

ENLARGEMENT OF THE EUROPEAN UNION IN THE CONTEXT OF UKRAINE, MOLDOVA, AND GEORGIA'S MEMBERSHIP APPLICATIONS

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Abstract

Ever since the foundation of the European Communities during the 1950s, enlargement of these organisations has been an important goal, as well as, in some cases, a challenge to the existing legal and political paradigm. In this article we set out to present the evolution of the accession process and the particularities present in specific cases, specifically those of the countries forming what is called the Eastern Neighbourhood, in order to evaluate Ukraine, Moldova, and Georgia's likelihood of becoming a fully-fledged member of the European Union, and the probable timeline.

Keywords: Association Trio, accession to the EU, EU membership, Eastern Partnership, Eastern Neighbourhood.

1. Introduction

The European Union¹, in accordance with the objectives laid out for it in art. 3 TEU², sets out to promote its values and encourage third countries' adherence to these values, with an eye to achieving and maintaining world peace and the improvement of standards of living, democracy, human rights, and welfare for all people. The EU does so by using both bilateral acts (in particular, advantageous trade agreements, cooperation agreements and association agreements that stimulate other states to comply with the EU's high standards in order to gain access to the EU's wealth single market) and unilateral ones, such as public statements, decisions, progress reports by the Commission, and others.

In the case of its relations with Eastern Europe, following the dissolution of the USSR and fall of the Iron Curtain, the European Union has employed a differentiated approach for specific regions and groups of states, with some Central and Eastern European states becoming EU Member States in a relatively timely fashion. At the same time, the Western Balkans, Ukraine, Moldova, and Georgia have progressed much slower in their relationship with the EU, despite concluding various Association Agreements, creating free trade areas, and working on harmonising their legislations with EU law. The events of 24 February 2022 seem to have changed the status quo, and to have prompted renewed efforts on the part of both the EU and the Eastern states to further integration and make future membership a reality, not just a possibility.

2. The process of accession to the European Union

Article 49 TEU currently provides two *sine qua non* conditions that a third state must fulfil if it hopes to become a member of the European Union: it must be a European³ state and it must show its respect for and commitment to promoting the EU's values, as enshrined in art. 2 TEU. The aspiring member must send its application to the EU Council, which will decide following a consultation of the Commission and the approval of the European Parliament; should the two conditions laid out in art. 49 not be fulfilled, the application will be deemed inadmissible. Additionally, the state must fulfil⁴ a set of „conditions of eligibility” that have been set by

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¹ As mentioned in art. 1 TEU, the „Union shall replace and succeed the European Community”, following the entry into force of the Treaty of Lisbon (2009). For reasons of simplicity and clarity of language, this paper will use the designation „European Union” to refer both to the European Community (the organisation prior to 2009) and the European itself (2009 – present).

² „The Union's aim is to promote peace, its values and the well-being of its peoples”.

³ Whilst a relatively clear condition on its surface, determining what constitutes a „European state”, or where Europe begins and ends, has occasionally been a subject of debate, especially in terms of its Eastern borders, with Turkey's status even being put into question. For more on what „European” means in this context, see L. Mkrtychyan, *The border-making policy of the European Union: eastern enlargement*, in *Journal of Education Culture and Society* no. 2, 2012, p. 8.

⁴ Art. 49 TEU states that the conditions of eligibility „must be taken into consideration”, suggesting that the EU institutions could decide to approve membership even when they are not sufficiently fulfilled; this would mean that only the two conditions explicitly laid out in art. 49 TEU are mandatory.

the European Council. The latest version of them was codified in Copenhagen, in 1993, at a point in time where the EU was looking toward the eastern side of the continent and anticipating a wave of accessions of formerly communist states, that would have to make significant efforts to catch up, economically and politically, to western states already in the EU. Thus, under the heading „Relations with the Countries of Central and Eastern Europe”, the Conclusions of the European Council lay out the Copenhagen criteria: „Membership requires that the candidate country has achieved stability of institutions guaranteeing democracy, the rule of law, human rights and respect for the 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. Membership presupposes the candidate’s ability to take on the obligations of a membership including adherence to the aims of the political, economic, and monetary union”.⁵ Additionally, the European Council used the word „brave” to describe these countries’ efforts to transition from the central planning system to a market economy, and pledged the EU’s support in this endeavour, considering the success of these efforts crucial to maintaining peace and prosperity in Europe. To that purpose, the European Council expressed its approval that Central and Eastern Europe should become members of the EU, as soon as they are „able to assume the obligations of membership by satisfying the economic and political conditions required”, and progress in that direction shall be monitored by the European Council, so that it may decide when the time is right for their accession. The Copenhagen criteria have, over time, become a baseline for accession conditions and have been partly codified via treaty revisions.⁶

If the aspiring member clears these initial conditions and its application is considered admissible, the accession process begins with the negotiation stage. Negotiations do not automatically start the moment the application is admitted, and they conclude with the drafting and signing of the accession treaty by the EU Member States and the applicant state. In order for the treaty to come into force, it must be ratified by all Member States; so far, there have been no cases of accession treaties being blocked by a single EU Member State refusing to ratify it. It can be noticed that the procedure laid out in Article 49 TEU is not a very detailed one, leaving instead a large margin of flexibility for the EU institutions involved and for the Member States, an understandable approach, considering the effects that a new state joining can have on the EU and on its members’ economic and political landscape. However, aspiring members could also be discouraged by this lack of clarity and certainty when it comes to having their candidacy evaluated.

Initially, the accession procedure was state-centred, in a way more closely resembling that of traditional cooperation organisations, rather than integration ones, like the European Communities; the European Commission was called to give an opinion on the potential accession of a state, but this opinion was non-binding⁷. Even at present, starting and finalising the accession procedure is dependent on an unanimous vote from the Member States, although this could come under question as more and more states join the EU and, in turn, make the likelihood of other states being able to join less likely, considering geopolitics.⁸ However, over time, the EU institutions have become more involved in the process: the first important change to that effect was involving the European Parliament, once it had become a democratically elected institution. Following the Single European Act (1987)⁹, the Member States being in agreement about another state’s application is no longer sufficient, and the European Parliament must give its approval following an absolute majority vote. The Lisbon Treaty (2009) effected further change by explicitly stating that the European Council sets „eligibility conditions” that must be taken into consideration when evaluating a state’s candidacy, and generally establishes the framework of the accession process. And whilst the Commission’s opinion is non-binding, it does hold sway over the Member States in most cases, and it had an influence on the drafting of the Copenhagen Criteria, at the request of the European Council, who asked the Commission to work on the content of these criteria and to track the

⁵ Conclusions of the Presidency, European Council in Copenhagen, 21-22 June 1993, p. 12, available at https://www.europarl.europa.eu/summits/copenhagen/co_en.pdf.

⁶ C. Hillion, *Accession and withdrawal in the law of the European Union*, in Anthony Arnall, Damian Chalmers (Editors), *The Oxford Handbook of European Union Law*, Oxford University Press, Oxford, 2015, p. 128. For more on the Copenhagen criteria, see also A. Fuerea, *Manualul Uniunii Europene*, VIth ed., Universul Juridic Publishing House, Bucharest, 2016.

⁷ For example, the UK received a positive opinion on its first application, which was rejected by France. Decades later, Greece’s application received a negative opinion from the Commission [COM (76) 30 final, 20.01.1976], but became a Member State nonetheless.

⁸ In theory, it’s been suggested that a Member State who unjustifiably opposes the accession of another state could be called to answer in front of the CJEU. See C. Hillion, *op. cit.*, p. 134. However, this would likely have serious political consequences, with Member States feeling like the veto they still have on this matter is being reduced.

⁹ Art. 8 SEA.

candidates' progress in this matter, as a precursor to opening accession negotiations.¹⁰ Following the accession of 10 states in 2004, which tested the limits of the European Union's possibility of absorption of new members, the European Council decided, in 2006, to put forward the „New Consensus for Enlargement”, that introduced, among other dispositions, the concept of conditionality: in order for various negotiation chapters to be opened and closed, and for the accession procedure to progress, the candidate must fulfil several „opening” and „closing benchmarks”, which are defined and monitored by the European Commission, with the approval of Member States.

Following the decision to employ a conditionality-based approach, the Council and the European Council, based on an initiative by the Commission¹¹, endorsed a New Approach system, meant to encourage candidates' efforts regarding the implementation of the EU *acquis*. Chapters that were given particular attention were Chapter 23, „Judiciary and Fundamental Right”, and Chapter 24, „Justice, Freedom, and Security” (notably, areas that are not economic in nature, but rather related to the EU's core values). These chapters are opened early in the negotiation process, and closed late, in order to allow candidates as much time as possible to efficiently and consistently implement the necessary changes to ensure compliance with their disposition, with the EU giving specific advice and guidance on how this goal can be achieved, throughout the process. Additionally, if the candidate doesn't comply with these standards and conditions, the New Approach entails the possibility of applying sanctions to that state („corrective measures”)¹²,

Consequently, the accession procedure has moved from being a mostly political, inter-state one, as presented in art. 237 EEC, to being an elaborate process that involves several actors, at a national and supranational state, and a more detailed system of conditions and sanctions, even if the final decision remains with the Member States, through the unanimous vote¹³ that is expected in the Council for several of the process' steps, such as deciding whether a candidate's application is admissible and should be submitted to the Commission for an opinion, and to the European Parliament for its approval.

3. Relations between the EU and its partners – the concept of conditionality

The European Union influences Member (and future Member) States' behaviours, development, and standards by way of two methods: *ex ante* conditionality and *ex post* conditionality. *Ex ante* conditionality refers to the conditions imposed by the EU on a state who aspires to becoming a member of the EU, and who has to adapt its legislation and internal structures to the rigors of the EU integration system. This can be done through a variety of means, such as cooperation agreements and association agreements, international treaties through which said states take on obligations related to incorporating and fostering the EU's values, as well as copying EU *acquis* in various areas. Only once the EU's conditions have been met, will the agreement be applicable and the road toward membership become clearer for the state. *Ex post* conditionality refers to the fact that a specific agreement provides rules and obligations that a state shall have to follow/meet the standards in order for that agreement to apply; it offers more certainty for the state that following said rules will result in palpable benefits for it. *Ex post* conditionality is noted¹⁴ as being more frequent in the EU's external policy, such as its practice to include conditions related to upholding human rights in its association agreements.

When divided into positive and negative conditionality, the relevant criterion is the nature of the consequences of violating the conditions. The concept of negative conditionality refers to the fact that a partner state is „threatened” with the suspension or elimination of certain benefits it enjoys in return for upholding the standards provided for in the agreement. Positive conditionality, on the other hand, refers to the practice of „rewarding” compliant states with economic, social, political etc. benefits, in exchange for fulfilling the conditions

¹⁰ C. Hillion, *op. cit.*, p. 129-130. This „pre-accession strategy” was introduced in 1994 as a method of preparing for what would be a large wave of accessions of Central and Eastern European countries.

¹¹ Communication from the Commission to the European Parliament and the Council, 'Enlargement Strategy and Main Challenges 2011–2012', COM(2011) 666 final, 12.10.2011, available at <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0666:FIN:EN:PDF>.

¹² C. Hillion, *op. cit.*, p. 131.

¹³ Despite a simple majority having been used for past accessions, it's been noted that, in recent times, it has become customary to expect a unanimous decision on this matter. For example, Germany single-handedly stalled, for over six months, the decision on asking the Commission to prepare an Opinion on Albania's application. C. Hillion, *op. cit.*, p. 132. This essentially turns an inter-institutional process into an intergovernmental one.

¹⁴ G. Gabrichidze, *The Instrument of Human Rights Clause as a Part of Conditionality in European Union-Georgia Relations*, in *The Review of European Affairs*, vol. 1, issue (2), 2017, p. 86.

indicated by the EU. The Union's approach is a mixture of positive and negative conditionality – positive conditionality offers states something to strive toward and aspire to, whilst negative conditionality represents a way to effect immediate change by bringing the consequences to the states' attention as soon as they disrespect the rules.

Most external agreements that the EU concludes concern trade matters, reflecting the Union's predilection for utilising economic instruments.¹⁵ An example of an important agreement between the EU and third countries – in this case, an entire region – is the Cotonou Agreement (ACP-EU Partnership Agreement). This agreement represents the legal framework for the Union's relations with countries from Africa, the Caribbean and the Pacific. However, the EU also concludes many agreements with a larger scope of cooperation. A suspension mechanism, meant to be included in agreements that the Union concluded with third countries, was approved in 1995 by the Council, allowing the EU to rapidly respond to situations where such a country would commit grave crimes, such as violating fundamental rights.¹⁶

4. The Eastern Partnership

The eastern enlargement process began in the 1990s, following the dissolution of the USSR and the emerging possibility that the states that had been part of it, or within its sphere of influence, could gravitate towards the west and the European Union. Once discussions had been opened, the Union first offered the Central and Eastern European countries membership of a „Stability Pact”, whilst Turkey's desire to join was met with an offer to form „a privileged partnership”.¹⁷ The initial discussions stopped at Romania, Poland, and Slovakia, as an eastern border of sorts, whilst Ukraine, Moldova, and Belarus were relegated to a different regime. One seemingly contradictory aspect to its approach was the fact that the EU seemed to waver between adopting a single policy framework for all post-communist states, and employing differentiated policies for various of these states.¹⁸

At the beginning of the 2000s, the EU invested large amounts into East European and Central Asian countries in order to assess the potential consequences a „Wider Europe”, involving enlargement toward the east and including the „Newly Independent States” would have. To that end, the EU's goal was to enhance cooperation and to reduce economic disparities between its Member States and its neighbours, as well as foster stability and democracy in the latter. At that point, the EU identified two categories of benefits derived from eastern enlargement: for the organisation itself, and for the future members. The EU would benefit from the increase in eastern security, the stabilisation of an area that, until now, has been prone to conflict and political tensions, access to growing markets and tens of millions of people, enhanced protection of the environment (particularly important, considering that the effects of pollution are felt continent-wide, and are not constrained to the areas where it is produced) thanks to new Member States integrating with the EU and its legislation on the environment, enhanced capabilities to fight against crime and illegal immigration, and to stop the trafficking of illegal substances. At the same time, Eastern European states who join the EU can benefit from the support offered by the organisation in the process of stabilising their young democracies, the protection of minorities, economic support and reforms leading to growth, better employment prospects, and trade surplus, as well as more opportunities for their citizens, to study, work, and integrate with the people from Western Europe. Additionally, enlargement enhances the worldwide influence and image of both parties – the EU grows and expands its influence to new territories and people, and integrates their economic capabilities, whilst the new Member States enjoy the legitimacy and the protection brought by participation in one of the most important and powerful international actors, known for the high standards it imposes on aspiring members.¹⁹

In 2006 the EU established a new financial mechanism meant to support the existing European Neighbourhood Policy²⁰, and replacing the existing frameworks²¹: the European Neighbourhood and Partnership

¹⁵ Whilst the Union's objectives have always been a mixture of the political and the economic, the Union's main instruments for achieving these objectives are economic in nature.

¹⁶ G. Gabrichidze, *op. cit.*, p. 87. „Furthermore, suspension of cooperation in certain areas, imposition of a trade embargo, postponement of planning or starting new projects, etc., can also be considered as an appropriate measure.”

¹⁷ L. Mkrtychyan, *op. cit.*, p. 14.

¹⁸ D. Jano, *EU Enlargement Rounds and Dilemmas: The Successful, the Reluctant, the Awkward, and the Laggards*, in Bruno Ferreira Costa (Editor), *Challenges and Barriers to the European Union Expansion to the Balkan Region*, IGI Global, January 2022, p. 29.

¹⁹ L. Mkrtychyan, *op. cit.*, p. 11-12.

²⁰ Regulation no. 1638/2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument.

²¹ The financial assistance programmes TACIS (for Eastern European countries) and MEDA (for Mediterranean countries).

Instrument (ENPI). Programmes financed under the ENPI had to comply with all of the EU's international agreements and commitments, thus including all the provisions regarding the respect of human rights and fundamental freedoms, democracy, rule of law, etc., with any violation of these provisions opening the possibility for an *ad hoc* review and for other appropriate steps regarding the assistance granted to the offending state²². The ENPI was replaced, in 2014, by the European Neighbourhood Instrument (ENI)²³, which further promoted the EU's values in this area, and also provided a conditionality clause, stating that partner states would be monitored with regard to their respect of these values, with support potentially being withdrawn if serious or persistent regression is identified.²⁴

The Eastern Partnership (EaP), a joint project involving the EU, its Member States, and six partner countries, was initiated in 2008 and officially launched on 7 May 2009, in Prague, establishing free trade and cooperation, and starting the discussion on visa liberation, with the EU's eastern neighbours: Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine. The possibility of future membership was not raised with these countries; nevertheless, the prevailing opinion has been, all along, that of these countries, Moldova and Ukraine stand the highest chance of becoming EU members, especially when comparing their situation with that of Turkey, who has been trying to accede for several decades.²⁵

The EaP is based on common values and interests, and aims to deepen the political and economic relations between the parties involved. The most important achievements, within the framework of the EaP, have been the Association Agreements and the Deep and Comprehensive Free Trade Agreement that the EU signed, in 2014, with Georgia, Moldova, and Ukraine, and visa liberalisation with these countries (2014 for Moldova, 2017 for Georgia and Ukraine).²⁶ The Agreements' goal is to strengthen the EU and its partner's bonds even more, and to align the Eastern states' rules and legislation with those of the EU.

The Russia-Ukraine war has influenced and accelerated the western-oriented development of the European Neighbourhood countries, who now view EU accession as essential for their security, as well as their economic growth.²⁷ Consequently, Ukraine presented its application for EU membership on 28.02.2022, just four days after the start of the war, and Georgia and Moldova soon followed its lead, applying on 03.03.2022. On June, 17, the Commission delivered its Opinion, and on June, 23, the European Parliament granted candidate status to Moldova and Ukraine, whilst Georgia's candidacy was conditioned by the addressing of a series of priorities. These developments might have the consequence of the EaP framework becoming unnecessary, EU's relations with its Eastern neighbours becoming typical relations between the Union and candidates for membership.²⁸

4.1. Georgia

Following the breakdown of the USSR, Georgia reoriented itself toward the west, accentuating its European identity as part of the recovery and development process it underwent, and deciding that one of its main foreign policy objectives should be integration with the west and cooperation with European Union.²⁹ An important moment in this process was the Rose Revolution, in 2003, which further pushed Georgia away from the Soviet political legacy and towards the west, a move that coincided with the EU's increased openness towards eastern, formerly Soviet states. Over time, initiatives such as the Eastern Partnership and Association Agreement, the Deep and Comprehensive Free Trade Area, the visa liberalisation scheme, and most recently, the application for EU membership have brought Georgia closer than ever to the fulfilment of its western aspirations.

The EU and Georgia's first legal instrument of cooperation was the Partnership and Cooperation Agreement (PCA)³⁰, signed by the European Union, its Member States, and Georgia on 22.04.1996. The PCA entered into

²² Art. 5 and art. 7 of Regulation no. 1638/2006 laying down general provisions establishing an ENPI.

²³ Regulation no. 232/2014 establishing an ENI.

²⁴ Art. 4.2 of Regulation no. 232/2014 establishing an ENI.

²⁵ L. Mkrtchyan, *op. cit.*, p. 15.

²⁶ O. Tkachuk, *Three decades of relations between the European Union and Moldova – from cooperation to the membership perspective*, in *Rocznik Integracji Europejskiej*, Uniwersytet Adama Mickiewicza, no. 16/2022, p. 224.

²⁷ P. Klimkin, A. Umland, *How to Progress Ukraine's Western Integration as a Prelude to Accession to the EU and NATO*, in *UI Paper*, Swedish Institute of International Affairs, no. 4/May 2020, p. 3.

²⁸ W. Kononczuk, *No Stable EU Without a New Eastern Enlargement*, Stockholm Centre for Eastern European Studies, Guest Commentary no. 15/10.11.2022, p. 1.

²⁹ The European Union has always been one of the main economic partners of Georgia, following the dissolution of the USSR. For more, see O. Çalışkan, *An Analysis of Georgia-EU Relations through the Expectation of Candidacy Status*, *Sosyolojik Bağlam Dergisi*, 3(3), December 2022, p. 267.

³⁰ Available at <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A21999A0804%2801%29>.

force on 1 July 1999 and was applicable for an initial period of ten years, followed by an automatic yearly renewal, provided that neither party notified the other with their intention to denounce the PCA six months before its expiry.

The preamble of the PCA stated that the parties „convinced of the paramount importance of the rule of law and respect for human rights, particularly those of persons belonging to minorities, the establishment of a multiparty system with free and democratic elections and economic liberalization aimed at setting up a market economy, and recognizing the efforts of Georgia to create political and economic systems based on these principles”, and its „General Principles” were defined in art. 2 as including „Respect for democracy, principles of international law and human rights as defined in particular in the United Nations Charter, the Helsinki Final Act and the Charter of Paris for a New Europe, as well as the principles of market economy, including those enunciated in the documents of the CSCE Bonn Conference”. Article 3 underlined the future necessity for the independent states that had emerged as a consequence of the dissolution of the USSR to cooperate with each other „in compliance with the principles of the Helsinki Final Act and with international law and in the spirit of good neighbourly relations”.

The PCA provided that, in case one of the parties had failed to fulfil its obligations as provided in the agreement, the other party – after informing the Cooperation Council created under art. 80 – could take whatever appropriate measures it deemed necessary and, in cases of emergency (such as violations of the aforementioned principles from art. 2), could even do so without informing the Cooperation Council, up to and including the suspension of the PCA’s application. This kind of conditionality clause regarding the respect of human rights had been previously used in the European Community’s Europe Agreements with Bulgaria and Romania, from 1993, that had itself replaced the similar clause used in the 1992 Europe Agreements with the Baltic states.³¹ The main – and crucial – difference between the two was that, in the case of Baltic clause, the parties were entitled to suspend the application of the Agreement in case of grave infringements of the essential provisions, whilst in the later version of the clause – as used in the EU and Georgia PCA – it became permitted to suspend the application of the Agreement for any infringements, as long as the appropriate forums are consulted (and without any consultation at all in the case of serious infringements).

Georgia was invited to participate in the European Neighbourhood Policy (ENP) on 14.06.2004. The ENP did not replace the PCA, but rather added to it by expanding EU-Georgia economic relations and integration, including by allowing Georgia to participate in the EU’s internal market. The ENP also made numerous mentions of the shared values of the EU and its neighbours, and the central role these values must play in their cooperation. Consequently, these countries are subjected to conditionality clauses, the Commission specifying that, for states in the Southern Caucasus, „the EU should consider the possibility of developing Action Plans with these countries in the future on the basis of their individual merits. With this in view, the Commission will report to the Council on progress made by each country with respect to the strengthening of democracy, the rule of law and respect for human rights”. The bilateral Action Plan that was subsequently elaborated in order to govern EU-Georgian relation was used to implement the ENP and identified priorities such as reforming the judicial system, in order to strengthen the rule of law, reforming the penitentiary system, strengthening democratic institutions and safeguarding fundamental human rights and freedoms.³²

Negotiations to include Georgia in the EaP began in July 2010, and the final text of the EU and Georgia Association Agreement was signed on 27.06.2014, after being reached during the third Eastern Partnership Summit, in November 2013, and entered into force on July 1, 2016.³³

Initially, Georgia planned to apply for EU membership, but, in the context of the Ukraine-Russia war, and Ukraine’s application on 28.02.2022, which called for an accelerated accession process, Georgia submitted its own letter of application on 03.03.2022, along with Moldova.

Following an expedited procedure and consideration, the Commission expressed its Opinion on 17.06.2022, stating that Ukraine, Moldova, and Georgia have reason to hope for membership. Unlike Ukraine and Moldova, Georgia did not receive an immediate acceptance of its candidacy, with the Commission saying that some aspects would first have to be prioritised and addressed by Georgia; the Commission has established 12 pre-conditions. Whilst this separation from Ukraine and Moldova’s road to membership caused disappointment at a national

³¹ G. Gabrichidze, *op. cit.*, p. 88.

³² EU and Georgia Action Plan https://www.eeas.europa.eu/sites/default/files/georgia_enp_ap_final_en_0.pdf

³³ Georgia has been called „the most progressive of the trio, Georgia, Moldova, and Ukraine, regarding the implementation of the Association Agreements and reforms that brought its legislation closer to that of the EU”. See Orçun Çalışkan, *op.cit.*, p. 267.

level, Georgia's outlook is still a positive one, especially considering that, until relatively recently, membership of the EU had not been seen as a realistic possibility.³⁴ The 12 pre-conditions suggested by the Commission regard the matter of political polarisation, independence of state institutions (rule of law), judicial reforms, fight against corruption, combating „oligarchisation”³⁵, fight against organised crime, media freedom and independence, protection of vulnerable minorities, gender equality, compliance with the European Court of Human Rights' rulings, involvement of civil society in the decision-making process, and independent and transparent nomination of public defenders³⁶.

It has been suggested that the reason behind this differentiated approach is the regression registered by Georgia in some key areas, such as a certain level of „democratic backsliding”, a worsening of institutional independence, political polarisation, and suppression of opposition media. Another issue that has been identified is that of vulnerable minority treatment; a conditionality clause introduced with the Visa liberalisation plan, agreed upon in 2013, regarded the introduction of an anti-discrimination law, which has proven to be a controversial topic. Despite it being adopted, the fact that it was met with criticism and opposition can put into question whether its implementation will be effective and long-term.³⁷ Additionally, the European External Action Service published a report, on 13 August 2022, showing that Georgia's alignment with the EU has declined from 62% in 2020 to 42% in 2022;³⁸ at the same time, the „share of Georgians who think Georgia is a democracy declined to the lowest level in a decade in 2022”.³⁹ Considering this pre-existent declining trend, it will be challenging for it to catch up in all these areas of interest, so its candidacy's status might remain unresolved for a longer time.

4.2. Moldova

Moldova's relations with the European Union took shape, as in the case of other post-Soviet states, during the 90s, when the EU looked to the east and the opportunity of future enlargements. Moldova and the EU signed the Partnership and Cooperation Agreement (PCA), a bilateral agreement concluded for a term of 10 years, on 28.11.1994, and it entered into force on 01.07.1998. Subsequently, the PCA constituted the legal and institutional framework for the two parties' cooperation, until 2004, when it was replaced as a basis for cooperation by the European Neighbourhood Policy. Following the signing of the PCA, the Moldovan Parliament approved a Foreign Policy Concept, in February 1995, stating that „one of the main and prospective foreign policy goals of the Republic of Moldova is the gradual entry into the European Union. The first step in this direction was the signing of the PCA, and in December 1996, the newly elected President of the state addressed a letter to the President of the European Commission, expressing Moldova's desire to become an associated country by 2000, a foreign policy strategy that was further confirmed in March 1999, when the Prime Minister of Moldova initiated a European-leaning programme whose slogan was „Rule of law, economic revival, European integration”.⁴⁰ Moldova joined the Stability Pact for South-Eastern Europe, which offered partner states assistance in order to foster cooperation and friendly relations, with a goal to remove trade barriers. The western-oriented foreign policy was furthered by Moldova creating, in December 2002, the National Commission for European Integration.

Moldova's inclusion in the ENP was welcomed by the state, who considered the ENP important for its internal reform and for connecting it to the EU's Member States. On the other side, the EU considered that a state close to the EU's borders, but that had an internal territorial dispute (as a consequence of losing control over the secessionist, Russia-supported Transnistria province)⁴¹ represented a particular point of interest, in terms of European security, with the Union wanting to help Moldova foster internal stability, strong institutions,

³⁴ Orçun Çalışkan, *op.cit.*, p. 264.

³⁵ The exact meaning of this concept is debated, and this pre-condition might prove to be the hardest to fulfil.

³⁶ https://www.eeas.europa.eu/delegations/georgia/twelve-priorities_en?s=221

³⁷ Orçun Çalışkan, *op. cit.*, p. 266.

³⁸ Another matter that will likely prove to be a long-term obstacle in Georgia's EU accession is that of Abkhazia and South Ossetia, breakaway regions that represent more than 20% of its territory. The EU's current stance is that it can't accept the accession of states which have territorial disputes or conflicts.

³⁹ Orçun Çalışkan, *op. cit.*, p. 269.

⁴⁰ O. Tkachuk, *op. cit.*, p. 225.

⁴¹ During the Council meeting on 14.06.2004, support for Moldova was reaffirmed, with the Council calling on both parties of the Transnistrian conflict to resolve its dispute while recognising Moldova's territorial integrity.

democratic values, respect for human rights, and the rule of law. The EU also underlined the importance of Moldova-Ukraine cooperation on the matter of common border management.⁴²

Following the dissolution of the USSR, Moldova joined the World Customs Organisation in 1994 (October 28, 1994), has been a member of the World Trade Organisation (WTO) since 26 July 2001, and of the Pan-Euro-Med Convention since 1 December 2016. At present, the EU is Moldova's biggest trading partner, accounting for over 50% of Moldova's trade. The main exports from the EU to Moldova are mineral products, and machinery and appliances, whilst the main imports are electrical machinery and appliances, base metals and metal products, and vegetable products. Exports from the EU to Moldova grew from 2020 to 2021 by 22%, while imports increased by 13.4% within that same time period. Moldova was the first country in the region to obtain visa liberalisation for its citizens, on 28.04.2014, with over 2,5 million Moldovans visiting the EU without a visa, and numerous students and researchers have benefited from the country's participation in the Erasmus+ Programme.

Having been a member of the EU's ENP and EaP since their respective foundation, the strengthening cooperation between Moldova and the Union culminated with the conclusion of the EU and Moldova Association Agreement on 27.06.2014, with it entering into force on 1 July 2016; the Agreement introduces a preferential trade regime, and contains numerous provisions on matters such as taxation, and customs and trade facilitation, regarding goods and services. In 2022, the two partners published a new Association Agenda for 2021-2027, meant to „consolidate their partnership by agreeing on a set of priorities for the period 2021–2027 for the joint work towards achieving the objectives of political association and economic integration as set out in the Agreement”. The EU and Moldova Association Agreement creates a preferential trade regime between the two parties, called the Deep and Comprehensive Free Trade Area (DCFTA), which requires Moldova to align with EU legislation on matters related to trade and which involves the reduction or even elimination of tariffs for numerous goods, the development of the services market, and the rise in investments.

Along with Georgia, Moldova applied for EU candidacy on 03.03.2022, in the context of the Russia-Ukraine war, and was granted candidate status on 23.06.2022, along with Ukraine. Considering Moldova's relations with the EU were already more advanced in some aspects, such as the earlier visa liberalisation, the fact that it has very strong ties with an EU Member State (Romania), and the fact that it has a relatively small population, its integration might be a smoother process than in the case of Georgia and Ukraine. However, Moldova's main obstacle in joining the EU is likely to be Transnistria, a breakaway territory, similar to Georgia's Abkhazia and South Ossetia, that is no longer under *de facto* control of Moldova. Considering the EU's reluctance to welcome a member who has territorial disputes, it is unlikely that Moldova will join the Union before settling this matter, whether by reaching an agreement regarding Transnistria's autonomy, or by regaining control over it.

4.3. Ukraine

The DCFTA intended to encourage trade in goods and services between the two parties by gradually cutting tariffs and pushing Ukraine to adapt its national legislation regarding specific agricultural and industrial matters to the EU's notably high standards, thus allowing for Ukrainian products to be easily imported in the EU and traded throughout the internal market. This regime was applied provisionally starting on 01.01.2016, and fully came into force on 01.09.2017. As part of the Association Agreement, Ukraine committed to making all necessary efforts to integrate with the Union's internal market, which entails a process of harmonisation, the same process that Member States comply with post-accession. This is part of the reason why association agreements are a helpful step in preparing third countries for a future accession, where possible and desired. However, the conclusion of the EU and Ukraine Association Agreement, in 2014, did not lead to a formal commitment from the EU regarding Ukraine's accession, despite such agreements traditionally representing a first step toward that goal. Until 2022, the attitude among EU institutions had been mixed: the European Parliament had demanded for the EU to formally open the possibility to Ukraine, but the Council and Commission, despite not rejecting it outright, also failed to commit to such an endeavour. Whilst this lack of commitment is partly justified by the fact that the three countries do not adequately fulfil the Copenhagen criteria, geopolitical factors, such as Russia's proximity, as well as a perceived lack of benefit to the EU have played a role in the latter's reticence to

⁴² O. Tkachuk, *op. cit.*, p. 226.

award the Eastern partners the same opportunities it did the Western Balkan ones.⁴³ In 2020, Ukraine's prospects for accession were assessed as „gloomy”, considering the political context and the world-altering pandemic.

Following the start of the Russia-Ukraine war, on 24.02.2022, the EU banned the import of good originating in Russian-occupied territories, such as Crimea, Donetsk, and Lugansk, as well as other areas not under Ukrainian control. Additionally, the EU restricted the movement of capital and services from said areas.⁴⁴ The war prompted the EU to deepen its relationship with Ukraine, permitting its accession, on 01.10.2022, to the Common Transit Convention⁴⁵ and the Convention on Simplification of Formalities in Trade in Goods⁴⁶. The EU and its Member States have offered Ukraine assistance in several areas: border management, support for the health care system of both Ukraine and the states hosting Ukrainian refugees, protection of children, refugee access to education, access to temporary accommodation and housing, access to the labour market. On 24.05.2022 a regulation was adopted, at EU level, allowing for the temporary liberalisation of trade, suspending various tariffs, anti-dumping duties on imports from Ukraine, and encouraging the flow of goods between the two.

All these measures effectively mean that Ukraine has had with the EU, for over a year now, a relationship that is closer to that between EU Member States, than between the EU and partner countries. Whilst there have been some dissatisfactions, on the part of Member States, related to the lower prices of Ukrainian agricultural products, which create a disadvantage for EU-grown products, part of the explanation is that Ukraine is not currently beholden to the exact same rules regarding the health and safety standards that must be followed. It stands to reason that, should the Ukraine follow these rules, as it would once it became a member, the matter of the pricing would be resolved. In short, the EU has had the opportunity to experience a window into what a future Ukraine membership could look like, and taking into account the grave security and humanitarian issues at play, we could surmise that a peaceful membership would not present any particular problems, and would lead to a successful integration. However, it is certain that serious accession negotiations will not begin until the conflict has been finalised and Ukraine enjoys peace and stability once again, and the possibility to rebuild.

5. Conclusions

The process of enlargement of the EU has undergone several changes throughout the years, with new conditions and procedures being implemented, new policies regarding third countries being adopted, and Member State involvement fluctuating in prevalence. One constant, since the foundation of the European Communities and until the present, has been that of the geopolitical motivations behind the decision welcome new members. From France's repeated rejection of the UK's applications for membership (a state who, politically and economically, was fully aligned to the European Communities' standards and rules at the moment of applying), to the rapid accession of Greece, a state whose candidacy had been negatively assessed by the Commission, the decades-long candidacy of Turkey, and to the slow progress toward accession of the Western Balkans, the European Union has always looked first and foremost to the benefits that it and its Member States would derive from enlargement, and only second to the technical aspects of such an enlargement. Where the Union and its Members estimated that there were advantages to be gained, whether related to European security or economic growth, enthusiastic steps were taken to encourage the potential candidates, and to help them align to the Union's high standards and rules. Conversely, states whose internal and foreign policies looked difficult to harmonise with the EU's were invited to cooperate, but were not given the perspective of membership.

This approach seems to have been turned on its head by the current situation in Ukraine. After decades of stalling on the possibility of Ukraine, Moldova, and Georgia's accession, the EU has moved at an unusually fast pace in order to receive and approve their candidacies, in Ukraine and Moldova's case, or to draw up a list of

⁴³ P. Klimkin, A. Umland, *op.cit.*, p. 6.

⁴⁴ https://taxation-customs.ec.europa.eu/customs-4/international-affairs/third-countries/ukraine_en.

⁴⁵ „The convention provides the legal framework setting out the obligations on traders and customs authorities for goods in customs transit from one contracting party to another. It covers the EU-27 (as one contracting party) and 8 common transit countries (Iceland, North Macedonia, Norway, Serbia, Switzerland, Turkey, Ukraine and the United Kingdom) as separate contracting parties.”

⁴⁶ Art. 1: „This Convention lays down measures to simplify formalities in trade in goods between the Community and the EFTA countries, as well as between the EFTA countries themselves, in particular by introducing a single administrative document (hereinafter referred to as the single document) to be used for any procedure at export and import and for a common transit procedure applicable to trade between the Contracting Parties (hereinafter referred to as transit), regardless of the kind and origin of the goods.” ([https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21987A0522\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:21987A0522(01)&from=EN)).

clear pre-requisites, in Georgia's. This, despite – and because of – the fact that the current geopolitical situation and the Russia-Ukraine put the Eastern partners of the EU in a very delicate, precarious position, and raise important security and stability issues. Whilst the rhythm at which the accession process of these countries will move has yet to be decided, the fact that the EU has made a decision that seems to prioritise the general welfare of all Europe, including its Eastern partners, rather than just that of its own Member States, could mark a new chapter in the European Union's foreign policy.

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