THE LEGAL ASPECTS OF THE EU ACCESSION PROCEDURE AND ITS IMPLICATIONS FOR THE EU EASTERN ENLARGEMENT (FROM THE EU FOUNDING TREATIES TO THE TREATY OF AMSTERDAM)[1]

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1. Introduction- The last decade of 20th century in Europe was marked by two important historical processes: the dismantling of the communist regimes in Eastern and Central Europe and the creation of the European Union (EU).[3] Those two processes are now entangled in the process of perspective accession of the countries of Central and Eastern Europe into the EU, known as EU Eastern Enlargement. This process places the greatest challenge for all Europeans in 21st century: the creation of one unified Europe. The creation of a united, peaceful, economically prosperous, and humane Europe will be a difficult, complex and long process, with significant economic, political and geo-strategic consequences, both for Europe itself and the world. The vision of a United Europe honors the painful, historic lessons learned in the 20th century - if there is to be peace, economic prosperity, political stability, rule of law and respect for human rights in Europe, no Europeans should be isolated and left behind from the economic, political and social processes on the European continent. While the process of the EU Enlargement is a complex economic, political and legal process, this article focuses only on the legal dimension of the EU Enlargement as defined and interpreted by the EU. Such an approach is not intended to distort the reality and the complexity of the Enlargement process, but to provide a contribution to a better understanding of the specific characteristics and the dynamics of the legal dimension of accession to the EU and its implication for the Eastern Enlargement. In particular, this article focuses on the accession procedures to the integration in the EU, their development in the course of the previous enlargement experiences and, most

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[3] The EU was established by the Treaty of European Union (TEU) of 1993, known as the "the Maastricht Treaty "(1992, O.J. No. C. 191)). Under the TEU, the EU is based on three pillars: the European Communities, the Common Foreign and Security Policy, and the Cooperation in Justice and Home Affairs. The EU has grown from the three founding Communities: European Coal and Steel Community, established in 1951 with the ECSC Treaty (261U.N.T.S. 143), European Economic Community, established in 1957 with EEC Treaty (298 U.N.T.S. 11), and European Atomic Energy Community, established in 1957 with the EAEC Treaty (298 U.N.T.S. 169. Under the TEU, these three Communities constitute the First Pillar of EU and are governed by common institutions. The Second and the Third Pillar are governed in intergovernmental fashion by the Member States of the EU. The founding members of these three Communities were six European States: France, Germany, Italy, Belgium, Netherlands and Luxembourg. Today the EU is composed of 15 Member States (the Founding Member States, UK, Ireland, Denmark, Greece, Spain, Portugal, Austria, Finland and Sweden);

importantly, their interpretation and implementation by the EU in the previous accessions. The purposes of such introspective are to present the legal nature and the main tendencies in the development of the accession procedure and their implications for the process of Eastern Enlargement.

2. Legal aspects of the accession procedure: Founding Treaties to the Treaty of Maastricht - Any Applicant State for membership in the EU is subject to certain legally defined accession procedures. In order to develop a successful strategy for joining the EU, each prospective applicant state must understand the legal nature and dynamics of the accession procedure, which have been evolving parallel with the development of the EU.

2.1 The Accession procedure in the Founding Treaties - The Treaties establishing the European Coal and Steel Community (ECSC)[4], European Atomic Energy Community (EAEC) and European Economic Community (EEC)[5] were negotiated, signed, ratified and entered into force as classical multilateral treaties among six sovereign states - Belgium, France, Germany, Italy, Luxembourg and Netherlands[6] - in accordance with the classical customary rules of international law of treaties.[7] However, each of these treaties in their Preambles[8] and in certain treaty provisions indicated that they are not multilateral treaties of closed type. Article 98 of ECSC, Article 237 of EEC Treaty and Article 205 of EAEC stipulated that the treaties are open to accession to "any European state":

Article 98 of ECSC Treaty stipulates: [9]

"Any European state may apply to accede to this Treaty. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the High Authority. The Council shall also determine the terms of accession likewise acting unanimously. Accession shall take effect on the day when the instrument of accession is received by the Government acting as depositary of this Treaty."

Article 237 of EEC Treaty and Article 205 of EAEC Treaty are identical and stipulate**:**[10]

"Any European State may apply to become a member of the Community. It shall address its application to the Council, which shall act unanimously after obtaining the opinion of the Commission.

The conditions of admission and the adjustments to this Treaty necessitated thereby shall be subject of an agreement between

[4] The Treaty on ECSC was signed in Paris on April 18, 1951 and entered into force on July 25, 1952;

[5] The treaties on EAEC and EEC were signed on March 25, 1957 in Rome and entered into force on January 1, 1958;

[6] See, Mathijsen P.S.R.F, *A Guide to European Union Law* (1999), at 7;

[7] The Vienna Convention on the Law of Treaties, which transformed the customary rules of the international law of treaties into conventional rules of international law, was concluded as a multilateral treaty in 1969, much later then the Treaties of ECSC, EAEC and EEC.

[8] EEC and EAEC Treaties in their Preambles explicitly declared that the Member States are "determined to establish foundation of an ever closer union among European peoples"; See, 298 U.N.T.S 11 (EEC Treaty) and 298 U.N.T.S. 169 (EAEC Treaty);

[9] 261 U.N.T.S. 143 (ECSC Treaty);

[10] 298 U.N.T.S. 11 (EEC Treaty); 298 U.N.T.S. 169 (EAEC Treaty);

the Member states and the Applicant State. This agreement shall be submitted for ratification by all the contracting states in accordance with their respective constitutional requirements."

These provisions provided the legal basis for any future enlargement of the three founding Communities. Moreover, they contained the necessary accession procedure for "any European state" interested in joining each of the respective Communities. The Applicant States would have had to address their applications to the Council of the respective Community, which would have had to "act" upon the application unanimously after receiving the opinion of the "High Authority" (ECSC Treaty) i.e. "the Commission" (EEC and EAEC Treaties). Apart from this common procedural element, however, there are some differences in the legal language used in these three provisions, which, to a certain degree, suggests important differences in the accession procedure for each of the communities: First, while Article 237 EEC and Article 205 EAEC provided for applying for membership in the respective Communities, Article 98 ECSC provided for acceding to the (ECSC) Treaty. However, this difference in the legal language would not have had any relevance in terms of legal consequences because all three provisions provided for accession to the respective Community. In essence, the accession to each of the respective treaties would have led to an accession to the respective Community. The difference in the legal language used can be explained with the influence of the time factor on the political aspirations of the six founding Member States. In the time capsule between 1951 and 1957, the success of the ECSC persuaded the founding Member States that economic integration is possible for the benefit of all members of the ECSC. This encouraged them to take bolder political steps for establishing deeper economic integration (EEC) and joint development of atomic energy (EAEC)[11]. Consequently, the bolder political aspirations resulted in using a bolder, nontraditional legal language. The traditional "accession to treaty"– language was replaced with the daring "member of the Community" - language. Furthermore, unlike the traditional treaties by which states were merely accepting mutual obligations, these treaties provided for the transfer of certain powers from the Member States to the Communities and their institutions over which they had no direct control. This "supranationality" of the communities made the "member to Community" - language a more adequate reflection of the legal substance of these treaties. Second, ECSC Article 98 stipulated that the Council would determine the "terms of accession". On the other side, Article 237 of the EEC Treaty and Article 205 of the EAEC stipulated that the Member states and the Applicant State would determine the "conditions of admission". These differences in the legal language implied serious differences in the legal nature of the instruments of accession to the respective Communities. While ECSC Article 98 suggested that admission of new member states in the ECSC would be a *unilateral act* of the Community (i.e. its

[11] On the historical context for the ECSC, EEC and EAEC treaties, see: Dedman Martin J., *The origins and development of the European Union 1945-1995:A history of European Integration* (1996); Moussis Nicholas, *Access to European Union: Law Economics, Policies* (1998); Mathijsen P.S.R.F, *A Guide to European Union Law* (1999);

Council), Article 237 EEC and Article 205 EAEC suggested that any accession of new Member States would be subjected to an *international agreement* between the Member States of the respective Communities and the Applicant State, rather than the Community (or its Council) and the Applicant State. Furthermore, unlike Article 98 ECSC, Articles 237 EEC and 205 EAEC suggest compulsory negotiations between the Members States and the Applicant State.[12] Third, unlike Article 98 ECSC, Article 237 EEC and Article 205 EAEC envisaged two phases in the accession procedure: a Community phase (membership application- opinion of the Commission – decision by the Council on the application) and inter-state phase (Agreement between the Member States with the Applicant State on the conditions of Accession Agreement and ratification of the Agreement by all Contracting States). As some authors have pointed out, this had created two confusions. The first confusion was whether these "two phases" should be conducted chronologically or simultaneously. The second confusion was whether the opinion of the Commission and the decision of the Council should refer only to the initiation and principles of accession negotiations or that they should also be given after the conditions and the agreement of accession are finally defined.[13] Fourth, Article 98 ECSC, Article 237 EEC and Article 205 EAEC were provisions of separate treaties, which established separate Communities. In terms of the accession, this meant that accession to each of the Communities would be subjected to a separate legal procedure and, consequently, any prospective Applicant state would have to apply for accession to each of the Communities with separate applications. It must be pointed out, however, that all these observations about the differences in the accession procedure among the three treaties are drawn from the plain meaning of the mentioned provisions of the Treaties. Complete and correct interpretation of the features of the accession procedure requires further insight in the practical application of the "accession articles" of the founding treaties.

2.1.1 The First Enlargement – Article 98 ECSC, Article 237 EEC and Article 205 EAEC were first implemented in the accession of Denmark, Ireland and the United Kingdom and the failed accession attempt of Norway. The accession of these states was conducted in several phases: application phase, negotiation phase, and accession phase: a.) **Application phase:** The four Applicant States expressed their interest to join the Communities by submitting a membership application to the Council. Each of the Applicant States submitted a single application for membership in all three Communities[14] despite the fact that according to the founding

[12] Puissochet J.-P., *The Enlargement of the European Communities: A commentary of the Treaty and Acts concerning the Accession of Denmark, Ireland, and the United Kingdom* (1975) at. 13-14;

[13] See, Puissochet J.-P., *The Enlargement of the European Communities: A Commentary on the Treaty and Acts concerning the Accession of Denmark, Ireland and the United Kingdom* (1975) at. 14

[14] United Kingdom submitted its application on May 10, 1967; Denmark and Ireland submitted their application on May 11, 1967 and Norway on July 21 1967. For each of these applicants, these applications represented the second round of application for membership. The first round of application in 1961 (UK, Ireland and Denmark) and 1962 (Norway), which reached negotiations, was aborted because of the French

Treaties, each of these three communities were separate legal entities with separate accession articles. However, the Convention on certain institutions common to the European Communities of 1957,[15] so-called "Merger Treaty" of 1965(1967)[16] and the "Budget Treaty"[17] from April 22, 1970, provided for common institutions and common financial management of the Communities, which profoundly changed the context of any future enlargement of the Communities. In spite of the legal autonomy of the Treaties, in political and practical terms, the accession to one community was tied to the accession of to the other two communities. In the course of the First Enlargement process, none of the member states of the Communities or the Applicant states suggested separate accession or accession only to one or two of the Communities; b.) **Negotiation phase:** In the course of the First Enlargement, the negotiation phase envisaged in Articles 237 EEC and 205 EAEC prevailed in practice[18]. The Conference of Heads of States or Governments of the six Member States of the Communities that was held in The Hague on December 1-2, 1969, indicated that there should be negotiations on the accession applications, although the Conference did not set a precise date for the beginning of negotiations[19]. This phase covered negotiations between the Member States and the Applicant States on the terms of accession of the Applicant States to the Communities. These were articulated in a separate annex titled "Act Concerning the Conditions and the Adjustments to the Treaties" attached both to the Accession Treaty to the EEC and EAEC and to the Decision of the Council on the Accession of the applicant countries to the ECSC[20]. In practice, the negotiations were much less negotiations between the Member States and the Applicant States, but more negotiations between the Communities and the Applicant States. The negotiations took a form of a Conference[21], with two levels: "multilateral" and "bilateral". The multilateral meetings were meetings between the Communities and

resistance, in particular, toward the UK application. For more on the French resistance to the UK application, see: Dedman Martin J., *The origins and development of the European Union 1945-1995: A history of European Integration* (1996); Nugent Neill, *The government and politics of the European Union* (1994);

[15] This Convention was adopted together with the EEC and EAEC Treaties in 1957 and provided for a single Court of Justice and Single Assembly common to all three Communities. The Convention was repealed by Article 9(1) the Treaty of Amsterdam of 1997 (1997, O.J. No.C 340), which, however, retained the essential elements of its provisions. See, Mathijsen P.S.R.F., *A Guide to European Union Law* (1999) at. 15;

[16] ((1967) O.J. No. L 152; The "Merger Treaty" was concluded on April 8, 1965 and entered into force on July 1, 1967. This Treaty simplified the institutional set- up of the Communities by establishing a Single Council and a Single Commission of the European Communities. Until that date, formally there were three Councils and three Commissions (one for each Community). The Merger Treaty were repealed by Article 9(1) of the Amsterdam Treaty of 1997 (1997, O.J. No. C.340). Also, see: Mathijsen P.S.R.F., *A Guide to European Union Law* (1999) at. 15;

[17] (1971) O.J. No.L 2 ;

[18] See: *Documents concerning the accession of Kingdom of Denmark, Ireland, Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Communities*, (1972) O.J. No. L 73;

[19] Ibidem;

[20] Ibidem;

[21] The conference was titled "Conference between the European Communities and the States Applying for Membership of these Communities," and it held its first session on June 30, 1970 in Luxembourg. Ibidem;

the Applicant States, while the bilateral meetings were meetings between the Community and each of the Applicant States separately. This form of conducting the negotiations did not seriously endanger the equal status of the Applicant States in the negotiations, but it did slow down the negotiation process.[22] The negotiations were conducted formally by the Council, with its President serving as an official spokesperson on a behalf of the Communities. Despite the regular meetings of the Council with the Applicant States[23], it was the Commission that played a crucial role in moving the negotiations to a successful conclusion. The Commission dealt both with the technical and substantial aspects of the negotiations[24]. This role of the Commission was a direct product of the practice developed in the course of the First Enlargement. The only explicit role provided for the Commission in Articles 98 ECSC, 237 EEC and 205 EAEC was to give an opinion on the membership application of any applicant state. Furthermore, the experience from the First Enlargement provided for more clarity with respect to the legal consequences and the content of the Commission's opinion in the accession procedure. Positive or negative, the opinion of the Commission represented a compulsory legal step before the Council decided on a membership application. However, it was not clear whether such opinion of the Commission should be given at the very start of the negotiations, at the end of the negotiations, or both at the beginning and end of the negotiations. In the First Enlargement, the Commission first gave its positive opinion before the start of the negotiations on October 1, 1969[25] (preliminary Commission's opinion) and then gave its definitive (positive) opinion on January 19, 1972[26], after the negotiations were concluded. In other words, the practical interpretation of Articles 98(1) ECSC, 237(1) EEC and 205(1) EAEC was that only the opinion given after the negotiation can be viewed as "Commission's opinion" in terms of these articles. The Council decided on the membership applications of Denmark, Ireland, Norway and UK only after the Commission delivered its opinion upon the conclusion of the negotiations[27]. With respect to the content of the Commission's opinion, the preliminary opinion was much more extensive than the second and final opinion. It covered the assessments of the Commission in relation to the Applicant's ability to assume the obligation of membership, and the

[22] The Communities held far more bilateral meetings with United Kingdom then with any of the other applicant states. Many issues were first negotiated with UK and then with the other applicants. See, Puissochet J.-P. *The Enlargement of the European Communities: A commentary on the Treaty and the Acts concerning the Accession of Denmark, Ireland, and the United Kingdom* (1975) at. 12;

[23] Meetings on the ministerial level were held once a month; meetings on a level of Permanent Representatives of the Six Member States to the Communities with the applicant states were held on a weekly basis. Ibidem;

[24] The technical aspects included fact-finding, explaining the community regulations, preparing negotiation documents on the behalf of the Communities, etc. The substantial aspects included: examination of the compatibility of the community secondary law with the law of the applicant states and defining the necessary transitional measures for adaptation of both community law and the law of the applicant states;

[25] See, Commission of the European Communities, *The Enlarged Community: Outcome of the negotiations with the applicant states*, Bull.EC. Supp. No.1 (1972);

[26] Ibidem;

[27](1972) O.J. No. L 73;

impact and the costs of the Enlargement[28]; c.) **Accession phase:** As a result of the differences between the Articles 237 EEC and 205 EAEC, on one side, and Article 98 ECSC, on the other side, this phase proved to be most complicated as a matter of practical implementation. All the involved players faced the challenge of finding a way to reconcile the required unilateral decision of the Council on the accession of new member states to the ECSC, as required by Article 98 ECSC, and the signing and ratifying of an Accession Treaty between the Member states of the Communities and the Applicant States for accession in EEC and EAEC, as required by Articles 237 EEC and 205 EAEC. The problem was additionally complicated by the single membership application for all three Communities by each of the Applicant States and by the common and simultaneous negotiations between the Communities and the Applicant States. In order to avoid violation of any of the Treaty articles, the "Acts of Accession" were, in fact rather unique legal combination of several Acts[29]: 1.*) Decision of the Council on accession of Denmark, Ireland, Norway and United Kingdom in ECSC*. This decision was based solely on Article 98 ECSC, and, in its legal nature, was a unilateral decision of the Council of the Communities. It stipulated the conditions of accession and had to be supplemented with unilateral instruments of accession by the accessing states; *2.) Treaty concerning the Accession of the Kingdom of Denmark, Ireland, Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the EEC and EUROATOM*. This treaty was signed by the six member states of the EEC and EAEC in accordance to Articles 237 EEC and 205 EAEC. In its legal nature and form, it was a classical multilateral treaty. The Member States of the EEC and EAEC, as sovereign states, as opposed to the EEC and EAEC, were parties to this treaty. The treaty was signed after the unilateral decision of the Council to allow accession of these four applicant states (January 22, 1972) in accordance with 237(1) EEC and 205 (1) EAEC. Before it could enter into force, the Treaty had to be ratified by all the concluding states. Except for Norway, all the other concluding states subsequently ratified the Treaty. Some ratified the Treaty by holding a referendum.[30]; *3.) Act concerning the conditions of accession and the adjustments to the Treaties* – This Act was an integral part of the Council Decision on the Accession to the ECSC and of the Treaty on Accession to the EEC and EAEC. Consequently, it embodied the conditions for accession for all Applicant States and in regard to the three Communities. The differentiations among the Applicant States, especially in regard to certain transitional measures, were stipulated in the supplementing

[28] See, Commission of the European Communities, The Enlarged Community: *Outcome of the negotiations with the Applicant states*, Bull. EC. Supp. No. 1 (1972).
[29] See, (1972) O.J. L 73;
[30] France was the only Member State that held a referendum on the Treaty. Denmark, Ireland and Norway also held referendums on the Treaty. Norway declined to ratify the Treaty after the negative result of the (consultative) referendum. See: Puissochet J.-P., *The Enlargement of the European Communities: A commentary on the Treaty and the Acts concerning the Accession of Denmark, Ireland, and the United Kingdom* (1975); pp.21-25;

documents[31]; *4.) Final Act* - This Act was adopted upon signature of the previous Acts and it was accompanied by text of a *Procedure for Adoption of Certain Decisions and Other Measures to be taking During the Period Preceding Accession.* In light of all this, the "Acts of Accession" were, in fact, a single "Act of Accession" for all Applicant States, apart from the instruments of accession to the ECSC and the instruments of ratification of the Accession Treaty to the EEC and EAEC. Pursuant to Article 2 of the Council Decision on Accession of the Applicant States to ECSC and Article 2 of the Treaty of Accession of the Applicant States to the EEC and EAEC, the "Acts of Accession" entered into force on January 1, 1973. Denmark, Ireland and the United Kingdom became members of the Communities on that date[32]. Furthermore, the First Enlargement shows not only how the Articles 98 ECSC, 237 EEC and 205 EAEC were interpreted, but also demonstrates how this experience shaped the legal nature, the content, and the dynamics of the accession procedure from the very start of its implementation.

2.1.2 The Second Enlargement – On January 1, 1981 Greece became the tenth member of the Communities. The accession of Greece to the Communities introduced two procedural novelties[33]. First, unlike the Applicant States in the First Enlargement, Greece had a previous pre-accession relation with the EEC pursuant to an Association Agreement, which was signed on July 9, 1961 and entered into force on November 1, 1962[34]. The legal basis for this Association Agreement was **Article 238 EEC[35]**:

" The Community may conclude with a third country, a union of states or an international organization agreements creating association embodying reciprocal rights and obligations, joint actions and special procedures.

Such agreements shall be concluded by the Council acting by means of unanimous vote and after consulting the Assembly.

Where such agreement involve amendments to this treaty, such amendments shall be subject to prior adoption in accordance with the procedure laid down in Article 236"

Article 238 EEC envisaged the Association Agreements as traditional international agreements, which provided for "reciprocal rights and obligations" among the parties. Unlike the Accession Agreements, these agreements were projected as agreements between the EEC and non-member states, not as agreements between the Member States and non-member States. Furthermore, Article 238 EEC neither included accession as an explicit objective of the Association Agreement, nor did it envisage such agreements as a pre-

[31] There are 11 annexes and 30 protocols attached both to the Council decision on Accession and the Accession Treaty. See, *Documents concerning the accession of Kingdom of Denmark, Ireland, Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland to the European Communities.* See, (1972) O.J. L. 73

[32] With a Decision from January 1, 1973, the Council of the European Communities adjusted the "Acts of Accession" in regard to Norway's refusal to ratify it. See, (1973) O.J. No. L.2;.

[33] More on the accession of Greece to the European Communities, see: Schloh Bernhard, *The Accession of Greece to the European Communities*, Ga. J. Intl. and Com. L. Vol. 10:2 (1980);

[34] (1978) O.J. No. L 161;

[35] 298 U.N.T.S. 11;

condition for accession. However, in the case of Greece, the Association Agreement served both as a tool and a pre-condition for accession. Article 72 of the Association Agreement explicitly provided that "as soon as the operation of the Agreement has advanced far enough to justify envisaging full acceptance by Greece of the obligations arising out of the Treaty establishing EEC, the Contracting Parties shall examine the possibility of the accession of Greece to the Community".[36] The Association Agreement was aimed at strengthening the trade and economic relations between the contracting parties, and to secure an accelerated development of the Greek economy, the very obstacle of Greek membership application to the EEC. The Association Agreement was designed to serve as a "pre-accession" phase in which Greece needed to achieve, with the help of the EEC, a level of economic development that would enable Greece to fulfill the membership obligations.[37] In order to enhance the cooperation between the EEC and Greece in pursuing this goal, Article 3 of the Agreement provided for an Association Council.[38] In practice, the achievement of this aim of the Agreement was impaired by the political situation in Greece[39]. Overall, the input of a "pre-accession" phase in the accession procedure was a more a direct product of a political decision of the institutions of the Communities and the Member States, rather then legally preconditioned in 237 EEC or 238 EEC. Second, the actual accession procedure was identical with that of the First Enlargement; however it added one significant novelty. Greece submitted its single membership application to all three Communities to the Council on June 12, 1975.[40] Unlike in the First Enlargement, the Commission, in its opinion, expressed reservation toward immediate Greek accession to the Communities and recommended a pre-membership period of unlimited duration to foster further economic reforms[41]. However, the Council, contrary to the Commission's opinion, decided to move to the accession negotiation phase, which lasted three years (1976-1979). The negotiations were successfully ended on May 28, 1979, when the Act of Accession was signed. This Act was modeled after the one in the

[36] (1978) O.J. No. L 161; The goal of accession was hinted also in the Preamble of the Association Agreement by stating that the Agreement is concluded, among other reasons, by " recognizing that the support given by EEC to the efforts of the Greek people to improve their standards of living will facilitate **accession of Greece to the Community at a later date."**;

[37] In its first, preliminary opinion on the Greek application, the Commission of the European Communities stressed the role of the Association Agreement in reducing the eventual economic impact of full membership status. Ibidem, pp. 2; Also, see, Nugent Neill, *The government and politics of the European Union* (1994), pp.31;

[38] In accordance with Article 65(3) of the Association Agreement, the Council was composed of members of the governments of the Member States and the members of the Council and the Commission of the Community on one hand, and of members of the Greek Government on the other. Ibidem;

[39] In the period between 1967-1974, the implementation of the Association Agreement was practically frozen because of the military rule in Greece after the coup d' etat on April 21, 1967. See, Schloh Bernhard, *The Accession of Greece to the European Communities*, Ga.J.Intl and Comp. L.(1980); Holland Martin, *European Community Integration*" (1992);

[40] Bill. EC. 6/75;

[41] E.C. Bull, Supplement 2/76;

First Enlargement[42]. The Council's disregard of the Commission's preliminary opinion was the first demonstrations that while the Commission's opinion on the membership applications is obligatory procedural step in the accession procedure, in accordance with 98 ECSC, 237 EEC and 205 EAEC, still it is not legally binding on the Council. Moreover, the subsequent change in the Commission's attitude toward the Greek accession, expressed in its favorable second opinion, was more a result of the political pressure of the Council, then of any dramatic changes in the Greek economy in the period between the two Commission's opinions. This outcome demonstrated that, in practice, the Council and the Member States have a crucial role in the accession procedure, as it was envisaged in the 98 ECSC, 237 EEC and 205 EAEC.

213 The Third Enlargement – The next enlargement of the European Communities, which is known as the "Iberian enlargement", included the accession of Spain and Portugal to the European Communities on January 1, 1986.[43] This Enlargement did not advance any novelty in the accession procedure. Nonetheless, two observations can be made: First, despite the similarities in the political and economic circumstances, Spain and Portugal did not go through a pre-accession phase like Greece did. Namely, just as Greece, Spain and Portugal had undergone dictatorship rule in the 1970's and had been having similar economic problems[44]. However, unlike Greece, the legal relationship between the Communities, Spain and Portugal prior to the accession were not conducted in a form of an Association Agreement, but in a form of preferential Trade Agreements with the EEC[45]. The absence of a pre-accession phase, i.e. Association Agreement in the Third Enlargement, constituted a political decision of the Council of the Communities, which was influenced by the Member States' political will. This means that the imposition of a pre-accession phase was the result of a political assessment, and not a phase of the accession procedure legally required for each prospective applicant state. The Council's decision to proceed with a pre-accession phase first in the case of the Greek accession did not have an *erga omnes* legal effect, that would affect the future membership candidates. Second, just as in the First Enlargement, there was an evident group dynamic developed in this Enlargement, especially, in the negotiation phase. The progress in the negotiations of Spain affected the progress of the negotiations of Portugal and *vice versa.*[46] For example, this group dynamic explains why Portugal's accession was delayed, despite the fact that Portugal applied and started with the negotiations earlier than Spain. Namely, Portugal applied for

[42] Previously, the Commission of European Communities gave its definitive and positive opinion on May 23, 1979. For the documents on the accession of the Hellenic Republic to the European Communities, see: (1979) O.J. EC. No. L 291;

[43] See, *Documents concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities*, (1985) O.J. No. L 302;

[44] See, Commission of the European Communities, *General Considerations on the problems of Enlargement*, Bull. E.C. Supp. 1/78;

[45] (1970) O.J. No. L 182 (Trade Agreement between EEC and Spain); (1972) O. J. No.L 301 (Trade Agreement between EEC and Portugal). These agreements were based on Article 113 EEC.

[46] The group dynamic also involves rivalry between the Applicant States who compete to access to the EU. See, Kaczorowska Alina, *EU Law Today* (1998) pp. 41;

membership on March 28, 1977 and started with the negotiations on October 17, 1978. Spain applied for membership later, on July 28, 1977 and also started with the negotiations later than Portugal, on February 5, 1979. However, the Acts of Accession with both Applicant States were signed on June 12, 1985 and both States accessed the Communities on the same date, January 1, 1986.[47] The negotiation problems with Spain, which were of economic nature and concerned the Spanish agriculture, fisheries and several industries, were the reason that led to the Portugal's accession to the Communities in the same time as Spain, despite of the earlier membership application and smoother negotiations[48].

2.1.4 German Reunification and the Enlargement - The German Reunification of 1990 may be considered only as a *de facto* enlargement of the European Communities[49]. It involved unification of one member-state of the European Communities, the Federal Republic of Germany (FRG), with a non-member state – the German Democratic Republic (GDR). The reunification, however, did not create a new state. The German Democratic Republic was absorbed by FRG pursuant to Article 23 of the Basic Law of FRG (*Grundgesetz*), which provided for "accession of other parts of Germany" in FRG[50]. This way, the legal identity and continuity of the FRG in terms of the international law were not affected. The Dublin meeting of the European Council, held on April 28 1990, took the view that there was no need for a revision of the Treaties because the "accession" of the GDR was covered by Articles 227 EEC, 198 EAEC and 79 ECSC[51]. These Articles dealt with the territorial application of the Treaties, and they referred to the territory of Federal Republic of Germany, without any further specification[52]. In other words, these Articles did not exclude the application of the traditional international law principle of moving treaty frontiers[53]. This opened the way for Council of the Communities to treat the German Reunification not as a matter of enlargement of the Communities with new member states, but as a matter of expanding the territorial application of the Treaties. Articles 98 ECSC, 237 EEC and 205 EAEC would not have been applicable because they referred only to membership applications of existing non-member European states. As a result of the reunification, GDR ceased to exist. None of the Member States challenged this

[47] See, *Documents concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Communities*, (1985) O.J. No.L 302*;*

[48]See Kaczorowska Alina, *EU Law Today* (1998) pp. 41;

[49] More on the German Reunification and enlargement of the Communities, see: Tomuschat Christian, *A United Germany within the European Community*, CML Rev. 27 (1990); Timmermans C.W.A., *German Unification and Community law*, CML. Rev. 27 (1990);

[50] See, Christian Tomuschat, *A United Germany within the European Community*, CML Rev. 27 (1990), pp.416;

[51] See, Bull. EC. 4 (1990);

[52] Article 227 EEC specifically mentions the FRG, while Articles 198 EAEC and 79 ECSC refer to the "European Territories of the Member States and non-European Territories subject to their jurisdiction". See, 261 U.N.T.S. 143 (ECSC Treaty); 298 U.N.T.S. 11 (EEC Treaty); 298 U.N.T.S. 169 (EAEC Treaty);

[53] According to this principle, the treaty always covers the entire territory of a state party, unless otherwise agreed. If the state frontier changes, so does the territorial scope of the treaty. See, Encyclopedia of Public International Law (North –Holland Publishing Company, Amsterdam, New York, Oxford, 1982);

interpretation of the founding Treaties. Thus, October 3, 1990 , the date of the GDR integration into FRG, was considered also as the date of its "accession" to the Communities.

2.2 The Treaty of Maastricht and its implications for the accession procedure in the Fourth Enlargement – The accession of Austria, Finland and Sweden to the European Union on January 1, 1995 opened a new chapter in the accession procedure[54]. It involved significant procedural changes in conjunction with the Single European Act[55] of 1986 and the Treaty on European Union (TEU) ("the Maastricht Treaty") from 1993[56]. Article 8 of the Single European Act introduced the assent of the European Parliament to the accession of any new member states. The main consequence of this reform was the increased importance of the European Parliament in the enlargement process[57]. However, this article was never applied. Later, it was absorbed into **Article O of TEU** ("the Maastricht Treaty**")**, which replaced 98 ECSC, 237 EEC and 205 EAEC:

" Any European State may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members.

The conditions of the admission and the adjustments to the Treaties on which the Union is founded which such admission entails, shall be the subject of an agreement between the member States and the Applicant State. This agreement shall be submitted for ratification by all the contracting states in accordance with their respective constitutional requirements".

Article O resembled Articles 98 ECSC, 237 EEC and 205 EAEC. The previous structure of the phases of the legal procedure, including application, negotiations, and accession, was preserved. Also, the Community phase and the Inter-State phase of the accession procedure were maintained. However, in comparison with these previous accession procedure articles, Article O introduces two major novelties in the legal procedure. First, Article O referred to applying for membership to the " Union", which is composed of three pillars: European Communities (EC, EAEC and ECSC), the Common Foreign and Security Policy, and the Cooperation in Justice and Home Affairs.[58] The new EU architecture removed any formal legal obstacle

[54] In fact, this Enlargement round includes Norway too, but again Norway failed to ratify the Accession Treaty because of the negative outcome of the ratification referendum held on November 28, 1994;

[55] (1987) O.J. No. L. 169;

[56] (1992) O.J. No. C. 191;

[57] This reform is a reflection of the general political effort (and pressure) to democratize the institutions of the Communities. The Preamble of the SEA expresses the determination of the Member States "to work together to promote democracy" and express the conviction that the " European Parliament, elected by universal suffrage, is an indispensable mean of expression" of the "wishes of the democratic peoples of Europe". (1987) O.J.No. L 169;

[58] Article A(3) of the Maastricht Treaty stipulated: " The Union shall be founded on the European Communities, supplemented by the policies and forms of cooperation established by this Treaty" . These other "policies and forms of cooperation" were regulated in Article J (Common foreign and Security Policy) and Article K (Police and Judicial Cooperation).See, (1992) O.J. No.C.191; The "European Communities" Pillar covered all three Communities: ECSC, EEC and EAEC. This pillar was

for a single membership application to the Communities and formalized the previous practice of submitting a single membership application. In other words, the TEU of 1993 (" Maastricht Treaty") provided the necessary legal basis for a single membership application and eliminated the legally problematic practice of single membership application exercised in the previous Enlargements. In addition, the accession procedure was no longer only an accession procedure confined to the ECSC, EEC and EAEC (the first pillar), but also included the Common Foreign and Security Policy (second pillar) and Justice and Home Affairs (third pillar).Second, as previously mentioned, Article O introduced a new player in the Community phase of the accession procedure[59]. It incorporated the assent of the Parliament as a compulsory procedural requirement. No state can access the European Union without the assent of the absolute majority of the component members of the European Parliament. This was designed as a very strict requirement and suggested changes in the balance of power among the Community institutions, especially affecting the dominant position of the Council in the accession procedure. In addition, this procedural reform changed the nature of the inter-state phase of the accession procedure. The accession of new member-states was no longer a Member State's prerogative and inter-governmental process, but it became a matter of the citizens of the European Union[60]. The accession procedure was also affected by Article D and Article J3 of the Maastricht Treaty. Article D formalized the previously established practice of two annual meetings of the Heads of States and Governments of the Member States of the Union as a European Council. Although not part of the institutional structure of the three Communities, the European Council had a major impact on the dynamic of the previous Enlargements. The European Council sets general political guidelines for further Community development, including in the area of the external relations and enlargement. Article D, in conjunction with Article J 3, provided for the necessary legal recognition of that practice and for implementation of the European Council's guidelines in the area of the common

established as a supranational pillar with a set of institutions common to all three Communities and managed independently from the Member States. Unlike this first pillar, the second and third pillars were envisaged to be governed in intergovernmental fashion. Furthermore, the Maastricht Treaty of 1993 changed the whole structure of the Communities as envisaged with the Founding Treaties(ECSC, EAEC and EEC treaties), by encompassing and modifying them. In the Enlargement context, it is important to point out that previous "accession" articles referred to SEPARATE applying to membership in each of the respective Community (Art. 237 EEC and 205 EAEC), or in the case of ECSC, it referred to "accession to Treaty" (Art. 98 ECSC). See Moussis Nicholas, *Access to European Union: the Law, Economics, Policies*(1998) pp. 33 ;

[59] On the European Parliament and the Enlargement of the Communities, see: Neunreither Karlheinz, *The European Parliament and Enlargement, 1973-2000, in* Redmond John and Rosenthal Glenda (eds.), *The Expanding European Union: Past, Present, Future* (1998*), pp. 65-83;*

[60] Until 1978, the Common Assembly was composed of delegates appointed by the National parliaments of the Member States from among their members (Articles 138 EEC and 108 EAEC). However, with the *Act concerning the Election of the Representatives of the Assembly by Direct Universal Suffrage*, which was signed in 1976 and entered into force in 1978, the members of the Common Assembly (later, European Parliament) were elected by the citizens of the Member states. See, (1976) O.J. L 278 ;

foreign and security policy through subsequent decisions of the Council of the EU. Article O was first implemented in the Fourth Enlargement[61]. The accession of Austria, Finland and Sweden, and the second failed attempt of Norway, so far constitutes the only accession of new Members States to the "European Union". Furthermore, this Enlargement is unique because the accession of the new Member States was conducted both according to the Articles 98 ECSC, 237 EEC and 205 EAEC and Article O of the TEU: **a.) Application phase** - All Applicant States applied for membership before the Maastricht Treaty entered into force[62]. Thus, the membership applications were addressed to the Council for accession to the three Communities, as opposed to EU. After the Maastricht Treaty entered into force, the applications for accession to the Communities transformed *ipso jure* into applications for accession in the EU, i.e. the Applicant States did not have to reapply for membership in the EU[63]. As in the previous Enlargements, the Council asked the Commission to give its opinion on each of the applications[64]. The Commission gave a positive preliminary opinion on all four applications[65]; **b.) Negotiation phase** [66] – In comparison with the previous Enlargements, the negotiation phases in the Fourth Enlargement were significantly shorter. Pursuant to the instructions of the European Council's Edinburg meeting in December 1992, the unofficial negotiations with the Applicant States were opened on February 1, 1993, before the TEU (the Maastricht Treaty) entered into force.[67] The negotiations were formalized after the Treaty entered into force on November 1, 1993. The Treaty of Accession with the Applicant States was signed on June 24, 1994, less than a year after the formal start of the negotiations. Two main reasons may explain these remarkably efficient negotiations. First, the Applicant States were all parties of the European Economic Area Agreement (EEA) between the EFTA countries and EEC, which entered into force on January 1, 1994.[68] As result of negotiation of the

[61] On the Fourth Enlargement, see: Booss Dierk and Forman John, *Enlargement: Legal and Procedural Aspects*, 32 CML Rev. 95-130 (1995); Jorna Marc, *The Accession negotiations with Austria, Sweden, Finland, Norway: A Guided Tour*, 20 Euro. L. Rev. 131-158 (1995*);*

[62] Austria applied for membership on July 17 (Bull. EC Supp. 4/92), Sweden on July 1, 1991 (Bull. EC 5/92) , Finland on March 18 (Bull. EC 6/92), 1992 and Norway on November 25, 1993(Bull.EC.2/93). The Maastricht Treaty entered into force on November 1, 1993;

[63] See also, Booss Dierk and Forman John, *Enlargement: Legal and Procedural Aspects*, 32 CML.Rev. 95-130 (1995);

[64] 28.07.1989 (Austria); 29.07.1991(Sweden); 06.04.1992(Finland) and 07.12.1992 (Norway);

[65] See, Bull. EC Supp. 4/92 (Commission's opinion on Austria's application), Bull EC 5/92 (Commission's opinion on Sweden's application), Bull. EC. 6/92 (Commission's opinion on Finland's application) and Bull. EC 2/92 (Commission's opinion on Norway's application);

[66] More on the negotiation phase of the Fourth Enlargement, see: Jorna Marc, *The Accession Negotiations with Austria, Sweden, Finland and Norway: A Guided Tour*, 20 Euro.L. Rev. 131-158 (1995);

[67] However, the European Council also laid down a condition that the negotiations have to consider the Maastricht Treaty. See, 25 E.C. Bull. 12/92;

[68] See, (1994) O.J. No. L 1 . Besides the applicant countries, this Agreement included Iceland, Liechtenstein and Switzerland. However, Switzerland did not become a part of the EEA because the EEA Agreement was not ratified on a referendum held on December 6, 1992;

EEA Agreement, the relevant legislative instruments of the EFTA countries have regularly been harmonized with the EU law.[69] Unlike in the previous Enlargements, Applicant States in the Fourth Enlargement faced reduced compatibility challenges. This considerably reduced the scope and the time of the negotiations. Second, the cumulated experience from the previous Enlargements provided for a much more efficient organization of the negotiations on the European Union and Member States' side. The negotiations between the Communities and the Member States and the Applicant states were simultaneously and parallel conducted, through a Negotiating Conference[70]. Although the Commission did not receive a formal negotiating mandate from the Council, following the established practice from the previous Enlargements, it still gained a much more prominent role in the conduct and the coordination of the negotiations than ever before. The Commission established an Enlargement Task Force (ETF), which was divided into four Units, one for each Applicant State[71]. The ETF dealt with the negotiating issues of the Fourth Enlargement on a regular basis, especially in relation to the common foreign and security policy, justice and home affairs, and the content of the EU legislative instruments. The role of the Commission was especially important in keeping the European Parliament informed about the state of the negotiations. Later, this proved to be crucial for obtaining the assent of the European Parliament for the Accession Treaty in accordance with Article O. Furthermore, for a first time, the Council formed a special Enlargement Working Group[72]. This Working Group dealt with the Enlargement issues on a regular basis and in constant contact with the Commission. Any issue that could not be resolved with the Commission was discussed and resolved with the Applicant States during the meetings of this Working Group. These special enlargement bodies accelerated the pace of the negotiations phase significantly; **c.) Accession phase** - As previously indicated, Article O of the Maastricht introduced several important novelties to the accession phase. First, the Fourth Enlargement was a first Enlargement that substantially involved the European Parliament in the accession procedure. The accession applications of Austria, Finland, Norway, and Sweden had to obtain the assent of the European Parliament. In practice, the assent of the European Parliament was not in effect that much an assent to the applications *per se*, but more it represented approval of the Draft Accession Treaty that was negotiated and submitted to the Parliament together with the accession applications[73]. According to Article O(2), an absolute majority of the members of the European Parliament had to vote for the accession applications. The legislative instrument that was used

[69] See, Booss Dierk and Forman John, *Enlargement: Legal and procedural aspects*, CML Rev.32 (1995), pp. 96;
[70] Ibidem, pp. 105;
[71] Ibidem, pp. 104-106;
[72] Ibidem, pp. 104. Also, see: Jorna Marc, *The Accession Negotiations with Austria, Sweden, Finland and Norway: A Guided Tour*, 20 Euro.L.R. 131, 132-133(1995);
[73] See, Documents concerning the accession of the Republic of Austria, the Kingdom of Sweden, the Republic of Finalnd and the Kingdom of Norway to the European Union, (1994) O.J. No. C 241;

for the assent of the European Parliament in the Fourth Enlargement was a *Legislative Resolution* on each of the accession applications separately. Therefore, there were four separate "absolute majorities", despite the fact that the Accession Treaty was common for all Applicant States. This means that even in situations when a common Accession Treaty is to be negotiated for several Applicant States, the Parliament may not give its assent to all of the candidates and, thus, the disapproved candidate(s) may be prevented from accession to the EU. This theoretical outcome represents a major difference in comparison to the previous (collective) Enlargements. In the previous Enlargements, such possibility existed only in respect to the approval of the "Acts of Accession" by the Member States, in the inter-state phase of the accession procedure[74]. In the past Enlargements, on the Community level, the Council unilaterally decided on the accession. Those decisions were very predictable because the Council was the chief and formal negotiator of the Acts of Accession. However, on the basis of Article O, the European Parliament gained equal power in the accession procedure. Moreover, Article O conditioned the Council to decide on the accession only after receiving the assent of the European Parliament. This was confirmed by the accession experience in the course of the Fourth Enlargement. The European Parliament gave its assent on the accession applications on May 4, 1994 and the Council's decision on the admission of Austria, Finland, Norway and Sweden followed on May 16, 1997[75]. Therefore, in effect Article O introduced two separate and unilateral decisions on the accession of new Member States, by two independent institutions of the Communities. In addition, in practical terms, the unilateral decision of the European Parliament made the accession phase a less predictable affair, even when compared to the ratification process of the Accession Treaty by the Member States. Namely, the representatives of the citizens of the Member States in the European Parliament may express their differences with the Member States and the other institutions of the Communities. Therefore, it was very easy to imagine a scenario in which the European Parliament may use this new, powerful tool in its struggle for a more prominent role in the Communities and in advancing its institutional reform agenda.[76] However, in the course of the Fourth Enlargement, the assent of the European Parliament was obtained smoothly and backed with a solid absolute majority[77]. Still,

[74] In the inter-state phase, such possibility comes very real when the Member states and the Applicant States have a minority governments, or when the parliament is not very submissive to the foreign policy of its government, as a matter of a domestic political culture, or when the Accession Treaty is put on a referendum;

[75] Both the European Parliament Resolution and the Council's Decision followed after the Commission gave its second and final positive opinion on the accession applications on April 19,1994. See, (1994) O.J. C. 241

[76] Indication for such scenario and "sentiments" were present in the course of the Fourth Enlargement. See, Neunreither Karlheinz, *The European Parliament and Enlargement, 1973-2000, in* Redmond John and Rosenthal Glenda (eds.), *The Expanding European Union: Past, Present, Future* (1998) pp. 74-80; Goebel Roger J. *The European Union Grows: The constitutional impact of the accession of Austria, Finland and Sweden*, Fordham, Int'l. L. J. (1995), pp. 1169-1172;

[77] Austria: 378 votes in favor, 24 against, and 60 abstentions; Finland: 377 votes in favor, 21 against and 61 abstentions; Norway: 376 votes in favor, 24 against, and 57 abstentions; Sweden: 381 votes in favor, 21 against and 60 abstentions; See, *Documents concerning the accession of the Republic of Austria, The Kingdom of*

it is not excluded that what is now only a theoretical scenario may become a reality in any of the future Enlargements of the EU, especially because the Amsterdam Treaty of 1997, which amended the TEU of 1993 ("the Maastricht Treaty"), did not introduce any changes in the accession procedure. Article 49 of the Amsterdam Treaty of 1997 replaced Article O of the TEU, but it did not change the role of the European Parliament in the accession procedure.[78] Consequently, the European Parliament, for example, might use this newly- obtained power to block the Enlargement of the EU toward some of the Central and Eastern European Applicant States. Second, by introducing single membership to EU and by removing the discrepancies in the accession procedure among ECSC, EEC and EAEC, Article O also brought significant changes in the legal form of the accession instruments (Act of Accession): *a.) Decision of the Council of the European Union on the admission of Austria, Finland, Norway and Sweden to the European Union* - The previous practice of separate Council's decisions on the accession to the ECSC, on one side, and on accession to the EEC and EAEC, on the other side, was replaced with one single Council decision "on the admission of the Republic of Austria, Republic of Finland, Kingdom of Norway and Kingdom of Sweden to the European Union."[79] Further, the Council's Decision referred to all three pillars of the EU, which had not yet existed in the previous Enlargements. Just as in the previous Enlargement, this Decision followed the second and final opinion of the Commission on the accession applications. However, as it was mentioned earlier, in the Fourth Enlargement, the Council's decision was given after the European Parliament had assented; *b.) The Accession Treaty* – Similarly to the Council's Decision, the Treaty covered all three pillars. Article O preserved the traditional international agreement nature of the Accession Treaty. The Treaty remained to be a Treaty between the Member States and the Applicant States, which had to be ratified by all the Contracting States in accordance to their constitutional requirements. Characteristically, in the course of the Fourth Enlargement, all four Applicant States put the Accession Treaty on referendum, notwithstanding whether or not such referendum was constitutionally required. Except for Norway, all Applicant States's referendums had positive outcome.[80] Just as in the

Sweden, the Republic of Finland and the Kingdom of Norway to the European Union,(1994) O.J. No. C. 241;

[78] Article 49 (1) states: " Any European State which respects the principles set out in Article 6(1) may apply to become a member of the Union. It shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the assent of the European Parliament, which shall act by an absolute majority of its component members" (1997) O.J. No.C. 340; Article 49 is also discussed later in this paper.

[79] Ibidem;

[80] The Austrian referendum was held on June 12, 1994 with 66.6% of the voters in favor of the Treaty; the Finnish referendum was held on October 17, 1994, with 57% of its citizens in favor of the Treaty. The Swedish referendum was held on November 13, 1994 with 52.2 % of the voters in favor of the Treaty, and the Norwegian referendum was held on November 29, 1994, with 52.2% of the voters AGAINST the Treaty. For a second time, Norway failed to ratify an Accession Treaty and become a Member State of the European Union. For more on the referendums, see: Goebel Roger J. *The European Union Grows: The Constitutional Impact of the Accession of Austria, Finland and Sweden*, *Fordham Int'l. L.J.* (1995); pp. 1172-1173;

previous Enlargements, the Accession Treaty stipulated that the Treaty should enter into force on a certain date (January 1, 1995), which was designed to pressure the Member States and the Applicant States to deposit their instruments of ratification before that date[81]. The Treaty entered into force on January 1, 1995. On the same date, the Council adopted a decision to make appropriate legal modifications to reflect the Norway's decision not to join the EU[82]; *c.) Act concerning the conditions of accession and the adjustments to the Treaties on which the Union is Founded* - Unlike in the previous Enlargements, this Act was only a formal part of the Treaty of Accession. Accompanied with protocols and annexes, it contained the common and separate conditions of the accession to the European Union of all the Applicant States, including temporary and transitional measures; *d.) Final Act* – Just as in the previous Enlargements, this Act served as a certification that the previously mentioned documents were adopted by all the Contracting States. It contained 50 Declarations that were made by some or all Contracting Parties, jointly or unilaterally.[83]

2.3 The Accession procedure under the Treaty of Amsterdam and its implications for the prospective Enlargement of the EU toward Central and Eastern Europe - The prospective "Eastern Enlargement" of the EU poses a much greater challenge for the EU for two reasons. First, the number of the states aspiring to join EU is higher than ever before. Second, the economic and political incompatibilities between the Member States and the States from Central and Eastern Europe are much greater than before: the prospective Eastern Enlargement involves former communist States that are currently undergoing extensive reforms to establish democratic political systems and market economies. As response to the prospective Eastern Enlargement, the Treaty of Amsterdam from 1997[84] amended Article O of the TEU ("the Maastricht Treaty"). Article 49, which replaced Article O, introduced some modifications aimed at providing explicit accession criteria, but it did not change the accession procedure. Facing the prospect of Eastern Enlargement, the EU institutions have developed and "institutionalized" a rather complex pre-accession phase, known as **pre-accession strategy**. The central objective of this pre-accession phase is to prepare the applicants and prospective applicants from Central and Eastern Europe to meet the obligations of the EU membership. Previously, the Greek Enlargement constituted the only precedent for implementation of a pre-accession phase. In respect to the Eastern Enlargement, the

[81] Article 2(2) of the Accession Treaty. See, *Documents concerning the accession of the Republic of Austria, The Republic of Austria, Kingdom of Norway, and Kingdom of Sweden* (1994) O.J. C. 241; Such Article was designed to avoid a situation when the Treaty would be blocked if one of the Member States would not ratify, and to avoid renegotiations of different Treaty provisions, as result of the time default either on the side of the Member States or the Applicant States. See, Booss Dierk and Forman John, *Enlargement: Legal and Procedural Aspects*, CML Rev. 32 (1995) pp 110;

[82] See, (1995) O.J. No. L. 1;

[83] These Declarations can serve as instruments of interpretation of the Treaty, in accordance with Article 31 of the Vienna Convention on Law of Treaties. See 1155 U.N.T.S. 331;

[84] (1997) O.J. No.C. 340;

pre-accession strategy was formally launched at the Essen European Council in December 1994[85], but also incorporated earlier agreements and commitments from the EU toward the Central and Eastern European countries. Unlike the Greek Enlargement, where the pre-accession phase was identical with the implementation of an Association Agreement, the pre-accession phase regarding the prospective Eastern Enlargement was designed to have four key elements: the Europe Agreements, the PHARE Program, the Single Market White Paper, and the Structured Dialogue: a.) *Europe Agreements* - These Agreements reflected the EU's commitment to assist the political and economic reforms and develop a deeper relationship with Central and Eastern Europe. They were designed to replace the so-called "First Generation," i.e. the Trade and Commercial and Economic Cooperation Agreements with these countries, which proved to be insufficient for such ambition task[86]. The first Europe Agreements were signed with Poland and Hungary in 1991, and entered into force in 1993.[87] These agreements exhibit a unique legal nature. They belong to the group of "mixed agreements," i.e. agreements which combine the treaty-making powers of the EEC and the Member States when concluding agreements with third countries[88]. The legal basis for these Agreements in the EEC Treaty was the amended version of Article 238 EEC[89]. Although a version of association agreements, these agreements had to be ratified by the Member States of EEC, which delayed their entering into force for two years[90]. Subsequent Europe Agreements were signed with the Czech Republic, Slovakia, Romania, Bulgaria, Slovenia, Estonia, Latvia and Lithuania.[91] The mixed character of the Europe Agreements is a direct result of their content. These agreements encompass economical and political dimensions, which touch upon the competencies both of the EEC and the Member States. The

[85] See, Conclusions of the Essen European Council, EC Bull. 12(1994);

[86] See: Horovitz Dan, *EC-Central/East European Relations: New principles for a new era*, CML.Rev. 27:259-284 (1990*);* Cremona Marise, *Community relations with the Visegrad Group*, Euro.L.R 18: 345-3561993); Rawlinson William, *An overview of EEC Trade with the non*-community countries and the law governing these external agreements, Fordham, Int'l L.J. 13:205-230 (1989-1990);

[87] See: (1003) O.J. No.L 347 (Europe Agreement with Hungary) and (1993) O.J. No. L.348 (Europe Agreement with Poland);

[88] See, Barbara Lippert, *Shaping and evaluating the Europe Agreements – The Community Side, in* Barbara Lippert and Schneider Heinrich (eds.) *Monitoring Association and Beyond: The European Union and the Visegrad States* (1995) pp.234-236;

[89] Just as in the case of 237 EEC, The 1987 Single European Act introduced assent of the European Parliament for each Treaty with "third countries and international organizations" See, (1987), O.J. No. L. 169;

[90] France and Germany were particularly late in ratifying the Europe Agreements with Poland and Hungary because of the bicameral character of their national parliaments. See, Lippert Barbara and Schneider Heinrich, *Association and Beyond: The European Union and the Visegrad States*, in Lippert Barbara and Schneider Heinrich (eds.), *Monitoring Association and Beyond: The European Union and the Visegrad States* (1995) pp. 41-42;

[91] See, (1994) O.J. No.L 360 (EA with Czech Republic); (1994) O.J. No. L. 359 (EA with Slovakia); (1994) O.J. No.L. 357 (EA with Romania); (1994) O.J. No. L. 358(EA with Bulgaria), (1998) O.J. No. L. 26 (EA with Latvia); (1998) O.J. No. L. 51 (EA with Lithuania); (1998) O.J. No. L 68 (EA with Estonia); and (1999) O.J. No. L. 51 (EA with Slovenia);

economical dimension aimed at liberalizing the trade and establishing free movement of goods between the EEC and the Central and Eastern European States over a ten year period.[92] The political dimension of the Europe Agreements provides for institutionalized and regular observance of the implementation of the Agreement and developing a political dialogue between EU and the Member States with each Associated State. The institutional instruments include: The Association Council, The Association Committee and the Joint Parliamentary Committee. The *Association Council* provides for annual bilateral meetings, which brings together ministers from the EU Member States, commissioners of the Commission of European Communities and ministers of the Associated States. It addresses issues in connection with the implementation of the Europe Agreement and considers proposals to make treaty modifications. The Association Council decides by unanimity, which reflects its "intergovernmental" character[93]. However, unlike the EEA Agreement, the Europe Agreements do not allow the Associated States to use the Association Council for being informed and consulted before decisions of the Council of the EU on matters of mutual interest. Thus, the Europe Agreements do not provide for the associated country's effective participation in the EU decision-making process. They do not represent an initial form of integration into the EU. The *Association Committee* is the operative body in the institutional structure provided by the Europe Agreements. It is composed of senior officials who represent the Council of the EU, the Commission of the European Communities and the Governments of the Associated States. It meets on a regular basis and addresses issues covered by the Europe Agreement in a more detailed and day-to-day manner. The Association Committee is complemented by a series of sub-committees, which provide technical support in certain issue areas. The *Joint Parliamentary Committee* is composed of members of the European Parliament and members of the national Parliaments of the Associated State. It meets twice a year, however, it does not have decision-making powers. It serves as a forum for cooperation between the European Parliament and the national Parliaments. It extends the relations between the EU and the Associated States on parliamentary level. In light of the roles of the European Parliament and the national Parliaments in the accession procedure, the work of this Committee may help securing the necessary parliamentary support for an eventual EU accession of the Associated State. Europe Agreements play a significant role in the accession procedure. As it was previously

[92] The Europe Agreements envisage this process as asymmetric, i.e. they provide for more rapid liberalization of the EEC side than on the side of the associated countries. Other economic issues that are covered are: movement of workers, establishment and supply of services, payments and capital in respect to investments, approximation of legislation relevant to the internal market and protection of intellectual, industrial and commercial property and other forms of economic and financial cooperation. However, unlike the Association Agreement with Turkey, the Europe Agreements do not envisage a customs union. *See*, Lippert Barbara, *Shaping and evaluating the Europe Agreements – The Community Side*, in Barbara Lippert and Schreider Heinrich, *Monitoring Association and Beyond: The European Union and the Visegrad States* (1995) pp. 239;

[93] See, Lippert Barbara and Schneider Heinrich (eds.), *Monitoring Association and Beyond: The European Union and the Visegrad States* (1995) pp. 240;

described, Article 72 of the Association Agreement with Greece explicitly provided for the eventual accession of Greece to the Communities. The Europe Agreements do not a contain provision that could constitute a legal obligation on the part of the Communities to provide for accession of the each of the respective Associated States, once they become able to observe the membership obligations. In their preambles, Europe Agreements only indicate the aspiration of each of the respective Associated States to apply for membership. In its legal nature, this represents a unilateral declaration of the associated countries, but it does not reflect any *legal* obligation assumed by the European Communities (now EU). However, the Europe Agreements do recognize that the Agreement may assist the Associated States to achieve membership. This demonstrates a *political commitment* of the parties to *de facto* treat the Europe Agreements as a pre-accession phase of the accession procedure.[94] Due to the political pressure from the Associated States, in June 1993, the Copenhagen European Council explicitly stated that the role of the Europe Agreements was to facilitate the desire of the associated countries to join the EU, once they became able to assume the obligations of membership.[95] This declaration of the European Council, however, was only a foreign policy guideline, and it did not carry any legally binding effect. It represents a political, not a legal interpretation of the legal substance of the Europe Agreements. However, under Article 13(3) of the TEU, the Council of the EU "shall take the decisions necessary for defining and implementing the common foreign and security policy on the basis of the general guidelines defined by the European Council"[96]. Therefore, one could argue that the Council of the EU has a legal obligation to transpose these policy guidelines of the European Council. So far, the Council of the EU has not initiated any amendments to the Europe Agreements similar to Article 72 of the Association Agreement with Greece. This may be a consequence of the decision of most Associated States to submit membership applications independently of the Europe Agreements.[97] There is no provision in the Europe Agreements that prevents Associated States from applying for EU membership. The membership applications of the Associated States called for reconsideration of the EU Enlargement Policy, especially the overall pre-accession strategy; *b.) PHARE Program* – Originally launched in 1989,[98] as a Program for Economic Reconstruction of Hungary and Poland, PHARE represents the one of the main instrument of the EU commitment to the economic

[94] For example, the Preamble of the Europe Agreement with Hungary declares: "Having in mind that the final objective of Hungary is to become a member of the Community and that this association, ***in the view of the parties***, will help to achieve this objective". See, (1993) O.J. L.No. 347;

[95] See, Conclusions of the Copenhagen European Council, Bull. EC. 6/1993;

[96] Treaty of Amsterdam, (1997) O.J. No. C. 340;

[97] Hungary applied on March 31, 1994; Poland applied on April 5, 1994; Romania applied on June 22, 1995; Slovakia applied on June 27, 1995; Latvia applied on October 13, 1995; Estonia applied on November 24, 1995; Lithuania applied on December 8, 1995; Czech Republic applied on January 17, 1996; Bulgaria applied on January 29, 1996; and Slovenia applied on June 10, 1996;

[98] PHARE program was launched at the G7 Arche Summit on June 14-16, 1989. It is a program administered by the Commission of the EU, but with financial support of 24 OECD countries. See, Moussis Nicholas, *Access to European Union* (1998) pp.37*;*

and political transition in Central and Eastern Europe. The program provides financial and technical assistance in virtually all Central and Eastern European countries.[99]; *c.) The White Paper*[100] – This document was prepared by the Commission of the European Communities, and constitutes an essential element of the pre-accession strategy proposed by the Essen European Council in December 1994, and subsequently adopted by the Cannes European Council in June 1995[101]. The White Paper is directed only to those Central and Eastern European countries that are associated to the EC through Europe Agreements. It provides guidelines and recommendations for approximating the domestic laws of the Associated States with the correspondent Community Internal Market legislation. Although the actual approximation process remained the responsibility of these countries, the White Paper recognized the need for EU expert advice and help in achieving this goal. As a result, the Commission of the European Communities in 1996 established a Technical Assistance Information Exchange Office (TAIEX) with the task of facilitating the transposition of Community legislation into the national laws. However, it is very important to point out that the White Paper is a unilateral pronouncement of the Commission of the European Communities. It does not contain any legal obligation for the EU to initiate accession negotiations with the Associated States if and when the recommended steps are undertaken; *d.) The Structured Dialogue*[102] – The Structured Dialogue was launched by the Copenhagen European Council in 1993 and later reaffirmed by the Essen European Council in 1994. It is a high level political forum that brings together the Heads of States[103] or Ministers[104] of the EU Member States and the Associated States from Central and Eastern Europe as well as the Commission of the European Communities. For the first time, prospective Applicant States were enabled to participate, on a regular and multilateral basis, in joint *political* meetings with the institutions of the EU and the Member States before the initiation of the actual accession procedure. Unlike the institutional framework of the Europe Agreements, the Structure Dialogue provided a forum for discussion of common interest issues that fall within the framework of the Second and Third pillar of the EU. However, the Structured Dialogue did not involve any decision-making, and, as a result, some have characterized this instrument as ineffective in practice[105].

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[99] See, O.J.No. L 375 (Hungary and Poland); (former) Czechoslovakia, (former) Yugoslavia and Bulgaria joined the Program in 1990 (O.J. No. 257); Albania, Estonia, Latvia and Lithuania joined in 1991(O.J.No.L357); Slovenia joined in 1992 (O.J.No. L. 227); and, Macedonia joined in 1996 (O.J. No.L.65);

[100] See, Bull. EU 6 (1995);

[101] Ibidem;

[102] See, Conclusions of the Copenhagen European Council (Bull. EC. 6/1993); Conclusions o f the Essen European Council (Bull. EC. 12/1994);

[103] The Heads of States meet together once a year within the framework of the Structured Dialogue;

[104] The Ministers meet twice a year within the framework of the Structured Dialogue;

[105] For an example, see: Burghardt Gunter and Cameron Fraser, *The Next Enlargement of the European Union*, European Foreign Affairs Review 2:7-21(1997); Nicolaides Phedon and Boean Sylvia Raja, *A Guide to the Enlargement of the European Union: Determinants, Process, Timing, Negotiations* (1997) pp. 29;

In the period 1994-1996, all of the associated Central and Eastern European countries have applied for membership. As a consequence, the EU had to reconsider its enlargement policy, including the pre-accession strategy. The EU thus had to simultaneously address the applications by initiating the procedure under Article O of the Maastricht Treaty and define the relationship between the accession procedure and the existing pre-accession strategy. The Copenhagen European Council had agreed that "the associated countries from Central and Eastern Europe that so desire shall become members of the European Union"[106]: *a.) Application phase* – This phase did not much differ from the previous Enlargements. After receiving the application from each of the Associated States from Central and Eastern Europe, the Council of Ministers (The Council) requested the Commission's preliminary opinion on the applications[107]. Moreover, the Madrid European Council urged to expedite all preparations of the opinions.[108] However, from the very start of the application phase, it was very clear that the Commission would face difficulties, which differed substantially from the previous Enlargements. The Commission was put in a situation to prepare 10 preliminary opinions almost simultaneously. In addition, it faced data collecting challenges in the Applicant States, which made the Commission's preliminary assessment on the capability of the applicants to observe the membership obligations more difficult. Many of these states were just established as independent states.[109] They lacked a developed and compatible statistical data-collecting system. As a consequence, the process of preparing the preliminary Commission's opinions and the application phase would have lasted when compared with the previous Enlargements. In order to speed up the process, the Commission decided to form a special Enlargement Team, whose main task was to gather the necessary data.[110] Another specificity of the application phase in the prospective Eastern Enlargement is the fact that the Commission's preliminary opinions on each of the ten Applicant States were first submitted to the European Council's meeting on July 15, 1997, as a part of a comprehensive package entitled "Agenda 2000: For a Stronger and Wider Union." Prepared by the Commission of the European Communities, Agenda 2000 was a document, which presented the Commission's recommendations for the EU's future economic, political, and institutional development. The Commission's preliminary opinions were submitted in Part II of the Agenda 2000 entitled "The Challenge of Enlargement"[111]. The Commission gave a

[106] See, Conclusions of the Copenhagen European Council, Bull.EC No. 6 (1993);
[107] The Council of Ministers asked for Commission's opinion on: 18.04.1994 (for the application of Hungary and Poland); on 17.07.1995 (for the application of Romania and Slovakia); on 30.10.1995 (for the application of Latvia); on 04.12.1995 (for the application of Estonia); 29.01.1996 (for the application of Lithuania, Bulgaria and the Czech Republic); and, on 15.07.1996 (for the application of Slovenia);
[108] See, Conclusions of the Madrid European Council, Bull. EU No. 12 (1995)
[109] The Estonia, Latvia, Lithuania, and Slovenia, for example;
[110] The basic instrument that was used for collecting the data was rather long questionnaire to each of the applicant countries. More on the content of these questionnaire and the preparation of the opinions, see: Graham Avery and Cameron Fraser, *The Enlargement of the European Union* (1998) pp. 34-40;
[111] See, Agenda 2000: For a Stronger and Wider Europe, Bull. EU. Supp. 5/97 (1997);

positive opinion only for five Applicant States: Hungary, Poland, the Czech Republic and Slovenia[112]. Moreover, the Commission proposed a ***principle of differentiation*** between the applicant countries in terms of the negotiations. The Commission suggested that the simultaneous opening of accession negotiations with these five countries should not be understood as an obligation for the simultaneous closure of the negotiations and the signing of an Accession Treaty. Each country should be treated separately with respect to its ability to meet the obligations of membership. This principle of differentiation represents a new challenge for the group Enlargements; b*.) Negotiation Phase* - The European Council's meeting in Luxembourg on 12-13 December 1997, endorsed the opinions and the recommendations of the Commission. It expressed its view that the Council of the EU should open the accession negotiations with Hungary, Poland, the Czech Republic, Estonia, and Slovenia in March 1998[113]. The Council of the EU opened the negotiations on March 31, 1998, when the foreign ministers of the Member states and the Associated States met [114]. Although the negotiations are still in progress, several observations can be made. First, just as in the previous enlargements, the organization and the dynamics of the negotiations are focused around the terms and the manner of acceptance of the acquis. But, in contrast to the previous enlargements, the Eastern Enlargement faces with a scope of the acquis much greater than ever before. In addition to that, the differences in the legal system between the applicant states, on one side, and member states and EU, on the other side, are also greater than ever before. As a consequence, prior to the formal opening of the negotiations, there was a preceding process of so-called "screening" of the acquis. The screening is conducted by Commission experts that present the 31 chapters of the acquis to the applicant states on multilateral and bilateral sessions with the aim to identify all the issues and potential problems that might occur during the negotiations. At the bilateral sessions, each of the applicant states are asked: whether they can accept the relevant chapter of the acquis; whether they intend to request transitional arrangements in the chapter under review; whether they have already adopted the laws necessary to comply with the acquis; if not, when they intend to adopt such laws; whether they posses the administrative structures and other capacity needed to implement and enforce EU laws properly; if not, when these structures will be put in place. The applicant states are expected to give answers to these questions, both written and oral. After the screening, the Commission prepares a report about the problems that are likely to occur during the negotiations with regard to each chapter of the acquis. This report also contains the opinion of the Commission with regard the problems that are identified in the applicant state' legislation and its capacity to implement and enforce the EU law. Additionally, the Commission prepares draft common negotiating position for the member states of the EU, but only with respect to the

[112] The Commission also recommended start-up of accession negotiations with Cyprus.
[113] See, Conclusions of the Luxembourg European Council, Bull. EU. 12 (1997);
[114] See, Bull EU 3 (1998);

issues that are within the Communities' competence and with respect to the issues that are of common interest of the member states, as defined in article K1 of the TEU.[115] Member states, through the Council, unanimously decide on taking a common negotiating position. This common position is put forward to the applicant states by the Presidency of the Council. With respect to the issues involving the second pillar of the EU (common foreign and security policy) and the third pillar of the EU (cooperation in justice and home affairs) , the common negotiating position is prepared and presented by the Presidency of the Council, in close cooperation with the member states and the Commission. Applicant states are also expected to define and present their negotiating positions. The negotiations on each of the chapters of the *acquis* start after both sides present their negotiating positions. With respect to the first five applicant states that have entered the negotiation phase, the screening process lasted over a year (March 1998-July 1999), although repeated screening of certain chapters of the acquis during the negotiations is still an open possibility. For comparison, the negotiation phase and the accession phase of the Fourth Enlargement *taken together* lasted about a year. Therefore, it can be noted that the screening of the *acquis* during the Eastern Enlargement has become sort of a sub-phase of the negotiation phase. Second, just as in the previous EU Enlargements, the current negotiations with the five Applicant States from Central and Eastern Europe are conducted on bilateral and multilateral level, within the framework of a negotiation conference (accession conference). The bilateral negotiations proceed through a framework of intergovernmental conferences, with biannual ministerial meetings and monthly ambassadorial meetings. Applicant states are expected to be represented by ambassadors or chief negotiators with a supporting team of experts. The General Secretariat of the Council has the role of secretariat of the negotiations. The multilateral meetings between the Council, the Commission and the Applicant States are used to discuss issues that may affect the negotiations with all five Applicants. However, as a consequence of the promotion of the principle of differentiation, it seems that the multilateral framework of the negotiations has lost the importance that it enjoyed during the previous group Enlargements. Third, the negotiations reflect the growing importance of the Commission's role in the conduct of the negotiations, while in the earlier Enlargements, it was the Council who had the role of chief negotiator. The practical aspects of the negotiations with the five applicants from Central and Eastern Europe, however, demonstrate interesting tendency. Although from a legal aspect, the Council still has the position of chief negotiator, the Commission starts to surpass its previous role. It can no longer be said

[115] According to article K1 of TEU, for the purpose of achieving the objectives of the Union, in particular the free movement of people and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest: a.) asylum policy; b.) rules governing the crossing by persons of the external borders of the Member States; c.) immigration policy;d.) combating drug addiction; e.) combating fraud on international scale; f.) judicial cooperation in civil matters; g.) judicial cooperation in criminal matters; h.) customs; i.) police cooperation, including within the European Police Office (Europol); See, Treaty on European Union, (1993) O.J. No.C 191;

that the Commission is a mere executor of the Council's decisions and provider for administrative support and technical expertise. In the current negotiations, the Council tends to follow the recommendations and the tempo suggested by the Commission. This subtle change in roles is a direct consequence of a shift of focus in the negotiations that seeks to accommodate the incompatibilities between the economic and political conditions of the Applicant States with the standards prevailing in the EU and its Member States. In addition to achieving the "conditions of admission", the negotiations evaluate the capability of the Applicants to observe the membership obligations, suggest the necessary steps, and asses the progress made by the Applicant states. This dimension of the negotiations, as it was mentioned earlier, is known as "screening," and it is carried out solely by the Commission and its Task Force for Accession Negotiations, which was established on January 21, 1998. With the arrival of the Prodi Commission in 1999, the Task Force was merged with the services responsible for pre-accession in the new Directorate General for Enlargement. Fourth, another distinct characteristic of these negotiations is the strengthening position of the European Parliament and overall openness, democratization, and public profile of the negotiations. In light of the required assent of the European Parliament in the accession procedure, the Commission informs the European Parliament on a regular basis about the progress of the negotiations. In this context, on July 5, 2000, the previously informal practice of informing the Parliament about the enlargement process has been transformed into a formal obligation with Annex II of the Framework Agreement on relations between Parliament and the Commission[116]. As a result, the European Parliament, more often than ever before, debates and issues resolutions and declarations directed at the progress of the negotiations and the Enlargement in general. What is particularly interesting is the fact that, in the Eastern Enlargement process, the European Parliament demonstrates greater independence with respect to its assessments and evaluation of the enlargement process. Furthermore, the European Parliament, when making evaluations of the enlargement process, relies more on its own experts and expert parliamentary bodies than on the ones presented by the Commission and the Council. For example, the Parliament, through its *Committee on Foreign Affairs*, appoints special rapporteurs who annually prepare so-called country reports for each applicant state.[117] Furthermore, the European Parliament intensifies more and more its cooperation with the national parliaments of the applicant states.[118]

[116] See, *Framework Agreement on relations between Parliament and the Commission-Annex II: Forwarding to the European Parliament information on international agreements and enlargement and involvement of the European Parliament in this respect*, Bull. EU 7/8 (2000);

[117] Also, the European Parliament forms committees of specialists, which monitor the negotiation process and prepare their expert opinions on the negotiations, on certain negotiation issue, etc.;

[118] This cooperation takes the following forms: a.) biannual conferences of the President of the EP with the presidents of the national parliaments of the applicant states; b.) biannual conferences of the EP, national parliaments of the member states of the EU, and the national parliaments of the applicant states; and, c.) formation of joint parliamentary committees that include members of the EP and the applicant states;

This, more engaged attitude of the European Parliament in the negotiations indicates that the Parliament will not give its assent for the accession treaty automatically as it had, more or less, in the past, but it will make its decision based on its own assessment about each of the candidate states. On the other side, keeping the European Parliament informed on a regular basis about its cooperation with the national parliaments of the applicant states should increase the chances of getting a parliamentary assent on the accession treaty. In addition to the increased role of the European Parliament, the EU institutions, especially the Commission, also put a lot of efforts to inform the general public in the member and applicant states about the prospective Enlargement through publications, regular press-conferences and the Internet[119]. In its *Strategic Paper* from November 8, 2000, the Commission emphasizes that " enlargement can only succeed if it is a social project involving all citizens and not just the elite"[120] In Commission's view, it is not enough to spread the information net, but it is vital to develop a wider dialogue in the societies of the member states and the applicant states. Such dialogue means establishing communications with all the interest groups and forms of social organizing that have influence over the public opinion, such as: political parties, churches, unions, women and youth organizations, and other NGOs. Special attention should be given to the educational system and the journalists. All this is important in view of the results of different public opinion surveys that indicate that although the enlargement process is generally supported both in member and applicant states, still significant resistance toward the process exists. If the procedural aspect of the enlargement is taken into account, especially the acts of ratification of accession treaty by national parliaments, then it becomes clear that EU must place greater efforts in providing transparency of the enlargement process and explaining the benefits of the EU enlargement to the citizens of the member states and applicant states. Fifth, , when it comes to the content of the negotiations, the Eastern Enlargement is not much different in comparison to the previous enlargements. The focus of the negotiations is placed on the terms under which the candidate state would accept, implement and enforce the acquis, as well as whether there is a need for transitional arrangements. What is specific about the Eastern Enlargement, besides the principle of differentiation, is the fact that the negotiations with each applicant state is in fact a serial of negotiations, Each episode of the negotiations deals with a specific chapter or chapters of the acquis and there are 31 chapters. When both negotiation sides put forward their negotiating positions and after these positions are brought to agreement, then the chapter in question is provisionally closed by unanimous decision by the negotiation conference. EU can ask re-opening of a provisionally closed chapter in two situations: first, when new acquis must be incorporated in the screening and negotiation process; and, second, when the candidate state does not meet up to its commitments in regard to the acceptance

[119] See, http://www.europa.eu.int;

[120] See, *Strategy Paper: Regular Reports from the Commission on the progress towards Accession by each of the candidate countries from November 8, 2000,* Bull. EU 11 (2000*);*

and implementation of the provisionally closed acquis. The latter case points to another characteristic of the negotiations in the Eastern Enlargement. Namely, the EU expects that the candidate states start accepting and implementing the EU acquis prior to formal conclusion and entering into force of the accession treaty. This represents another argument of the EU superiority in the negotiations beginning with the First Enlargement and adds to the argument that these negotiations are not classical international agreement negotiations of relatively equal subjects of international law. Furthermore, as it was pointed out earlier, transitional arrangements represent important subject of the negotiations. In the current negotiation with the first five candidate states from CEE at the conclusion of 2000, the Commission had received from the candidate states 340 requests for transitional measures in the area of agriculture and 170 requests for areas other than agriculture.[121] As in the previous enlargements, the transitional measures must have limited applications both in terms of time and scope. Finally, it has to be noted that with the conclusion of 2000, negotiations with the first five candidates from CEE are surpassing its second year and yet there have only been 16 of 22 chapters of the acquis provisionally closed. It seems that the longest negotiations so far in the history of EU enlargement would become another characteristic of the Eastern Enlargement. Sixth, the most novel characteristic of these negotiations is the interconnection and the interaction between the negotiations and the pre-accession strategy. The rationale for "blending" together the pre-accession phase and the negotiation phase of the accession procedure was outlined by the Commission in the Agenda 2000. In its final recommendations, addressing the membership applications and the "challenge of enlargement", the Commission emphasized that none of the Applicant States are fully prepared to observe the obligations of membership, including the applicant states for which it was willing to recommend earlier start-up of the accession negotiations. In addition, following the conclusion of the Amsterdam European Council[122] that the Enlargement should embrace all of the Applicant States, the Commission was not ready to write-off all the other applicants from the accession process. Instead, the Commission recommended a ***reinforced pre-accession strategy*** that would include all of the Applicant States, including the ones that would start the accession negotiations[123]. As the Commission pointed out in Agenda 2000, the main purpose of the reinforced pre-accession strategy is to "enable assistance to be directed toward the specific needs of each applicant, *with a view to the negotiations*, in a *coherent overall approach.*"[124] The principle elements of this reinforced pre-accession strategy are: the Accession Partnerships, the Reoriented PHARE, the Regular Reports, and the European Conference: *a.) The Accession Partnerships* – This instrument is designed to provide a single framework for the mobilization of all forms of Community assistance to the Applicant States, including the previously mentioned elements

[121] Ibidem;
[122] See, Conclusions of the Amsterdam European Council, Bull EU 6 (1997);
[123] See, Agenda 2000: For A stronger and Wider Europe, Bull. EU. Supp. 5/97 (1997);
[124] Ibidem;

of the pre-accession strategy. The legal basis for introducing the Accession Partnerships is the *Council Regulation (EC) No. 622/98 of 16 March 1998 on assistance to the applicant States in the framework of the pre-accession strategy, and in particular on the establishment of Accession Partnerships*[125]. The Accession Partnerships do not constitute agreements between the Communities/EU and the Applicant States. They are unilateral legal acts (Decisions) of the Council, adopted on the basis of the Council Regulation (EC) No. 622/98 and "with regard to the Treaty establishing the European Community". According to Article 2 of this Council's Regulation, the Council decides by qualified majority on the adoption or amendment of each Partnership, following a proposal from the Commission. The Applicant States are consulted in relation to the principles, the priorities, the intermediate objectives, and the conditions contained in the Partnership. The first Accession Partnerships for the Applicant States were adopted in March 30, 1998.[126] In their content, the Partnerships focus on providing precise definition of areas of priority in which applicant states have to show progress in order to increase their chances for EU membership (for example, strengthening the democracy, macroeconomic stabilization, etc.). The programming of the priorities is done in short, medium and long-term periods with the possibility for adjustment during subsequent revisions of the Accession Partnerships.[127] Also, the Partnerships contain a precise timetable for using the EU funds that the applicant state would receive from the EU through PHARE and other programmes of the Union. Setting priorities and timetables for results in the Partnerships clearly is aimed to help the Commission in evaluating the progress of each applicant state in its Regular Reports and to help condition the use of the EU financial help with concrete results ***(conditionality clause***).[128] Finally, it has to be mentioned that in connection to the Partnerships, each applicant state is expected to draw its National Program for the Adoption of the Acquis in which the applicant state, in detail, sets its own program for realization of the priorities as stipulated in the Accession Partnership. In this way, it can be said that the National Programs effectively (if not legally) become complementary part of the Partnerships; *b.) Reorientation of PHARE* – In respect to the Applicant States, the PHARE Program was refocused on the membership preparations. Most of the efforts are concentrated on two programs: institution building and investment projects. The purpose of the institution building is to help reform the national legislative, judicial, and administrative institutions, as well as the efforts to harmonize the domestic legal infrastructure with the one of the EU to include training civil servants, public officials, professionals and relevant private sector actors. The underlying premise of this program is that the integration process is not simply a process of approximation

[125] See, (1998) O.J. No. L. 85;
[126] (1998) O.J. No.L 121;
[127] The last revision of the Accession Partnerships was made in February 2000.
[128] On the basis of Article 4 of Council Regulation (EC) No. 622/98, each Accession Partnership provides for suspension of EU financial assistance to an Applicant state in cases of failure to respect its commitments under the Europe Agreement, Copenhagen criteria, and the priorities set in the Accession Partnership. See, Council Regulation (EC) No. 622/98, Bull.EU 6 (1998).

of applicant states' legislation to that of the EU; it is also one of ensuring the effective and correct implementation of the legislation, and that, of course, requires trained civil servants. The investment projects are intended to help the Applicant States in their efforts to bring their economies much closer to the Community standards by mobilizing investment, accepting Community quality standards, and working conditions; *c.) Regular Reports* – The Commission submits annual reports to the Council on the progress of each of the Applicant States in respect to their capability to observe the membership obligations. The reports are designed to provide the basis for the Council's decision governing the further conduct of the negotiations and the possible extension of the negotiations to other Applicant States;*d.) European Conference* – In Agenda 2000, the Commission stressed that the Structured Dialogue would be an inappropriate tool of the pre-accession strategy in light of the intensity of contacts between the Union and the applicants in course of accession negotiations and in the framework of the Accession Partnerships. Instead, the Commission proposed the establishment of European Conference as an annual forum of the heads of states and governments to consult on a broad range of issues in the areas of the Common Foreign and Security Policy[129] and Justice and Home Affairs.[130] The Luxembourg European Council welcomed the idea of European Conference, and several such Conferences have been conducted[131].

[129] In respect to the Common Foreign and Security policy, the European Conference provides forum for establishing a dialogue on the international problems of common concern, such as the relations with other non-applicant countries and issues that concern the European Security. See, www.europa.eu.int

[130] In respect to the Home and Justice Affairs, the European Conference provides forum for establishing cooperation and sharing issues of common concern, such as organized crime, terrorism, corruption, drug trafficking, illegal arms trade, and immigration. See, www.europa.eu.int

[131] The first Europe Conference was held on March 12 1998 in London the second on October 6, 1998 in Luxembourg; the third was held on July 14, 1999 in Brussels; the fourth was held on November 23, 2000 in Sochaux, France; and, the fifth was held on December 7, 2000.

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