STUDENTS FORUM

Legal Aspects of European Union Membership

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"Being a member of the family does not preclude anyone
from being an individual nor does the
membership of the European Union preclude anyone
from remaining a national of his country."
Valerie Giscard d'Estaing[1]

I. Introduction

The two World Wars of the twentieth century brought about the demise of millions of lives, economic destruction and the erecting of the Berlin Wall for Europe. It was necessary to undertake some intensive measures for the unification of the European states around common interests for the purpose of suppressing further armed conflicts and economic stagnation on the Continent. The task of the post-war economic revival of Europe was imposed upon the Organisation for European Economic Co-operation (OEEC) which was founded in Paris in 1948 by seventeen participating states and which was transformed into the Organisation for Economic Co-operation and Development (OECD) in 1961. No less important was the establishment of the Council of Europe in 1949 which had a great political resonance.

The plan of *Robert Schumann*, the then Minister of Foreign Affairs of France, should be regarded as the milestone for the construction of a united, peaceful and economically strong Europe. This plan then became the basis for the creation of the European Communities and, later, of the European Union.

Along with the other factors, the desire of the European and even non-European[2] states to become a member of the European Union speaks for the successfulness of the European integration. Georgia can be boldly attributed to the category of those countries which have the clearly manifested political desire of becoming a Member State of the European Union. Being an integral part of the political, economic and cultural space, Georgia believes that full integration into the European political and security systems is in its crucial national interest.[3] Georgia's consistent integration into European and Euro-Atlantic institutions is the key priority of the foreign policy of the current Government of

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[1] Former President of France, 1974-1981.
[2] For example, Morocco's application for membership.
[3] *Mikheil Saakashvili*, President of Georgia, www.eu-integration.gov.ge/eng.

our country.[4] Naturally, one can only appreciate the desire to become a member of a civilised and developed family although it should also be mentioned, however, that European Union membership requires the observance of certain preconditions along with a political will and the completion of rather time-consuming and specific procedures. Based upon the foregoing, the presentation and legal analysis of membership preconditions and procedures, as well as of the practice of the European Union Member States, is particularly interesting for Georgia. The main purpose of this article is to make a moderate contribution to this end.

II. The European Union (EU)

1. Introduction

The Treaty Establishing the European Union was signed on 7 February 1992 by the then twelve Member States[5] of the European Communities[6] and entered into force on 1 November 1993. The word *union* stems from the Latin *unio* which means "unity".

The establishment of the European Union launched a new phase of European integration. This presumption is proved by the Establishing Treaty itself under which it is the new step forward in "creating an ever closer union amongst the peoples of Europe."[7] The current status of the European Union is not the final but, rather, interim point within the dynamic process of integration. Such an open horizon[8] for European integration had an impact upon the legal nature of the European Union as well.

The main goal of the European Union is "to organise, in a manner demonstrating consistency and solidarity, relations between the Member States and between their peoples."[9] The term *consistency* means bilateral balloting and the development of relationships without controversy whilst the application of the *solidarity* principle prohibits the pursuit of national interests without accounting for the possible complications for the other states. Rather, it demands the intensification of common strength.[10]

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[4] Speech of *Giorgi Baramidze*, the State Minister of Georgia for European and Euro-Atlantic Integration, made at the forum dedicated to the Days of Europe – Georgia and European Integration, 3 May 2005, 1. See also the welcome speech of Minister *Giorgi Baramidze* made at the opening conference dedicated to launching the GEPLAC V, 17 January 2006, 1 www.eu-integration.gov.ge/eng.

[5] These are Belgium, Germany, Denmark, Great Britain, Spain, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Greece and France.

[6] The Treaty Establishing the Coal and Steel European Community was executed on 18 April 1951 and came in force on 23 July 1952 (the Treaty was made for a period of fifty years and, consequently, this Community ceased to exist on 23 July 2002. The Treaty Establishing the European Economic Community was signed on 25 March 1957 and came into force on 1 January 1958. By virtue of the Maastricht Treaty of 1992, the name of the European Economic Community was transformed into the European Community. The Treaty Establishing the European Atomic Energy Co-operation was signed on 25 March 1957 and entered into force on 1 January 1958.

[7] Art. 1 Abs.1 EUV.

[8] *Stumpf* in *Schwarze* (Hrsg.), EU Kommentar, Baden-Baden (Nomos), 2000, Art.1 EUV, 46, Rn. 19.

[9] Art.1 Abs.3 Satz 2 EUV.

[10] *Geiger*, EUV/EGV Vertrag über die Europäische Union und Vertrag zur Gründung der Europäischen Gemeinschaft, 5. Auflage, München (Beck), 13, Rn. 12.

2. Legal Nature of the European Union

a) The Three Pillar Construction of Europe

The legal nature of the European Union is one of the most complicated and debated aspects of the *acquis communautaire*. The international and community legal dogmatism has hardly been as helpless as when it tries to clarify the legal nature of the European Union established under the Maastricht Treaty.[11] The Treaty Establishing the European Union generated the absolutely "new construction which had no analogue in the history of law."[12] Currently, there exists the so-called *three-pillar system*[13] and the European Union itself is regarded as its *roofing*.[14]

b) The European Union and the European Communities

The basis of the European Union is the "European Communities supplemented by the policies and forms of co-operation established by this Treaty."[15] The European Communities are the integral part of the Union although they are not its official members. The European Union and the European Communities are closely interrelated formations.[16] The European Union is described as a union of states with supranational and intergovernmental elements.[17] The delimitation between the terms contained in the Treaties (meaning the European Union and the European Communities) demonstrates that the *union* is something special in relation with *community*.[18]

In media and publicity, the institutions which are located in Brussels, Luxembourg and Strasbourg, are often mentioned jointly under the name of the *European Union*. This tendency is also notable in the scientific literature[19] which means that the European Union is already well established in the mentality of the Europeans. The European Union and the European Communities have many common features. They have common institutions, they are based upon the principle of joint membership and an applicant state should accede both to the Treaty Establishing the European Union and the Treaty Establishing the European Communities.[20] The amendments to the Treaty Establishing the European Community are made commensurate with the procedure envisaged by Article 48 of the Treaty Establishing the European Union.

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[11] *Dörr*, Zur Rechtsnatur der Europäischen Union, EuR, Heft-4, 1995.
[12] *Bogdandy*/*Nettesheim,* Die Verschmelzung der Europäischen Gemeinschaften in der Europäischen Union, NJW, 1995, 2325.
[13] The three pillars upon which the European Union is built are as follows: the European Community and Euratom, the Common Foreign and Security Policy (CFSP) and police and judicial co-operation in criminal matters.
[14] *Lecheler,* Einführung in das Europarecht, 2. Auflage, München (Beck), 2003, 31, *Oppermann,* Europarecht, 3. Auflage, München (Beck), 2005.
[15] Art.1 Abs. 3 Satz. 1 EUV.
[16] *Dörr*, 346.
[17] *Geiger*, 12, Rn. 11.
[18] *Stumpf*, 42, Rn. 5.
[19] *Bogdandy/Nettesheim*, 2324.
[20] Europäisches parlament, Arbeitsgruppe des Generalsekretariats TASK-FORCE Erweiterung, Die Rechtlichen Fragen der Erweiterung, Themenpapier Nr. 23, 7.

c) Common Foreign and Security Policy (CFSP) and Police and Judicial Co-operation in Criminal Matters

The provisions on the Union's Common Foreign and Security Policy and police and judicial co-operation in criminal matters are given in Chapter 5 of the Treaty Establishing the European Union. By virtue of the Maastricht Treaty, it substituted the earlier existing European Political Co-operation.[21] Its main goal is the gradual development of common foreign policy and common defence policy. Commensurate with Article 29 of the EU Treaty, the main goal of police and judicial co-operation in criminal matters is "to provide citizens with a high level of safety within an area of freedom, security and justice."[22]

d) Legal Personality of the European Union

The EU Treaty does not contain an article which would have spoken about the legal personality of the European Community as it is done in Article 281 of the Treaty Establishing the European Community.[23] Despite this, it is apparent that the European Union is subject to international law which is proved in the first instance by the fact that it was founded upon the basis of an international agreement. The conditions for admission and the adjustments to the Treaties upon which the Union is founded are subject to the execution and enforcement of a new agreement.[24]

In its famous Maastricht Decision,[25] the German Constitutional Court defined the European Union as *Staatenverbund.* This term was absolutely new for legal terminology and there was no analogy to it either in Georgian or in many other languages. It stresses the particular nature of the European Union. It can be said that by means of this term, the Court declared that the European Union is neither a confederation, a state nor an international organisation in the classic meaning of this term but, rather, an absolutely new creation of *sui generis* nature.

3. What is the European Union?

After this short review of the essence and nature of the European Union, it can be said boldly that there are many problems in this field from the legal standpoint which can be explained by the specific nature of European integration along with the legal aspects. It was necessary to create a European identity and bring together the European people for the purpose of ensuring peace on the Continent. There are many other unprecedented

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[21] The European Political Co-operation was the name of the regular meetings of the Foreign Ministers of the European Communities. The Single European Act codified this practice. This type of co-operation aimed at the development of common positions with respect to various aspects of foreign policy.
[22] Art. 29 Abs. 1 S. 1 EUV.
[23] The Community shall have legal personality.
[24] Art. 48 49 EUV.
[25] BVerfGE 89, 155.

phenomena in the history of European integration but it should be mentioned that the creation of the European Union gave origin to an absolutely new era. The Europeans wanted to create a completely new and historically unparalleled institution which would unite the already existing achievements and present the European family to the international community as a single organism. Quite naturally, not each and every legal detail therein could have been accounted for upon the foundation of the European Union under this spirit which is a fact that has been proven by further revisions of the Treaty.[26]

It can be said that the majority of the problems related to the status of the European Union will be solved after the coming into force of the Treaty Establishing a Constitution for Europe. A simple example to the foregoing is that Article I-7 of the aforementioned Treaty grants the legal personality to the European Union which makes it possible for the European Union itself to become a party in an international agreement and, consequently, the a full person of international law. Apart from this, there will be no complicated three-pillar construction after the consolidation of the Treaties and the written primary legislation[27] will be regulated by a single Treaty, instead of three, which will make the European Union and its structure more easily understandable for both lawyers and the "citizens of Europe"[28] as well as other interested persons.

III. The History of the Enlargement of the European Communities and the European Union

The establishment of the European Communities,[29] the initial founders and members of which were Germany, France, Italy, the Netherlands, Belgium and Luxembourg, can be regarded as the starting point for the efficient and successful implementation of European integration. It was necessary, however, to unite even more European states around common interests for the purpose of the implementation of the thoughts of the European integration ideologists and for ensuring peace and economic welfare in Europe.

The first enlargement was made northward on 1 January 1973 when the Communities were joined by Denmark, Ireland and Great Britain. Eight years later, the borders were enlarged southwards after Greece's accession thereto on 1 January 1981. This was the only case in the history of enlargement when only one and not several states acceded to the project for European integration. On 1 January 1986, the European Communities were joined by Spain and Portugal. On 1 January 1995, Austria, Finland and Sweden

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[26] The Amsterdam Treaty was signed on 2 November 1997 and entered into force on 1 May 1999. The Nice Treaty was signed on 26 February 2001 and entered into force on 1 February 2003. The Treaty Establishing a Constitution for Europe was signed in Rome on 29 November 2004.

[27] The sources of the *acquis communautaire* are subdivided into primary and secondary legislation. The primary legislation consists of the first (in the literary meaning of this word) normative acts on the grounds of which the Communities were created first before the European Union and which now make the legal basis and framework for the performance of various institutions of the Communities (the founding treaties, protocols, charters of the bodies, generally acknowledged principles). The secondary legislation is made up of the legal acts adopted by various institutions of the European Communities (resolutions, directives, decisions, recommendations, and opinions).

[28] Art. 17 EUV.

[29] See Footnote 6.

joined the twelve members of the European Union[30] on its way towards the construction of a united and strong Europe.

After the collapse of the Soviet Union, a number of countries of Eastern Europe expressed their desire to join the European Union. The eastward enlargement was particularly important as it allowed for the overcoming of the post-war division of the Continent and the unification of Western and Eastern Europe.[31] These very motivations – and not economic factors – played a decisive role in making the decision for eastward enlargement. On 1 May 2004, ten more states became members of the European Union[32] and on 1 January 2007, Romania and Bulgaria also joined the Union. As a result the number of the European Union states increased to twenty-seven.

IV. Preconditions for Joining the European Union

1. A European State

The basic constitutional principle of the European Union is its openness for every European state.[33] Commensurate with Article 49, any European state may apply to become a member of the European Union.

The word Europe stems from the Phoenician *erebu* (*Maghreb* in Arabic) and means the dark place were the sun goes down in West whilst Asia (*Aku*) means "sunrise."[34]

The disputes regarding which states should be attributed to Europe (in particular, where the eastern boundary of Europe is located) were initiated in 1989-90 after the political division of the Continent.[35] The key question is what should be understood under the word *European*: the territorial location of a state or its historical and cultural belonging to Europe?

There is a simple answer to this question: due to absence of explicit boundaries of Europe in the East and the South, geographical criteria alone will be insufficient.[36] For this reason, account should be taken of the historical, cultural and political components as well. The European Union should seek for its boundaries in the East and the South where scope of the European historical and cultural identity of people is already insufficient.[37]

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[30] See Footnote 5.
[31] *Pfetsch*, Die Europäische Union, Geschichte, Institutionen, Prozesse, 3. Auflage, München (Wilhelm Fink), 2005, 345.
[32] Estonia, Cyprus, Latvia, Lithuania, Malta, Poland, Slovenia, Slovakia, Hungary and the Czech Republic.
[33] *Bruha/Alsen*, EWR, EU-Mietgliedschaft und neue Nachbarschaftspolitik der Europäischen Union, in: *Bruha/Quaderer* (Hrsg.), Liechtenstein – 10 Jahre Bilanz, Herausforderungen, Perspektiven, Liechtenstein Politische Schriften, Band 40, 2005, 171.
[34] *Dorau*, Die Öffnung der Europäischen Union für europäische Staaten, EuR, Heft 6, 1999, 737.
[35] *Geiger*, 138, Rn. 4.
[36] *Pechstein* in *Streinz* (Hrsg.), 202, Rn. 2.
[37] *Dorau*, 751.

Article 49 excludes the admission of such states which are not a part of Europe either from geographical, historical or cultural points of view.[38] Those countries, a certain part of whose territory is located on the so-called Eurasian continent, may be regarded as potential candidate member states. This situation is particularly apparent with respect to Turkey and Russia insofar as the major part of the territories of both of these countries is located in Asia. The possibility of the admission of the countries of such a Euro-Asian synthesis mainly depends upon the observance of the other preconditions.

Of the former Soviet Republics, Kazakhstan, Kyrgyzstan, Turkmenistan, Tajikistan and Uzbekistan are explicitly attributed to those states which do not meet the criterion of a European state and, consequently, cannot join the European Union under the current legal framework.[39]

Certain states may also be qualified as being *European* ones according the practice of other international organisations such as the Council of Europe, for example, which recognised the Caucasian states of the former Soviet Union (Armenia, Azerbaijan and Georgia) as rightful members of the *European Family* due to their cultural links and the European orientation of the population.[40] All three states are full members of the Council Europe although, commensurate with the Charter of the Council of Europe, only European states may become members of this organisation.[41] Such a practice is of legal importance for the European Union insofar as there is no sign that the definition of *Europe* existed for those European Communities which were founded later and also that the admittance of the aforementioned states into the Council of Europe was preceded by the consent of the European Union Member States.[42] The generalisation of this practice may lead to the situation when every member of the Council of Europe will apply for European Union membership.

Observance of the criterion of a European state is explicitly provided for as a precondition for the submission of application[43] and this is a point which must be carefully observed upon making an application. The apparent example of the foregoing is the case of Morocco.

On 20 July 1987, Abdellatif Filali, the Minister of Foreign Affairs of Morocco, presented an official letter to the Council from Hassan II, which was then chaired by Denmark, wherein he requested the acceptance of his country to the European Community. At a subsequent press conference, Uffe Ellemann-Jensen, the Minister of Foreign Affairs of Denmark, said that the issue would be reviewed by the Council in September and would establish whether or not the application could be regarded as an ordinary one.[44] On 1

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[38] *Vedder* in *Grabitz/Hilf* (Hrsg.), Art. 49 EUV, 7, Rn. 10.
[39] *Bruha*/*Vogt*, Rechtliche Grundfragen der EU-Erweiterung (VRÜ) (30), 1997, 482.
[40] The Geographical Enlargement of the Council of Europe, Parliamentary Assembly of the Council of Europe, Strasbourg, Conclusion of the Bureau as approved on 22 April 1992, HRLJ 1992, 231.
[41] Art. 4 Europaratsatzung.
[42] *Vedder*, 7, Rn. 12.
[43] *Sarcevic*, EU-Erweiterung nach Art. 49 EUV: Ermessensentscheidung und Beitrittsrecht, EuR, Heft 4, 2002, 465.
[44] EA 1987 Z. 160.

October of the same year, the Community informed Morocco that the applicant was not a part of the European space and for legal reasons its desire could not be taken into account.[45] This example clearly demonstrates that Morocco was refused from further consideration of the issue because it failed to meet the precondition concerning a European state and, thus, the necessity of compliance with this precondition was explicitly reiterated.

The criterion of a European state clearly demonstrates the limited nature of the European Union which is open only for European states. It should be mentioned as well that the main goal set out in the Treaties establishing the European Community and the European Union is to create firm bases for the construction of the future Europe with due consideration of creating an ever closer union amongst the peoples of Europe[46] and the historic importance of ending the division of the European Continent.[47] Even upon the basis of the basic tasks of European integration, a state which may be characterised as a European one cannot be excluded from the "potential list of candidate members."[48] The term *potential member state* clearly deflects the reality insofar as an application made by a European state in no way results in a legal request for the European Union and its Member States to accept the applicant as a Member State.

2. Political Criteria According to Article 49 of the Treaty Establishing the European Union

Along with the European state criterion, Article 49 of the Treaty establishing the European Union further envisages the necessity of the observation of political preconditions for an applicant state. In general, before the enactment of the Amsterdam Treaty, such requirements stemmed from the agreements and acts adopted by the Union bodies.

The Amsterdam Treaty, which came into force on 1 May 1999, established that the Union is founded upon the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law as principles which are common to all the Member States.[49] The foregoing implies the compatibility of the provisions of the secondary law with those of the primary one, the binding nature of the legal provisions for the Union's institutions, the division of power[50] and the involvement of citizens in the process of the formation of the institutions which is realised in the European Parliament and which is directly elected by the citizens of the European Union Member States. It should also be mentioned, however, that the role of the European Parliament is not a crucial one and the problem of the deficit of democracy is related to this very institution. Furthermore, the European Union protects the basic human rights and

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[45] EA 1987 Z. 207.
[46] Präambel EGV.
[47] Präambel EUV.
[48] *Bruha/Vogt*, 482.
[49] Art. 49, Art. 6 EUV.
[50] The classic model of the distribution of power (legislative, executive and judicial powers) is not fully ensured within the European Union. Only the Court of Justice of the European Communities can be regarded as a judicial power in the classic meaning of this term.

fundamental freedoms in the manner as they are guaranteed by the Convention, which was signed in Rome on 4 November 1950, and as they are derived from the constitutional provisions of the Member States in the capacity of the general principles[51] of the *acquis communautaire*[52].

The reference to Article 6 changed the nature of Article O (now Article 49), which was only a *procedural provision,*[53] and embodied it with the material function as well through the stipulation of the respect and observance of principles, set out in Article 6 of the Treaty Establishing the European union as the precondition for an applicant to become a member of the Union.

The principles of freedom, democracy, respect for human rights and the rule-of-law state are at the same time the basis of the European Union and common basic principles of the Member states.[54] These *structural principles*[55] acted as *unwritten necessary preconditions for membership*[56] and it can be said boldly that their appearance in the primary legislation was practically the codification of the Copenhagen political criteria.

The initial purpose of the aforementioned principles is the protection of the structure of the European Union (the term *structural principles* is used for their description for this reason). The Union will be able to act as a legal community only when its member states observe the basic principles of democracy and a rule-of-law state.[57] For this reason, the further detached an applicant state is from the observance of these principles, the less probable is the launching of the negotiations concerning its admission and, consequently, there is a greater probability for being refused admission.[58]

In its conclusions made within the framework of Agenda 2000[59] concerning the applications made by the countries of Middle and Eastern Europe, the European Commission named the constitution, democratic freedoms, political pluralism, guaranteed the freedom of

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[51] The general principles of the law are also the source of the *acquis communautaire* as mentioned in Article 288 of the Treaty Establishing the European Community. They should be sought for by the Court of Justice of the European Court of the European Communities "upon the basis of the evaluative comparative law method" which means that a judge should verify the operation of the principle and then, based upon the goals of the communities, conclude whether or not it may have a legal importance for the Communities.

[52] Art. 6 Abs. 2 EUV.

[53] *Pechstein,* 202, Rn. 3.

[54] *Nicolaysen*, Beitritt und Erweiterung – drei Perspektiven zur Europäischen Union, 4, www.jura.uni-hamburg.de.

[55] *Hernfeld* in *Schwarze* (Hrsg.), Art. 49 EUV, 215, Rn. 4.

[56] *Vedder*, Art. 49 EUV.

[57] *Bruha*/*Vogt*, 486.

[58] *Vedder*, 8, Rn. 13.

[59] In December 1999, the Madrid European Council applied to the European Commission for the latter to present a general document on the enlargement and the *reformation of the those policy fields which were common for all*. In response to this request, the European Commission adopted the action plan, Agenda 2000, on 15 July 1997. This document covers all those tasks which challenge the European Union at the beginning of the twenty-first century. The document is attached herein with the opinions of the European Commission concerning the states which put forth applications for joining the European Union. (For details see: The European Union: Policy and Managerial Institutions, Tbilisi, 2003, 4).

expression, stable democratic institutions, fair and free elections compatible with the rule-of law principle and the independent judiciary as the main indicators.[60]

For an applicant state to become a member, it should reinforce the principles of a rule-of-law state. The division of powers and the supremacy of the law should become the starting point of a state. Holding fair elections should be guaranteed as a main precondition for democracy. Otherwise, without such a guarantee it will be utopian to speak about the observance of political preconditions. The judiciary should be the only really independent branch of state power which will be able to protect basic human rights and, consequently, be the guarantor for the observance of the European Convention for Human Rights and Fundamental Freedoms. It can be said that the positive assessments of the respective European organisations made with respect to the protection of human rights in the country will be an important step forward towards the integration into the European institutions.

According to widely accepted opinions, the aforementioned preconditions should be fully observed not at the stage of the filing of an application but, rather, at the stage of the launching of the negotiations concerning admission.[61] The refusal of an application under the motivation that a state is not fully compatible with the requirements set forth for the political system will be incompatible with the purposes of integration and the openness of the European Union for every European state. It should also be mentioned, however, that the probability of launching the admission negotiations with such countries which neglect the principles which are the crucial starting points for the European Union and its Member States is rather small.

3. The Copenhagen Criteria

The Copenhagen European Council, held on 21-22 June 1993, spelled out the conditions for EU membership[62] known as the Copenhagen Criteria. These criteria require that candidate countries have:
1. Stable institutions to guarantee democracy, the rule of law, human rights and respect for and protection of minorities,
2. A functioning market economy and the capacity to cope with competitive pressure and market forces within the EU's internal market and
3. The ability to take on all the obligations of membership and adherence to the aims of political, economic and monetary union.

The Union's capacity to absorb new members, whilst maintaining the momentum of European integration, is also an important consideration for the enlargement of the European Union and it can be regarded as the fourth item of Copenhagen criteria. It is oriented not on the states but, rather, on the European Union itself.

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[60] *Hernfeld*, 215, Rn. 5.
[61] *Lippert*, in: *Weidenefeld/Wessels* (Hrsg.), Europa von A bis Z, Taschenuch der europäischen Integration, 9. Auflage, 2006, Berlin (Institut für europäische Politik), 122.
[62] Bull. der Europäischen Gemeinschaften, 26. Jahrgang, No. 6, 1993.

As already mentioned,[63] the Amsterdam Treaty has codified the Copenhagen political criteria.

a) Economic Criteria

The requirement concerning "market economy and free competition" originated after the Maastricht Treaty came into force. More specifically, it stems from the first paragraph of Article 4 of the Treaty establishing the European Community. Consequently, this is not an unwritten precondition but, rather, the obligations deriving from the membership.[64] The members of the European Union are required to transpose the established format of the economic system.[65] Based upon the foregoing, it becomes apparent that the states are required to adjust their economic systems to the principles upon which the Community is based.

No excessive requirements can be made with respect to the states upon making application for membership.[66] Unlike the political criteria, the full observance of the economic criteria is not necessary upon making application or for the moment of being accepted as a member.[67] An example of this can be taken from the enlargement of 2004 when the European Union accepted such countries for membership even though their economic status was far behind that of the Member States. The full opening of markets will lead both parties to a structural crisis.[68] A special transition period is being introduced for the full integration of a new Member State into the internal market and the adjustment of its economy to the European standards. During this transition period, the state concerned gradually integrates into the common European economic space.

b) Readiness for Integration (*Acquis Communautaire*)

The European Commission developed the following definition of the *acquis communautaire* in its opinion regarding the admission of the Kingdom of Denmark, Ireland, the Kingdom of Norway, the United Kingdom of Great Britain and Northern Ireland: "Being a member of the Communities, the states admit the treaties, their political goals, all the decisions entered into force after the enactment of the Treaties, also the choice made in favour of the development and strengthening of the Communities without any reservations."

The essential characteristics of the legal framework created by the Treaty establishing the Communities are as follows: the direct effect of its certain provisions in Member States, the prevalence over domestic law and the existence of the process of uniform interpretation of the Community Law. Membership of the Community means the

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[63] See IV.2 Political Criteria according to Article 49 of the Treaty Establishing the European Union.
[64] *Pechstein*, 203, Rn. 5.
[65] *Vedder*, 10, Rn. 16.
[66] *Vedder*, EUV, 10, Rn. 16.
[67] *Hernfeld*, 215, Rn. 16.
[68] *Meng* in: von der *Groeben/Scwarze* (Hrsg.), Kommentar zum Vertrag über die Europäische Union und zur Gründung der Europäischen Gemeinschaft, Art. 49, 540.

acknowledgement of the imperative nature of these stipulations, the observance of which is necessary for the operation and uniformity of the Community law."[69] After the enactment of the Maastricht Treaty, the decisions made within the framework of the European Union were also added to the *acquis communautaire.*[70]

Compliance with the integration criteria is related to the fulfilment of serious requirements by the candidate member states which have the desire to accede to the Union. To this end, it is necessary not only to transpose a large number of legal provisions but also to adjust their domestic legislations to the framework of the *acquis communautaire.*[71]

The Community law does not require the full transposition of the *acquis communautaire* but, rather, the existence of an explicit desire and the readiness to transpose it and also the respective guarantees to this end.[72] This circumstance can be presumed as an apparent example of a reasonable decision insofar as it will be impracticable even from the technical point of view to say that a state is able to implement the absolutely new, supranational law of a specific legal nature, which is based upon international agreement, within a day or with one stroke.

One of the outcomes of the direct effect of the Community law in Member States is that the individuals acquired the right to refer to these provisions when appearing before the courts.[73] This means that the national courts may even be obliged to provide for the interpretation of the provisions of the Community law which have a direct effect in certain cases. To this end, it is necessary for the judges to know the European law insofar as it is impossible to ensure the uniform application of the *acquis communautaire* when a judge of a Member State is not aware of at least the procedure of the "reference for a preliminary ruling to the Court of Justice of the European Communities."[74]

With a view to ensuring the unimpeded operation of the *acquis communautaire* in new Member States, the knowledge of the fundamentals of European law should be mandatory not only for judges but also for other lawmen as well. For this reason, the teaching of European law at the universities of those states which want to become members of the European Union can be regarded as one of the necessary preconditions insofar as the alignment of the domestic legislation with the European one and the implementation of the latter will be very difficult and even practically impossible only under the assistance of the European experts.

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[69] Amtsblatt der Europäischen Gemeinschaften, 1972, L. 73, 3, Stellungnahme der Kommission vom 19. Januar 1972 zu den Anträgen des Königreichs Dänemark, Irlands, des Königreichs Norwegen und des Vereinigten Königreichs Grossbritanien und Nordirland auf Beitritt zu den Europäischen Gemeinschaften.

[70] იხ. Bull EG, Beilage 3-92 EG-Kommission, Die Erweiterung Europas: Eine neue Herausforderung.

[71] *Nicolaysen*, 8.

[72] *Bruha/Vogt*, 488.

[73] EuGH Slg., 1978, 629.

[74] One of the types of proceedings within the Court of Justice of the European Communities within the framework of which a national court may apply to the Court of Justice with a question in the case of doubt during the interpretation of the Community law. In the case of doubtfulness, the courts of supreme instance shall be required to apply to the Court of Justice of the European Communities.

c) Capacity of the European Union to Enlarge

Along with the states having the desire to become members of the European Union, the addressee of the Copenhagen criteria is also the European Union. Apart from the observance of political, economic and legal preconditions by the states, it is also necessary for the European Union to maintain the momentum of integration and, at the same time, the capability of post-integration development.

As a result of the enlargement of the European Union, the territory of the internal market also expands and with an ever increasing number of people becoming EU members, the scope of the co-ordination of the Common Foreign and Security Policy is expanding in the light of the foreign policy which increases the global and political roles of the European Union but, at the same time, generates problems of co-ordination as well. It is apparent that enlargement has both positive and negative impacts upon the European Union itself which may even endanger the implementation of the major goals of European integration to some extent. For the purpose of the maintenance of the level of integration and the functionality of the European Union, it may become necessary to carry out reforms within the Union's institutions and decision-making system.[75] According to the principles of democracy, the consent of Member States is also necessary for the enlargement.[76]

Based upon the foregoing, it can be presumed that the main purpose of this criterion is the clarification of whether or not the European Union will be able to maintain the ability of a further intensification of expansion through an efficient and timely resolution of conflicts between the Member States in the case of the acceptance of new members.

d) Legal Nature of the Criteria

From the legal point of view, the Copenhagen criteria are just the opinion of the European Council. The European Council provides the Union with the necessary impetus for its development and defines the general political guidelines thereof to this end.[77] It is not only the "institutionalised, intergovernmental conference which is being held periodically"[78]and which settles such conflicts that cannot be resolved at a lower level.[79] As a general rule, the sessions of the European Council review the issues of crucial importance for the European Union at the level of the heads of the states and governments of the Member States. The decisions made by them are legally binding political guidelines.

Although the Copenhagen criteria is the declaration of the political will of only the Copenhagen Council, they have, no doubt, become obligatory[80] for the states which have the desire to become members of the European Union due to unilateral and long-standing consent of the states and have now become the measurement for the *ability of Europe to absorb*.[81]

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[75] *Vedder*, 11, Rn. 18.
[76] *Geiger*, 139, Rn. 8.
[77] Art. 4 EUV.
[78] *Bruha/Vogt*, 485.
[79] *Oppermann*, 96, Rn. 62.

Finally, it can be said that the opinion of the European Council and, consequently, the Copenhagen criteria is the so-called *soft law*[82] of special force and the guidelines of material elements of membership both for the candidate member states and the European Union which is proved by the fact that the Copenhagen criteria are being gradually codified.

e) Assessment of Compliance with the Criteria

The major task of the Copenhagen criteria is the establishment of the eligibility of states to become members of the European Union and also of the possibility of the European Union to enlarge. Herein a question arises of who will assess the compliance with the criteria and how this will be done. According to Article 49 of the Treaty establishing the European Union, no state is entitled to demand admission to the Union even if it meets all the preconditions. The assessment of the political reasonability of enlargement is the sole competence of the Community.[83]

Based upon data obtained from various international and domestic sources, the European Commission prepares regular opinions concerning political and economic processes ongoing within the states both before the launching and during the process of negations on accession. Upon assessment of Estonia's compliance with the first Copenhagen criterion, for example, the Commission based itself on numerous sources of information such as the answers of the Government of Estonia to a questionnaire circulated by the Commission in 1996, the outcomes of bilateral meetings, an analysis of the embassies of Member States and the Commission Delegation as well as the opinions of international organisations (in particular, the Council of Europe and the OSCE) and upon reports of non-governmental organisations.[84]

Unlike the other criteria, the fulfilment of political preconditions[85] can be assessed more explicitly and, for this reason, they should be fulfilled for the moment of accession with no transitional provisions given with respect to them. The admission of such states into the European Union, whose domestic political arrangement is not democratic, will endanger the democratic legitimacy of the European Union itself insofar as the representatives of

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[80] *Meng*, 535.
[81] *Zeh*, Recht auf Beitritt? Ansprüche von Kandidatenstaaten gegen die Europäische Union, Baden-Baden (Nomos), 2002, 24.
[82] The term *soft law* stems from English-American law. It is used with respect to the decisions of the international organisations which are of an advisory nature. The soft law may even be the prerequisite of the international usage of law. The provisions of soft law are not legally binding and mainly generate only political obligations. Recently, soft law was introduced into private law as well such as, for example, the UNIDROIT principles.
[83] *Nicolaysen*, 9.
[84] Bull. EU Beilage 11/97, Stellungnahme der Kommission zum Antrag Estlands auf Beitritt zur Europäischen Union, 15.
[85] See the Political Criteria according to Article 49 of the Treaty establishing the European Union.

the governments are almost in every institution and every body. Apart from that, it will be difficult to ensure a fair election of the European Parliament.

The assessment of economic preconditions is not an easy task as it is practically impossible to unmistakably say whether or not a state will manage to fully integrate into the internal market and that its economy will withstand the existing competition. The fulfilment of the second precondition, therefore, is a matter of a purely economic decision.[86] For this reason, a number of transitional provisions have been adopted after the last enlargement eastward.

As mentioned above, the full observance of the criterion on supporting the integration is practically impossible. When assessing the fulfilment of the *acquis communautaire* precondition by applicant states, the main attention is paid to the clearly manifested desire of the states to transpose European law and the existence of the guarantees of the foregoing.

4. Membership of Other International Organisations, Observance of the Principles of International Law and the Peaceful Settlement of Disputes as Necessary Preconditions for Acceding to the European Union

From 1974 onwards, each Member State of the European Communities and then of the European Union are members of the Council of Europe, too. Based upon the foregoing, it can be presumed that membership of the Council of Europe is a necessary unwritten precondition for acceding to the European Union. Apart from this, according to Paragraph 2 of Article 6 of the Treaty establishing the European Union, the Union shall respect the fundamental rights as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. Consequently, a state should be a party to the Convention if it wants to become a member of the European Union. There is also a presumption that the membership of the UN and the OSCE is also a necessary precondition for admission.[87]

The European Council meeting in Luxembourg on 12 - 13 December 1997 considered a commitment to the settlement of territorial disputes by peaceful means, in particular through the jurisdiction of the International Court of Justice in The Hague, as a necessary precondition for participation in the European Conference.[88] Insofar as only the European Union Member States and the states whose admittance to the European Union was under consideration were allowed to participate in the European Conference, these preconditions were also regarded as mandatory ones for European Union membership.

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[86] *Bruha/Vogt*, 488.
[87] *Vedder*, 9, Rn. 15.
[88] Bull. der Europäischen Union 12-1997 I. Europäischer Rat von Luxemburg, Schlussfolhgerungen des Vorsitzes, 9.

5. Constitutional Preconditions

The states willing to join the European Union are required to transform their economic and legal systems to this end. Of course, the full adjustment of the legal framework requires respective constitutional changes. As already mentioned, the membership of the European Union means the membership of the European community which has a supranational nature. Supranationalism is a term from within international law and means the assignment of competencies at a suprastate level. The main peculiarity of supranationalism is that "the organisations which are of a supranational nature predominate over their member states."[89] When joining a supranational organisation, the states limit their sovereignty and delegate certain sovereign powers to the community. An apparent example of limited sovereignty is the monetary union. Only the Central European Bank enjoys the right to issue euros whilst the national banks of the states are allowed only to issue coins under the permission of the Central European Bank.[90] The above examples explicitly demonstrate the assignment of sovereign rights.

Within the European Union Member States, the limitation of sovereignty is regulated by the constitutional provisions. For example, Article 92 of the Constitutions of the Netherlands[91] allows for conferring legislative, executive and judicial powers upon international institutions. According to the Constitution of Austria,[92] specific federal competencies can be transferred to intergovernmental organisations. The Italian Constitution agrees, upon conditions of equality with other states, to such limitations of sovereignty as may be necessary to allow for a legal system that will ensure peace and justice between nations.[93] Insofar as the main task of the European Communities and the European Union is to ensure peace, the constitutionality of the limitation of sovereignty in favour of the European Union is beyond doubt.

The discussions concerning the limitation of sovereignty began in Germany mainly with respect to Article 24 I of the Basic Law. *Carlo Schmied*, a member of the Parliamentary Council, gave the following description of the political implication of Article 24: "In future, we should introduce such a stipulation which provides for the assignment of certain sovereign rights to international organisations at a legislative level. I believe that this stipulation will be the apparent example of the commitment of the German people towards moving from the national to supranational phase of their history.... We should not be misled. There is no problem these days which may be resolved only through national arrangements."[94] Article 23, which provides for the transfer of sovereign powers to

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[89] *Schwantes*, Die Supranationalität, Eine Untersuchung internationaler wirtschaftlicher Organisationen Europas im 19. und 20. Jahrhundert, Inaugural-Dissertation zur Erlangung der Doktorwürde einer Hohen Rechtswissenschaftlichen Fakultät der Universität Köln, Tag der mündlichen Prüfung: 15 Mai 1962, 5.
[90] Art. 106 EGV.
[91] Verfassung des Königreichs der Niederlande vom 17 Februar 1983, www.Verfassungen.de.
[92] Bundes-Verfassungsgesetz der Republik Österreich vom 10. November 1920, i.d.F. vom 7 Dezember 1929, www.Verfassungen.de.
[93] Verfassung der Italienischen Republik vom 27 Dezember 1947, Art. 11, www.Verfassungen.de.
[94] Stenographische Berichte des Parlamentarischen Rates, 2. Plenarsitzung v. 8.9.1948.

international institutions by legislation,[95] was added to the Basic Law of Germany in 1992 and since then has been operating as *lex specialis* with respect to Article 24.[96]

Until 1 May 2004 and a major enlargement of the European Union, the countries of Eastern Europe prepared their constitutional law preconditions[97] such as Poland, for example, whose Constitution allows for the transfer of sovereign powers to the powers of the European Union from 1997.[98] As it became apparent, the limitation of sovereignty requires constitutional regulation. It can be said that a state which desires to join the European Union should demonstrate its will through constitutional amendments as well and which is something that can be regarded as a preliminary consent to the consequences of membership[99] along with the explicitly demonstrated will.

V. The Process of Accession to the European Union

Before the entry into force of the Maastricht Agreement, the Treaties establishing the European Communities provided for a different regulation of the accession process.[100] After the enactment of the aforementioned act on 1 November 1993, the procedural aspects for the admission of new members came to be regulated in a uniform manner.[101] Article 49 of the Treaty establishing the European Union only partially regulates the procedure of the admission of new members.[102] It is completed by the rules of the negotiation of accession provided for by the Decision of the European Council of 9 June 1976.[103] Apart from that, the current practice of conducting the negotiations on accession also contributed to the formal development of the process.[104] The following three main phases of the accession process can be identified: 1) Initial phase, 2) Negotiation phase, 3) Final phase.

1. Initial Phase

The first step towards accession is the decision of the state desiring to join the European Union to make an application. The format of the application is not envisaged either by the Treaty establishing the European Union or any other legal act. It is the unilateral declaration of will which is subject to acceptance.[105]

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[95] Art. 23 GG.
[96] *Schwarze* (Hrsg.), Die Entstehung einer Europäischen Verfassungsordnung, Das Ineindergreifen von nationalem und europäischem Verfassungsrecht, Baden-Baden (Nomos), 2000, 133.
[97] *Vedder*, 14, Rn. 23.
[98] Verfassung der Republik Polen vom 2 April 1997, Art. 90, www.Verfassungen.de/eu.
[99] For example: prevalence of Community law over the domestic legislation, etc.
[100] Art. 237 EGV, Art. 205 EAGV, Art. 98 EGKSV. These Articles no longer exist.
[101] *Hernfeld*, 216, Rn. 7.
[102] *Pechstein,* in: *Streinz* (Hrsg), Art. 49 EUV, 204, Rn. 5. *Vedder* in: *Grabitz/Hilf* (Hrsg.), Art. 49 EUV, 15, Rn 25.
[103] EA 1970, D 350
[104] *Cremer,* in: *Calliess/Ruffert* (Hrsg.), Kommentar des Vertrages über die Europäische Union und des Vertrages zur Gründung der Europäischen Gemeinschaft, 2. Auflage, Neuwied und Kriftel (Luchterhand), 2002.
[105] *Meng*, 542, Rn. 87.

For expressing the desire to join the common European family, the Council of the European Union is to be addressed with an application for membership. The application of Hungary, for example, was handed over to Council of European Union under the presidency of *Mangalos* on 1 April 1994 by then Prime Minister of Hungary, *Boros,* and that of Poland, by then Prime Minister *Pavlak*, on 8 April 1994.[106]After the receipt of an application, the Council of the European Union makes a decision upon the initiation of the process of accession (for example, following the receipt of an application of Hungary and Poland, the Council of the European Union made a decision upon the initiation of the accession process for these countries on 18 April 1994[107]). At the next stage, the Council requests the Commission to present its opinion.

After an analysis of political, economic and legal situation in a candidate member country, the European Commission prepares its preliminary opinion.[108] The opinion prepared with respect to the application of the Czech Republic can be quoted herein as an example.[109] The Commission's document offered a description of the relationships between the Czech Republic and the European Union, an assessment of the situation in the Republic in the light of the political criteria laid down by the Council of the European Union (democracy, legal framework, rule-of-law state, human rights, protection of minorities), an assessment of the economic situation in the Republic in the light of economic criteria laid down by the Council of the European Union (market economy, ability to withstand the competition) and the capability of the Czech Republic to transpose the primary and secondary legislations as well as the perspectives for future development.

Upon the basis of the information obtained from various sources, the Commission then offers its recommendation for the initiation of negotiations on accession according to its opinion.[110] After the receipt of the preliminary opinion of the Commission, the Council of the European Union makes a decision regarding the initiation of the negotiations after which the process of accession moves to an entirely new phase in the form of the so-called negotiation phase. The European Union will initiate these negotiations only if an applicant state fulfils the necessary preconditions for the accession.[111]

2. The Phase of Negotiations

The negotiations phase of accession to the European Union is regulated by the already established practice. Before launching the negotiations with the United Kingdom, for example, the Member States agreed within the Council that the negotiations would have been held by them under the participation of the Commission which in their opinion would have improved the co-ordination between the Member States at the same time.[112] This practice proved to be inefficient, however, and the negotiation phase with the United Kingdom in 1961-1963 failed).

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[106] Bull. EU 4, 1994, 1.3.18/1.3.19.
[107] Bull. EU 4, 1994, 1.3.18/1.3.19.
[108] *Hernfeld*, 217, Rn 7.
[109] Bull. EU Beilage 14/97, Stellungnahme der Kommission zum Antrag der Tschechishen Republik auf Beitritt zur Europäischen Union.
[110] Bull. EU beilage 12/97, Stellungnahme der Kommission zum Antrag Litauens auf beitritt zur Europäischen Union, 84.
[111] *Lippert*, in: Europa von A bis Z, 122.
[112] *Meng*, 544, Rn. 94.

On 9 June 1970, the Council made a decision under which the Council was supposed to conduct the negotiations according to those main directions it elaborated with the Commission.[113] The Council was also entitled to authorise the Commission to conduct the negotiations.[114] The negotiations with the United Kingdom, Ireland, Denmark, Norway (1970-1972), Greece (1976-1979), Spain and Portugal (1978/79-1985) were conducted in accordance with this procedure.

According to the established practice of the enlargement of 1995, which was the adaptation of the previous process with the Treaty establishing the European Union,[115] the negotiations are conducted by the Governmental Conference of the Member States and of the applicant states at the ministerial level and under the presidency of the Council. The foregoing explicitly shows that the Member States have greater influence upon the negotiations, wherein the text of a treaty is being actually agreed, than the European Union and, consequently, their national interests are presented at a due level.

During the negotiations, the text of the treaty is being agreed as well as the terms and conditions of the acceptance of a new member, the contractual amendments and the transitional provisions which will operate for a certain period for the newly accepted Member States. Some three hundred transitional provisions were elaborated for ten states which joined the European Union in 2004. These provisions will be valid for a period of eleven years.[116]After reaching an agreement concerning all the disputed details, the negotiation phase comes to an end which at the same time is a further necessary precondition for the movement to the next phase of accession.

3. The Last Phase

a) The Decision of the European Union

After the completion of the negotiations, the Commission prepares it opinion. It should be stressed, however, that this act is not legally binding and,[117] consequently, it depends upon the will of the Council and the political power of the Commission whether or not the Commission opinion will be accounted for.

Commensurate with Article 49 of the Treaty establishing the European Union, the Council will make a decision only after receiving the assent of the European Parliament which shall act by an absolute majority of its component members. By virtue of this stipulation, this body, elected by the European citizens, directly participates in and influences the accession process. Given the necessity of the assent of the European Parliament, it can better protect the interests of the European Union than the Commission.[118] A legislative resolution of the Parliament is a rather small act by virtue of which the Parliament expresses

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[113] ob. Beschl. v. 9.6.1970, EA 1970, Folge 3/1970 Z 143.
[114] *Vedder*, 16 Rn. 30.
[115] *Meng*, 544, Rn. 96.
[116] *Lippert*, 125.
[117] *Pechstein*, 205, Rn. 8.
[118] *Vedder*, 16, Rn. 33. In general, both the European Commission and the European Parliament serve the common European interests. Unlike the Council of the European Union, they are acting independently from the Member States.

its assent to the acceptance of an applicant state into the European Union. Unlike a Commission opinion, it does not provide for the analysis of the political, economic and legal situation in a state which is applying for membership of the Union. It makes reference to the Commission opinion and the reports of the respective committees of the European Parliament with respect to the states concerned.[119]

After the receipt of the legislative resolution of the European Parliament, the Council of the European Union will be entitled to make a unanimous decision, either positive or negative. It should be mentioned that neither this act nor the successful completion of the aforementioned procedures entitles an applicant state to request its acceptance to the European Union insofar as the members in an accession treaty are the Member States and not the European Union. In their turn, the Member State can make an accession treaty with an applicant state only when the Council of the European Union unanimously makes a decision after receiving the opinion of the Commission and the assent of the European Parliament which shall act by an absolute majority of its component members. The foregoing explicitly demonstrates that the European bodies and common European interests greatly influence the procedure of acceptance of a new member.

b) An Accession Treaty between the Member States and an Applicant State

In the case of a favourable decision of the Council of the European Union, an accession treaty is made between the European Union Member States and a state willing to join the Union. This treaty[120] regulates the terms and conditions of the acceptance of a candidate member state and the adjustment of Treaties.[121] Amendments introduced into the Treaties are mainly related to the institutional provisions (representation of the newly accepted members within the Union bodies and institutions, etc.). As a rule, the amendments may be introduced commensurate with the procedure envisaged by Article 49 of the Treaty establishing the European Union and, when necessary, to adjust the Treaties with the circumstances amended as a result of the accession, "Article 49 shall act as *lex specialis* with respect to Article 48."[122]

Despite the fact that the specific regulation of the structure of an accession treaty is not provided for anywhere, it has still developed in practice. The accession treaty made with Austria can be considered as an example of such a treaty.[123] This 702 page act consists of the following three parts: 1) an accession treaty, 2) an accession act and 3) a final act.

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[119] ABl 94/C 241/03, Legislative Entscheidung des Europäischen Parlaments vom 4 Mai 1994 zu dem Antrag der Republik Österreich, Mitglied der Europäischen Union zu werden.
[120] Art. 49 Abs. 2 EUV.
[121] The Treaty establishing the European Union, the Treaty establishing the European Communities and the Treaty establishing the European Atomic community.
[122] *Cremner*, 321, Rn. 4, *Pechstein*, 206, Rn. 10.
[123] EuZW Heft 10/1994, Der Beitrittsvertrag Österreichs zur Europäischen Union vom 12.04.1994, 309-310.

An accession treaty identifies the parties to the agreement, the deadline for the ratification[124] period and the accession date.[125] Italy was nominated as a depository state.

The terms and conditions of accession and the amendments to Treaties were envisaged by the accession act which consisted of 176 articles, nineteen annexes and ten protocols. The final act constrained the list of the constituent parts and the representations of the parties.

An accession treaty comes into force in every signatory state upon the date specified therein following the submission of a ratification statement, envisaged by a national constitution, to the Government of Italy.[126] The analysis of the accession process gives an impression that the bodies of the European Union make a decision *whether or not* an application will be accepted whilst the Member States specify *how* this can be done through an agreement made with the candidate member states.[127] It should be mentioned, however, that these issues are not subject to division and they are equal and indivisible components of a single, complex process.

VI. Consequences of Accession to the European Union

The participants of an accession procedure are the European Union, its Member States and a state willing to become a member of the Union. The favourable decision has certain consequences for each of the participants of this process. After the enlargement of the European Union to the East, the number of members of the common European Family and the number of official working languages increased from eleven to twenty-two[128] which became an extra factor for additional expenses together with the reforms implemented for the purpose of the representation of the Member States in the bodies of the European Union. As a result of the enlargement, the border related conflicts existing between Hungary and Slovakia, the minority problems in the Baltic counties and the division of Cyprus into Greek and Turkish parts are now regarded as the heritage of the European Union.[129] It should be mentioned that despite the expenses of the European Union related to the acceptance of the new members and certain difficulties related to institutional reforms, the enlargement has positive features as well. On 1 May 2004, for example, ten new Member States joined the European Union which resulted in the increase of the population by 28 percent and of the territory by 23 percent.[130] The foregoing can be regarded as the major catalyser of the increase of its importance on an international level. The scope of the application of *acquis communautaire* also expanded although certain problems related to its application in the new Member States should not be excluded.

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[124] 31.12.1994.
[125] 01.01.1995.
[126] *Geiger*, 140.
[127] *Geiger*, 139.
[128] Czech, , Bulgarian, Danish, German, Dutch, English, Estonian, Finnish, French, Greek, Hungarian, Italian, Latvian, Lithuanian, Maltese, Polish, Portuguese, Romanian, Slovak, Slovene, Spanish and Swedish.
[129] *Pfetsch*, 350.
[130] *Pfetsch*, 347.

As a result of accession to the European Union, a new Member State accedes to every treaty or agreement made by the Communities, limits some of its sovereign powers in favour of the Union and the *acquis communautaire,* the law of direct effect and prevailing over the domestic legislation, starts its operation within whilst the citizens of the Member States mechanically become members of the European Union. As a result, they acquire the active and passive voting rights during the elections of the European Parliament and local self-government,[131] the right to free movement and settlement on the territory of the European Union[132] and also the right to be protected by the diplomatic and consular missions of any of the Member States in third states as if by those of their own states.[133]

Generally, it is presumed that the enlargement to the East was more favourable from the economic point of view for the new members than it was for the old ones.[134] Sixty-two percent of the population of Germany, for example, believed that the enlargement included a financial risk for their country. At the same time, 60 percent believed that the level of unemployment increased and 57 percent thought that enlargement resulted in the cut-off of wages. Along with the negative aspects of the enlargement, however, 94 percent of the population was of the opinion that one of its major consequences would be the insurance of peace.[135] Based upon the foregoing, it can be said that the old Member States fully acknowledge the necessity of overcoming the barrier between Western and Eastern Europe and made quite a risky, but bold decision for strengthening the peace and economic welfare in Europe upon the acceptance of the new members.

VII. Conclusion

The European Union is a successful example of integration which never suffices itself with whatever is already attained and is looking forward for further advancement for the purpose of ensuring peace and economic welfare in Europe through bringing closer the interests of the Member States and the intensification of integration in certain fields. This very feature makes the Union so appealing for Third Countries and provides for the magnetism which attracts the ever increasing number of states willing to integrate into the European Union.

These days, more than one state has the political will to become a full member of common European family. This desire, however, may only become legally valid after filing out an application for admission with the Council of the European Union.

The analysis of the preconditions of accession, laid down by the European Council in Copenhagen, provides for the assertion that their major purpose is the identification of the

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[131] Art. 19 Abs. 1 S. 1, Abs. 2 S. 1 EGV.
[132] Art. 18 S.1 EGV.
[133] Art. 20 EGV.
[134] *Breuss*, EU Erweiterung: Europas grosse Chance, Forschungsinstitut für Europafragen an der Wirtschaftsuniversität (Wifo) Wien, 12. September 2000 .
[135] Umfrage Perspektive - Deutschland: Deutliche Skepsis gegenüber EU-Erweiterung, Eine Initiative von Mc Kinsey, Stern, ZDF und AOL.

necessary standards for the EU membership. Despite its openness for every European state, the European Union lays down rather serious requirements for an applicant for its membership in terms of the Copenhagen criteria. The fulfilment of the preconditions is mainly controlled by the European Commission which relies upon numerous sources of information therein.

Along with meeting the preconditions, the states willing to become members of the European Union have to pass rather time-consuming and structurally complicated procedures. The preliminary opinion of the Commission, the decision of the Council on the initiation of negotiation, the successful completion thereof, the opinion of the Commission, the assent of the Parliament made by the absolute majority of component members, the unanimous decision of the Council, the execution of a treaty between the Member States and the states willing to become members of the European Union and the ratification of this agreement are the component parts of the accession process.

The parties to an accession treaty are the European Union Member States and the states willing to become members themselves. Despite their active participation in the accession process, the Council of the European Union, the European Parliament and the European Commission do not have any further legal levers for influencing the execution of a treaty between the Member and applicant countries and upon the ratification thereof. Based upon the foregoing, quite a fair opinion is being generated, on the one hand, that the national interests of the Member States are higher than the common European ones during the accession period although, on the other hand, it can be said as well that the enlargement to the East has proved the opposite.[136]

As previously mentioned, there is an explicit political will in Georgia to become a member of the European Union. For the initiation of an accession process, it is necessary for the political will to be legally proved through the submission of an application for accession to the Council of the European Union. Being a member of the Council of Europe, Georgia explicitly meets the criteria of a European state which allows for the acceptance of the application by the Council of the European Union. It should be mentioned, however, that the adoption of this decision by the Georgian Government will be reasonable only when the political preconditions are unequivocally met. Otherwise, in the case of a negative preliminary opinion of the European Commission, the delivery of a decision upon the initiation of the negotiations for accession and the further development of the procession will be devoid of any reality.

Even in the case of the observance of all three criteria laid down by the European Council in Copenhagen, none of the states acquires a legal right to request membership of the European Union. To this end, the entry into force of an agreement made between the European Union Member States and the states willing to become members of the Union is absolutely necessary after the delivery of a favourable decision by the European Commission, Parliament and the Council. This fact shows the necessity of accounting for the national interests of all twenty-seven members of the Union by an applicant state along with the common European considerations. An intensive co-operation with the Member States, the demonstration of the

[136] See: The Consequences of Accession to the European Union.

benefits of enlargement for them and the gaining of their sympathies should be the major task of any state which wants to become a member of the European Union.

With due consideration of the practice of those already Member States, it can be said with respect to Georgia that the political will should be demonstrated upon a constitutional level as well as to what end a constitutional law should be adopted.[137] The possible amendment to the Constitution of Georgia may read as follows: "The Parliament of Georgia shall be entitled to assign the part of sovereign powers to the European Union by a two-thirds majority of its component members" or "The Parliament of Georgia shall be entitled to limit the country's sovereignty in favour of the European Union by a two-thirds majority of its component members." The adoption of such a constitutional law shows that Georgia clearly demonstrates its assent to the consequences of possible accession which, to a certain extent, may become the decisive factor of certain success on the way towards its integration into the European Union.

The best conclusion to this article can be made with the words spoken by *Konrad Adenauer*, the first Chancellor of West Germany, on 15 December 1954 who said: "The unity of Europe was the dream of a few. It became the hope of many. Today, it has become a necessity for all of us. It is necessary for our security, for our freedom and for our existence as a nation."

[137] Commensurate with Article 164 of the Rules of Procedure of the Parliament of Georgia a draft constitutional law is adopted if no less than two thirds of full composition of the Parliament votes for it.