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Towards a catalogue of options for future accession treaties

Much has changed since the EU welcomed Croatia as its latest member in 2013. Whilst the merit-based approach continues to underpin the enlargement process, the new geopolitical reality underscores the importance of enlargement as a geostrategic investment in peace, security, stability and prosperity. Enlargement has made the EU stronger. The current volatile geopolitical landscape requires a Union that has the capacity to swiftly act upon opportunities and respond decisively to emerging challenges.

Candidate countries need a clear perspective for enlargement. Therefore, we need to maintain momentum in our enlargement policy, which ensures that enlargement negotiations do lead to results. Building on the lessons learned from past enlargement rounds, we need a fresh perspective on accession treaties. A copy-paste of previous accession treaties will not suffice. We must seize this opportunity and design necessary improvements to ensure that enlargement will strengthen the EU and enhance the security of its neighborhood. This will be key to uphold and increase political and public support for enlargement, which is in turn instrumental in view of the required ratification of accession treaties in all Member States. In parallel, the EU must take forward the work on internal reforms, to inter alia ensure the Union's capacity to act and safeguard the Union's values, for instance by strengthening the rule of law toolbox.

What is needed is a general template for future accession treaties and catalogue of options to choose from, which can then be flexibly tailored and complemented depending on the challenges that each accession might bring, and the particularities of the candidate country in question. All options should be on the table. We need an open exchange, and carefully assess what is effective, practical, and legally feasible under the treaties, while taking into account the geopolitical context. We call for a focus on (but not limited to) the following areas:

Building upon existing sectoral safeguards and transitional measures from previous enlargements

- Past accession treaties contained **safeguard clauses** which could be triggered when difficulties arise in the field of Justice and Home Affairs, the internal market, or the economic situation in a given area. These safeguards should again be included in future accession treaties, yet we must assess whether they are still sufficiently broad in scope to respond to the current challenges, such as possible serious disturbances of the EU's internal security, and reflect on the need adapt the timeframe to these challenges beyond 3 years. Sectoral safeguards of this kind may also be required in areas, such as economic security and resilience against foreign interference.
- Past accession treaties also incorporate **transitional measures** which provide a solid basis to build upon. They should be included in future accession treaties and it should be discussed and assessed whether these should be enhanced:
    - for financial provisions, we could make use of the solutions applied in previous accession treaties, such as a transitional phase-in for the Common Agricultural Policy and cohesion policy.
    - for the movement of workers and labour mobility based on the freedom to provide services and the freedom of establishment, we need to retain the staged approach to optional measures regulating access to Member States' labour markets and possible circumvention thereof, while considering extending the maximum possible timeframe, taking into account the particularities in each candidate country and possible circumvention thereof.
    - Additionally, the broader impact of disturbances in Member States' labour markets, such as impact on the standard of living and housing situation in Member States, ought to be taken into account.
    - For other possible sensitive issues such as cabotage, transitional arrangements foreseen in past accession treaties should also be made available to Member States.

- A **monitoring mechanism** – possibly in a staged form, with more intensive monitoring directly after accession – should ensure the proper implementation of the EU acquis.
- Furthermore, we stress the need for measures at EU level to promote **fair labour mobility**. The signatories advocate for a clarification of the European legal framework for posting of third country nationals within the EU and strengthening the European Labour Authority (ELA), which becomes even more urgent in view of EU enlargement.

The above is without prejudice to specific transitional periods as well as potential accompanying support and monitoring or regulative measures to be decided on, taking into account the situation of each candidate country.

Safeguards to protect EU values (article 2 TEU)

- European cooperation in all fields is built on the fundamental premise that all Member States respect the values of the EU enshrined in Article 2 TEU and the Charter of fundamental rights.
- The EU therefore needs adequate instruments to be able to act in case of potential backsliding on EU values such as the rule of law. Taking into account the lessons learnt from previous experiences, the EU needs instruments which can be used quickly and effectively.
- In future accession treaties, the following safeguards should therefore be included in addition to the current (rule of law) instruments. Effectiveness and legal feasibility are essential:
    - a **non-regression clause** is codified as a binding norm, which prohibits regression on EU values including respect for the rule of law after accession. This would have the benefit of explicitly placing non-regression on EU values at the center of the safeguards. In case of a (potential) breach, (an investigation into) the use of e.g. financial rule of law instruments, the infringement procedure and a new safeguard clause, depending on the specific situation, should follow automatically;
    - a **safeguard clause** – which extends beyond the fields covered by previous accession treaties (regarding Justice and Home Affairs, internal market or the economic situation in a given area) – to allow protective measures to be taken in the event of serious shortcomings or backsliding in the respective Member State in protecting the EU values, including the respect for the rule of law, democratic principles and media freedom. In addition, it should be clarified when this clause can be invoked and what types of measures could be taken (e.g. suspension of EU cooperation in different areas). The duration of this clause should be extended beyond the previous three years;
    - the EU should have a discussion on the possibility of a temporary deviation from the procedural rules of **Article 7 TEU**, taking due account of legal and political considerations. The EU could also explore a temporary transitional period (subject to extension) for the voting procedure (4/5th majority) as set out in article 7(1) TEU to also apply to the procedure set out in article 7(2) TEU, as a safeguard mechanism.
- It remains crucial to monitor the developments in (new) Member States, and use all (rule of law) instruments quickly and effectively and in a coherent manner in case of backsliding on EU values. The Rule of Law Report, which already monitors the developments in the EU Member States and already a few candidate countries, should therefore also be further developed.
- The signatories also consider participation in the European Public Prosecutor's Office (**EPPO**) as a (political) precondition for accession for new Member States. This would be a key contribution to safeguarding EU values, in particular when it comes to the rule of law.
- EU accession does not automatically mean **Schengen** accession. This requires a separate Council decision based on the Schengen Acquis. A strong rule of law is a fundamental requirement for successful Schengen cooperation. Therefore, strongly anchoring of rule of law requirements, including safeguards against backsliding, in the EU accession treaty and monitoring in the rule of law report is essential.

Options to ensure the EU's capacity to act

- The EU needs to explore how the Union's **capacity to act** can be guaranteed, including options for strengthening decision-making. This should principally take form through the work

on EU **internal reforms**, carried out in parallel to the enlargement process. The signatories call on the European Commission to publish the pre-enlargement policy reviews.
- The EU should have an in-depth discussion on the possibility of **temporary, transitional limitations of voting rights** for new Member States, in particular parts of the EU-acquis where unanimity is required (e.g. (parts of) enlargement, CFSP, MFF), taking due consideration of legal and political sensitivities.

Safeguards against conduct that runs counter to the principle of sincere cooperation (article 4 TEU)

- Conduct that is at odds with sincere cooperation affects the Union as a whole, seriously undermining EU unity, mutual trust and decision-making.
- Accession treaties should include a clause recalling for respect for the principle of **sincere cooperation** (Article 4(3) TEU). We should reflect on possible mechanisms to address such behavior to help uphold the EU's capacity to act.

The period ahead will be key to jointly draft a new blueprint for accession treaties that contributes to sustaining an upward trend after enlargement – further cementing members' track-record on rule of law – and contributing to public support for the enlargement process.