

# SWP Comment

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## Acceding Countries' Gradual Integration into the EU Single Market

Prerequisites, Opportunities and Hurdles

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Since 25 June 2024, the 27 member states of the European Union (EU) have been engaging in accession negotiations with Ukraine and Moldova. The EU wants and needs to provide a strategic response to new geopolitical challenges, especially the Russian war of aggression against Ukraine. At the same time, it intends to accelerate already tough negotiations with the countries of the Western Balkans. Indeed, new proposals are aiming to gradually integrate candidate and acceding countries into specific policy areas of the EU. Accession negotiations regularly focus on these countries' integration into the highly regulated European single market, and thus their adoption of the EU's *acquis communautaire* with regard to the free movement of people, goods, services and capital. Whether the EU's offer of these country's gradual integration into the EU single market sparks momentum depends on how both sides weigh expected costs and benefits, and whether it is possible to develop concrete measures and timetables for implementation.

In order to reaffirm the prospect of accession and accelerate corresponding negotiations, the EU has promised to gradually integrate the six non-EU Western Balkan countries of Albania, Bosnia and Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia (also known as the WB-6), as well as Ukraine, Moldova and Georgia into select policy areas. Two main elements of the EU's enlargement strategy, which was revised in 2020, will remain unchanged. First, the 33 negotiating chapters will still be nested under six thematic clusters, the first of which comprises the fundamental political criteria (fundamentals) that are

addressed at both the beginning and end of the negotiations. Second, and reinforced by the first, the EU wants to continue to ensure that the pace of negotiations is strictly conditional on the countries' track records in good governance and overall performance with respect to the *acquis*. It is hoped that these processes gain momentum through this so-called gradual integration approach. The European Commission lists the EU single market as the first and most important sector that could be considered for this new approach. Accordingly, individual candidates could be able to participate in and benefit from at least partial



integration into the EU's economic core even before their accession. At the same time, however, the obligations of EU membership would also become tangible, not least with regard to EU administrative procedures. To be gradually integrated into the single market, it is particularly essential that candidates adopt the EU's body of law, rights and obligations without restriction. Under no circumstances should they be able to choose their EU à la carte.

The partial integration of third countries into EU regulations is nothing new and has always been practised within the framework of association relationships. Nevertheless, there are some specific challenges and questions for both sides in the context of the accession processes:

a) Those who want to participate in the single market must still fulfil demanding conditions to accede; so how can gradual integration be organised in such a way that the candidate countries adopt the *acquis* more effectively and quickly than before?

b) Gradual integration should quickly produce tangible benefits for acceding countries; how then, can the EU ensure that this happens, as the European Council puts it, "in a reversible and merit-based manner" as a condition for enlargement?

c) Does gradual integration weaken Cluster 1's political requirements, or does it create new incentives for these countries to fulfil the conditions more quickly?

d) How can gradual integration and accession negotiations be interlinked in such a way that accelerates the negotiations?

The EU does not yet have answers to these questions. By pursuing the gradual integration approach, the EU is entering a learning process, the success of which will ultimately determine the overall credibility of its enlargement policy.

## The requirements of single market integration

For the candidates, gradual and early integration into the European single market is a

key goal. Inclusion in this market promises them access to the European goods and labour markets as well as integration into international supply chains and the facilitation of trade in goods and services. It also attracts investors and foreign direct investment. However, adopting the *acquis communautaire* with respect to single market legislation is the most difficult challenge in any accession process.

In this regard, candidate countries must engage in legal harmonisation to access the single market of products, services, persons and companies. First of all, they must establish the structural and legal foundations of a functioning market economy. This includes, above all, the legal basis for property, contract and commercial law. In addition, they need to meet numerous administrative and technical requirements in order to guarantee the functioning of the single market. Many of these requirements have resulted from the broad base of case law coming out of the European Court of Justice (ECJ) with regard to the single market.

Two principles should be highlighted here: (a) the mutual recognition of standards, and (b) the harmonisation of standards, which enables, further develops and permanently secures the free and unhindered exchange of goods, services, capital and persons in the common market. All goods that are legally traded in only one part of the single market must also be allowed to circulate freely in all other parts. The exchange of goods in the single market may only be affected by national provisions that are necessary to ensure public order and safety (i.e. legislation combating fraud or efforts to prevent corruption, illegal trade and organised crime), public health, consumer protection, the environmental and climate protection. Mutual recognition of standards requires two things: firstly, mutual trust among all member states with regard to the due diligence and effectiveness of national protection and safety regulations. This also means trusting that national regulations and administrations ensure the quality and expertise of the companies and businesses that produce the

goods or offer the services. Every single market economy's national requirements, which are recognised by all other members, must meet to the same high safety standards and level of protection. This also applies to the standards and legislation of non-EU member states with which the EU has established a free trade or association agreement that entails the perspective to accede to the EU.

Secondly, this mutual trust is therefore based on a common understanding between all single market countries as to what product safety every state must ensure and guarantee its citizens and what the countries can demand from European partners. If there are doubts about this, it could mean that the EU grants third countries' products and services only selective access to the single market in order to protect it from damage.

In addition to implementing harmonisation legislation, all countries participating in the single market in those areas in which common standards have been agreed upon are required to exercise administrative control of European standards and adopt strict testing and certification measures as well as, in some cases, national market surveillance. To this end, they must create, adequately equip and run appropriate national institutions that supervise, control and, if necessary, penalise manufacturers and distributors. Such institutions can take the form of, for example, testing laboratories, technical institutes or competent supervisory bodies with oversight over areas including financial services or occupational health and labour safety.

With regard to the exchange of goods, a distinction is made between product and production-related requirements. In order for a product to be freely exchanged within the single market, it must meet European safety and protection standards. New participants' entry into the single market must not result in reduced levels of consumer protection or safety. Furthermore, production of the new participant's commodity must not cause any distortions of competition. To this end, the EU must guarantee a

level playing field and monitor its development. For example, manufacturing standards for any given product must be harmonised to ensure adequate labour and environmental protections, otherwise a company could potentially manufacture a product for much cheaper and undercut competition by offering the product in the common market at a lower price. Consequently, market participants must harmonise their production-related requirements, such as environmental, labour and consumer protections, and relevant social policies. At the same time, new members must set up supervisory national institutions and adopt and define required administrative procedures. They must also harmonise their taxation principles as well as corporate and capital legal requirements with those of the other single market members.

Thus, in addition to the adoption of secondary legislation, integration into the single market also requires the creation of suitable structures and effective institutions as well as adequate human and financial resources. Setting the right priorities plays just as important a role here as following the appropriate sequence of steps – both for the candidates and for the EU itself.

### **The single market: access and participation without EU membership**

Depending on its own economic and political interests as well as those of the third country, the EU determines the scope and forms of access to the single market by way of trade and association agreements. In each case, the third country must fulfil the conditions defined by the EU in order to access or participate in the single market, and it must be able to meet these requirements on a permanent basis. Because the countries at hand are not (yet) EU members, contractual regulation is needed in order to capture the complexity of the single market.

Together with the three European Free Trade Association (EFTA) countries of Norway, Iceland and Liechtenstein, the EU

formed the European Economic Area (EEA), whose members fulfil the conditions of the single market *acquis* and thus are able to fully participate in the single market. This means that Norway, Iceland and Liechtenstein are part of the single market without being members of the EU. As single market legislation constantly progresses, the EEA provides a mechanism through which these three EFTA countries adopt new legislation in a quasi-automatic fashion. They are consulted in advance on legislative proposals and participate in the Council's implementation committees, however, they do not have a vote on the legislation in the Council or European Parliament.

Separately, the EU has concluded a large number of individual sectoral agreements with the fourth and final EFTA member Switzerland, allowing it partial access to the single market. However, the EU does not regard this as a model of association for other third countries. This network of bilateral agreements with Switzerland is extremely costly and inefficient because this form of voluntary harmonisation with relevant EU secondary legislation (autonomous adaptation) does not guarantee Switzerland's complete and swift adoption of current single market legislation.

The EU's economic partnership with the United Kingdom (UK) allows British products to enter the single market without duties or quotas. However, the UK is neither part of the EU customs union, nor does it automatically or regularly adopt new EU legislation or rules for the single market, including common product standards. The differences between British and European standards are therefore likely to multiply, necessitating more border controls for bilateral trade. Besides, the two sides still have not sought to negotiate the free movement of people, goods, services and capital.

While the four EFTA countries and the UK are not seeking EU membership, other third countries' EU aspirations still matter as this determines how association relations will be organised and defines these countries' access to the single market. In general, association agreements are expected

to include an explicit preparatory character for potential acceding countries, especially when the countries are not yet ready to enter the single market. These agreements contain clauses on the further development of relations, including in the realm of economic cooperation and integration. For many years, Stabilisation and Association Agreements (SAAs) with the WB-6 were expected to bring these countries closer to meeting the requirements of the single market *acquis* with the help of EU financial, technical and administrative support. The first SAA – with (North) Macedonia – came into force in 2004. The SAAs could certainly be used as an intermediate step in granting aspiring countries full participation in the single market, but this has hardly been the case in the past. Although the EU is the most important trading partner for the WB-6, this does not mean that they are ready to enter the single market.

The EU concluded association agreements and Deep and Comprehensive Free Trade Agreements (DCFTAs) with Ukraine, Moldova and Georgia at a time when it did not want to afford these countries the prospect of accession. To compensate for this and to adhere to the idea of “sharing everything but institutions”, the DCFTAs contain provisions on integration into the single market and trade conditions that are deeper and more favourable than those of the SAAs. Still, both the DCFTAs and SAAs would be suitable starting points for setting country-specific priorities for gradual integration, both in terms of their substance and parity of national and EU institutions – at the ministerial, parliamentary and senior official levels.

## Deficient single market maturity

A paramount prerequisite for gradual integration into the single market is visible progress in the fulfilment of the fundamentals in Cluster 1. There are political and material reasons why the EU only wants to accept countries that can demonstrate functioning separation of powers, rule of law, accountable public administrations

and anti-corruption efforts. However, these are the biggest problem areas for all candidate countries. Those wishing to participate in the single market must have established administrative structures and institutions for market surveillance. Nonetheless, the European Commission did not look favourably on these countries' reforms in the fields of public administration and institutional requirements, noting in its latest 2023 Communication on EU Enlargement Policy that "[f]or now, most reforms are more cosmetic than substantive". It went on to caution that the nine enlargement countries of the WB-6, Ukraine, Moldova and Georgia "remain at best moderately prepared in terms of quality of their public administration". These countries therefore fail to fulfil the fundamental economic criteria that would signal their readiness to enter the single market as they struggle to establish fully functioning market economies and the abilities to withstand competitive pressure in the single market.

Of the six thematic clusters that comprise the 33 total negotiating chapters, Cluster 2 "Internal Market" consists of nine chapters, including free movement of capital, free movement for workers, right of establishment and freedom to provide services, and competition policy. As far as these four freedoms are concerned, the European Commission stated in its November 2023 country-specific assessments that none of the nine countries were meeting targets. Progress in 2023 itself was also consistently low or limited.

Montenegro is the Western Balkan country with which the EU has been conducting accession negotiations the longest, since 2012. It has opened all nine chapters of Cluster 2 (Internal Market) but has not provisionally closed any. The European Commission assesses the country as only moderately prepared when it comes to the free movement of goods, and in its latest country report it recommended that Montenegro focus on aligning with single market legislation to standardise and strengthen its individual agencies. According to the Commission's analysis, Moldova, the most

recent country to become an accession candidate along with Ukraine, has only made limited progress in aligning its legislation with that of the European single market *acquis* while also having what is described as only "some level of preparation" to enter the single market. No candidate country in the Western Balkans currently fulfils the criterion of a functioning market economy. Here, the Commission considers Moldova and Ukraine to be "between an early stage and some level of preparation". Therefore, it is too early to partially integrate Moldova or Ukraine into the single market, as doing so would jeopardise the single market as the core of EU integration.

### **Gradual integration: rewards and added value**

Even in the context of gradual integration, the EU is not compromising in terms of aspiring countries' requirement to harmonise with the *acquis* and create necessary structures and institutions. However, through gradual integration, the EU is aiming to reduce the costs associated with accession by gradually and partially affording candidate countries access to the single market early on. Third countries' efforts to adapt should be rewarded with effective economic and financial benefits quickly and before their accession.

Still, one central problem remains, even with this modified strategy: The adjustment costs incurred by the accession countries are only offset – to a degree – by temporary, not permanent transitional arrangements with the EU. Here, it is only during the pre-accession phase that the EU can alleviate these burdens, particularly by granting financial aid and technical/administrative support. In previous rounds of enlargement, the candidates calculated that their adaptation efforts and costs would be outweighed by the benefits of future integration into the EU as a full member. This made the one-sided burden politically acceptable.

The EU's primary aim with gradual integration is to spur new momentum in the

slow accession processes of the WB-6, where the main obstacle has been massive democratic and governance deficits. These deficits must also be remedied for the WB-6 to gain faster access to the single market, whether for individual products or entire industries or sectors. If systemic reforms take effect in the WB-6, this should pay off even before full accession. The EU is also offering financial support to these countries to help them fulfil the requirements of the single market. Whether this incentive mechanism works as intended will depend on how the governments of these countries weigh the potential (and usually future) advantages of partial single market integration against the (current) political and financial costs of far-reaching structural reforms.

The idea of gradual integration is enshrined in the latest negotiating frameworks in which the 27 EU member states set out the principles for accession negotiations. However, there is no direct link between that which is agreed upon over the course of gradual integration and that which is agreed upon over the course of formal negotiations at intergovernmental conferences. A solution could be for the European Commission to assess the success of these countries in certain areas of the single market during accession negotiations and gradual integration prior to becoming full members of the EU. These achievements could then also be considered when assessing the third countries' fulfilment of the benchmarks that close negotiation chapters. Killing two birds with one stone, this could simplify and accelerate the accession negotiations, provided that all 27 member states accept the Commission's assessment. Members could then rely on the Commission's decision if it would only authorise financial aid to accession countries in the context of gradual integration if the requirements for the application of the single market *acquis* were met. Measures arising over the course of gradual integration could also be adopted by the acceding countries' institutions and thus become legally binding. However, it remains to be seen what this

would mean for the actual accession negotiations. The negotiating framework developed by the EU for the assessment of partial single market readiness could therefore influence the pace and dynamics of the accession negotiations.

## Concrete implementation is required

One weakness of the new enlargement strategy is that gradual integration into the single market has not yet been tailored to the individual accession candidates based on their own unique circumstances. The starting conditions for the new eastern European candidates Moldova and Ukraine differ considerably from those of the WB-6. Indeed, it has not been specified how gradual integration into the single market would be made possible. What are the political prerequisites, and what are the legal and institutional measures that would need to be implemented, and in what order? In order to be able to utilise the enlargement strategy's new gradual integration instrument, the EU will need to clarify its ideas and incentives for each candidate country's entry to the single market as quickly and comprehensively as possible.

In the country-specific negotiating frameworks, the 27 member states have stipulated that there should only be a few and short transitional periods in connection with the expansion of the single market. Gradual integration should focus on areas "where the candidate country already has the capacity and expertise for exports to the EU, and on areas of mutual strategic interest where the candidate country has significant production but needs to meet EU norms and standards, and as well on areas where there is a vast untapped potential". This provision from the negotiating framework with Albania is an example of the EU's desire to level the playing field and ensure the integrity of the single market.

In the future, the EU needs to concretely define and specify necessary institutional, administrative and technical structures and



instruments on a case-by-case basis, as these will vary significantly from sector to sector and country to country. It would also make sense for the EU to recommend the best sequence of steps and to offer precise timetables and implementation plans for the necessary reforms, once again, customised for each candidate.

In November 2023, the European Commission submitted a proposal on a growth plan for the Western Balkans and a reform and growth facility for its financing. Here, it voiced both its ideas on gradually integrating the WB-6 into the EU single market as well as its insistence on requiring the WB-6 to pursue a results-oriented reform policy. However, the proposed areas of partial integration into the single market are rather selective (including inclusion in the Single Euro Payments Area – SEPA, the establishment of a voluntary roaming agreement and the recognition of professional qualifications) and no comprehensive access to the single market for an entire industry or sector has been offered. The areas in which partial integration may be the easiest and quickest are not at the direct centre of the single market. For example, the Commission highlighted acceding countries’ potential to participate or be included in the areas of: European transportation and energy, climate and environmental policy, consumer protection policy for food production, European cohesion and economic policy under the European Semester, and migration and border management.

In any case, the ball is now in the court of the WB-6, which the Commission is calling on to make its own proposals. This bottom-up approach forces the WB-6 to take more ownership and to clarify their interests and plans to reform. The existing bilateral association committees could function as fora where these countries’ national plans are compared and made more concrete.

Still, the European Commission itself notes a number of concerns with gradual integration. In the event that the single market is opened up to certain goods and

services in a more comprehensive way, the EU would undoubtedly be faced with the question of how it can ensure that EU regulations are comprehensibly applied and enforced in non-EU single market states, and thereby protect its own citizens and companies. If it is to simply rely on national technical regulations in lieu of harmonisation with EU requirements through EU legislation, the EU must ensure that these regulations are still interpreted by the acceding countries’ authorities in accordance with EU law. This includes complying with the interpretation of requirements by the European Court of Justice (ECJ), whose judgements are not yet binding for the acceding countries. Considering this, the European Commission’s concrete ideas for gradual integration into the single market also appear to be cautious and reserved. In this context, the establishment of a Single Market Academy may be the most appropriate proposal, as it would offer the WB-6 a point of contact that could provide concrete assistance to help these countries develop their structures and capacities in key areas including standards, certification and conformity. Nonetheless, such a mechanism would certainly not constitute the market integration that the candidate countries hope for and expect; and it could therefore prompt them to reweigh the burdens and benefits of EU membership and thus strengthen and accelerate their reform efforts.

### **Conclusion: hurdles remain high**

Upon first glance, the potential of gradually integrating candidate countries into the single market appears to be a reasonable step in furthering the desired (and geopolitically necessary) dynamisation of the EU’s enlargement processes. This applies first and foremost to the WB-6. On second glance however, certain conceptual and practical questions remain unanswered, for both the EU and the candidate countries. The requirements for single market readiness remain unchanged and the cri-



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teria cannot be softened. The burden of compliance, i.e. reform, harmonisation of EU and national legislation, and the establishment of stable administrative structures, can only be partially eased through EU funding. The EU's commitment to afford more financial support is nearly to the point of offering EU structural funds, which are only granted in the event of full membership. In this respect, the EU has largely exhausted its range of instruments. It cannot (and must not) permanently exempt the candidate countries from certain areas of the single market *acquis* lest it run the risk of damaging the core of EU integration, cohesion and political stability. It remains to be seen whether the EU can enforce the political conditions vis-à-vis the political elites of the acceding countries within the framework of gradual integration. The link between better governance and professional public administration on the one hand and access to the single market and its economic benefits on the other, must be positioned at the centre of accession negotiations and association relations. This also means that benefits will only be granted if the conditions are met, and the former will be withdrawn if the latter are not reliably met. If acceding countries' elites are not prepared to adopt the EU's political, economic and social model, access to the EU single market will only be open to them without formal EU membership. Here, they would still need to comprehensively fulfil the legal obligations, but not necessarily the political and normative conditions. However, the financial support at their disposal in this case would likely also be significantly diminished.

The heightened imperative – if not dominance – of the geopolitical (and geo-economic) rationale for future enlargement must not, however, mean that enlargement and negotiation proceedings are no longer based on merit, performance and the fulfilment of objective parameters. The politicisation of enlargement risks undermining

the importance of the functioning single market and its accompanying policies that ensure the (enlarged) EU's continued cohesion and prosperity.

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