



Council of the European Union
General Secretariat

Legal Service

Directorate 3 – External Relations

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Recent developments in EU external relations

The perspective of the Council Legal Service



Outline

- Introduction
 - The Council Legal Service and extra-judicial developments in EU external relations law
- Recent developments in the Court's case-law in EU external relations from the Council's perspective
- The enlargement process
 - Article 49 TEU
 - Wider Europe



Introduction

The Council's Legal Service

Functions

- ✓ **Legal adviser to the Council and the European Council**
 - Legal aspects of EU policy-making (Council and European Council Conclusions, Statements, Declarations)
 - International agreements and Non-binding instruments (Article 218 TFEU & the *Swiss MoU case*)

- ✓ **Ensures the legality and drafting quality of legal acts**
 - Russia restrictive measures, GSP Regulation, Anti-coercion instrument

- ✓ **Represents the Council and the European Council before the Court of the EU**



Recent developments

- **Inter-institutional cases** (*IMO, Armenia, Korea, Geneva Act*)
- **Restrictive measures** (Venezuela, Congo, Syria)
- **Misappropriation regimes** (Ukraine, Egypt)
- **Advisory** (Opinion 1/19, Opinion 1/20)
- **Other** (*EULEX Kosovo, Front Polisario*)



The enlargement process: the legal basis

Article 49 TEU

Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. The European Parliament and national Parliaments shall be notified of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament, which shall act by a majority of its component members. The conditions of eligibility agreed upon by the European Council shall be taken into account.

The conditions of 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.

Union pillar – intergovernmental pillar

Formal steps – informal steps



The enlargement process: formal steps

1. Any European State

What is European?

What is a State?

... Article 2 TEU

Case C-896/19 *Repubblika v Il-Prim Ministru*

62 *In particular, it follows from Article 2 TEU that the European Union is founded on values, such as the rule of law, which are common to the Member States in a society in which, inter alia, justice prevails. In that regard, it should be noted that mutual trust between the Member States and, in particular, their courts and tribunals is based on the fundamental premiss that Member States share a set of common values on which the European Union is founded, as stated in that article (...).*

63 *It follows that compliance by a Member State with the values enshrined in Article 2 TEU is a condition for the enjoyment of all of the rights deriving from the application of the Treaties to that Member State. A Member State cannot therefore amend its legislation in such a way as to bring about a reduction in the protection of the value of the rule of law, a value which is given concrete expression by, inter alia, Article 19 TEU (...).*

64 *The Member States are thus required to ensure that, in the light of that value, any regression of their laws on the organisation of justice is prevented, by refraining from adopting rules which would undermine the independence of the judiciary (...).*

... may apply to become a member of the Union. The applicant State shall address its application to the Council,...



The enlargement process: formal steps

2. *“The European Parliament and national parliaments shall be notified”*

3. *“The Council shall act unanimously after consulting the Commission and after receiving the consent of the European Parliament”*

- Unanimous decision by the Council
- Formal opinion from the Commission
- Consent by the European Parliament

4. *“agreement between the Member States and the applicant State”*

5. *“ratification by all the contracting States”*



The enlargement process: informal steps

Terminology and various steps

- “European perspective” and “potential candidates”
- “candidate status”
- “opening of accession negotiations”
- “negotiating framework”
- “Intergovernmental Conferences” (IGCs)
- “screening of the *acquis*”
- “opening chapters/clusters” – NB. enlargement fundamentals
- “unopening”, “reopening”, “suspending negotiations” – NB. the revised methodology for the enlargement process (dynamism and reversibility)
- “closing chapters/clusters/negotiations”
- “drafting the treaty of accession”



The enlargement process: the conditions of eligibility

The Copenhagen criteria

- "Membership requires that the candidate country has achieved
 - stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities,
 - the existence of a functioning market economy as well as the capacity to cope with competitive pressure and market forces within the Union.
 - Membership presupposes the candidate's ability to take on the obligations of membership including adherence to the aims of political, economic and monetary union.
 - The Union's capacity to absorb new members, while maintaining the momentum of European integration, is also an important consideration in the general interest of both the Union and the candidate countries."



European Council Conclusions, 23-24 June

MEMBERSHIP APPLICATIONS OF UKRAINE, THE REPUBLIC OF MOLDOVA AND GEORGIA

“10. The European Council recognises the European perspective of Ukraine, the Republic of Moldova and Georgia. The future of these countries and their citizens lies within the European Union.

11. The European Council has decided to grant the status of candidate country to Ukraine and to the Republic of Moldova.

12. The Commission is invited to report to the Council on the fulfilment of the conditions specified in the Commission’s opinions on the respective membership applications as part of its regular enlargement package. The Council will decide on further steps once all these conditions are fully met.

13. The European Council is ready to grant the status of candidate country to Georgia once the priorities specified in the Commission’s opinion on Georgia’s membership application have been addressed.

14. The progress of each country towards the European Union will depend on its own merit in meeting the Copenhagen criteria, taking into consideration the EU’s capacity to absorb new members.”



European Council Conclusions, 23-24 June

WIDER EUROPE

1. The European Council held a strategic discussion on the European Union's relations with its partners in Europe. It discussed the proposal to launch a European political community.

What, who and how?

The aim is to offer a platform for political coordination for European countries across the continent. It could concern all European countries with whom we have close relations.

The objective would be to foster political dialogue and cooperation to address issues of common interest so as to strengthen the security, stability and prosperity of the European continent.

2. Such a framework will not replace existing EU policies and instruments, notably enlargement, and will fully respect the European Union's decision-making autonomy.

3. Building on this first exchange of views, the European Council will revert to the issue.



Concluding remarks

- The enlargement process and the future of Europe
- The enlargement process as a driver for constitutional change

- Article 48(7) TEU

“Where the Treaty on the Functioning of the European Union or Title V of this Treaty provides for the Council to act by unanimity in a given area or case, the European Council may adopt a decision authorising the Council to act by qualified majority ...”

- Council: Article 16(4) TEU & Article 238(2)(3) TFEU
- Commission: Article 17(5) TEU
- EP: Article 14(2) TEU

