B, to the Protocol.

Romania was required to fully respect the commitment not to grant or pay any State aid to the steel mills covered by the National Restructuring Strategy from 1st January 2005 to 31st December 2008 and to fully respect the State aid amounts and the conditions regarding capacity reductions to be decided in the context of Protocol 2 on ECSC products to the Europe Agreement establishing an association between the European Communities and their Member States, of the one part, and Romania, of the other part.

Finally Romania was required to continue devoting adequate financial means and sufficient and adequately qualified human resources to the Competition Council'.²⁸

Question No. 19

Were There Any Country-Specific Transitory Provisions?

The Treaty of Accession of Bulgaria and Romania includes three provisions which were to allow the Union to remedy difficulties encountered as a result of accession, namely a general economic safeguard clause; a specific internal market safeguard clause; and a specific justice and home affairs safeguard clause.

These safeguards were the same as the ones included in the Accession Treaty of the Member States who joined on 1st May 2004.

In the case of Romania, the clause may be invoked not only in case of a lack of preparation 'in a number of important areas', but also if one or more of 11 specific commitments (in the areas of justice and home affairs and competition) are not met.²⁹

Romania holds a record number of six safeguard clauses in the Accession Act, the largest number of safeguard clauses in relation to the other countries from the fifth and previous enlargement wave. There is a general economic safeguard clause; a safeguard clause regarding the failure to fulfil obligations assumed during the accession process impacting the functioning of the internal market; a safeguard clause

28 Treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union Accession Protocol and its Annexes, signed in Luxembourg on 25 April 2005.

29 Frequently asked questions about the safeguard clauses included in the Treaty of Accession of Bulgaria and Romania. MEMO/05/396. Brussels, 25 October 2005.

to be activated in case of deficiencies in transposing, applying or respecting legal provisions on justice and internal affairs; a safeguard clause regarding the unfulfillment of obligations in one or more fields related to justice and internal affairs; and a safeguard cause regarding the unfulfillment in one or more fields related to competition.

Question No. 20

Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?

Romania did not request and did not negotiate permanent exemptions from EU law.

Question No. 21

To Your Knowledge, Were There Any Notable Differences in the Content of Your Country's EU Accession Treaty From Other Countries in a Comparable Position?

When Romania entered the EU on 1st January 2007, special provisions were made to facilitate and support its smooth accession while, at the same time, safeguarding the proper functioning of EU policies and institutions.

The Accession Treaty made clear that should there be any serious shortcomings in the transposition and implementation of the *acquis* in the economic, internal market and justice and home affairs areas, safeguard measures could be taken for up to three years following accession. Romania's accession was also accompanied by a set of specific accompanying measures, put in place to prevent or remedy shortcomings in the areas of food safety, agricultural funds, judicial reform and the fight against corruption. For the last two areas, a cooperation and verification mechanism was established, setting out benchmarks to provide the framework for monitoring progress in this area.³⁰ This mechanism was put in place to improve the functioning of the legislative, administrative and judicial system and to address serious deficiencies in fighting corruption. The purpose of the Cooperation and Verification Mechanism was to ensure that measures were taken to provide assurance to Romanians and to the other Member States that administrative and judicial decisions, legislation and practices in Romania were in line with the rest of the EU. Progress on judicial reform and the fight against corruption would allow Romanian citizens and business to enjoy the rights due to them as EU citizens. Without irreversible progress in these areas, Romania risks being unable to correctly apply EU law.³¹

30 Commission Decision 2006/928/EC of 13 December 2006 establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption (OJ L 354, 14.12.2006).

31 Brussels, 27.6.2007 COM(2007) 378 final Report from the Commission to the European Parliament and the Council on Romania's progress on accompanying measures following Accession.

In November 2022, the European Commission requested the lifting of the Cooperation and Verification Mechanism (CVM) for Romania, meaning that the Commission will no longer monitor or report on Romania under a CVM but via the annual Rule of Law Report, as for all other EU member states.

In July 2023, the European Commission Vice President Věra Jourová stated that the Commission was sending a letter to the Council and the European Parliament intending to close the CVM for Bulgaria and Romania, expecting the Council to ‘make observations by 25th August’. On 15th September 2023, the European Commission formally closed the CVM for Bulgaria and Romania.³² Much of the ongoing monitoring would continue under the EU’s annual Rule of Law Cycle, which applies to all EU member states.

After the European Commission formally closed the CVM reports for both Bulgaria and Romania on 15th September 2023, the European Commission decided to not use the CVM for aspiring members of the EU. Instead, the Commission now expects every new member to join the EU without deficiencies that would require special monitoring, such as how CVM reports were used for Bulgaria and Romania.

The decision to end the use of the CVM for future members was also taken because the EU recently introduced its new Rule of Law mechanism in 2019, which monitors all member states, including Bulgaria and Romania, who now use the standard Rule of Law cycle instead of the CVM reports.

Benchmarks had been met by Romania in order for the CVM to be lifted, including: (1) the guarantee of a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy, and reporting and monitoring the impact of new civil and penal procedures codes; (2) the establishment, as foreseen, of an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken; (3) the continuation of building on progress already made, continuing to conduct professional, non-partisan investigations into allegations of high-level corruption; (4) the implementation of further measures to prevent and fight against corruption, in particular within local government.

Question No. 22

Are There Any Other Noteworthy Exemptions From the Application of the EU Law in Your Country?

There are no exemptions from the application of EU law in Romania.

32 Commission Decision (EU) 2023/1786 of 15 September 2023 repealing Decision 2006/928/EC establishing a mechanism for cooperation and verification of progress in Romania to address specific benchmarks in the areas of judicial reform and the fight against corruption. Official Journal of the European Union (OJ L 229/94. 18.9.2023).

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CHAPTER 7

SERBIA



DALIBOR ĐUKIĆ

Abstract

This report provides an overview of the accession process of the Republic of Serbia to the European Union (EU). It examines the prerequisites that the Republic of Serbia had to fulfil before formally applying for EU membership and scrutinises the historical and political peculiarities of Serbia's accession. The process of European integration of Serbia has been influenced by the disintegration of Yugoslavia, regional conflicts, and relations with the international community, among other such factors. The report covers the long period starting from the Yugoslav era through the State Union of Serbia and Montenegro, and the harmonisation efforts of the Republic of Serbia. Central to Serbia's accession process have been its commitments to the rule of law and judicial reforms, cooperation with the International Criminal Tribunal for the former Yugoslavia, and the normalisation of relations between Belgrade and Pristina. The report also explores the impact of the principle of conditionality in the EU's relations with Serbia. Despite some progress that has been made, the report notes challenges in areas such as judiciary independence, freedom of expression, anti-corruption measures, and normalisation of relations with Pristina, which continue to pose obstacles in Serbia's pace of EU integration. The report concludes by situating Serbia's accession within the context of the EU's new enlargement methodology and assessing Serbia's readiness to open further negotiation chapters contingent on reform milestones.

Keywords: Republic of Serbia, European Union accession, European integration, European Union conditionality, European Union enlargement methodology

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1. Initial Requirements on Candidate Countries

This section of the report examines the prerequisites that the Republic of Serbia was required to meet prior to formally submitting its application for membership in the European Union (EU). It provides a brief overview of the historical relationship between Serbia and the EU, outlining the trajectory towards integration and the subsequent adoption and implementation of the EU acquis.

Before addressing the specific conditions that the Republic of Serbia had to meet prior to formally applying for EU membership, it is important to provide some contextual background. Unlike other post-communist states, Serbia did not follow the conventional path of Europeanisation, which typically involves fulfilling the political criteria established by the European agenda. Serbia's journey towards EU membership was heavily influenced by the disintegration of Yugoslavia, regional conflicts in the Western Balkans, and internal political crises. These factors shaped Serbia's negotiation process, becoming unavoidable preconditions for further progress, and ultimately set a precedent in terms of both the substance and nature of its accession negotiations, distinguishing them from previous EU enlargement processes.

At the time of the establishment of European Communities, Serbia was part of the Federal People's Republic of Yugoslavia, later known as the Socialist Federal Republic of Yugoslavia (SFRY). Following the 1948 Cominform Resolution and the subsequent blockade by Eastern European countries, Yugoslavia began to shift its focus towards the West and progressively engaged in European integration processes.¹ Furthermore, socialist Yugoslavia sought to establish closer commercial ties with the West and became the first socialist nation to permit foreign investment through joint ventures in 1967.² That same year, the Declaration on Relations between SFR Yugoslavia and the European Economic Community (EEC) was signed, aiming to establish a framework for future economic cooperation. This was followed by two trade agreements in 1970 and 1973, which granted SFRY the status of most-favoured nation and led to its inclusion in the Generalised System of Preferences (GSP). The Joint Declaration signed in Belgrade on 2 December 1976 marked a turning point in relations between Yugoslavia and the EEC, formalising Yugoslavia's intent to strengthen cooperation with the EEC on the basis of equality and acknowledging its unique status as a non-aligned, Mediterranean country and a member of the Group of 77.³ In 1980, another agreement granted the former SFRY preferential trade treatment with the European Communities, along with provisions for financial assistance through financial protocols.⁴ In 1990, the SFRY signed a framework agreement under the PHARE program (Poland and Hungary: Assistance for Restructuring their

1 Bazić, 2019, p. 305.

2 Law on Investment of Resources of Foreign Persons in Domestic Organizations of Associated Labor, Official Gazette of SFRY, No. 31/67.

3 Commission of the European Communities, 1979, p. 3.

4 European Commission, 1986.

Economies) expanding cooperation to include financial support for social and economic reforms. However, relations were suspended during the 1990s due to conflicts in the territory of the former SFRY.⁵ The legal climate of Yugoslavia was perceived as 'conducive to further integration with the West'.⁶ However, the disintegration of Yugoslavia was inevitable, leading to the emergence of new sovereign states, which subsequently sought integration into the European Communities.

Following the disintegration of the SFRY, the Federal Republic of Yugoslavia (FRY) was formed, consisting of the Republic of Serbia and Republic of Montenegro. These two republics experienced nearly a decade of international isolation, during which there were no substantial efforts to pursue integration into the EU. Nevertheless, the FRY's aspiration to join the European Community was explicitly stated in the constitutional declaration adopted on 27 April 1992, alongside the Constitution of the FRY. In 1996, at the initiative of the Republic of Serbia, the FRY established the Commission for the Harmonisation of its legal system with the legislation of the EU and the Council of Europe.⁷ Despite the democratic revolution in 2000, which marked a significant political shift, Serbia remained part of the FRY. Consequently, the initial steps towards European integration were undertaken by the joint state of Serbia and Montenegro. Significant developments occurred shortly after the democratic changes in Serbia. On 8 October 2000, just three days after the revolution, the President of the FRY was invited to the EU Summit in Biarritz under the French presidency, and the FRY formally joined the Stabilisation and Association Process.⁸ In November 2000, the FRY officially participated in the EU summit held in Zagreb. During this summit, the EU reiterated that 'In this context, the way is now open to all the countries of the region to move closer to the EU as part of the stabilization and association process'.⁹ Furthermore, within a month, autonomous trade measures granted to the Western Balkans were extended to the FRY. In conclusion, the initial steps towards Serbia's association with the EU were taken within the framework of the FRY, immediately following the democratic revolution of 2000.

After the democratic changes in Serbia, the political elites in Montenegro raised questions regarding the future legal and political relationship with Serbia. At this time, the EU played a decisive role in shaping the political landscape, opting to create the State Union of Serbia and Montenegro rather than allowing the formation of two independent states. The EU's primary objective was 'to avoid the risk of a hasty separation which might jeopardize the stability achieved in the region after

5 Mission of the Republic of Serbia to the European Union, no date, para. 1.

6 Getter, 1990, p. 790.

7 *Odluka o osnivanju Komisije za harmonizaciju pravnog sistema Savezne Republike Jugoslavije sa pravom Evropske unije i Saveta Evrope* (Decision on the Establishment of the Commission for the Harmonization of the Legal System of the Federal Republic of Yugoslavia with the Law of the European Union and the Council of Europe), *Službeni list SRJ* (Official Gazette of FRY), No. 45/1996.

8 Government of the Republic of Serbia, Ministry of European Integration, no date a.

9 europa.rs, 2024.

the intervention in Kosovo'.¹⁰ The first constitutional document in Serbia to establish accession to the EU as a key state objective was the Constitutional Charter of the State Union of Serbia and Montenegro.¹¹ According to Art. 3 of the Constitutional Charter, the goals of Serbia and Montenegro include, among others, joining European institutions, particularly the EU, and aligning their regulations and practices with European and international standards.¹² Therefore, the State Union has commenced, without legal obligation, the process of harmonising the legislation with the *acquis communautaire*.

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join the EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

In April 2005, the State union of Serbia and Montenegro received a positive assessment of the country feasibility study for concluding the Stabilisation and Association Agreement (SAA) with the EU.¹³ In June 2005, the National Strategy of Serbia for the Accession of Serbia and Montenegro to the EU was adopted. This strategy sought to incorporate the obligations of the Stabilisation and Association Process and the goals of Serbia's integration into the EU into a broader framework of Serbia's development.¹⁴ The negotiation process between the State Union of Serbia and Montenegro and the EU encountered significant challenges. One of the primary obstacles was the lack of consensus between the two constituent republics regarding the terms of the agreement and the failure of achieving a minimum level of common trade policy and internal market integration. Consequently, the EU adopted a 'twin track' approach, whereby negotiations for the SAA were conducted separately with each republic, as well as with the State Union.¹⁵ However, this approach did not yield the expected results.

During this period, the initial conditions for advancing the European integration of the Western Balkans were established. In accordance with the EU–Western Balkans Summit Declaration, adopted in Thessaloniki in June 2003, the Western Balkan countries committed to full and unequivocal cooperation with the International Criminal Tribunal for the former Yugoslavia (ICTY), including the transfer of

10 Vejvoda, 2004, p. 40.

11 Tišma, 2010, p. 145.

12 Ustavna povelja državne zajednice Srbija i Crna Gora (Constitutional Charter of the State Union of Serbia and Montenegro), Službeni list SCG (Official Gazette of Serbia and Montenegro), No. 1/2003 and 26/2005.

13 Government of the Republic of Serbia, Ministry of European Integration, no date b.

14 Government of the Republic of Serbia, Ministry of European Integration, no date c.

15 Commission of the European Communities, 2005.

remaining indictees to The Hague.¹⁶ Although the State Union of Serbia and Montenegro passed a Law on Cooperation with the Hague Tribunal in 2002,¹⁷ the European Commission deemed its cooperation insufficient, particularly in locating and extraditing individuals accused of war crimes during the Yugoslav wars. Consequently, negotiations with the EU were suspended on 3 May 2006, just three weeks before Montenegro's referendum on secession. This suspension symbolised the final phase of the State Union's existence. Following the referendum on 21 May 2006, Montenegro declared its independence in June. As in previous Yugoslav states, independence was seen as a path towards further European integration. The two constituent republics of the State Union were now able to separately continue their negotiations with the EU and support their integration processes.

The Republic of Serbia, shortly after gaining independence, adopted the new Constitution, which stipulates in Art. 1 that,

Republic of Serbia is a state of Serbian people and all citizens who live in it, based on the rule of law and social justice, principles of civil democracy, human and minority rights and freedoms, and commitment to European principles and values.¹⁸

The explicit reference to future EU membership and integration has been omitted, with future negotiations inferred from general provisions on the role of international law within Serbia's legal system.

In addition to the complexities of economic transition and democratisation, Serbia faced two key conditions that needed to be met to begin negotiations on the SAA. The first was cooperation with the ICTY, which required Serbia to arrest and extradite war crime suspects to The Hague: 'Compliance with ICTY-related conditionality comprises many different subfields such as the arrest and transfer of indictees to The Hague, access to documents, witness protection or domestic war crimes trials'.¹⁹ In October 2005, the EU approved the start of negotiations on the SAA with Serbia. However, the negotiations, conducted between May 2006 and September 2007, were suspended following the Hague Tribunal Chief Prosecutor's assessment that Serbia had not sufficiently cooperated with the Tribunal. The SAA was effectively

16 European Commission, 2003. Another important criterion reiterated in the Thessaloniki Summit Agenda is regional cooperation, which remains a precondition for the EU integration of the Western Balkan countries.

17 *Zakon o saradnji Srbije i Crne Gore sa Međunarodnim Tribunalom za krivično gonjenje lica odgovornih za teška kršenja Međunarodnog humanitarnog prava počinjena na teritoriji Bivše Jugoslavije od 1991. Godine* (Law on Cooperation of Serbia and Montenegro with the International Tribunal for the Prosecution of persons Responsible for Serious Violations of International Humanitarian Law Committed in the territory of the Former Yugoslavia since 1991, *Službeni list SRJ* (Official Gazette of FRY, No. 18/2002 and *Službeni list Srbije i Crne Gore* (Official Gazette of Serbia and Montenegro), No. 16/2003.

18 Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, Nos. 98/2006 and 115/2021.

19 Menz, 2014, p. 17.

used by the EU as a diplomatic incentive,²⁰ with the start of negotiations, the ratification, and the SAA's entry into force in 2008 all being contingent on Serbia's level of cooperation with the ICTY. Serbia was not the only country to experience the 'ICTY conditionality'. It was rather inconsistently applied towards Croatia during the accession negotiations.²¹ The standards for ICTY conditionality appeared lower in Croatia's case than in Serbia's. This disparity stems from two factors: first, EU decisions are driven by political negotiations among member states rather than fixed rules; second, the policy of conditionality evolved over time, becoming stricter due to concerns about 'enlargement fatigue' and the EU's ability to absorb new members, especially after the premature accession of Romania and Bulgaria in 2007.²²

The second condition for Serbia's EU integration, which remains a central issue to this day, was the participation in negotiations on the status of its southern province of Kosovo and Metohija. This province was placed under international supervision, with a special civil mission established to provide interim administration. United Nations (UN) Security Council Resolution 1244 (1999) suspended the legislative, executive, and judicial authority of the FRY and Serbia in Kosovo and Metohija, while formally reaffirming the commitment to the sovereignty and territorial integrity of the FRY (now Serbia). In addition to its mandate to maintain regional stability and promote cooperation among the countries of the former Yugoslavia, the EU made the negotiations between Belgrade and representatives of the Kosovo Albanians a key political priority. The situation deteriorated in February 2008 when ethnic Albanians in Kosovo and Metohija unilaterally declared independence. This declaration has not been recognised by five EU member states (Cyprus, Greece, Romania, Slovakia, and Spain), two regional countries (Serbia and Bosnia and Herzegovina), three 'new applicants' (Georgia, Moldova, and Ukraine), and two permanent members of the UN Security Council (China and the Russian Federation). Serbia's further progress in EU integration remains conditional upon the EU-facilitated dialogue between Belgrade and Pristina. This was particularly evident when Serbia was granted EU candidate status after Belgrade and Pristina reached an agreement on regional representation of the Serbian southern province.²³ Moreover, the accession negotiations with Serbia only began after Serbia signed the First Agreement of Principles Governing the Normalisation of Relations (commonly known as the Brussels Agreement). The link between European integration and the dialogue between Belgrade and Pristina is a

20 Dobbels, 2009a, p. 15.

21 Menz, 2014, p. 33.

22 Dobbels, 2009b, p. 28.

23 European Parliament, 2024.

unique precondition imposed by the EU specifically in Serbia's case, unlike any other country in a comparable situation.²⁴

As with all previous instances preceding the initiation of accession negotiations with a candidate country, Serbia was required to conclude the SAA and obtain candidate status. Owing to prolonged interruptions in the SAA negotiations, which extended alongside the signing process, the Republic of Serbia voluntarily commenced the harmonisation of its national legislation with the *acquis communautaire*. At the 2003 European Summit in Thessaloniki, the EU introduced the European Partnership as a central pre-accession strategy for potential membership candidates from the Western Balkans, including the State Union of Serbia and Montenegro. The partnership established short- and mid-term priorities for EU integration and was intended to govern relations until the signing of the SAA. Subsequently, the Government of the Republic of Serbia formulated an Action Plan in 2004 for the implementation of the European Partnership's priorities. This plan outlined a schedule of short- and medium-term activities to be undertaken as part of the country's stabilisation process and its path towards EU accession.²⁵ In a few subsequent years, action plans for harmonisation were adopted to ensure that certain areas of law would be sufficiently advanced by the time the first agreement with the EU is signed. In 2006, the Government of the Republic of Serbia adopted the Action Plan aimed at enhancing institutional capacity to fulfil obligations in the process of European integration.²⁶ This initiative was also a consequence of implementing the European Partnership. However, while the scope of the voluntary phase of legal order harmonisation was limited, it demonstrated Serbia's commitment to European integration and could yield advantages in the negotiation process.

Negotiations on the conclusion of the SAA between the EU and Serbia were relaunched in mid-2007. This time, the Republic of Serbia participated independently for the first time in negotiations with the EU. The negotiations resulted in the signing of the Agreement on Visa Facilitation and the Agreement on Readmission between the European Community and the Republic of Serbia on 18 September 2007.²⁷ Shortly thereafter, on 7 November 2007, the SAA was also initialled. Additionally,

24 Cyprus is an EU member state with an unresolved territorial dispute, but unlike Serbia, participation in dialogue or resolution of the dispute was not a formal precondition for Cyprus' EU integration or accession. According to the 1999 Helsinki Presidency conclusions, while a political settlement would facilitate accession, it was not a prerequisite. The European Council stated that if no settlement was reached by the end of negotiations, the decision on Cyprus' accession would still proceed, taking into account all relevant factors, without making settlement a precondition. European Parliament, 1999.

25 Ministarstvo za evropske integracije, 2004a.

26 Ministarstvo za evropske integracije, 2004b.

27 Agreement between the European Community and the Republic of Serbia on the facilitation of the issuance of visas – Declarations, Official Journal L 334, 19/12/2007 P. 0137–0147. Agreement between the European Community and the Republic of Serbia on the readmission of persons residing without authorisation, Official Journal L 334, 19/12/2007 P. 0046–0064.

the EU Council adopted a decision on the principles, priorities, and conditions of the European Partnership with the Republic of Serbia, which includes Kosovo, in accordance with UN Resolution 1244.²⁸

The SAA was finally signed in 2008 and entered into force only after ratification by all member states.²⁹ On 14 June 2010, the EU decided to initiate the ratification process for the SAA, which lasted three full years. Lithuania was the last EU member to ratify the SAA, paving the way for its entry into force on 1 September 2013. In the meantime, the Interim Association Agreement on Trade and Trade-Related Matters,³⁰ which Serbia voluntarily applied unilaterally, entered into force in February 2010. The SAA granted the Republic of Serbia the status of an associated country to the EU. The two most significant commitments undertaken by Serbia upon signing this Agreement were to establish a free trade zone and align its domestic legislation with EU standards. By signing both the SAA and Interim Trade Agreement, the Republic of Serbia advanced to the second phase of legal order harmonisation, assuming contractual obligations in accordance with the signed agreements. Even at this stage, there remained an element of voluntariness on the part of the Republic of Serbia, as the EU decided not to apply the Interim Trade Agreement signed with the SAA. On 16 October 2008, Serbia decided to unilaterally apply its provisions starting 1 January 2009.³¹

In 2008, the Government of the Republic of Serbia adopted the National Program for Integration (NPI) of the Republic of Serbia into the EU.³² The NPI served as a preparatory framework for the National Programme for the Adoption of the Acquis (NPAA), a requirement for all candidate countries for EU membership. The National Programme replaced the annual Action Plans and covered all 35 negotiation chapters of the EU acquis, including detailed measures for the period 2008–2012.

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

Serbia officially applied for EU membership on 22 December 2009. On 25 October 2010, the Council of Foreign Ministers of EU Member States decided to forward Serbia's candidacy for membership to the European Commission for review. Shortly thereafter, on 24 November 2010, the European Commissioner for Enlargement

28 Council Decision of 18 February 2008 on the principles, priorities, and conditions contained in the European Partnership with Serbia including Kosovo as defined by United Nations Security Council Resolution 1244 of 10 June 1999 and repealing Decision 2006/56/EC, Official Journal of the European Union, L 80/46.

29 Stabilisation and Association Agreement between the European Communities and their Member States of the one part, and the Republic of Serbia, of the other part, Official Journal of the European Union, L 278.

30 European Commission, 2008.

31 Government of the Republic of Serbia, Ministry of European Integration, no date a.

32 Ibid.

handed over the European Commission's Questionnaire for Serbia to prepare its response regarding its EU membership application.³³ The questionnaire contained 2,563 questions and sub-questions, divided into six annexes and 33 chapters.³⁴ Its aim was to allow the Government of the Republic of Serbia to explain the country's ability to adopt and implement legislation in all areas of EU law. At the end of January 2011, the prime minister of the Republic of Serbia handed over the answers to the questionnaire to the European Commissioner for Enlargement. Additionally, on 22 April 2011, Serbia sent answers to a supplementary set of questions from the European Commission.³⁵

On 12 October 2011, in its Opinion on Serbia's candidacy, the European Commission recommended that Serbia be granted candidate status for EU membership, contingent upon further substantial progress by Belgrade in normalising relations with Pristina.³⁶ This underscores the distinct character of Serbia's negotiations with the EU, particularly in comparison to other Western Balkan countries. The European Council, in its decision of 1 March 2012, endorsed the conclusions of the General Affairs Council, affirming that Serbia had demonstrated a credible commitment and had made significant progress in implementing agreements reached in the dialogue with Pristina, including those related to integrated border management, thereby granting Serbia candidate status for EU membership. The European Commission's positive Opinion on Serbia's application began by referencing Art. 2 and Art. 49 of the EU Treaty, as well as the Copenhagen criteria, which provided the legal and political framework for evaluating Serbia's candidacy.³⁷ On 27–28 June 2013, the European Council agreed to launch accession negotiations with Serbia by January 2014 at the latest. The Council adopted the negotiation framework on 17 December 2013 and agreed to hold the 1st Intergovernmental Conference with Serbia by the end of January 2014.³⁸ On 21 January 2014, the First Intergovernmental Conference was held in Brussels, marking the formal opening of Serbia's accession negotiations with the EU. Just a few weeks earlier, EU delivered its General Position for Ministerial meeting, opening the Intergovernmental Conference on the Accession of Serbia to the EU, in which the Negotiating Framework adopted by the EU Council was included together with basic principles governing the negotiations.³⁹

33 Ibid.

34 mei.gov.rs, 2010.

35 Government of the Republic of Serbia, Ministry of European Integration, no date a.

36 Government of the Republic of Serbia, Ministry of European Integration, no date d.

37 European Commission, Commission Opinion on Serbia's application for membership in the European Union, COM(2011) 668 final.

38 European Union, 2014.

39 Ibid.

2. Institutions and Procedures of Accession

Question No. 5

What Was the Legal Framework of the Accession Procedure (Since the Application to Join the EU Till the Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

Before the official start of negotiations at the First Intergovernmental Conference in 2014, to prepare its legal system for the next phase of negotiations, the Government of the Republic of Serbia adopted the first NPAA 2013–2016. The second NPAA was adopted for the period 2014–2018 in July 2014, while in November 2016, the Serbian Government adopted the revised NPAA. The structure of the NPAA consists of three main sections and three annexes. The main sections cover the political criteria, economic criteria, and the ability to assume the obligations of EU membership. The annexes are as follows: Annex A, which outlines the plan for aligning Serbia's legislation with the EU *acquis* and a review of implementation measures; Annex B, detailing the measures planned for translating and preparing the national version of the *acquis*; and a final annex focusing on administrative and procedural aspects. Overall, it outlines not only the obligations for incorporating EU legislation into national law but also the necessary steps to meet the political and economic criteria for EU membership (Copenhagen 1993 and Madrid 1995). The NPAA sets out both developmental and strategic goals, as well as policy reforms and actions required to achieve them. Additionally, it includes a detailed plan, schedule, and priorities for adopting regulations and specifies the bodies responsible for their implementation. The NPAA will be updated as needed in the future, considering the progress made during accession negotiations and the ongoing development of the EU *acquis*, which candidate countries must adopt at the time of accession.⁴⁰

The EU initiated the first screening meeting on 25 September 2013, focusing on Chapter 23 – Judiciary and Fundamental Rights. This marked another confirmation of the revised approach in the accession process for new candidate countries introduced by the EU, considering that the screening process is officially conducted after the formal opening of negotiations. However, in the case of Serbia, as well as Montenegro, screenings for chapters of fundamental importance to the harmonisation process with EU law were held before the negotiations officially began.

The purpose of the screening meetings is to conduct a detailed analysis of Serbia's legislative alignment with EU law for each negotiation chapter. The outcome of the screening provides an overview of what remains to be done to bring the candidate country's legislation in line with the EU *acquis* before membership. This analysis forms the basis for the candidate country's negotiating positions, particularly for

40 Ministry of European Integration, no date a.

chapters that require transitional periods for the implementation of certain EU regulations. For the European Commission, the screening process indicates the candidate state's readiness to open specific chapters.

One distinct aspect of the screening process is that EU Member States do not participate in screenings, leaving this task to the Commission. However, there are exceptions for Chapters 23, 24 (Justice, Freedom, and Security), and 31 (Foreign, Security, and Defence Policy), where Member States actively participate, underscoring the significance of these chapters in the overall accession process for Serbia.

The analytical screening of Serbian legislation is conducted through explanatory and bilateral screenings. The explanatory screenings involved the European Commission presenting the EU *acquis* for each chapter, while the bilateral screenings were more crucial, as they allowed Serbia to present its domestic legislation to the Commission. Differences between Serbian law and EU law were then identified. Following the bilateral screening, the Commission evaluates the candidate country's readiness to open the chapter, and the Council assesses whether the country is sufficiently prepared to submit its negotiating position.

Serbia's negotiating position outlines the remaining legislative harmonisation tasks, reviews the existing administrative capacities, and details the application of legal norms within the relevant chapter. After the submission of Serbia's negotiating position, the EU adopts a Joint Position, followed by an Intergovernmental Conference to officially open the chapter.

In many cases, however, the Commission concludes that a candidate country has not yet achieved sufficient alignment to open negotiations on a specific chapter, leading to the establishment of opening benchmarks. These benchmarks include the adoption of laws; administrative strengthening; and, in complex cases, the creation of action plans to meet these requirements. Serbia, for instance, was granted immediate alignment only for Chapters 25 (Science and Research) and 26 (Education and Culture), while most other chapters required opening benchmarks.

Once the opening benchmarks are met, the European Commission drafts an Opening Benchmark Assessment Report (OBAR), and upon a positive evaluation, the chapter is opened. After a chapter is opened, the candidate country must continue working towards closing benchmarks, updating action plans, and ensuring the full implementation of previously adopted legislation. Once the closing benchmarks are met, the Commission submits a report to the Council, along with the EU's Joint Position, recommending temporary closure of the chapter. The Commission continues monitoring compliance even after the chapter is temporarily closed.⁴¹

A particular feature of the negotiations between Serbia, Montenegro, and the EU is the introduction of interim benchmarks for Chapters 23 and 24 under the revised methodology. Based on these benchmarks, Serbia adjusts its legal framework and action plans. The European Commission then submits a report to the Council, recommending a Joint Interim Position to advance the negotiations further.

41 Ministry of European Integration, no date b.

Serbia has signed several important agreements with the EU that facilitate its EU integration. These include the SAA (2008); Visa Facilitation and Readmission Agreements (2007); Open Skies Agreement (2006); and Energy Community Agreement (2005), which integrates Serbia's energy market with the EU. Additionally, Serbia signed the CEFTA Free Trade Agreement (2006) to boost regional trade and the Treaty Establishing the Transport Community (2017), which enhances cooperation in transport infrastructure and policies between Serbia and the EU. Finally, the Financial Framework Partnership Agreement between the European Commission and the Republic of Serbia regulates specific arrangements for implementation of EU financial assistance to the Republic of Serbia under the Instrument for Pre-Accession Assistance (IPA III).⁴²

With the entry into force of the SAA, three new joint bodies were established to oversee its implementation: (1) The Stabilisation and Association Council, composed of representatives from the European Commission, the Council of the EU, and Serbian government ministers, monitoring implementation of the agreement at the highest political level. Its main role is to address unresolved issues arising during the implementation process. (2) The Stabilisation and Association Committee supports the council in its duties, consisting of expert-level representatives from both the European Commission and the Serbian government. This committee plays a crucial role in overseeing implementation of the agreement and refining its provisions. (3) The Stabilisation and Association Parliamentary Committee serves as a platform for members of Serbia's National Assembly and the European Parliament to meet and exchange views.⁴³

Question No. 6

What Institutions Were Set up for the Purposes of Accession at Both the EU and National Levels?

Before the official start of negotiations, the Government of the Republic of Serbia established a negotiating team for leading the EU accession negotiations and appointed a chief negotiator.⁴⁴ The Negotiating Team of Serbia is responsible for preparing negotiation positions and conducting accession talks with the EU across all chapters and stages. It operates under guidelines set by the Serbian Government and coordinates with EU institutions, member states, and other candidate countries to fulfil its tasks and advance the accession process. In March 2016, the Negotiating Team adopted the Guidelines for cooperation of the Negotiating Team for Accession of the Republic of Serbia to the EU and negotiating groups with the representatives of civil society organisations, the National Convention on the EU, and the Chamber

42 Ministry of European Integration, no date c.

43 Ministry of European Integration, no date d.

44 Decision on Establishing the Negotiating Team for Accession of the Republic of Serbia to the European Union, Official Gazette of RS, No. 71/2015.

of Commerce and Industry of Serbia. Meanwhile, in April 2016, it adopted the Rules of Procedure of the Negotiating Team for Accession of the Republic of Serbia to the EU.⁴⁵

The Serbian Ministry of European Integration, established in 2017, coordinates the country's EU accession process. Its tasks include managing negotiations with the EU, aligning national regulations with EU standards, and implementing the SAA. The ministry also oversees the use of EU funds, promotes international cooperation, and ensures public communication on integration efforts. It plays a key role in programming and monitoring IPA funds and supports collaboration with EU institutions and member states.⁴⁶ Each Ministry has a sector for EU negotiations, including the Serbian Ministry of European Affairs.⁴⁷ The minister of European Integrations is also a Chief Negotiator and National Coordinator of the Reform Agenda of the Republic of Serbia for the period 2024–2027, in accordance with the Growth Plan for the Western Balkans.

The National IPA Coordinator (NIPAC) in Serbia manages the planning, coordination, and monitoring of EU pre-accession assistance (IPA funds). This role ensures alignment between national priorities and EU financial support, fostering effective use of resources to advance European integration. NIPAC works closely with state institutions, civil society, and international partners, facilitating Serbia's progress towards meeting EU accession requirements.⁴⁸

The Coordination Body for the EU Accession Process in Serbia ensures efficient collaboration among state institutions involved in EU negotiations. It shall consider the most important issues and guide operations within the scope of the public administration in the process of accession of the Republic of Serbia to the EU.⁴⁹ The Coordination Body Council performs operations regarding current issues within the process of accession of the Republic of Serbia to the EU.⁵⁰ Furthermore, 35 negotiation groups have been established to negotiate the accession of the Republic of Serbia to the EU. Each negotiation group manages key tasks in Serbia's EU accession process, including participating in the screening process, drafting negotiation positions, and monitoring the NPAA. It also assigns responsibilities for tracking EU regulations and proposes communication strategies for negotiation chapters.⁵¹ Finally, the Mission of the Republic of Serbia to the EU operates in Brussels, while the Delegation of the EU to Serbia is based in Belgrade.

45 Ministry of European Integration, no date e.

46 Ministry of European Integration, no date f.

47 Ministry of European Integration, no date g.

48 Ministry of European Integration, no date h.

49 Ministry of European Integration, no date i.

50 Ministry of European Integration, no date j.

51 Ministry of European Integration, no date k.

3. European Integration and the Serbian Constitution

Question No. 11

In What Way Was the Constitution of Your Country Changed to Accede the EU?

Serbia has yet to join the EU; however, amendments to the 2006 Constitution have been deemed necessary to align the country's legal framework with EU standards. In its 2007 Progress Report, the European Commission devoted special attention to the Serbian Constitution, identifying specific provisions as inconsistent with European standards. These included concerns related to the independence of the judiciary, the role of parliament in judicial appointments, the lack of clear and objective criteria regarding the re-election of judges, political party control of mandates of individual members of parliament, the level of corruption, and the presence of organised crime. At the same time, the report commended the constitutional protections afforded to minorities in Serbia and the provisions safeguarding human rights.⁵²

The process of adopting constitutional amendments was lengthy and complex, requiring sustained dialogue with European experts, particularly with the European Commission for Democracy through Law – better known as the Venice Commission. As Serbia advances towards EU membership, the constitutional reforms exemplify efforts to align the national legal framework with the requirements of accession. After nearly two years of stagnation, the newly formed Government of Serbia submitted a proposal in December 2020 to amend the Constitution, marking a renewed commitment to reforms to adapt its legal and constitutional system with European rule of law standards among which the independence of the judiciary is the core pillar. On 26 October 2021, the Committee on Constitutional and Legislative Issues of the Serbian Parliament finalised the draft amendments following consultations with the Venice Commission. The Venice Commission's involvement was pivotal, given that the European Commission relies heavily on its recommendations when assessing Serbia's progress in judicial reforms and constitutional compliance.

Throughout the discussions, a dominant argument in favour of adopting the amendments was Serbia's commitment to its European path and the fulfilment of obligations expected from EU candidate countries. The reform effort was further aligned with the new Judicial Development Strategy (2020–2025) and the revised Action Plan for Chapter 23,⁵³ which set a deadline for the adoption of constitutional amendments by the end of the fourth quarter of 2021. During this period, dialogue was initiated with professional associations, legal experts, and civil society representatives. European stakeholders, including the Venice Commission, European Commission, and EU, actively participated in the process. Both government officials and

52 Serbia 2007 Progress Report, p. 6.

53 Strategy of judicial development for the period 2020–2025, Official Gazette of Republic of Serbia, No. 101/2020 and 18/2022. Revised AP23 adopted at the Government session on 10 July 2020.

experts viewed the adoption of constitutional amendments as a crucial step towards European integration, signalling progress in aligning Serbia's legal system with European constitutional principles.

The Venice Commission welcomed the amendments and expressed particular support for several key changes:

the introduction of the principle of non-transferability of judges, functional immunity for judges and prosecutors, the removal of the probationary period for judges and prosecutors, that the High Judicial Council will no longer be dissolved if it does not render a decision within 30 days and, most importantly, the removal of the competence from the National Assembly to elect court presidents, the Republic Public Prosecutor and public prosecutors and to decide on the termination of their office as well as to elect judges and the deputy public prosecutors. The relevant amendments are in line with European standards and address previous recommendations, including of the Venice Commission.⁵⁴

After the adoption of the amendments, a second and arguably more important phase commenced. This stage focuses on passing judicial laws and by-laws essential for the practical enforcement of constitutional reforms. These legislative actions aim to supplement the amendments, ensure their proper implementation, and promote a legal culture aligned with European values, thereby bringing Serbia's legal framework into closer conformity with EU standards.

4. Specific Rules Applicable to Candidate Countries Before and After Their Accession

Question No. 7. and No. 10

What Legal Criteria Were Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in a Comparable Position? Has Your Country Experienced any Particular Difficulty Meeting Some of the Accession Criteria?

The classical fulfilment of the Copenhagen criteria in the case of the Republic of Serbia has been modified with additional conditions contained in democratic conditionality. While this type of conditionality is not new for countries involved in the Stability Pact, in the case of the Republic of Serbia, each of these conditions has been expanded with specific requirements, such as cooperation with the ICTY and regional cooperation. In Serbia's case, the latter condition involves dialogue at the

54 European Commission for Democracy through Law, 2021, p. 20.

Belgrade–Pristina level and implementation of the agreements that resulted from this dialogue. While progress in cooperation with the Hague Tribunal was key to opening negotiations, the normalisation of relations between institutions in Belgrade and Pristina became the central precondition of Serbia's further integration.

The normalisation of relations between Belgrade and Pristina became a new priority for the EU, as Kosovo Albanian's unilateral declaration of independence in 2008 had the potential to compromise regional stability in the Balkans. Furthermore, with its territorial integrity questioned, Serbia was in a different situation from all the other candidate and potential candidate countries since the very beginning of its negotiations. This is reflected by the inclusion of political dialogue between Belgrade and Pristina in the negotiation framework, specifically in Chapter 35 – Other Issues. In the case of Serbia, this chapter, typically reserved for technical or additional matters in other countries, contained only one point: normalisation of relations between Serbia and Kosovo.⁵⁵

The asterisk next to the word Kosovo became an unavoidable condition for Serbia's participation in regional initiatives and other forms of regional cooperation involving representatives from the provisional institutions in Pristina – necessary for fulfilling the requirement of good neighbourly relations. Additionally, this politically challenging chapter became the greatest burden in Serbia's negotiations, entirely diverting the process from its original objective of aligning with the *acquis communautaire* and fulfilling the Copenhagen criteria. This was clearly reflected in the EU Common Position on Chapter 35:

the advancement of Serbia's EU accession negotiations will be guided by Serbia's progress in preparing for accession, which will be measured in particular against Serbia's continued engagement towards a visible and sustainable improvement in relations with Kosovo, as well as the other requirements contained in point 23 of the Negotiating Framework.⁵⁶

Throughout the decade-long dialogue, it became evident that the clause stating, 'any view expressed by either Serbia or the EU on a specific chapter of the negotiations will in no way prejudice the position which may be taken on other chapters',⁵⁷ had little practical significance. After the first agreement on principles governing the normalisation of relations was signed in Brussels on 19 April 2013 between representatives of Belgrade and Pristina under the EU's auspices,⁵⁸ the EU gave the green light to reward Serbia for its progress and participation in the dialogue. The agreement

55 This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

56 European Union, 2015, Chapter 35, p. 2.

57 Ibid.

58 The Government of the Republic of Serbia, no date.

was used as a political incentive to open negotiations. In its Progress Report on Serbia's Alignment with Membership Criteria, the European Commission noted:

Overall, Serbia has taken significant steps towards visible and sustainable improvement of relations with Kosovo⁵⁹ which have already led to a number of irreversible changes on the ground.⁶⁰

According to point 14 of the first agreement, Belgrade and Pristina committed that they will not 'block, or encourage others to block, the other side's progress in their respective EU path'.⁶¹ However, little progress has been made on this point or the other 14 points of the first agreement. Nevertheless, Chapter 35 has largely determined every phase of progress or stagnation in Serbia's negotiations, setting a precedent in the EU's enlargement policy.

Furthermore, the EU has introduced more stringent conditions for Chapters 23 and 24, which now form Cluster 1. It has also established a monitoring system for progress in these chapters: the Commission is required to report to the Council twice a year on the overall progress of candidate countries in the rule of law area. This is carried out through the annual Enlargement Package or country reports, followed by a second report in the form of non-papers.⁶²

5. Brief Overview of the Current State of Affairs

As previously mentioned, the First Intergovernmental Conference, marking the formal commencement of Serbia's accession negotiations with the EU, took place on 21 January 2014 in Brussels. Between 2014 and 2019, 11 intergovernmental conferences were held, during which the following chapters were opened: 4, 5, 6, 7, 9, 13, 17, 18, 20, 23, 24, 25, 26, 29, 30, 32, 33, and 35.⁶³ In 2020, the EU introduced a new enlargement methodology aimed at providing stronger political steer and establishing a more credible, dynamic, and predictable integration process.⁶⁴ The negotiating chapters were reorganised into thematic clusters, each covering broad policy areas. This clustering approach enables a more focused political dialogue, particularly by prioritising critical reforms within core sectors. The new methodology is intended to enhance the impact of reform processes by incentivising

59 This designation is without prejudice to positions on status and is in line with UNSCR 1244/1999 and the ICJ Opinion on the Kosovo declaration of independence.

60 Serbia Report, 2013, p. 6.

61 The Government of the Republic of Serbia, no date.

62 Pejović, 2018, p. 81.

63 Government of the Republic of Serbia, Ministry of European Integration, no date a.

64 European Commission, 2020.

sectoral improvements that benefit both citizens and businesses. Negotiations on each cluster will be opened as a whole – after fulfilling the opening benchmarks – rather than on an individual chapter basis.

Although the adoption of the new methodology was not mandatory for Serbia and Montenegro, both countries accepted it, and the European Council approved its application to their respective accession processes.⁶⁵ However, two chapters remain outside the cluster structure: Chapter 34 (Institutions) and Chapter 35 (Other Issues). Chapter 34 will be addressed at the conclusion of the negotiations, while Chapter 35, specific to Serbia, focuses on the normalisation of relations with Pristina.⁶⁶ A significant development in the accession process occurred on 22 June 2021, when the Twelfth Intergovernmental Conference was held in Luxembourg. This conference marked the opening of Cluster 1 – Fundamentals – and was particularly notable as the first held under the revised enlargement methodology. Another milestone followed on 14 December 2021, when the Thirteenth Intergovernmental Conference, also in Luxembourg, resulted in the decision to open Cluster 2 – Green Agenda and Sustainable Connectivity. The period from 2020 to 2024 can be defined as a time of change, but not of significant progress for the Republic of Serbia in aligning its legal system with European values and the EU *acquis*. Serbia is prepared to open negotiations on Cluster 3, but the opening remains contingent on further progress in the areas of the rule of law and normalisation of relations with Pristina.⁶⁷ Alongside the introduction of the new (revised) methodology, this period was marked by the COVID-19 pandemic, multiple election cycles, and foreign policy challenges. The focus on values was evident only through the preparation of constitutional amendments, as mentioned before.

Serbia has engaged in the implementation of the new Growth Plan for the Western Balkans. The Commission has noted Serbia's engagement across the four pillars: gradual integration with the EU single market, regional economic integration, fundamental reforms, and increased financial support.⁶⁸

Judicial reform remains one of the key strategic priorities of the Republic of Serbia, aimed at ensuring the rule of law and consistent application of the principle of separation of powers in a democratic society. The European Commission noted in its latest report that 'Serbia is between having some level of preparation and a moderate level of preparation in the area of judiciary', while the adoption of by-laws to the laws implementing the constitutional amendments has been recognised as limited progress.⁶⁹

Regarding human rights protection and fundamental rights, Serbia has established a legislative and institutional framework, as acknowledged by the European

65 European Council, 2021.

66 Ministry of European Integration, no date 1.

67 Subotić, 2024.

68 Serbia Report, 2024 Report, p. 4.

69 *Ibid.*, p. 5.

Commission, but the challenge remains the consistent and effective implementation of these frameworks. The EU places particular emphasis on freedom of expression and media freedom, as well as the transparency of their implementation. It is especially stressed that ‘the overall environment for the exercise of freedom of expression without hindrance still needs to be further strengthened in practice’.⁷⁰ Serbia adopted the Strategy for the Development of Public Information System for the period 2020–2025,⁷¹ but the Commission noted no progress in its implementation. Nevertheless, a positive development is the newly formed Ministry for Human and Minority Rights and Social Dialogue, which since 2021, has been engaged in drafting and adopting anti-discrimination laws and strategic documents.

Frequent elections in Serbia have caused additional challenges for both the adoption and implementation of legislative measures. Many reform activities within Cluster 1 were put on hold, including the drafting and adoption of regulations. The Commission noticed that some progress was made in the fight against corruption and that ‘Serbia is between having some level of preparation and a moderate level of preparation in the fight against corruption’.⁷² Furthermore, alignment with the Common Foreign and Security Policy became highly relevant for the estimation of further progress of a candidate country, such as Serbia.⁷³

70 Serbia Report, 2024, p. 41. In the 2024 report, the Commission noted that Serbia ‘has made no progress on the recommendations from last year, which therefore remain valid’. Serbia Report, 2024, pp. 6–7.

71 Strategy for the Development of the Public Information System in the Republic of Serbia for the Period 2020–2025, Official Gazette of the Republic of Serbia, No. 11/2020.

72 Serbia Report, 2024, p. 6.

73 Serbia Report, 2024, pp. 95–96.

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CHAPTER 8

SLOVAKIA



ALENA KRUNKOVÁ

Abstract

The Slovak Republic became an independent state on 1 January 1993, after the dissolution of the Czech and Slovak Federative Republic. The period of its formation is related to the shift in integration on the European continent in connection with the creation of the European Union. The Treaty on European Union (signed in Maastricht on 7 February 1992) entered into force (1 November 1993) in the same year the independent Slovak Republic was created. The Slovak Republic was interested in joining the European structures while operating in a common state with the Czech Republic. The signing of the Agreement on Trade in Industrial Products in 1988 between the former Czechoslovak Socialist Republic and the European Economic Community can be considered the first significant step in the European integration processes. This Agreement entered into force on 1 April 1989; however, it was short-lived owing to changes of November 1989. The Agreement between the European Economic Community and the European Atomic Energy Community and the Czech and Slovak Federative Republic on trade and commercial and economic cooperation was signed in Brussels on 7 May 1990. The Protocol between the European Coal and Steel Community, on the one hand, and the Czech and Slovak Federal Republic, on the other hand, was initialled in Brussels on 28 June 1991. More intense integration efforts began in the former Czechoslovakia shortly after the ‘Velvet Revolution’ in November 1989, when changes in the state regime occurred inside the country. This National Report provides an overview of the substantial historical context reflecting the activities of the Slovak Republic first as a candidate, and later as an acceding country.

Keywords: integration, European Union, candidate country, Slovakia’s accession to the EU, Association Agreement, the Copenhagen criteria

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1. Introduction

After the establishment of the independent Slovak Republic in January 1993, a natural transition occurred in development of the integration processes towards the European Communities. The Slovak Republic had new opportunities to integrate into the international space as it was gradually recognised by individual states and international communities. The transition process from a federal to unitary state occurred relatively smoothly and was continuous. The top state representatives of the Slovak Republic were aware of the importance of the international community also for the unitary state, therefore, they continued the efforts to integrate into the European structures initiated by the former common federal state. The Slovak Republic became a member of the Council of Europe on 30 June 1993 as the thirty-first member state. Consequently, new possibilities emerged for its participation in addressing Europe's common political problems, as well as new possibilities and forms of legal cooperation in the area of human rights protection and the rule of law guarantees. A slightly more complicated situation occurred in connection with the integration into the intergovernmental military alliance – the North Atlantic Treaty Organization ('NATO'). The Slovak Republic declared its interest in joining NATO as soon as it was established. The inaugural documents listed the chief foreign policy priorities, which included the ambition to achieve membership in NATO and the European Union.¹ Initial development in this area appeared favourable,² however, the political direction of the Slovak Republic stymied these efforts for some time under the former government of Prime Minister V. Mečiar.³ The issue of Slovakia's

- 1 All Slovak governments from 1994 to Slovakia's accession to the EU in 2004 stated the membership in NATO as one of their most important priorities.
- 2 At the time when NATO proposed to create a 'Partnership for Peace' to better develop relations with former socialist countries, Slovakia was among the first to sign the Framework Document and join this initiative (February 1994). The presentation document submitted by Slovakia in May 1994 established the areas of interest of the Slovak Republic and the Partnership. At that time, the Slovak Republic took advantage of the extensive opportunities that this program provided to meet the government's program objectives in defence and security policy. In November 1995, the first individual Partnership for Peace program was approved as an essential tool for establishing cooperation and involvement in NATO activities. In that year, Slovakia was also involved in the evaluation and planning process. The activities of that process were aimed at achieving the interoperability of Slovak units subordinate to NATO command, therefore, they were able to work alongside with NATO countries without any problems. The approval of the aforementioned documents and joining the Partnership for Peace and later the evaluation process meant confirming Slovakia's long-term orientation towards Euro-Atlantic values and clearly marked the principles of the country's security and defence policy.
- 3 At the NATO summit in July 1997 in Madrid, three post-socialist states (which became members in 1999) were invited to the Alliance: the Czech Republic, Hungary, and Poland. Slovakia was not mentioned in the invitation list as a candidate in the second wave of enlargement, where Slovenia and Romania were envisaged. However, simultaneously it was declared that both in the economic and military area, as well as in the issues of adapting its legislation, Slovakia was fully comparable with its neighbours.

accession to NATO was reopened after the NATO Washington Summit in 1998.⁴ Slovakia became a full member of NATO on 29 March, 2004.

2. Initial Requirements for Candidate Countries

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

As a successor state of the former Czechoslovakia, the Slovak Republic assumed the obligations of the Interim Agreement of 16 December 1991 as part of its pre-accession preparations.⁵ Its progress in integration was subject to all the conditions set for any country applying for EC/EU membership. From the EU's position, the Treaty on European Union already laid down basic conditions (Art. 49) and principles (Art. 6, sec. 1), which must be fulfilled by all countries aiming to become the EU members.⁶

The accession criteria, also known as the Copenhagen criteria, were conceived in 1993 at the Copenhagen summit of the European Council.

- 4 The first Slovak plan for NATO membership, based on which the Slovak Republic began to prepare basic strategic documents, such as the Act on Military Obligation, the Act on Defence of the Slovak Republic, the Act on the Armed Forces of the Slovak Republic, was called 'NP PRENAME' and was approved in the autumn of 1999.
- 5 In its integration efforts to join the European Communities, the former Czechoslovak Federative Republic signed the Association Agreement on 16 December 1991. As each association agreement was subject to time-consuming ratification by all parliaments of the Member States, mutual trade relations were regulated in the 'Interim Agreement'. This was essentially identical to the trade part of the Association Agreement, but, unlike it, it only required approval by the Council, not ratification by parliaments. Thus, it could enter into force much earlier, that is, as early as on 1 March 1992. Owing to the further development and split of Czechoslovakia, the original Association Agreement lost one of the contracting parties and, therefore, never entered into force. However, the successor states, the Czech Republic and the Slovak Republic, have assumed the obligations arising from this Interim Agreement and agreed to apportion the rights and obligations resulting from the original Association Agreement. Thus, the new Association Agreement with the official name 'European Agreement establishing the Association' was signed by representatives of the Slovak Republic on 4 October 1993.
- 6 First, it is geographically a European state that respects and promotes the fundamental values of the EU, such as respect for human dignity, freedom, democracy, equality, the rule of law, human rights, including the rights of persons belonging to minorities. Simultaneously, the state has a functioning market economy, stability of institutions guaranteeing democracy, rule of law, human rights and respect for and protection of minorities; and demonstrates the ability to adopt the law of the Union, including commitment to the goals of political, economic and monetary union.

The basic criteria constituting the essential conditions for the candidate countries were: (1) the creation of stable institutions that would guarantee democracy, rule of law, human rights, and respect for and protection of minorities; (2) a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; (3) the ability to assume the obligations of membership, including the ability to effectively implement the rules, standards, and policies that constitute the body of EU law; and (4) compliance with the objectives of political, economic, and monetary union.⁷

In December 1994, at the European Council meeting in Essen, these conditions became part of a broader material, known as the 'Pre-Accession Strategy', which combined the European Agreements and the PHARE Programme into a single whole, as a specific policy towards the candidate countries. The next European Council meeting in December 1995 adopted the White Paper on the Single Market, which specified 'compliance with the objectives of political, economic and monetary union' and added the stability of the candidates' economic and monetary environment to entry conditions. The EU conceived the White Paper as a document to be adopted by candidates as a guideline (as well as a condition for full membership) for economic reforms and the sequence of those reforms. Such clarification was made 'in connection with the creation of conditions for the gradual and harmonious integration of candidate countries'.⁸ In practice, this meant that candidate countries would have to gradually adopt EU legislative standards, which focused primarily on the liberalisation of external economic relations and regulated trade in goods and services on the internal market. Moreover, the White Paper and the Structured Dialogue became part of the pre-accession strategy as instruments to accelerate the acceptance of EU conditions. After clarifying and adding further criteria for entry, the monitoring process became deeper and also affected new areas, particularly the reform of state and public administration, legal system and rights of ethnic minorities. Thus, the conditions for accession to the Union continued to change and were not stable, making the entire process uncertain and unpredictable to the candidate countries for the most part, as several enlargement options were discussed; however, none were officially adopted. Individual governments had to prepare their own national plans for the adoption of the *acquis*. The political criteria were gradually made more precise in individual negotiations, with the structured dialogue serving as the chief tool for implementation and mediation of conditionality. This was also indicated by the first reports (*avis*) prepared and published by the Commission. The Commission focused on evaluating the candidate countries under the Copenhagen Conditions and assessed the readiness of countries to join the Union accordingly.

The European Agreements constituted the basic legal framework for the relationship between the Community and the associated countries of Central and Eastern Europe. The first European Agreements were signed with Hungary, Poland, and

7 European Union, no date.

8 Figel' and Adamiš, 2004, p. 12.

Czechoslovakia in 1991; however, they only included a reference to the political dimension of integration by mentioning in the preamble the common European values to which the parties subscribe. Listed among those values was pluralist democracy, the rule of law, respect for fundamental human rights and freedoms, free and democratic elections based on a pluralist party system, as well as such pillars of Western civilisation as the market economy and social justice. Only later, in May 1992, the EU strengthened the meaning of this general formulation and included an additional clause in the European Agreements according to which it obtained the right to terminate the Trade and Cooperation Agreement if the associated country violated the aforementioned contractual political principles. Since then, all other Association Agreements have had a specific article obliging the associated countries to respect democracy and human rights. This was the first innovative approach in relation to all other applicants for the associated country status. However, the focus of the European Agreements was mutual trade, which generally supported the liberalisation of markets in the associated countries, scheduled gradually over a ten-year period, and opened up the common market for industrial goods from the candidate countries in a shorter, five-year period. However, the beginning of the negotiations indicated that Member States would strictly guard their markets, particularly with respect to the sensitive items such as steel, textiles, and agricultural products.

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

In June 1995, through the Minister of Foreign Affairs of France, the then Slovak Prime Minister Vladimír Mečiar and the Minister of Foreign Affairs Juraj Schenk handed over the application of the Slovak Republic for EU membership together with the Memorandum of the Government of the Slovak Republic on the application for EU membership to the then French President Jacques Chirac, who was also the head of state of the presiding country of the European Union at that time. The government memorandum stated that the strategic goal of the Slovak Republic was to acquire full membership in the EU in the 2000.

Question No. 3

*What Conditions Did Your Country Need to Satisfy Before Joining the EU?
To Your Knowledge, Were These Conditions Different From Those Applied to Countries
in a Comparable Position?*

On 4 October 1993, the European Association Agreement – the Association Agreement (hereinafter, the ‘Agreement’)⁹ was signed in Luxembourg by the

⁹ The European Agreement on Association was published under number 158/1997 of the Statutes in the Statutes of the Slovak Republic.

European Communities and their Member States, and the Slovak Republic.¹⁰ The Agreement aimed to harmonise Slovakia's economic and social policies, as well as adapt them to EU legislation. The National Council of the Slovak Republic (hereinafter, the 'NC SR') approved the Agreement by its Resolution No. 352 of 15 December 1993 and the President of the Slovak Republic ratified it on 19 July 1994. Pursuant to Art. 123, para. 2, the Agreement entered into force on 1 February 1995. On the date of its entry into force, the Agreement between the European Economic Community and the European Atomic Energy Community and the Czech and Slovak Federative Republic on trade and commercial and economic cooperation of 7 May 1990 and the Protocol between the European Coal and Steel Community and the Czech and Slovak Federative Republic expired. By honouring the Association Agreement, the Slovak law began to adapt to EU legislation, and the economic and social policies began to converge. After a ceremonial handover of the document on the association status in May 1994, Slovakia, together with the Czech Republic, Hungary, Poland, Bulgaria, Romania, Lithuania, Latvia, and Estonia, became one of the associated members of the Western European Union.

Question No. 4

*Were There Any Specific Features of Your Member State's Accession to the EU,
Compared to Other Countries in a Comparable Position?*

Following the adoption of the pre-accession strategy, the European Commission began to monitor, and evaluate the fulfilment of all the Copenhagen criteria in an intense and organised manner. In July 1997, the Commission published an assessment of progress in each candidate country for the first time. On this basis, it recommended that accession negotiations be initiated with only six countries: the Czech Republic, Estonia, Hungary, Poland, Slovenia, and Cyprus. Bulgaria, Lithuania, Latvia and Romania did not meet the economic conditions that Slovakia managed to meet; however, in the Commission's opinion, Slovakia was the only country that did not meet the political criteria for initiating the negotiations. According to the Commission, the Slovak government did not sufficiently respect the separation of

10 On behalf of the Slovak Republic, it was signed by the then Prime Minister Vladimír Mečiar, accepted in the international arena at that time.

powers enshrined in the constitution and too often did not respect the rights of the opposition, among other aspects.¹¹

Thus, the summit of the European Council in Luxembourg divided the candidate countries into two groups; only the later meeting of the Council in Helsinki in 1999 changed this model. In preparation for the accession of the new Member States in 1997, the Commission drew up a specific document called Agenda 2000. It merged all the requirements and assistance provided by the EU into one framework, called the Accession Partnership. The Commission placed ever-increasing emphasis on candidates' readiness to join, as well as on the general development of their economy and societies.

When the European Commission published the first assessment of the state of readiness of candidate countries for EU membership in 1997, reservations about the impact of the executive branch in Slovakia were underlined. Of the ten countries assessed, only Slovakia did not meet the basic requirements set by the Copenhagen criteria stipulated by the EC in Copenhagen, and together with four other countries that did not meet the economic requirements, did not begin accession negotiations. One of the EC's most serious reservations towards Slovakia was the extremely strong executive branch of government, which caused an overall instability of political institutions.¹²

- 11 The European Commission expressed its first concern about development in Slovakia after the infamous night session of the NC SR on 3–4 November 1994, when the coalition majority changed the practices of proportional representation of the opposition in the leadership and management of the parliament, thus fully limiting the control powers of the opposition. For example, it did not elect any member of the opposition as a vice-chairman of the NC SR, and it also transferred all opposition party leaders to the parliamentary Committee for the Environment. The new majority in the NC SR recalled opposition representatives from bodies supervising public media and intelligence services. Opposition nominees in the Supreme Audit Office and the National Property Fund did not remain in their positions, and a candidate close to the future government was elected to the position of the Attorney-General. Furthermore, the parliamentary majority created a committee to investigate the legitimacy of the mandates of the opposition Democratic Union. The opposition, as a key institution for the functioning of any democratic regime, was provided no formal opportunity to provide checks and balances in the government or interfere in its policy.
- 12 The gradually chaotic internal political situation (the Mečiar government) in Slovakia began to negatively affect the integration of Slovakia into the EU, which resulted in the adoption of a European Parliament's resolution on the necessity of respecting human rights and democracy in Slovakia in 1997. The resolution of the European Parliament was announced to the Slovak government by *démarche* and was the first warning signal in the accession negotiations. As the Mečiar government was not interested in improving the situation and did not act to rectify the mistakes and the chief criticism was the failure to meet the political criteria, at its meeting in Luxembourg, the European Council decided – accession negotiations would be initiated only with Poland, the Czech Republic, Hungary, Cyprus, Slovenia and Estonia (the Luxembourg Group). Subsequently, Slovakia was included in the second group, in which further relations were to be regulated individually within the framework of the Accession Partnership, aiming to support those areas of the Copenhagen criteria in which the countries concerned were lagging behind.

3. Institutions and Procedures of Accession

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Until Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

The basic document was the European Association Agreement, published under number 158/1997 in the Statutes of the Slovak Republic as the Notice of the Ministry of Foreign Affairs of the Slovak Republic on the signing of the European Association Agreement concluded between the European Communities and their Member States on the one hand, and the Slovak Republic on the other.

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both EU and National Level?

Slovakia's integration into the European Union led to some pressure on national political institutions. Institutions and their arrangement at the level of the government of the Slovak Republic were changing the most. Responsibility for Slovakia's accession to the EU was assumed by the Ministry of Foreign Affairs of the Slovak Republic, whereas the Mission of the Slovak Republic to the European Communities (today the Permanent Representation of the Slovak Republic to the EU) and the specially created Office of the Deputy Prime Minister for Integration, which at that time established the position of chief negotiator with the EU, also played an important role in the integration.

By 1995, which was rich in watershed events, the process went relatively smoothly – all then EU Member States approved Slovakia's association with the EU, and thus, the Association Agreement entered into force. Consequently, Slovakia acquired the status of an official candidate country at the European Council and the Government of the Slovak Republic received the White Paper (preparation of associated countries for integration into the EU market). Moreover, the Delegation of the European Commission officially began its work in Bratislava. During 1996, several meetings of the Association Committee of the SR-EU or the Joint Parliamentary Committee of the NRSR and the European Parliament occurred in Bratislava.

According to the impact of the EU on national political institutions, we can identify four basic periods: Stage 1 – from entering into the Association Agreement between the Slovak Republic and the EC after 1997; Stage 2 – limited by the change of government after the 1998 election; Stage 3 – after the conclusion of accession negotiations with the EU, to the Slovak Republic's membership in the EU; Stage 4 – the period after Slovakia's accession to the EU in May 2004.

Similarly, institutional changes can be studied at two levels: (1) horizontally as changes at the national level, particularly in the relationships between the executive and legislative branches, (2) at the vertical level, as the relationship between the EU and the Slovak Republic.

Although continuous changes have occurred in all periods at the vertical level, a significant change in executive-legislative relations occurred only with the adoption of the 2001 Constitutional amendment and later adoption of the Constitutional Act on cooperation between the NC SR and the government in EU matters.¹³

Moreover, different temporal stages of integration affected the structure of public authorities in different ways. In the first stage, changes resulted from entering into the Association Agreement of 4 October 1993. Based on this Agreement (No. 104–109), an Association Council was created, the members of which were representatives appointed by the Government of the Slovak Republic and members of the Council and the Commission. The most important power of the Association Council was the ability to approve decisions and recommendations for the implementation of the Association Agreement, the most significant of which had the status of international treaties. In the Programme Declaration of January 1995, the Government undertook to prepare ‘the appropriate institutional framework necessary to ensure the successful preparation of the accession of the Slovak Republic to the European Union’.¹⁴ This was to create ‘conditions for effective sectoral involvement in activities implementing the European Agreement and the prerequisites for their cooperation’.¹⁵ Based on Resolution of the Government of the Slovak Republic No. 10 of 3 January 1995, the Council of the Government of the Slovak Republic for Integration into the European Union (hereinafter, the ‘Council of the Government’), headed by Deputy Prime Minister J. Kalman, became an advisory body of the Government of the Slovak Republic on integration issues.

Resolution of the Government of the Slovak Republic of 28 February 1995 No. 137 obliged individual central state administration bodies to establish European integration units.

On 1 June 1995, the Institute for Approximation of Law was established, which was responsible for the implementation of the concept of approximation of Slovak law to EU law and to the Council of Europe conventions (Government Resolution No. 70/1996). The Mission of the Slovak Republic to the European Communities played an important role throughout the entire accession process. The Government of the Slovak Republic prepared a nationwide campaign based on the Communication Strategy for preparing the population for EU membership. In May 2001, the first National Convention on the European Future of Slovakia was established, aiming to initiate and shape a nationwide debate on the future of Europe and the Slovak position on the draft Constitutional Treaty.

13 Bilčík, 2004, pp. 443–459.

14 It was the third government in a row, the prime minister was Mečiar.

15 Mečiar, 1995.

At the parliamentary level, a committee of the NC SR for European Integration was created in the first parliamentary term, the chief task of¹⁶ which was to supervise the implementation of the Association Agreement, cooperate with the Association Council, and oversee the executive branch in this area. Moreover, a joint committee of the EU and the NC SR was created.

Significant changes in the second stage of the accession process of the Slovak Republic to the EU occurred after the election in 1998.¹⁷ In its 1998 Programme Statement, the Government stated:

the strategic goal and one of the most important political and economic priorities of the Slovak Republic is membership in the European Union. To achieve it, the government will meet the political criteria in the shortest possible time and undertake to meet the other criteria set by the EU Copenhagen Summit and the conclusions of the joint bodies of the Slovak Republic – EU, so that the Slovak Republic is among the best prepared candidate countries.¹⁸

From the EU position, the perception of the Slovak Republic also changed, and thus, the different intensity of diplomatic relations was reflected in the creation of the EU-Slovakia High level working group. In a period of less than a year (November 1998 – September 1999), this group aimed to help the new government coalition accelerate the integration process.

Instead of the Government Council for Integration, the Government Ministerial Council for European Integration was created as an advisory and coordinating body of the Government of the Slovak Republic. It was headed by the Deputy Prime Minister for European Integration, appointed for this purpose.

The Ministerial Council of the Government for European Integration had an auxiliary body – the Working Committee, comprising heads of European Integration departments at ministries and other state administration bodies and heads of 29 working groups of the negotiating team.

A new position was created at the Ministry of Foreign Affairs – State Secretary for European Integration, which was associated with the position of the chief negotiator of the Slovak Republic for the accession of the Slovak Republic to the EU.

In the area of approximation of law, there was a change in the adoption of the new statute of the Legislative Council of the Government of the Slovak Republic.¹⁹ On its basis, the Government Legislative Council began to assess the compliance of the discussed bills and legislative intentions with EC/EU law and with the Council of Europe conventions. For each material submitted to the Legislative Council, the

16 By Resolution No. 408/1996 of 12 September 1996.

17 Dzurinda became the prime minister; historically, we refer to this government as the first government of Dzurinda.

18 Mečiar, 1995.

19 Resolution of the Government of the Slovak Republic No. 60 of 20 January 1999.

Institute for the Approximation of Laws prepared a written opinion on the compliance of the bill with European law and Council of Europe conventions.

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in Comparable Position?

The most important fact in the area of legal support was the preparation of an amendment to the Constitution, as the basic document of the acceding state. And then the transformation of the entire legal system.

Question No. 8

What Procedures on EU Level Were There in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

The accession negotiations occurred in 31 negotiating chapters, with the most significant challenge being the transformation from a managed economy to a market economy, including areas such as energy, agriculture, and regional policy. In economic policy, the Government of the Slovak Republic particularly advocated for the acquisition of foreign investments within the framework of the EU free market. Their acquisition was based on the promotion of Slovakia's competitiveness, stemming from it being a country with low taxes and, simultaneously, low wages, liberal labour laws, high labour intensity and a relatively educated and disciplined workforce.

During 1999, Slovakia made significant progress in fulfilling the Copenhagen criteria and the expanded accession strategy, thus creating the prerequisites for a positive assessment by the European Commission. In November 1999, the assessment report recommended initiating accession negotiations with Slovakia. Considering the overall political situation related to the Kosovo crisis, the Commission also accounted for the political impact of its decision and proposed to initiate negotiations with all other candidate countries (Slovakia, Malta, Romania, Latvia, Lithuania and Bulgaria). Türkiye was granted the status of a candidate country. In 1990, Slovakia met the political criteria, which was also confirmed by the decision of the Helsinki Summit. This was a crucial moment in mutual relations with the EU, which thus moved to a qualitatively new level. Compared with other countries in the region, Slovakia began the negotiation phase with a two-year time lag. Since the Union had already undergone several waves of enlargement in its history, it had certain mechanisms and procedural rules in place. These were applied, in principle, to all accession negotiations. The negotiation process occurred in three stages (screening, accession negotiations and ratification process). The Commission divided the course of screening into two stages: multilateral and bilateral. Slovakia, together with other candidates of the Helsinki Group, participated in the multilateral part of the screening

only from April 1998 to February 1999. At these meetings, the Commission presented the candidates with a comprehensive information on Union legislation within each negotiating chapter. The bilateral part of the screening between the Commission and Slovakia continued from March 1999 to February 2000. It aimed to analyse the state of compatibility of the Slovak law with the Union law, to identify possible problems, as well as verify the administrative capacity for the implementation of the relevant legislation. That is, defining the areas in which the candidate country would achieve the compatibility of national legislation not later than on the date of its accession, or in which areas and under what conditions the candidate country or the Union would require transitional periods. The negotiations occurred in the aforementioned 31 negotiating chapters, of which 29 were legislative in nature. The prerequisite for the opening of the chapter by the Union was the presentation of a negotiating position that the candidate country would prepare for each of the chapters. The Slovak Republic handed over its negotiating positions in the course of 2000. The final result of the agreed obligations of both parties in all negotiation chapters was subsequently modified by the Accession Agreement.

Moreover, Slovakia's accession negotiations were influenced by the individual presidencies of the European Union. In the first half of 2000, Portugal held the presidency. Slovakia commenced the negotiations at the opening meeting of the Accession Conference on 15 February 2000, where it presented its general negotiating position declaring the basic framework of negotiations. Moreover, it included setting a timeframe for the accession process. The Slovak Republic planned to harmonise its legislation with EU law, create the necessary administrative capacity and complete the negotiations by the end of 2002. The reference date for accession to the EU was 1 January 2004. In terms of development of the entire enlargement process and the pace of negotiations, it later emerged that this scenario could be realistic. During the Portuguese Presidency, the European Union initiated 18 negotiating chapters of EU legislation with Slovakia and provisionally also concluded 6 of them. These chapters were: Small and Medium-sized Entrepreneurship, Education and Training, Science and Research, Common Foreign and Security Policy, Statistics and External Relations.

In the second half of 2000, France became the presiding country, and 8 more chapters were initiated. Simultaneously, the negotiations were concluded on four chapters: Fisheries, Consumer and Health Protection, Industrial Policy, Culture, and Audio-visual Policy. Thus, Slovakia commenced a total of 16 out of 29 chapters, reaching its internally set goal (to open at least half of the negotiating chapters during the first year). Simultaneously, it closed ten chapters, while six remained open owing to the need for additional information from the Slovak side, or the need to seek modified solutions.

In the first half of 2001, Sweden held the presidency. The meeting of EU representatives in Nice approved the European Commission's strategic document for enlargement, the road map. It was about setting a timetable for specific chapters that the Union dealt with as a priority in a given half-year. For Slovakia, this meant

focusing on the area of the internal market – that is, the free movement of goods, persons, and capital, and free provision of services. However, it needed to focus on other chapters – Corporate Law, Environment, Social Policy and Employment. During the Swedish Presidency, Slovakia made exceptional progress in the negotiations, as all 29 chapters were open after its completion. Provisionally, the negotiations were concluded in the next 9 chapters. The fact that the Helsinki catching-up principle was fulfilled and Slovakia, with a total of 19 provisionally closed chapters, reached the level of its neighbours (from among the V4 countries) negotiating for the third year after seventeen months of negotiations, can be described as an extraordinary success and a certain milestone in the negotiation process.

In the second half of 2001, during the Belgian Presidency, negotiations with Slovakia entered a more difficult stage. More extensive chapters were discussed in terms of volume, as well as the negotiating requirements of the Slovak Republic. During this period, Slovakia closed three more chapters: Energy, Environment and Financial Control. Thus, the number of closed chapters increased to 22.

Spain held the presidency in the first half of 2002. Slovakia entered this Presidency term with a view of closing the chapters that remained open from the previous period – the Economic competition, Cooperation in the area of Interior and Justice, Taxation and Transport. For the period of the Spanish Presidency, agriculture was also defined within the priority chapters, and the Slovak Republic prioritised it in the negotiations. It was an issue of high political sensitivity on both sides. The solution to the issue of direct payments to farmers and the solution to the length of the proposed transitional period until 2013 resonated the most. Slovakia's strategic effort was to achieve a combination of individual factors (production quotas, direct payments, rural development funds, budget contributions, other compensations) that would ensure the competitiveness of farmers and acceptable impacts on the country's consumers and macroeconomics. Negotiations began in May 2002 and were not concluded until the upcoming Danish Presidency in December 2002 at the EU Summit in Copenhagen.

After the 2002 elections, the Slovak government set the conclusion of negotiations with the EU by the end of 2002 and declared its will to join the EU in such a timeframe that the Slovak Republic could participate in the European Parliament elections in 2004 as a Member State.

The priorities that the government wanted to pursue after accession to the EU were support for reforms and measures that would adequately take into account the influence of EU member countries regardless of their size, maintaining national identity in cultural and ethical matters, strengthening the EU's Common Foreign and Security Policy and the European Security and Defence Policy, effective use of European funds in the pre-accession process, as well as after gaining membership, the accession of the Slovak Republic to the monetary union and the adoption of the necessary measures for the accession of the Slovak Republic to the Schengen agreements.

The Slovak Republic successfully managed the crucial periods in the accession negotiations, therefore, it was included among the 10 candidate countries with the intention to join the EU in 2004, which eventually occurred.

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission's or Council's Working Groups, Participation of Your Representatives at the Commission's or Council's Meetings etc.)?

Through its representatives, the Slovak Republic also participated in the Convention on the Future of Europe (in 2001), as one of the candidate countries.

In the third stage, after the signature of the Accession Treaty in April 2003, the Slovak Republic obtained observer status in the EU, which again brought some institutional changes. By Resolution No. 431/2003, the Government of the Slovak Republic approved the proposal for the coordination of the decision-making process in EU matters and the model statutes of the departmental coordination groups and the Commission for EU Affairs. The Section of the Ministry of Foreign Affairs for European Integration was changed to the Section of European Affairs, and the relevant departments were also changed.

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. Constitutional Court)?

The Constitution of the Slovak Republic No. 460/1992 Statutes, as amended, was adopted in 1992, dating back to the period of the common Czechoslovakia, its amendment in relation to European integration was foreseen in several strategic documents,²⁰ as well as the EU institutions themselves. The necessity of amending the Constitution in some areas (e.g., the judiciary) was indicated by the European Commission in its evaluation report.²¹ The European Parliament pointed out that 'constitutional reform will be a significant achievement for the country by enabling the country to push through the legislative and administrative reforms necessary to prepare for membership'.²²

The Euro amendment to the Constitution of the Slovak Republic, that is, the amendment to the Constitution by Constitutional Act No. 90/2001 of the Statutes, was the most significant interference with the text of the Constitution,²³ as well as the constitutional structure of public authorities in the Slovak Republic.

20 For instance, Measures to implement the priorities of the Accession Partnership or the National Programme for the Adoption of the Acquis.

21 Regular report, 2001, p. 81.

22 EP resolution on Slovakia's application, 2001.

23 It amended 40% of the original text of the Constitution of the Slovak Republic.

For example, the change occurred in the establishment of the second level of territorial self-government, strengthening of the powers of the Supreme Audit Office and the Constitutional Court of the Slovak Republic, creation of the Judicial Council of the Slovak Republic as an independent body supervising the judiciary in the Slovak Republic, creation of the Office of the Public Defender of Rights, as well as the specification of the relationship between the Slovak Republic and the EU per Art. 7 of the Constitution.²⁴

Question No. 12

Was There a Referendum in any Stage of the Accession Procedure?

As in the case of other acceding countries,²⁵ a referendum on Slovakia's accession to the EU was held in the Slovak Republic. It was announced by the President on 17 February 2003 for Friday, 16 May and Saturday, 17 May 2003. Of the eligible voters, 52.15% participated in the referendum; 92.46% of voters answered positively to the referendum question, whereas 6.20% voted against. Thus, the referendum on Slovakia's accession to the EU became the first valid referendum in the Slovak Republic.

Subsequently, on 1 July 2003, the NC SR ratified the Treaty of Accession of the Slovak Republic to the EU by 129 members of Parliament out of a total of 150 members. MPs of the Communist Party of Slovakia voted against the Accession Treaty. President R. Schuster signed the Agreement, and on 8 October 2003, the Agreement was deposited with the Government of the Italian Republic.

4. Legal and Economic Support for Candidate Countries

Question No. 14

Before the Accession, Was There Any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

The assistance that the EC Member States have committed to providing has played an important role in supporting the transition and reform efforts of the candidate countries. It was approved by the Council on 18 December 1989 with the creation of the PHARE (Poland-Hungary Action for Reconstruction of Economy) programme. It was originally established only for the restructuring of the economies of two countries, Poland and Hungary. During 1990, the number of recipients of the PHARE project, which had long been the most important source of financial support,

²⁴ See Krunková, 2023, pp. 353–389.

²⁵ In addition to Slovakia, the referendum on EU accession was also held in Malta, Slovenia, Hungary, Lithuania, Poland, the Czech Republic, Estonia and Latvia.

expanded to include other countries (Slovakia). Since 1992, projects designed to strengthen democracy have also been supported under PHARE.

Funds to help transition economies flowed not only from the EC budget under the PHARE project, but also from individual member countries and financial institutions.

Furthermore, in 1989, the EC Commission was entrusted with the coordination of assistance from the G24 (an informal association of donor countries), including the International Monetary Fund, World Bank, OECD and Paris Club, which also increased the Commission's role in the further development of relations with the acceding countries.

Support for the Slovak Republic as a candidate country was significantly affected by the experience of applying political conditionality in 1994-98. Complicated political developments during that period led Union representatives to engage in domestic political developments in Slovakia to protect democratic rules and institutions. The lag in the process of integration into the EU conditioned the Slovak Republic's strategy in preparing the country for EU membership and accession negotiations, particularly the government's focus on closing negotiating chapters as rapidly as possible. However, the paradox of this accession strategy remains that some difficult-to-negotiate transition periods have not even entered into force, because the new government, which came into office after the 2002 elections, simply abolished them with its political reforms. This points to the lack of broad political consensus in parliament and often a low degree of coordination at the executive level.

5. Specific Rules Applicable to Candidate Countries Before and After Their Accession

Question No. 17

After the Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

The most difficult negotiating chapters were those in which Slovakia requested transitional periods. These were Agriculture, Free Movement of Capital, Free Movement of Services, Taxation, Environment and Energy. Except for the 'Agriculture' chapter, positive results were achieved in all other chapters. In the case of free movement of capital, Slovakia negotiated a seven-year transitional period for the acquisition of agricultural and forest land by foreign nationals. In the area of free movement of services, it was able to enforce the requirement of a three-year transitional period for investor compensation schemes. The preliminary closure of the 'Environment' chapter, which is the most demanding part of European legislation,

was extremely important. In the Energy chapter, Slovakia has reached a five-year transitional period to ensure mandatory emergency 90-day stocks of crude oil and petroleum products. In the chapter 'Taxes', Slovakia requested several transitional periods and exemptions for VAT and excise duties. At the conclusion of this chapter, Slovakia obtained seven transitional periods in total. Some other hard-earned exemptions from VAT (tax reduction in the field of gas, thermal energy, basic food-stuffs, construction and construction works) did not come into force, as the government changed the tax system as of 1 January 2004. Moreover, Slovakia received a permanent exemption for the fruit distillation by the growers, where a reduced excise duty was applied.

Question No. 19

Were There Any Country-Specific Transitory Provisions?

The Union has established seven transitional periods for Slovakia before accession for the introduction of the costliest environmental directives. The longest transitional period was set until 2015 for urban wastewater treatment.

The transitional periods on the part of the EU primarily concerned the free movement of workers to protect the labour market of the original Member States. After the enlargement of the EU by 10 countries in May 2004, eight of them (except for Malta and Cyprus) were subject to a transitional period for labour market opening in the then EU Member States. Thus, initially, Slovakia did not have the opportunity to fully exercise the freedom of movement of workers within the EU. However, this did not apply equally to all Member States – the United Kingdom, Sweden and Ireland did not apply the transitional period and made their labour markets available immediately after enlargement. Two years after Slovakia's joining, at the end of April 2006, Spain, Finland, Portugal and Greece also abandoned the transitional period. Moreover, in July 2006, Italy opened its labour market without restrictions. Belgium partially restricted access to its labour market until 2009. It gradually expanded the list of sectors in which it facilitated the employment of citizens of the new Member States. The Netherlands, Luxembourg, France and Denmark proceeded similarly. They first opened their market partially and completely ended the application of the transitional period only as of May 2009.

Question No. 20

Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?

The transitional period may be applied for a maximum of seven years under the EU Treaty. Therefore, the last phase of the transitional period ended in May 2011. Germany and Austria were the last to open their respective labour markets. Since 1 May 2011, Slovak citizens have been able to enjoy the freedom of movement of workers within the EU in all Member States without restrictions.

Slovakia became part of the Schengen area on 21 December 2007, however, it had already acceded to the Schengen Convention by signing the Treaty in Athens in April 2003. By joining Schengen, Slovakia assumed the obligation to ensure the security of other Member States in this area by protecting a 90-kilometer section of its external border with Ukraine. Two years later, Slovakia also managed to meet the conditions for joining the eurozone and began using the common currency, the euro, on 1 January 2009. Therefore, Slovakia is part of all key forms of cooperation in the EU, and in particular, eurozone membership has placed it at the heart of the ongoing integration efforts in the Economic and Monetary Union during the years of crises.

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CHAPTER 9

SLOVENIA



RADO BOHINC

Abstract

This report presents the relevant features of EU enlargement process related to Slovenia. Slovenia submitted its membership application on 10 June 1996. The European Parliament (hereinafter, EP) gave its assent to Slovenia to become a member of the EU on 23 September 2003. The entire process from the submission of the formal application to its acceptance took seven years. Formal negotiations on the 31 chapters of the *Acquis Communautaire* occurred during the intervening four years (from 1998 to 2002).

The accession process began after Slovenia applied for EU membership and its request was agreed to, by all EU member states, as the commencement of the formal accession negotiations required the agreement of all EU member states. For Slovenia as a candidate country, these negotiations were the opportunity to prepare for the membership in terms of satisfying the Copenhagen criteria (the adoption of the established EU law and implementation of the reforms required: judicial, administrative and economic).

After successful negotiations, the demanding process of accepting the accession treaty was conducted. The terms and conditions for accession were incorporated into an accession treaty. The treaty needed the European Parliament's consent and the Council's unanimous approval before EU member state and the candidate country could sign it. After all the contracting parties ratified the accession treaty, Slovenia become an EU member state.

The Report is divided into 22 questions in the following 3 chapters: (1) Initial requirements upon Slovenia as candidate country; (2) Institutions and procedures of Slovenia's accession; (3) Legal and economic support for Slovenia as candidate country

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Keywords: enlargement process, Treaty of Accession, Luxembourg negotiating group, Copenhagen criteria, candidate country, *Acquis Communautaire*, Slovenia's accession to the EU

1. Introduction

Membership in the EU has been the aspiration of the Slovenian people since before its independence. The Republic of Slovenia (hereinafter, Slovenia or RS) strengthened its already close political, economic and cultural cooperation with the EU and its cultural and civilisational position in Europe. Slovenia's strategic goal to join the EU was significant from the security perspective. Slovenia believed that it could address national security and defence issues more effectively within the EU and NATO.

Slovenia's position and its prospects of joining the EU were somewhat controversial. On the one hand, considering its economic development and its capacity for adopting the *Acquis Communautaire*, Slovenia was regarded as being one of the applicant countries likely to qualify among first for admission to the EU. On the other hand, this was rather a success for a country that had some problems while taking the first steps towards European integration and was primarily considered by many as simply another part of the turbulent Balkans.¹

RS became member of the EU together with the Czech Republic, Republic of Estonia, Republic of Cyprus, Republic of Latvia, Republic of Lithuania, Republic of Hungary, Republic of Malta, Republic of Poland, and Slovak Republic signing the Treaty of Accession in 2003. A similar in-depth adaptation occurred in the accession cases of Bulgaria and Romania (2007) and Croatia (2013).

Slovenia joined the first Luxembourg negotiating group, as the last candidate, together with Cyprus, the Czech Republic, Estonia, Hungary, and Poland. The conditions of admission and the adjustments to the Treaties on which the Union is founded, following such admission, were set out in the Act annexed to the Treaty of Accession which is an integral part of the Treaty.

The EU integrates new members through the enlargement process once they fulfil a number of political and economic conditions. The process encourages democratic and economic reforms in countries that aim to become EU members and promotes greater stability and prosperity in Europe.

In principle, any European state which respects EU democratic values and is committed to promoting them may apply for EU membership. However, the accession waves differ significantly depending on the intensity of the differences in established values and political traditions in the candidate countries. In this regard,

1 Ministry of Foreign Affairs, Government Communication Office, 2014.

the accession of the ten Central and Eastern Europe Countries (CEEC), Baltic states and Cyprus in 2004, stands out.

2. Initial Requirements on Candidate Countries

Question No. 1

What Conditions Did Your Country Need to Satisfy Before Formally Applying to Join EU? To Your Knowledge, Were These Conditions Different From Those Applied to Countries in a Comparable Position?

This chapter presents the requirements laid upon Slovenia before the accession process began and before it joined the EU.

Conditions and the legal and institutional framework, relevant for relations between Slovenia and the EU, that Slovenia needed to satisfy before formally applying to join the EU were laid down by the Cooperation and later Europe Agreement.

The Cooperation Agreement between the RS and Former European Economic Community was signed on 5 April 1993 and entered into force on 1 September 1993. By this agreement Slovenia assumed the rights and obligations deriving from the Cooperation Agreement concluded with the former FSRY in 1980.

Negotiations for the conclusion of the new Cooperation Agreement (also called Association Agreement) began soon after independence, in July 1992. Slovenia had to update the political part of the agreement shortly afterwards, leading to preparation of a Europe Agreement.

In 1992 Slovenia officially applied for an Association Agreement with the EU (also known as the Europe Agreement). It was signed on 10 July 1996; the same day Slovenia presented an application for membership in the EU. Europe Agreement with the EU replaced the then existing Cooperation Agreement.

On 15 July 1997, the Europe Agreement was ratified by the Slovenian National Assembly, after an amendment to Art. 68 of the Constitution had been adopted, making it possible for foreigners to own real estate in Slovenia after a four-year transitional period. The agreement entered into force on 1 February 1999.

The Europe Agreement comprised three chief sections. The first, second and third sections contained the political provisions, trade between the EU and Slovenia and technical and financial assistance, respectively.

The section on trade prioritised the harmonisation of legislation in relation to the internal market. The Parties agreed to establish a free-trade area between the EU and Slovenia in the next few years.

On 11 November 1996, Slovenia and the EU signed an Interim Trade Agreement, which entered into force on 1 January 1997. With this, the part of the agreement

relating to trade, which defined the free trade area between Slovenia and the Member States, entered into force.

The EU was Slovenia's chief trading partner. In 1998, 65.5% of Slovenia's exports were to the EU, and 69.4% of its imports were from the EU. Although Slovenia's exports to the EU rose by 12% in 1997 its trade balance with the EU indicated a deficit of EUR 1.5 bn. Slovenia's chief trading partners in the EU were Germany, Italy and France.²

As the Cooperation and Europe Agreements were bilateral (EU and Slovenia), clearly the conditions for accession differed for the applicant countries, however the general framework referring to political provisions and free trade between technical and financial assistance was mostly similar.

On 12-13 December 1997, the Luxembourg European Council instructed the Commission to submit its recommendations for the bilateral governmental conferences with the applicant countries. A single framework was created for Slovenia and other applicant countries. However, it considered the specificities and characteristics of individual countries and differed in this sense.

Moreover, the Luxembourg European Council 1997 decided to launch the accession process on 31 March 1998 with the ten applicant countries (the Czech Republic, Republic of Estonia, Republic of Cyprus, Republic of Latvia, Republic of Lithuania, Republic of Hungary, Republic of Malta, Republic of Poland, Republic of Slovenia and Slovak Republic) and Cyprus. The first meeting occurred in London on 12 March 1998 and the second in Luxembourg on 5 December 1998.

Question No. 2

When Did Your Member State Formally Apply to Join the EU?

Slovenia submitted its membership application on 10 June 1996, on the same day when it signed a Europe Agreement (see above) with the EU which entered into force, after ratification on 1 February 1999.

On 16 July 1997, the European Commission presented an opinion on candidate countries to join the EU (Agenda 2000). As the opinion on Slovenia was favourable, in December 1997 Slovenia was included in the first round of countries for the commencement of negotiations, which officially began on 31 March 1998 and ended at the end of 2002 with an agreement on Slovenia's accession conditions.

European Parliament legislative Resolution on the application by the RS to become a member of the EU gave its assent to the application on 23 September 2003.

2 Slovenia's exports to the EU were categorised as follows: machinery and electrical equipment, 22%; equipment for various modes of transport, 16%; textile products, 13%. Its imports from the EU were: machinery and electrical equipment, 25%; equipment for various modes of transport, 15%; and base metals, 11%.

The entire process from the submission of the formal application in 1996, to its acceptance took seven years, including formal negotiations on the 31 chapters of the *Acquis Communautaire* in the intervening four years (from 1998 to 2002).

Question No. 3

*What Conditions Did Your Country Need to Satisfy Before Joining the EU?
To Your Knowledge, Were These Conditions Different From Those Applied to Countries
in a Comparable Position?*

The accession criteria or Copenhagen criteria (named after the 21/22 June 1993 Copenhagen European Council meeting which defined them), were the essential conditions that Slovenia, as all candidate countries, had to satisfy to become an EU member state. These are: (1) political criteria: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; (2) economic criteria: a functioning market economy and the capacity to cope with competition and market forces; (3) administrative and institutional capacity to effectively implement the EU *Acquis* (body of common rights) and ability to fulfil the obligations of EU membership.

Copenhagen criteria were defined as minimum political, economic and legal standards which a candidate country had to fulfil to qualify for the EU accession.

The implementation of the Copenhagen criteria went hand in hand with the processes of deep democratic and economic reforms in the country, which resulted in a thoroughly revised legislation to create a legal order consistent with European ones. This involved a chapter-by-chapter scrutiny of progress in adopting the *Acquis Communautaire*; a total of 31 chapters had to be adapted and scrutinised, which was an enormous job for political and administrative structures of Slovenia as candidate country.

The conditions for the admission of Slovenia as the applicant country were, the same as that for all the other nine in the group of accession countries, set out in the draft Treaty on Accession (2004). The general conditions for the ten countries that applied were not different but comparable. The Commission drew up a partnership for each of the applicant countries, comprising priority action areas and financial resources to enable each applicant to implement the priorities, conditions for implementing the assistance.

The Commission asked each applicant country to propose a national programme for adoption of the *Acquis Communautaire* (NPAA), with a timetable for priority measures and details of the resources required. These documents were reviewed and adapted each year for each of the applicant countries. Therefore, the process was coordinated not only in terms of timelines and procedures, but also in terms of the legal adjustments that the candidate countries had to implement to fulfil the conditions for accession.

Question No. 4

Were There Any Specific Features of Your Member State's Accession to the EU, Compared to Other Countries in a Comparable Position?

The implementation of the Copenhagen criteria for Slovenia meant a thorough reconstruction of its political and economic system and the adoption of *Acquis Communautaire*, including amending the Constitution. Conclusion thereof depended on full compliance with the three Copenhagen criteria: democracy, the rule of law, human rights and the protection of minorities; a functioning market economy; and compliance with the obligations of membership.

The pre-accession strategy was drawn up by the Commission in consultation with the Council and the European Parliament pursuant to Art. 308 of the TEU.

The European Council decided to establish bilateral partnerships to bring the applicant countries up to the standards prevailing in the EU as rapidly as possible. On 31 March 1998, official accession negotiations began with six bilateral governmental conferences. As part of a new approach introduced by the Helsinki European Council, the other applicant countries also began their accession negotiations.

Specific features of Slovenia's accession to the EU, compared with other countries were expressed in the negotiations, where each candidate country asserted its own specificities.

According to the Treaty of Accession (2003), RS together with other nine countries became member of the EU and simultaneously became Party to the Treaties on which the Union was founded (Art. 1). The conditions of admission and the adjustments to the Treaties on which the Union is founded, following such admission, are set out in the Act annexed to the Treaty, as its integral part.

However, EU enlargement processes have had a strong impact on the EU itself, its governance structures and decision-making methods, and thus on the position of the member states. For example, this was clearly visible in the Treaty of Nice, which fundamentally changed the balance of power in the context of the approach of the ten new member countries in 2004.

3. Institutions and Procedures of Accession

Question No. 5

What Was the Legal Framework of the Accession Procedure (From the Application to Join the EU Until Accession)? What Agreements Were Signed With the EU?

What Legal Measures Adopted by the EU Governed the Proceedings?

Were There Any National Rules Specifically Governing the Procedure of Accession?

This section discusses the legal aspects of the accession procedure, including institutions established for that purpose, legislative changes at national level and monitoring of the process by the EU institutions.

The legal framework of the accession procedure comprised the two aforementioned agreements (Cooperation and Europe Agreements) and the legal acts that were enacted by EU bodies (Commission, the European Council and European Parliament).

The accession process with Slovenia and the ten applicant countries (CEEC, Baltic countries, Malta and Cyprus) formally began on 30 March 1998. The pre-accession strategy was imposed by the EU Commission and the official accession negotiations began on 31 March 1998.

Accession negotiations continued since April 1998, through a screening process. A special Accession Partnership was adopted for Slovenia.

The accession procedure (since the application to join the EU until the accession) was guided throughout by the Commission and the Council, which adopted interim decisions on Commission's proposal. On 15 March 1998 the Commission presented to the Council the short- and medium-term priorities which Slovenia should fulfil.

After concluding its regular report on 13 October 1999, the Commission also published its proposal for a Council decision on the new principles, priorities, interim objectives and partnership conditions for the accession of Slovenia. The Council adopted the decision and updated priorities.

Slovenia, as other applicant countries, proposed a national programme for adoption of the *Acquis Communautaire* (NPAA) with priorities in accordance with those of the accession partnership (short- and medium-term priorities which Slovenia should have fulfilled). On 27 May 1999, Slovenia adopted the new NPAA, in accordance with the Commission's comments.

The conditions for the admission of the ten applicant countries and adjustments following their accession were finally set out in the draft Treaty on Accession.

Question No. 6

What Institutions Were Set Up for the Purposes of Accession at Both EU and National Level?

The following institutions were established at the EU level.

The Association Council (at Foreign Minister level) is the forum in which the Parties raise certain issues and agree on solutions. Its first meeting occurred at Luxembourg on 22 February 1999.

The Association Committee (comprising senior civil servants) met for the first time on 25 March 1999 in Ljubljana.

The Joint Parliamentary Committee comprised Members of the Slovenian Parliament and MEPs. The constituent meeting was held in Strasbourg from 15 to 16 December 1998; the second meeting was held in Ljubljana from 17 to 19 March 1999.

Many institutions were established at the Slovenia level as well. The Government of the RS appointed the leaders and members of the 31 working groups in the areas divided by negotiation chapter content and a national coordination group chaired first by minister for foreign affairs and later by minister for EU affairs.

The working groups comprised representatives of individual ministries, governmental and some non-governmental bodies. In certain stages of the negotiations, representatives of employers, employees and interested representatives of non-governmental organisations were also included.

In addition, the National Assembly was organised specifically in connection with preparations for joining the EU, which is discussed separately.

Question No. 7

What Legal Criteria Was Your Country Obligated to Satisfy Before Joining the EU? To Your Knowledge, Were These Criteria Different From Those Applied to Countries in Comparable Position?

Slovenia was in the first group of six candidate countries (the Luxembourg group), assessed as ready to initiate the negotiations. Negotiations began on 31 March 1998 and were concluded on 13 December 2002. On 15 July 1997, the Commission, in Agenda 2000 recommended to initiate accession negotiations with Slovenia, as in the Commission's opinion, Slovenia provided the necessary guarantees for democratic development and respect for human rights.

Since April 1998, an analytical assessment ('screening') of various sections of the *Acquis Communautaire* had been under way, leading to substantial negotiations, as a result of which it was possible to close 12 out of 31 negotiating chapters. The Commission appreciated the fact that objectives were properly identified in the amended NPAA. However, it criticised the Slovenian authorities for not clearly defining the arrangements and timetable for their implementation.

A chapter-by-chapter scrutiny of progress in adopting the *Acquis Communautaire* also involved ascertaining whether a compatible legislative process already existed or would need to be set up and investigating the administrative capacity of the country to adopt the *Acquis*.

In the case of Slovenia (and the other 'wave' countries), 10 out of 15 chapters were completed at the beginning and did not require further negotiation (research and science; teaching and education; culture; small businesses; company law; consumer and health protection; the customs union; external trade relations and telecommunications).

Considering the dynamics of the negotiations, three chapters were closed in 1998, six in 1999, five in 2000, twelve in 2001 and five in 2002. At the end of 2002, negotiations were closed.³

3 Lavrač and Majcen, 2006.

At the Intergovernmental Conference in Brussels from 30 September to 4 November 1999, a further eight chapters were due for negotiation, including: economic and monetary union, the free movement of capital, social and employment policy, energy, free movement of services, transport, the environment and taxation policy. The EU foreign ministers and those of some of the applicant countries met in Brussels on 7 December 1999 for a further round of negotiations.

One of the Portuguese Presidency's stated objectives was to open as many negotiating chapters as possible to speed up the pace of talks under the French Presidency in the second half of 2000. The Slovenian authorities had expected the negotiations to be concluded in late 2001 so that accession could come into effect on 1 January 2002, however they were not concluded.

Question No. 8

What Procedures on EU Level Were There in Place to Monitor the Fulfilment of the Accession Criteria? Were There any Comparable Specific Domestic Monitoring Procedures?

The screening procedure was an overview of Slovenia's domestic legislation in comparison with the European one (the *Acquis Communautaire*). An analytical assessment of various sections of the *Acquis Communautaire* led to substantial negotiations; this made it possible to close 12 out of 31 negotiating chapters at the beginning. For each of the chapters, both the EU and Slovenia prepared their negotiating positions. In negotiations for each chapter, Slovenia agreed on necessary changes to domestic legislation, except for some exemptions from the complete adoption of the *Acquis*.

A national negotiating team, a narrower group of experts (the working groups for the individual chapters formed by decision of the Government), exerted considerable effort to conduct the negotiations.

On 13 October 1999 Slovenia was assessed as having the democratic structures to safeguard the rule of law (the Helsinki European Council). Regarding economic criteria, a market economy existed, and Slovenia maintained its macroeconomic stability. However, that was insufficient; the areas requiring further effort were highlighted, such as legislative process being extremely slow to ensure transposition of the entire *Acquis Communautaire*.

The European Parliament gave its assent to the application by the RS to become a member of the EU by legislative resolution on 23 September 2003. The EP assent was given upon the Council's request for Parliament's assent pursuant to Art. 49 of the EU Treaty (C5-0123/2003), according to the opinion of the Commission (COM (2003) 79) and following the resolution of 9 April 2003 on the conclusions of the negotiations on enlargement in Copenhagen.

Question No. 9

To What Extent Was Your Country Involved in the Work of EU Institutions (e.g. Participation in the Commission's or Council's Working Groups, Participation of Your Representatives at the Commission's or Council's Meetings etc.)?

The National Assembly, following the example of other national parliaments, established a Commission for European Affairs in May 1996. The Commission played a central coordinating role on European affairs within the National Assembly. Thus, it differed in terms of its sphere of work from other working bodies specialising in particular areas. The Commission ceased its work on 21 May 2004, when the Committee on EU Affairs was established by a decree of the National Assembly.

Pursuant to the Constitution of the Republic of Slovenia and the Cooperation between the National Assembly and the Government in EU Affairs Act, the National Assembly required to take a position on EU legislative acts. Art. 3a of the Constitution of the RS stipulates that a law regulating relations between the National Assembly and the Government when adopting legal acts and decisions in international organisations to which Slovenia entrusts the exercise of sovereign rights (EU) shall be adopted by a two-thirds majority vote. The Cooperation between the National Assembly and the Government in EU Affairs Act was adopted in 2004, immediately before Slovenia's accession to the EU (it was then amended on three separate occasions in 2010 and 2015).

Slovenia is now represented in all EU institutions. Slovenian citizens, as politicians, officials and other experts, actively participate in the work of EU institutions and bodies.⁴

4 The European Parliament, which represents the voices of EU citizens, now includes eight Slovenian Members.

The European Commission, which represents the common interests of the EU, is composed of one commissioner from each member state. In the 2019-2024 term, the Slovenian commissioner was responsible for crisis management; in 2024-2029, the Slovenian commissioner has planned to take over the Balkans and Ukraine enlargement.

The Council of the European Union represents the interests of member states and meets in different configurations at different levels. The Slovenian representatives include ministers, representatives of ministries and government offices and diplomats from the Permanent Representation of the Republic of Slovenia to the EU.

The Prime Minister of the Republic of Slovenia represents Slovenia's political interests in the European Council.

The Economic and Social Committee includes seven Slovenian members, who represent the interests of employers, trade unions and various interest groups.

The European Committee of the Regions includes seven Slovenian members, who represent two representative organisations of Slovenian local communities – the Association of Municipalities and Towns of Slovenia and the Association of Municipalities of Slovenia.

Question No. 10*Has Your Country Experienced any Particular Difficulty in Meeting Some of the Accession Criteria?*

Slovenia's negotiations with the EU began in 1998. Negotiations occurred successively, beginning with easier chapters and later proceeding to more difficult chapters. Real negotiations on a financial package of membership (contributions to the EU budget and payments from it for the agricultural policy, structural and cohesion funds in the period 2004-2006) began at the end of the negotiations, in 2002.⁵

In its resolution of 15 April 1999 European Parliament indicated that Slovenia had the democratic structures to safeguard the rule of law and had reached a satisfactory level concerning the economic conditions for accession laid down in Copenhagen. However, it deplored the lack of progress on incorporating the *Acquis Communautaire*, particularly in sensitive areas such as justice, home affairs and the internal market. Moreover, the Parliament drew attention to the need for a serious and through-going reform of the administration and justice system. It expressed its conviction that the Slovenian authorities would be able to recover the accumulated delay.

In December 1998, the Commission submitted its first report to the European Council on the progress in each of the countries of central and eastern Europe in preparing for accession. In 1999, in its second report on 13 October 1999, the Commission published regarding the Helsinki European Council. The reports reviewed Slovenia's effort to prepare for accession to the EU and highlighted the areas where further effort was required. It was reported that Slovenia fulfilled the political Copenhagen criteria (Slovenia now had the democratic structures to safeguard the rule of law), although, according to the Commission, the legislative process was extremely slow to ensure that transposition of the entire *Acquis Communautaire* was completed. The time problem also affected the country's enhanced judicial capacity.

Regarding economic criteria, a market economy existed, and progress had been made in liberalising administered prices. Slovenia had maintained its macroeconomic stability, however, the Commission report indicated that to cope with competitive pressure and market forces within the EU, the legal environment for business needed to be further modernised. It was suggested that the pace of structural reforms should be stepped up to better use the economy's growth potential.

Regarding the third criterion, that is, the capacity to adopt the *Acquis Communautaire*, Slovenia made considerable efforts in most areas of the *Acquis*, such as the internal market, justice and home affairs. It was required that an appropriate legal framework must be created for state aid, the agriculture sector and the free movement of persons, capital and services.

It was assessed that Slovenia had made limited progress regarding general reform of its public administration. Appropriate supervisory and regulatory bodies needed

5 Lavrač and Majcen, 2006.

to be set up in the fields of public procurement, energy and telecommunications. Thus, the negotiations had not concluded and the process continued despite good results in the negotiation of most chapters.

Question No. 11

In What Way Was the Constitution of Your Country Changed in Order to Accede the EU? Was the Accession Legally Challenged (e.g. Constitutional Court)?

Immediately before joining the EU, Slovenia amended the Constitution, that is, Art. 3a and thereby created the constitutional basis and conditions for the transfer of a part of its sovereignty to international organisations.

More specifically, the amended Art. 3a stipulates the transfer of the exercise of a part of sovereign rights, owing to the involvement of the country in international organisations, rather than of the transfer of sovereignty.

The amended Art. 3a of the Constitution of Slovenia stipulates that Slovenia, with an international agreement can transfer the exercise of a part of sovereign rights to international organisations, but not to any international organisation.

The Constitution sets the condition that the exercise of a part of sovereignty can only be transferred to international organisations based on respect for human rights and fundamental freedoms, democracy and the principles of the rule of law (EU). The same constitutional rule with supplementary Art. 3a of the constitution also applies to entering a defence alliance with countries based on respect for these values (NATO).

As explained before, an amendment to Art. 68 of the Constitution had also been adopted, enabling foreigners to own real estate in Slovenia after a four-year transitional period, to ensure Slovenia signed a Europe Agreement with the EU.

The accession of Slovenia was legally challenged at the constitutional court.

Question No. 12

Was There a Referendum in any Stage of the Accession Procedure?

The above Art. 3a of the amended Constitution of Slovenia, also stipulates that before the ratification of such an international treaty, the National Assembly can call a referendum. The proposal is accepted at the referendum, if most voters have validly voted for it. The National Assembly is bound by the outcome of the referendum.

On this basis, a referendum was held regarding both issues (EU and NATO) on 23 March 2003, which was supported by a large majority of voters (89.64% for Slovenia's entry into the EU and, with a slightly smaller majority of 66.05% for Slovenia's entry into NATO).

On 30 January 2003, the National Assembly adopted the referendum question that read: 'Do you agree that the Republic of Slovenia becomes a member of the European Union (EU)?'

To summarise, on 23 March 2003, the majority of Slovenian citizens voted in favour of Slovenia joining the EU in a referendum on Slovenia's accession to the EU, and on 1 May 2004, Slovenia became a full member of the EU after completing the accession process.

The referendum on EU membership demonstrated a high level of Slovenian public support for joining the EU (with 86% of votes in favour of EU accession).

Question No. 13

In Addition to the Above, Were There any Noteworthy Legal Aspects Concerning the Negotiation and Ratification of the EU Accession Agreement in Your Country?

The Treaty of Accession, 2003 was signed on 16 April 2003 in Athens, Greece, between the then-EU members and the ten acceding countries concerning these countries' accession into the EU (2004 enlargement of the EU). Moreover, the text amended the chief EU treaties, including the qualified majority voting of the Council of the EU; it changed a number of points which were originally laid down in the Treaty of Nice. The treaty entered into force on 1 May 2004 resulting in enlargement of the EU with ten states.

The ten countries became EU members on 1 May 2004, however, some areas of cooperation in the EU applied to some of the EU member states at a later date. The EU had to prepare for such a significant expansion as well. Its member states at that time harmonised the Nice Treaty, thus preparing the EU for the extensive enlargement on 1 May 2004.

The Treaty of Nice reformed the institutional structure of the EU; a compromise was reached, which provided for a double majority of Member States and votes cast. The Treaty provided for an increase after enlargement of the number of seats in the European Parliament to 732.

The Treaty provided that once the number of Member States reached 27, the number of Commissioners appointed in the subsequent Commission would be reduced by the Council to below 27. As a transitional measure the Treaty stipulated that after 1 January 2005, Germany, France, the United Kingdom, Italy and Spain would each give up their second Commissioner.

The changes involved modification of the decision-making process, substantial reduction in the number of cases where the Council of the EU had to decide by an absolute majority and adjustment of the weighting of votes of individual member states in the Council of the EU with a qualified majority; the powers of the President of the European Commission were strengthened.

4. Legal and Economic Support for Candidate Countries

Question No. 14

Before the Accession, Was There Any Institutionalised Support for the Approximation of the Legal Order of Your Country From the EU?

The support provided to the candidate countries by the EU includes the following financial aid programmes of three types: (1) The National PHARE Programme, which covered the following sectors in the programme for Slovenia: (a) administration and public institutions, particularly in the fields of agriculture, public finance and financial control; (b) the adoption of legislation on the internal market; support for investment in the environment and transport sectors; (c) education, research and science; (d) the private sector, reconstruction and privatisation; support for social programmes and job creation; (e) cooperation in the fields of judicial and home affairs (on frontier controls, fighting organised crime, and immigration and visa policy).

Under the PHARE Programme Slovenia received technical and financial assistance. Between 1992 and 1999 it received a total of EUR 192 million (average approximately EUR 30 million per year) in grants.

(2) The Cross-Border Cooperation Programme: These programmes aimed to increase cross-border cooperation with Austria (EUR 2 million per year) and Italy (EUR 5 million per year). A trilateral cooperation project has also been operating with Hungary and Austria since 1995.

(3) The Multi-Country Programme: Slovenia participates in multi-country programmes to encourage the development of small businesses and infrastructure in the applicant countries.

The 2000 PHARE programme allocated EUR 33.4 million. A further EUR 7 million were allocated for cross-border cooperation programmes. PHARE 2001 allocated EUR 21.3 million for Slovenia. A further EUR 7 million were provided for cross-border cooperation. PHARE 2002 allocated EUR 18 million to Slovenia, plus an envelope of EUR 16.9 million under the additional facility to reinforce the institutions. This was supplemented by a further envelope of EUR 7 million for cross-border cooperation with its neighbours. The financial aid for the period 2000-2002 was allocated as follows: PHARE, EUR 25 million a year; aid for agriculture and rural development, EUR 6.6 million a year; structural instrument, between EUR 10 and 20 million a year (source: Partnership for the accession of Slovenia).

The programme observed the principle of equal treatment between applicant countries. The PHARE Programme is based on two priority objectives: strengthening of administrative and judicial capacity (approximately 30% of the total); and investment for adopting the *Acquis Communautaire* (70%). Moreover, similar to other applicant countries, Slovenia participates in some Community programmes on education, training and research, and in some Community agencies.

Financial assistance for the period 2000-02 was divided as follows: EUR 25 million a year under PHARE, EUR 6.5 million a year under the Special Accession Programme for Agriculture and Rural Development (SAPARD) and EUR 10.8-21.7 million a year under the Instrument for Structural Policies for Pre-Accession (ISPA). SAPARD 2002 allocated EUR 6.6 million to Slovenia.

The ISPA envelope for 2002 was between EUR 10.9 and 21.8 million (source: Partnership for the accession of Slovenia).

Question No. 15

Did Your Country Benefit From Any Funds Providing Financial Support in Relation to EU Accession Immediately After the EU Accession?

Yes, in addition to the aforementioned PHARE and the other two Programmes, which were supportive of the accession priorities, pre-accession aid was provided, the amount of which doubled in the period 2000-2006, that is immediately after the EU accession. It included aid for agriculture and rural development (SAPARD) and a structural instrument (ISPA) to benefit similar measure for the cohesion funds in the environment and transport sectors.

PHARE was redirected towards preparing the candidate countries for accession and was complemented by two other instruments: ISPA and SAPARD. These instruments, which were set up for the period 2000-2006, was replaced by the Instrument for Pre-Accession Assistance (IPA) for the period 2007-2013. Slovenia benefited from all these programmes.

Question No. 16

Were There Any Other Noteworthy Aspects of EU Support Provided to Your Country Before the Accession?

The EU research (e.g. framework programmes) and development programmes from that period, as well as student exchange programmes and exchange of professors and researchers are noteworthy.

Notably, integration into the EU was not only a political project, but also, from the candidate's position, a project of civil society, particularly the scientific and the business communities.

Research projects in the field of social sciences (primarily economics, law, political science, international relations) from that period almost consistently included EU topics. The EU's support for these projects was significant, and this in many ways facilitated the significant systemic upheavals and adaptations that occurred based on negotiations by individual chapters/areas.

The same applies to development funds intended for restructuring the economy owing to more demanding competitive conditions on the single EU market.

5. Specific Rules Applicable to Candidate Countries Before and After Their Accession

Question No. 17

After the Formal Application to Join the EU, Was Your Country Willing or Able to Negotiate Any Specific Exemption From the Accession Procedure (e.g. Areas of Law Not to Be Approximated, Limits to the Approximation etc.)?

Two types of exemption from the full *Acquis* were available in negotiations for the candidate countries: transition period and derogation.

Transition period presents a temporary exemption, which provides a country more time for adjustment, whereas derogation is permanent exemption; it lasts until it is lifted and means that the country does not have to take over the complete European legislation in that area.

Yes, after the formal application Slovenia negotiated specific temporary and permanent exemption from the accession procedure, chapter by chapter. Altogether Slovenia proposed 22 exemptions or transition periods and 6 derogations. Prior to accession, Slovenia adapted its legislation to EU regulations in all areas of law, except in areas where certain exceptions and transitional periods were agreed in the negotiations (18 transitions and 2 derogations). Country-specific exemptions from the general approach for Slovenia were negotiated during the pre-accession negotiations only. After the actual accession there were no further negotiations. Derogations were approved very exceptionally. As explained, Slovenia finally negotiated 18 transition periods and 2 derogations.

There is also the third type of exemptions called safeguard clauses, which present the right to suspend a certain part of the *Acquis* if a country failed to fulfil its accepted obligations. Safeguard clauses were primarily intended for the EU side, and not for the candidate countries. Slovenia did not apply this type of exemption.

Question No. 18

What Country-Specific Provisions Were Contained in the EU Accession Agreement of Your Country?

As noted by Lavrač and Majcen,⁶ Slovenia asked for 22 transitory periods and 6 derogations. These requirements were not distributed proportionally across chapters. There were 19 chapters where Slovenia did not ask for any exemption, which means that in these areas Slovenia committed itself to fully adopt the *Acquis* by the time of the EU accession. The highest concentration of required exemptions was in some of the most demanding negotiating chapters, such as agriculture and environment.⁷

⁶ Lavrač and Majcen, 2006.

⁷ Mejač, 2000.

The results are comparable to the negotiating position at the beginning, although the comparison cannot be a direct one, as in time some of the negotiating positions evolved into something else, such as a concrete financial obligation or a similar agreement. An overall assessment for the case of Slovenia is that negotiations were smooth and successful.⁸

Question No. 19

Were There Any Country-Specific Transitory Provisions?

An example of country-specific transitory provisions is provided below.

In 2003, Slovenia only partially fulfilled its commitments regarding direct taxation, and therefore, needed to transpose almost the entire *Acquis* for this area.

Slovenia had obtained transitional periods for the reduced VAT rate on construction, renovation and maintenance work for residential housing not provided as part of a social policy (until 31 December 2007), the reduced VAT rate on the preparation of meals (until 31 December 2007).

Moreover, Slovenia was granted derogations allowing it to apply a VAT exemption and registration threshold of EUR 25000 for small and medium-sized businesses and VAT exemption on international passenger transport.

Further, Slovenia was granted a transitional period allowing it to defer until 31 December 2007, the implementation of the minimum excise duty rates of EUR 64 per 1000 cigarettes for the category most in demand.

The legal framework for indirect taxation primarily comprises harmonised legislation in the field of value added tax (VAT) and excise duties. This includes the application of a non-cumulative general tax on consumption which is levied at all stages in the production and distribution of goods and services and requires equal tax treatment of all domestic and import transactions.

In the field of excise duties, the *Acquis* comprises harmonised tax structures and minimum rates of duty together with common rules on the holding and movement of excisable goods (in particular, the use of tax warehouses).⁹

⁸ Lavrač and Majcen, 2006.

⁹ Commission Opinion [COM(1997) 2010 final - Not published in the Official Journal]; Commission Report [COM(1998) 709 final - Not published in the Official Journal]; Commission Report [COM(1999) 512 final - Not published in the Official Journal]; Commission Report [COM(2000) 712 final - Not published in the Official Journal]; Commission Report [COM(2001) 700 final - SEC(2001) 1755 - Not published in the Official Journal]; Commission Report [COM(2002) 700 final - SEC(2002) 1411 - Not published in the Official Journal]; Commission Report [COM(2003) 675 final - SEC(2003) 1208 - Not published in the Official Journal]; Treaty of Accession to the European Union [Official Journal L 236 of 23.09.2003].

Question No. 20*Was Your Country Able to Negotiate Any Permanent Exemptions From the EU Law?*

As aforementioned Slovenia finally negotiated 18 transition periods and 2 derogations. The negotiations were professional and lasted from 1998 to 2002, when the last chapters were closed. The initiating point of negotiations and a negotiation expert group were prepared for each of the 31 chapters; both were determined by the Government, which through a government negotiating group, led by the minister responsible for European affairs, closely monitored the progress achieved in the negotiations and adjusted the negotiation initiating points.

However, the candidate's country negotiating goal could not be to change anything in the European legal order; this was also not subject to negotiation. The negotiators could only negotiate on the method of implementing the legal order, on a possible transition period, and as an exception, meaning only on country-specific transitory provisions and country-specific exemptions.

The period of real and tough negotiations began in the final phase of the financial package negotiations, which included both negotiations on inflows from the EU budget to Slovenia, as well as on its payments to the EU budget.

Negotiations on the financial package for Slovenia's entry into the EU actually began in January 2002, when the European Commission published a document titled 'Common Financial Perspective 2004–2006', in which it defined the basic framework for discussing the financial aspects of the integration of candidate countries into the EU, and which was relatively unfavourable for Slovenia.¹⁰

The most significant obstacle in the negotiations on the financial package was the European Union's horizontal approach to the candidate countries, which did not sufficiently consider the specificity of our country as the most developed among the candidates from Central and Eastern Europe.¹¹

Question No. 21*To Your Knowledge, Were There Any Notable Differences in the Content of Your Country's EU Accession Treaty From Other Countries in a Comparable Position?*

Certainly, the content of Slovenia's EU Accession Treaty differs from that of other countries. The first group of differences involves the specific exemption from the accession and country-specific transitory provisions that we mentioned briefly. The second group of difference involves specific historical transition that Slovenia faced during the accession process. As noted by Lavrač and Majcen (2006), Slovenian transition process had a triple dimension: a) transformation of the economic system, b) shift from a regional to national economy, and c) change from being a part of the federal state to becoming a member state of the EU.

10 Bučar and Brinar, 2005.

11 Mencinger, 2004.

These historical positions are not directly comparable; there are some similarities of the concept of transition in the post-socialist countries, however, even here there are significant differences between the Baltic countries, the countries of the former Warsaw Pact and Slovenia. Direct comparisons are risky.

In Slovenia there was a high level of consensus on the importance of Slovenia's inclusion in the EU. However, in the negotiators' experience, the most difficult part of the negotiations were encountered at home. It was often difficult to reach consensus on several issues.

The sensitive issues of negotiations on the Slovenia EU accession were agriculture, environment, regional policies, budgetary flows with the EU and later Schengen border.

However, the chief areas of disappointment which raised considerable attention and led to intense public debates have to do with the following (although unimportant today) issues: (a) the rights of the EU citizens to purchase land in Slovenia even before signing the association agreement and (b) demands of the EU to close Slovenian free-trade shops on the state borders with Italy and Austria before the EU accession.

In addition, in this context, the treatment of denationalisation (return of confiscated property after the war) and the possibilities for the migration of the Slovenian labour force to the EU (detailed and balanced assessment of the chief problematic issues, see Bučar and Brinar, 2005) are noteworthy. The ten countries that joined the EU in 2004 experienced varying transition periods and exemptions, depending on their specific political situations. Cyprus had unique challenges owing to its division; the EU *Acquis* was only applied to the southern part. The Czech Republic, similarly to the Slovenia transition period, heavily emphasised agricultural reforms to align with the Common Agricultural Policy (CAP). In Hungary, similar but with more emphasis on social policy adjustments, also with some flexibility in implementing procurement regulations.

In Malta, transition period was less extensive owing to its smaller economy. Malta received some flexibility in applying certain EU laws, particularly in environmental standards. Estonia and Malta faced less extensive reforms owing to their stronger pre-accession economic conditions. All countries prioritised agriculture, however, the extent and focus varied, with some (such as Lithuania) emphasising energy reforms, whereas others (such as Poland) had broader economic reforms. The amount of flexibility varied widely, with some countries negotiating significant exemptions, whereas others facing fewer exemptions. Overall, while all ten countries aimed for integration, their individual circumstances shaped their transition periods and exemptions significantly.

Question No. 22***Are There Any Other Noteworthy Exemptions From the Application of the EU Law in Your Country?***

Noteworthy exemptions from the application of the EU law are related to alignment with the CAP, including subsidies and agricultural standards. Environmental Policy and implementation of EU environmental legislation were also among exemptions. Public Procurement is also worth mentioning, for example, reforms to ensure compliance with EU public procurement rules to promote transparency and competition and strengthening competition laws and institutions to align with EU regulations and prevent monopolies. Gradual adaptation of banking and financial regulations to meet EU standards, including measures for consumer protection was also temporary exemption from the application of the EU law; and labour market regulations: reforming labour laws to comply with EU employment standards, including worker rights and health and safety regulations. In the field of justice and home affairs, issues such as immigration, asylum, and border control were addressed for temporary exemptions.

We have to highlight the EU law related to Schengen. On 21 December 2007 Slovenia became a member of the Schengen Area and abolished border controls at its internal land and sea borders with EU member states. Checks at air borders were lifted on 30 March 2008. By joining the Schengen Area, Slovenia abolished border controls at its borders with Austria, Italy and Hungary, and simultaneously strengthened controls at its border with Croatia, which has become the external border of the Schengen Area.

Later, despite the Schengen rules, the borders were re-established in terms of border control not only between Slovenia and Croatia, but also on the Slovenian-Italian and Slovenian-Austrian borders, as well as on the borders with Germany, and after Brexit, the UK as well.

6. Conclusion

Slovenia's entry into the EU is characterised by the fact that it was closely related to the post-socialist transition and the disintegration of the previous federal state. Therefore, the political charge for joining the EU was different from comparable countries, deeper and more intense and more favourable to joining the EU. Therefore, it was not only a political and legal process, but also the realisation of the historical aspirations of the dominant part of the Slovenian people.

Slovenian accession in the EU membership as part of the EU enlargement by ten countries of CEEC, the Baltic countries and Cyprus began and ended in a good ten years. It was not an easy process, however, it was transparent, consistent and

effective. The process has changed Slovenian legislation landscape radically and in many areas. It was a comprehensive formal process, which simultaneously contributed to the gradual change of legal culture, invading a new legal tradition different from the previous one.

In terms of the complexity of the processes, the accession processes of the former socialist countries of CEEC and the Baltic states stand out. It would be interesting to analyse the differences in approaches and complexity between the latter and the waves, over the years 1973 (Denmark, Ireland and the United Kingdom), 1981 (Greece), 1986 (Portugal and Spain), 1995 (Austria, Finland and Sweden).

A comparison between these processes and the current enlargement of the EU with the countries of the Western Balkans and particularly Turkiye (where proceedings have dragged on for decades) on the one hand, and Ukraine and Moldova (where everything is supposed to occur rapidly) on the other, would be particularly useful.

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