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Reprinted from Common Market Law Review, 63 (1), pp. 179-194, February 2026, with permission of Kluwer Law International.

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BALANCING ON A TIGHTROPE: PRE-ACCESSION POLICY AND THE PURSUIT OF EU VALUES

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Abstract

In the wake of the full-scale Russian invasion, Ukraine applied for membership of the European Union. It was shortly followed by Moldova and Georgia also expressing a desire to join the EU. Almost overnight, EU enlargement became a geopolitical matter forcing the EU and its Member States to revive the stalled rapprochement of the Western Balkan countries and process the Eastern European aspirants' applications. Bearing in mind that all contemporary candidates have a chequered history of compliance with the rule of law standards, the question emerges as to whether the geopolitical desiderata should trump EU values and thus open the door to fast accessions. This article argues that the dilemma is not new and that the EU has been balancing on a tightrope for many years now. The analysis shows the evolution of pre-accession policy and claims that the EU is procedurally well equipped to pursue its values as listed in Article 2 TEU. While candidates cannot be forced into accession against their will, the EU's allure, combined with resolutely used conditionality and benchmarking, may bear fruit. While there is no guarantee of success, the EU should pull its weight as the failure of its pre-accession policy would further exacerbate the threats posed by Russian neo-imperialism.

1. Introduction

Balancing on a tightrope is the skill that only few are capable of mastering. It does require physical strength, patience and – above all – the will and determination to move forward. The risk of falling and injuring oneself is always high. Over the past two decades, the European Union has been engaged in such an exercise when applying its pre-accession policy to the Western Balkan countries and Türkiye. On the one hand, promises of the European perspective have been made to the States forming a queue of EU

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hopefuls.¹ On the other hand, having learned from past experience, the EU has been putting much more emphasis on compliance with its own values than on technical box ticking, endorsing yet another EU legal act being turned into the domestic law of an aspiring State. Alas, a combination of the poor rule of law credentials of the potential candidates and candidates for EU membership, combined with enlargement fatigue within the European Union have meant that the balancing act has been more challenging than one could perhaps have anticipated. Consequently, following Croatia's accession in 2013, EU enlargement has stalled. It is nothing but a paradox that if it were not for the full-scale Russian invasion of Ukraine in 2022 and, in the wake of it, applications for EU membership submitted by the authorities in Kyiv, Chişinău, and Tbilisi, EU enlargement would – in all likelihood – have continued to travel on that stable trajectory to nowhere. The unprovoked invasion, war crimes committed by Russian forces on an industrial scale and the existential threat that Russian neo-imperialism poses to the democratic part of Europe have once again shown that peace is the biggest dividend of European integration, but sadly it cannot be taken for granted.² In turn, these tragic historical events have transformed EU enlargement and, by default, pre-accession policy as well, into a geopolitical matter that can no longer remain on the sidelines of the EU's agenda.

Unsurprisingly, in the aftermath of the full-scale Russian invasion, voices were raised that at least Ukraine should be put forward for fast-track accession, or as Roman Petrov and Christophe Hillion called it: 'accession through war'.³ Furthermore, even before 24 February 2022, various models of gradual integration for the Western Balkans had been floated, too.⁴ These ideas continue to be explored now in relation to all current candidates for EU membership.⁵ The fact is, though, that the basic parameters of the terms of accession have not changed. EU accession

1. European Council, 'Thessaloniki European Council. 19 and 20 June 2003. Presidency Conclusions' (11638/03, Brussels, 1 October 2003).

2. For a detailed account, see, *inter alia*, Yaroslav Trofimov, *Our Enemies Will Vanish. The Russian Invasion and Ukraine's War of Independence* (Penguin 2024). More broadly about independence of Ukraine and the path to Russian invasion, see, *inter alia*, Serhii Plokhyy, *The Russo-Ukrainian War* (Allen Lane 2023); Adrian Karatnycky, *From Independence to the War with Russia. Battleground Ukraine* (Yale University Press 2024).

3. Roman Petrov and Christophe Hillion, "'Accession through war" – Ukraine's road to the EU' (2022) 59 CML Rev 1289, doi: 10.54648/COLA2022092.

4. Milena Mihajlović, Steven Blockmans, Strahinja Subotić and Michael Emerson, 'Template 2.0 for Staged Accession to the EU' (CEPS, 28 August 2023) <www.ceps.eu/ceps-publications/template-2-0-for-staged-accession-to-the-eu/> (all websites last visited 24 November 2025).

5. Andi Hoxhaj, 'How to make EU enlargement a fairer and merit-based process: A legal and policy analysis' (2024) 30 ELJ 571, doi: 10.1111/eulj.12543.

continues to be based on the well-established paradigm that newcomers need to comply with EU *acquis* in its entirety, with any transitional arrangements limited in time and scale.⁶ Furthermore, the candidate countries must respect unequivocally the values on which the EU is based. Irrespective of whether desiderata for fast or staged accession are legally and politically plausible, the recent discussion has brought to the fore the quagmire that the European Union has found itself in. Balancing on the tightrope has not disappeared. *Au contraire*, the difficulty level has decisively risen.

The dilemma is as follows. On the one hand, the exacerbated geopolitical considerations should indeed translate into faster *rapprochement* of the Western Balkan countries, Ukraine and Moldova.⁷ On the other hand, any future enlargement of the European Union should not undermine the EU's ability to operate effectively without its values and legal order being put at risk. Thus, the meta question is whether the EU should sacrifice its values on the altar of geopolitics, with the hope that issues will miraculously iron themselves out, or whether it should continue pursuing its existing pre-accession policy and paradigms as if nothing has changed.⁸ There is no reasonable way of answering this question in a straightforward fashion. Indeed, in political and legal terms, there is no golden rule. This contribution argues that *prima facie*, neither of these binary options is plausible and an in-between model needs to be found. As demonstrated in the analysis that follows, the European Union already has a wide arsenal of procedural tools at its disposal. While there is no need to reinvent the wheel, it should, unlike in the past, employ these tools resolutely whenever the circumstances so require (and with the hope that its power of persuasion still works and will reverse any emerging negative trends). Arguably, simply muddling through or outright procrastination are no longer fit for purpose. The EU should stop being driven by the Italian idiom 'Tra il dire e il fare c'è di mezzo il mare'.⁹ A more colloquial 'cutting to the chase' is, under the circumstances, a far more desired and appropriate way to proceed. This, of course, will not come easy, as key decisions in the enlargement process are *par excellence*

6. The reality is, however, very much more nuanced. See Adam Łazowski, 'Permanent Derogations and Transitional Arrangements for New Member States: Accession *Conditiones Sine Quibus Non*' in Diane Fromage (ed), *Redefining EU Membership. Differentiation In and Outside the European Union* (OUP 2024).

7. Both Türkiye and Georgia have become pariahs of EU enlargement and their chances of making any progress in the *rapprochement* in the nearest future are, at best, marginal.

8. Another meta question that needs to be addressed is the EU's ability to cope with the next rounds of enlargement, that its own compliance with the absorption capacity Copenhagen criterion. It is notable that the Russian invasion of Ukraine has already impacted the European Union. See Inge Govaere, Sacha Garben and Eleanor Spaventa (eds), *The Impact of War (in Ukraine) on the EU* (Hart 2025).

9. In translation: 'there is a sea between what is said and what is done.'

political. While the European Commission and the European Parliament have their roles to play, the final word always remains with the Member States.

These arguments are further developed in Section 2, where the main stages of the development of the revamped pre-accession policy are presented. In Section 3, several recommendations are made *pro futuro*. Section 4 concludes.

2. On the road to a revamped pre-accession policy

It is a well-known phenomenon that accession to the European Union requires from candidates comprehensive legal reforms and a wide-scale law approximation effort.¹⁰ This is how it has always been. Having said that, the early enlargement rounds were much more modest in terms of technical exercises than is the case nowadays.¹¹ As the European Communities (and later, the European Union) have evolved, so has – in parallel – the obligation to comply with EU law before accession. In other words, the amount of EU *acquis* and areas that EU law covers has grown exponentially in the intervening period. It is notable that, with the accession of Bulgaria and Romania, the centre of gravity in the accession process has tilted towards rule of law related dossiers. This is hardly surprising, as the premature enlargement of 2007 showed that joining the European Union does not serve as a magic wand that can miraculously solve pertinent matters of Statehood (for instance, by guaranteeing the existence of an independent judiciary or robust anti-corruption procedures and institutions).¹² It is fair to say that contemporarily, accession to the European Union demands, first and foremost, compliance with the EU values listed in Article 2 TEU. Among them, as the Court of Justice's prolific case law shows, respect for the rule of law occupies a prominent place. This change of paradigm in pre-accession policy has not, of course, happened overnight. It took time and several stages that materialised in sequence. They are presented in turn.

The first considerable change came when accession negotiations with Croatia and Türkiye commenced. To begin with, broadly understood rule of

10. For an analysis of the Ukrainian experience, see Tetyana Komarova and Adam Łazowski, 'Switching Gear: Law Approximation in Ukraine After the Application for EU Membership' (2023) 19 *Croatian Yearbook of European Law and Policy* 105, doi: 10.3935/cyelp.19.2023.532.

11. See Christopher Preston, *Enlargement and Integration in the European Union* (Routledge 1997); Allan F Tatham, *Enlargement of the European Union* (Kluwer 2009).

12. Dimitry Kochenov, *EU Enlargement and the Failure of Conditionality. Pre-accession Conditionality in the Fields of Democracy and the Rule of Law* (Kluwer 2008).

law matters were allocated a dedicated chapter within EU membership talks. This henceforth became Chapter 23; the most important dossier in the *rapprochement*. By separating it from three large areas forming the Area of Freedom, Security and Justice, space was created for more focused, targeted conditionality and benchmarking. The latter became the second feature of the modified pre-accession policy. By setting additional benchmarks for compliance, the EU has started to add much more guidance to the mix. Alas, while the negotiations with Türkiye quickly slowed down to the point of stopping altogether, membership talks with Croatia demonstrated that much bigger changes to the pre-accession *modus operandi* were necessary. In a nutshell, Chapter 23 was opened too late in the membership talks.¹³ Adding insult to the injury, some of the benchmarks have proven to be completely unrealistic and thus undermined the credibility of EU pre-accession policy.¹⁴ Furthermore, the unanimity requirement applicable throughout the accession process under customary rules of EU law meant that any progress could easily be blocked by a single Member State attempting to solve – by blackmail – any bilateral issues with the candidate that it could pick a fight with (even if not EU accession related). *In casu*, Slovenia blocked progress in Croatia's *rapprochement* as a vehicle to solving, of course to its advantage, a bilateral border dispute going back to the dissolution of Yugoslavia. At the same time, the mounting rule of law challenges in the remaining Western Balkan countries queuing for EU membership could not be ignored. The change of tack was, therefore, very much desired. It was largely too late to do so in relations with Croatia, but the time seemed apt to proceed with changes that would apply *vis-à-vis* the other potential candidate and candidate countries.

All of the above paved the way for the second stage of the pre-accession policy revamp. This has amounted to employment of much heavier rule of law benchmarking and conditionality already from the very early stages of *rapprochement*. In other words, many fundamental reforms would have to be brought forward by the potential candidates and candidate countries. The *raison d'être* behind this fundamental change was based on the presumption that if the necessary changes are introduced early enough in the accession process, the more likely they would become more sustainable

13. The negotiations started with Chapters 25 and 26 (Science and Research and Education and Culture respectively). The first was opened and closed on 12 June 2006, the second on 11 December 2006. In contrast, Chapter 24 was opened on 2 October 2009, while Chapter 23 on 30 June 2010. In fact, the latter was the last chapter to be opened in Croatia's accession negotiations.

14. See Mirna Vlašić Feketija and Adam Łazowski, 'The Seventh EU Enlargement and Beyond: Pre-Accession Policy *vis-à-vis* the Western Balkans Revisited' (2014) 10 Croatian Yearbook of European Law and Policy 1, 14–18, doi: 10.3935/cyelp.19.2023.532.

and, thus less prone to downsliding. This, of course, is a rebuttable presumption. Sadly, even the most established democracies may – as the recent example of the United States shows – experience fast and furious lowering of rule of law standards. In other words, the erosion of democracy may happen in any corner of the world, and Europe is not immune. As for the EU's pre-accession policy, Albania, Montenegro, Serbia, North Macedonia, Bosnia and Herzegovina, and Kosovo found themselves at the receiving end of the discussed change of the EU accession paradigm. In 2022, they were joined by Ukraine, Moldova, and Georgia.

As of the late 2000s, compliance with more voluminous and varied rule of law related benchmarks has become a *conditio sine qua non* for upgrades from potential candidate status to candidate status and, in turn, for receiving the green light from the European Council to start accession negotiations – with a follow-up decision of the Council on the adoption of the General EU Position for membership talks also being subject to benchmarks. The examples of Albania, North Macedonia, and Bosnia and Herzegovina show that, albeit for various reasons, it may take years to meet the benchmarks and progress from one stage of accession to the next.

While, in theory, the discussed changes look sensible *prima facie*, the proof – as always – is in the pudding. In practice, three major challenges emerged. Firstly, many of the rule of law benchmarks cover areas falling under the EU values listed in Article 2 TEU. They are all very much desired beacons for navigation for the EU; however, their constitutional importance is frequently not mirrored in the EU's competence to legislate. Consequently, many benchmarks cannot be anchored in EU secondary legislation, providing for harmonized or unified rules for all Member States. Under the circumstances, the European Union has to outsource and, for example, rely on the general standards developed by the Venice Commission (a Council of Europe outlet).¹⁵ Alas, this does not stop some benchmarks from being vague, with their content at times hard to define, and as a consequence, challenging to implement.¹⁶ Secondly, the scale of the needed work on the ground has been considerable. As the evidence shows, the countries queuing for EU membership have been suffering from challenges to what one would consider pillars of democratic Statehood. In 2018, the European Commission – in its rather gloomy

15. See further Paul P Craig, 'Transnational Constitution-Making: The Contribution of the Venice Commission on Law and Democracy' in Gregory Shaffer, Tom Ginsburg and Terence C Halliday (eds), *Constitution-Making and Transnational Legal Order* (CUP 2019).

16. For instance, as one of the requirements to be upgraded to a candidate status, Albania was required to 'ensure proper functioning of Parliament on the basis of a constructive and sustained political dialogue among all political parties.' See European Commission, 'Opinion on Albania's application for membership of the European Union' COM (2010) 680 final, 11.

assessment of the EU membership hopefuls – noted that the Balkan candidates have all of the features of ‘capture states’, undermined by rampant corruption and weak economies that would not sustain the pressures of competition on the internal market.¹⁷ The political will to pursue reforms was not in abundance. This, combined with a shortage of political desire in the Member States to move future EU enlargements forward, led to the already mentioned stalling of *rapprochement*.

What did not help was the credibility gap that the European Union found itself in (and that was of its own making). While it was relying heavily on conditionality and benchmarking in relation to the applicant countries, it was doing comparatively little at a time when its own Member States, and in particular Hungary and Poland, were busy pursuing their anti-rule of law bonanza. Seen from Tirana or Skopje, the pre-accession conditionality was akin to a classic example of the saying ‘do as I say, don’t do as I do’. It required the Court of Justice to unlock the procedural chains of the infringement procedures and the preliminary ruling procedure in *Associação Sindical dos Juizes Portugueses* for the EU to start fighting back in earnest in the rule of law crisis.¹⁸ While Article 7 TEU, previously nicknamed a ‘nuclear option’, proved to be rather useless due to its design, further instruments to combat the rule of law crises were adopted. For instance, the hotly contested Conditionality Regulation was added to the procedural arsenal.¹⁹ Still, the analysis of the effectiveness of these efforts offers a mixed bag. There is only as much as they can achieve, even when the EU uses its apparatus with full force. The partial improvements visible in Poland have been a direct result of the choices made by voters at the polling stations in the autumn of 2023, and not of the EU’s interventions. In parallel, the situation in Hungary has not improved over the past few years, and it has even worsened in some respects.²⁰ What this shows is that the EU is experiencing challenges in keeping its own Member States on the rule of law trajectory, let alone its potential candidate and candidate countries.

17. European Commission, ‘A credible enlargement perspective for and enhanced EU engagement with the Western Balkans’ COM (2018) 65 final, 3. See further, *inter alia*, Jelena Džankić, Soeren Keil, Marko Kmezić, (eds), *The Europeanisation of the Western Balkans. A Failure of EU Conditionality?* (Palgrave Macmillan 2019).

18. Case C-64/16, *Associação Sindical dos Juizes Portugueses v Tribunal de Contas*, EU: C:2018:117.

19. Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget [2020] OJ L433 I/1.

20. See Kinga Koranyi, ‘The limits of EU rule of law financial sanctions: how economic and political costs shaped Hungary’s selective compliance strategy’ (2025) 32 JEPP, doi: 10.1080/13501763.2025.2553752.

One should not be under the impression that the European Union has become a silent bystander and just watched from the fringes its own pre-accession policy stall. Despite the political malaise and the focus on the polycrises that battered the European Union at the time, Member States and the European Commission made several attempts to revive the pre-accession policy. Some ended up being nicely shaped figures of speech, while others have created vehicles for genuine improvement. What stands out is the reform vaguely sketched by the French Government in 2019, which was in turn selected by the European Commission in its 2020 communication²¹ and then endorsed by the Member States.²² This has brought several changes to the enlargement *modus operandi*, two of which are of relevance for the present exegesis, and they therefore merit a closer look.

Let us start with the clustering of chapters for accession negotiations. All but two of the existing 35 chapters have been allocated to six clusters. The benefit lies in launching accession negotiations, as six unanimous decisions taken by the Council on opening clusters have replaced 35 such decisions taken separately for each chapter. Of course, it does not stop individual Member States from blocking the opening of membership talks or moving things forward by refusing to open clusters for negotiations. The current case of Ukraine being blocked by Hungary is a case in point. However, the number of opportunities to wave such a veto card has shrunk considerably, which in the long run will hopefully streamline the *rapprochement*. For the sake of clarity, it should be emphasized that chapters of EU *acquis* are provisionally closed on an individual basis, without the need to wait for the negotiations of other chapters in each cluster to be completed.

Secondly, under the new design of pre-accession policy, the centre of gravity is on Cluster 1 (Fundamentals). It groups together the key rule of

21. European Commission, 'Communication from the European Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Enhancing the accession process – A credible EU perspective for the Western Balkans' COM (2020) 57 final.

22. For an academic appraisal, see, *inter alia*, Uroš Ćemalović, 'One Step Forward, Two Steps Back: The EU and the Western Balkans After the Adoption of the New Enlargement Methodology and the Conclusions of the Zagreb Summit' (2020) 16 Croatian Yearbook of European Law and Policy 179, doi: 10.3935/cyelp.16.2020.372. See also Dimitry Kochenov and Elena Basheska, 'Ukraine and the EU Enlargement: What Is the Law and Which is the Way Forward?' (2025) 16 EJRR 1, doi: 10.1017/err.2025.23.

law chapters, and in particular Chapters 23 and 24. This is a cluster on steroids. Unlike in the past enlargement rounds, where the ‘feel good’ chapters on Science and Culture (Chapters 25 and 26 respectively) were at the forefront, the Fundamentals cluster is the first to be opened in the EU membership talks and also the last that will be closed. Furthermore, the progress in the Fundamentals cluster will determine the progress in all remaining clusters.²³

3. Future accessions and EU values: Tools and mechanics

As a starting point, two important caveats seem necessary. Firstly, the recent reforms of the pre-accession policy outlined in the 2020 European Commission communication have been supplemented by procedural and substantive rules laid down in general EU frameworks adopted by the Council for the purposes of EU membership talks with North Macedonia, Albania, Ukraine, and Moldova.²⁴ Secondly, they are only now being put to the test right as negotiations with Albania are gaining pace and, hopefully, membership talks with the other most advanced candidates for EU membership (Ukraine, Moldova, and North Macedonia) will follow suit. More experience, of course, has been gained in accession talks with Montenegro and with Serbia, as both countries commenced their membership negotiations over a decade ago. Since the new *modus operandi* has now also been extended to these two candidate countries, some of the recent developments may also serve as beacons for navigation. While it might be tempting to follow the recent trend of criticizing the European Union for the sake of it, the present author will resist that temptation. Instead, the following analysis builds on Sherlock Holmes’ second rule of life: ‘It is a capital mistake to theorise before one has the data.’²⁵ And this data is simply sparse and does not give enough to make a learned assessment as to whether the discussed reforms of pre-accession policy made it stronger and helpful in order to

23. Council of the European Union, ‘Enlargement’ (Brussels, 17 July 2022) <data.consilium.europa.eu/doc/document/ST-10375-2022-REV-1/en/pdf> Annex, ‘Conference on Accession to the European Union – Albania’, ‘General EU Position’ 10375/22 (‘GEUPA’). ‘Conference on Accession to the European Union – North Macedonia’, ‘General EU Position’ (‘GEUPNM’); Council of the European Union, ‘Conference on Accession to the European Union – Ukraine’, ‘General EU Position’ (Brussels, 21 June 2024), AD 9/24 (‘GEUPUkr’) <www.consilium.europa.eu/media/hzmfwlji/public-ad00009en24.pdf>; ‘Intergovernmental Conference on the Accession of the Republic of Moldova to the European Union – Opening Statement of the Republic of Moldova’, ‘General EU Position’ (Luxembourg, 21 June 2024) AD 11/24 (‘GEUPM’) <old.gov.md/sites/default/files/general_position_rm_3.pdf>.

24. *ibid.*

25. Hugh Rawson, *The Unwritten Laws of Life* (Carbolic Smoke Ball 2008) 136.

navigate the quagmire highlighted in the introduction. Still, without reading tea leaves, it is worth looking to the future to suggest how the European Union should attempt to square the circle and marry the dramatically changed geopolitical environment with the desideratum to respect its values as listed in Article 2 TEU.

Before looking into the mechanics of the enlargement *modus operandi*, it is fitting at this juncture to make one thing clear: it serves two masters. It goes without saying that it aims to provide the tools, guidance and time necessary for reforms pursued before accession to materialize and become irremovable parts of the aspiring States' DNA. This is what conditionality and benchmarking are for. However, they are also there for the EU's self-preservation and to facilitate safely balancing on a tightrope. In other words, they have been put in place in order to ringfence the European Union from premature accessions as in the case of Bulgaria and Romania and to minimize the risks of future rule of law crises *à la* Hungary and Poland. At the same time, they allow the EU to implement the geopolitical desiderata considering, however, that accession to the European Union (just like withdrawal) is a voluntary act. One must accept the simple fact that the power of persuasion, which the EU has in abundance, does have limits and the aspiring countries, either overtly or tacitly, may reject EU values and decide not to join the European Union after all. Geopolitics dictates, however, that the EU should do whatever it can in order to try to keep them on board.

When it comes to the mechanics of *rapprochement*, several procedural features stand out. For instance, non-compliance with benchmarks set by the European Union or downsliding may translate into slowing down, or even freezing, of the EU accession process. This may happen at different stages of *rapprochement*, even before membership talks commence. A good exemplum is the decision by the European Council to suspend Georgia's accession process after its Parliament adopted a series of genuinely Putinesque laws, which clearly run against the EU values listed in Article 2 TEU.²⁶ Even if the membership talks are in full swing, one needs to bear in mind that accession negotiations are governed by the principle of reversibility.²⁷ In other words, EU membership should not be taken for granted when accession negotiations are in progress. The general EU negotiation frameworks envisage tailor-made procedures that may be employed should the situation take an undesired direction. For instance, in the event of 'serious and persistent breach [...] of values on which the EU is funded', the Council acting by reverse qualified majority may decide on the general suspension

26. See, *inter alia*, Tinatin Lolomadze, 'Georgian Dream's war with reality' (2025) 4 New Eastern Europe 120 <neweasterneurope.eu/2025/07/08/georgian-dreams-war-with-reality/>.

27. See GEUPUkr (n 23) para 2.

of accession talks.²⁸ Furthermore, backsliding in Cluster 1 as well as other clusters may lead to the reversal of decisions on opening the negotiations, thus effectively putting them on hold until the situation is remedied. Again, Cluster 1 (Fundamentals) stands out, as slower progress in chapters falling under its umbrella may lead to a suspension of negotiations elsewhere. Needless to say, the restarting of membership talks would be subject to heavy conditionality and benchmarking with the Council decisions (adopted by reverse qualified majority) required for accession negotiations to pick up the pace again.

A reminder is fitting here that throughout the *rapprochement*, and in particular during accession negotiations, conditionality and benchmarking play a fundamental role. At the beginning of membership talks, the opening benchmarks are set in a great majority of chapters. It is only when they are met to a satisfactory level that the clusters for negotiations can be opened. When that happens, the European Union adopts its negotiating positions for each cluster, where the closing benchmarks are laid down. Only when they are complied with can negotiations in individual chapters be provisionally closed. Again, the specificity of Cluster 1 (Fundamentals), and in particular Chapters 23 and 24, stands out. Apart from the usual set of benchmarks, they also envisage interim benchmarks that serve a double role. Firstly, they determine which reforms need to be pursued to move to the closing stages of accession talks in these chapters. Secondly, as the example of Montenegro shows, meeting the interim benchmarks in Chapters 23 and 24 opens the door to the closure of chapters positioned in other clusters when the relevant closing benchmarks (if there are any) are met. For reasons explained above, it remains to be seen how these mechanisms would operate in practice and whether they would serve as effective deterrents or disciplinary tools should the candidates step on the path of recalcitrancy. It is worth adding that additional *modi operandi*, including heavy monitoring and benchmarking, are envisaged in the flagship financial programmes available to the candidate countries. Transfers of funds from the Growth Plan for the Western Balkans, the Ukraine Facility and the Growth Plan for Moldova hinge upon compliance with milestones outlined in the national plans, which are inextricably linked to conditionality and benchmarks laid down at different stages of the accession process. For example, one of the most recent instalments of payments for Ukraine has been possible thanks, in part, to the entry into force of national legislation on the reform of civil service remuneration (a benchmark falling under the Fundamentals cluster), the entry into force of the legislation on State climate policy and the action

28. *ibid*, para 16.

plan for national greenhouse gas emissions (a benchmark covered by Cluster 4).²⁹

The picture would not be complete without also looking at later stages of *rapprochement*; that is, the closure of accession negotiations, the signing and entry into force of an accession treaty and the initial years of EU membership. As noted above, chapters of EU *acquis* are provisionally closed when the closing benchmarks are met. However, at the very end of the membership talks, they are all revisited with the view of making necessary updates. It goes without saying that in the intervening period, candidates are subject to monitoring by the European Commission. Additional conditionality and benchmarking may be employed, too. When negotiations are closed for good, an accession treaty is drafted and signed within a short period of time. Weather permitting, after ratification by all existing Member States and at least one acceding country, it then enters into force, making EU enlargement possible.

The question now worth exploring is which features of previous accession treaties should be utilized in future rounds of enlargements and which additional instruments could be developed to ensure compliance with EU values. As for the former, JHA safeguard clauses are well-established features of the accession treaties. They supplement the standard infringement procedures (Articles 258 to 260 TFEU) and Article 7 TEU, which are available *vis-à-vis* newcomers as of the date of accession. The advantage of a JHA safeguard clause is that it can be triggered very quickly by the European Commission and, unlike the infringement procedures, it may lead to the immediate suspension of certain benefits of membership (for instance, mutual recognition instruments). The traditional time limit for triggering the JHA safeguard clause is three years from the date of accession, though the legal measures adopted on its basis may be in force for much longer (no final deadline is even provided in the accession treaties). *Pro futuro*, it is very desirable to continue having this additional punitive *modus operandi* in future Accession Treaties but, unlike in the past, making good use of it should the circumstances so require. While the sheer existence of the JHA safeguard clause may have a deterrent effect, triggering it would hopefully increase the chances of reversal of the downsliding and thus protect the respect for EU values. This, however, would have to be done resolutely and quickly. A novelty that would be worth considering for the next accession treaties is linking the JHA safeguard clause with the principle of non-regression. The latter has been spelled out by the Court of

29. Council Implementing Decision (EU) 2025/1799 of 8 August 2025 establishing the satisfactory fulfilment of the conditions for the payment of the fourth instalment of the loan support under the Ukraine Plan of the Ukraine Facility [2025] OJ L2025/1799.

Justice in its case law, starting with the judgment in *Repubblica*.³⁰ Anchoring the prohibition of downgrading the rule of law standards after accession could potentially help the application of JHA safeguard clauses in the event of rule of law backsliding.

Last but not least, as the European Union is planning to address its absorption capacity ahead of the next waves of enlargement, it is worth exploring two options for how the existing enforcement procedures could be decisively strengthened and thus potentially made more effective. As things currently stand, under a combination of Article 258 TFEU and Article 260 (3) TFEU, financial penalties may be imposed at the end of the first infringement proceedings only in the event of failure to transpose a legislative directive. While this allows the European Union to discipline the Member States in the event of the most common breaches of EU law (failure to transpose directives), it suffers from a design flaw that does not allow the imposition of financial penalties in rule of law cases (except for breaches of interim measures adopted by the CJEU). For that to happen, infringement procedures must be brought again under Article 260 TFEU. This way, a lot of time is wasted while the rule of law downsliding proceeds and damage is being done in the intervening period. In the grand scheme of things, a much more severe penalty is available for a minor breach of EU law than for a breach of the values on which the EU is founded. In other words, a Member State may be penalized during the first infringement procedures for breaching a directive on hens laying eggs but not for dismantling its independent judiciary.³¹ The second reform material, as already flagged by the Group of Twelve Report, is Article 7 TEU, which instead of being a nuclear option has proven to be a paper tiger.³²

With all of the above in mind, it is clear that the European Union has the procedural tools to ensure compliance with the rule of law principles by candidates for membership. While, of course, there is no guarantee that they would work, the apparatus is in place. ‘But what about the geopolitics?’, one

30. Case C-896/19, *Repubblica v Il-Prim Ministru*, EU:C:2021:311. For an academic appraisal, see Mathieu Leloup, Dmitry Kochenov and Aleksejs Dimitrovs, ‘Opening the door to solving the “Copenhagen dilemma”? All eyes on *Repubblica v Il-Prim Ministru*’ (2021) 46 EL Rev 692; Adam Łazowski, ‘Strengthening the rule of law and the EU pre-accession policy: *Repubblica v. Il-Prim Ministru*: Case C-896/19’ (2022) 59 CML Rev 1803, doi: 10.54648/COLA2022119.

31. Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens [1999] OJ L203/53.

32. Report of the Franco-German Working Group ‘Group of Twelve’ on EU Institutional Reform, ‘Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century’ (Paris-Berlin, 18 September 2023) <www.diplomatie.gouv.fr/IMG/pdf/20230919_group_of_twelve_report_updated14.12.2023_cle88fb88.pdf>.

may ask. Can the EU afford to pursue its values vigorously and potentially risk losing candidates *en route*? It is nobody's secret that Russia, with its neo-imperialism (belonging to the bygone era), is putting a lot of effort into undermining the European Union and its candidate countries that it perceives to belong to its own sphere of influence. If Russia succeeds, it would be the end of EU's pre-accession policy and future enlargements. This is not an argument based on scaremongering, but a rather sober assessment of reality. If proof were needed, Georgia is a very good example of an EU candidate country where democracy has unravelled faster than one would imagine. Should a similar scenario materialize in other candidate countries (or Kosovo, a potential candidate) that directly border the European Union, then the geopolitical implications would be profound.

To prevent this from happening, the EU may wish to accelerate the enlargement to supersonic speeds. If that were to happen, the existing *modus operandi* would not suffice. In other words, a major paradigm shift would be required. In this author's opinion, a gradual integration from within would be a way forward as it would amount to a faster accession, albeit subject to many transition periods and phasing in regimes. For instance, for newcomers suffering from rule of law deficiencies, participation in mutual recognition in criminal and civil matters would have to be deferred (as is currently the case with full participation in the Schengen area) until later stages, and switching these principles on would be subject to strict conditionality and monitoring. For this to work, inextricable links with support from the EU budget would also have to be established and any financial transfers would be conditioned on compliance with EU values. These are just modest examples of solutions that could be adopted. While there is no guarantee that any of this would work, at times like ours, the European Union cannot afford not to have alternative plans to what it currently considers the best way of handling future accessions. The realization that it is potentially an existential matter for the EU itself is pivotal.

4. Conclusions

Balancing the geopolitical desiderata with the pursuit of EU values is – by default – challenging, and golden rules are not in abundance. The picture emerging from the analysis above shows that over the last 20 years, the European Union has developed various procedural tools that allow it to assist the candidate countries and, at the same time, fortify itself against those countries whose democratic credentials are not yet up to standard. The changes to pre-accession policy reflect the simple fact that embedding

democracy and rule of law in countries in transition is a time-consuming exercise. And yet, as the internal EU rule of law crisis has shown, no reform is set in stone or immune to constitutional vandalism. Then there is the geopolitical reality, which has been very much exacerbated by the Russian full-scale invasion of Ukraine. Under the circumstances, the meta question is whether the EU can afford to keep the current candidates in the membership antechamber until they become perfect Member States, without the risk of losing them. Inevitably, opinions will be divided depending on where one stands. Two things are certain, though. The European Union needs to be alert, decisive and persuasive like never before. Furthermore, it is worth remembering an old piece of life wisdom that one should not pretend it is not their business when the neighbour's garden is on fire.

