Rule of Law Conditionality in EU Enlargement: Benchmark Criteria and Democratic Backsliding

კანონის უზენაესობის პირობითობა ევროკავშირის გაფართოებაში: ნიშნულების კრიტერიუმები და დემოკრატიული უკუსვლა

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Rodica Crudu[1a]

როდიკა კრუდუ[1]

[1] Academy of Economic Studies of Moldova, Moldova

[1] მოლდოვას ეკონომიკური კვლევების აკადემია, მოლდოვა

* crudu.rodica@ase.md

Abstract

Introduction. Rule-of-law conditionality has become a defining feature of European Union enlargement as accession increasingly connects Article 49 TEU with the values of Article 2 TEU and more developed standards of judicial independence, effective judicial protection, and institutional accountability. Yet the accession framework remains better equipped to measure progress than deterioration from standards already attained. **Methods.** The article combines doctrinal legal analysis of Articles 2, 19, and 49 TEU, relevant Court of Justice jurisprudence, and EU enlargement methodology with a structured comparison of Moldova, Ukraine, Albania, Montenegro, and Serbia. It examines Commission reports, Council and European Council documents, accession benchmarks, and related institutional materials through the analytical dimensions of compliance, track record, and non-regression. **Results.** The analysis shows that accession conditionality has evolved from predominantly formal compliance towards implementation and demonstrable track records, while CJEU jurisprudence increasingly provides a substantive constitutional vocabulary for assessing rule-of-law reforms. Comparative evidence nevertheless reveals an asymmetry: benchmarks and monitoring have become increasingly sophisticated in identifying progress but remain less systematic in determining when deterioration constitutes regression from an attained level of protection. **Conclusion.** The article argues that non-regression should operate as an explicit substantive dimension of benchmark assessment, distinct from track record, while reversibility should function as a proportionate procedural response to serious deterioration. Compliance, track record, and non-regression should therefore be understood as cumulative analytical dimensions contributing to constitutional resilience. This approach can strengthen merit-based enlargement without treating candidate constitutional arrangements as immutable or implying that Member-State obligations apply identically before accession.

Keywords: EU enlargement; rule of law conditionality; accession benchmarks; democratic backsliding; non-regression

აბსტრაქტი

შესავალი. კანონის უზენაესობის პირობითობა ევროკავშირის გაფართოების განმსაზღვრელ მახასიათებლად იქცა, რადგან გაწევრიანება სულ უფრო მეტად უკავშირებს ევროკავშირის შესახებ ხელშეკრულების (TEU) 49-ე მუხლს ამავე ხელშეკრულების მე-2 მუხლით გათვალისწინებულ ღირებულებებსა და სასამართლოს დამოუკიდებლობის, ეფექტიანი სასამართლო დაცვისა და ინსტიტუციური ანგარიშვალდებულების უფრო განვითარებულ სტანდარტებს. თუმცა გაწევრიანების ჩარჩო უკეთ არის მორგებული პროგრესის გაზომვაზე, ვიდრე უკვე მიღწეული სტანდარტებიდან გაუარესების შეფასებაზე. **მეთოდები.** სტატია აერთიანებს ევროკავშირის შესახებ ხელშეკრულების მე-2, მე-19 და 49-ე მუხლების,

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მართლმსაჯულების სასამართლოს შესაბამისი პრაქტიკისა და ევროკავშირის გაფართოების მეთოდოლოგიის დოქტრინულ სამართლებრივ ანალიზს მოლდოვის, უკრაინის, ალბანეთის, მონტენეგროსა და სერბეთის სტრუქტურირებულ შედარებასთან. სტატიაში შესწავლილია კომისიის ანგარიშები, საბჭოსა და ევროპული საბჭოს დოკუმენტები, გაწევრიანების ნიშნულები და სხვა შესაბამისი ინსტიტუციური მასალები სამი ანალიტიკური განზომილების მიხედვით: შესაბამისობა, შედეგების დადასტურებული ისტორია და უკუსვლის დაუშვებლობა. **შედეგები.** ანალიზი აჩვენებს, რომ გაწევრიანების პირობითობა უპირატესად ფორმალური შესაბამისობიდან განვითარდა განხორციელებისა და შედეგების დემონსტრირებადი ისტორიისკენ, ხოლო ევროკავშირის მართლმსაჯულების სასამართლოს (CJEU) პრაქტიკა სულ უფრო მეტად უზრუნველყოფს არსებით კონსტიტუციურ ლექსიკონს კანონის უზენაესობის რეფორმების შესაფასებლად. მიუხედავად ამისა, შედარებითი მონაცემები ავლენს ასიმეტრიას: ნიშნულები და მონიტორინგი სულ უფრო დახვეწილი ხდება პროგრესის იდენტიფიცირებისას, მაგრამ ნაკლებად სისტემური რჩება იმის განსაზღვრისას, თუ როდის წარმოადგენს გაუარესება უკუსვლას დაცვის უკვე მიღწეული დონიდან. **დასკვნა.** სტატიაში დასაბუთებულია, რომ უკუსვლის დაუშვებლობა უნდა მოქმედებდეს როგორც ნიშნულების შეფასების აშკარა არსებითი განზომილება, რომელიც განსხვავდება შედეგების ისტორიისგან, ხოლო შექცევადობა უნდა ფუნქციონირებდეს როგორც სერიოზულ გაუარესებაზე პროპორციული პროცედურული რეაგირება. შესაბამისად, შესაბამისობა, შედეგების ისტორია და უკუსვლის დაუშვებლობა უნდა იქნეს გაგებული როგორც კუმულაციური ანალიტიკური განზომილებები, რომლებიც კონსტიტუციურ მედეგობას უწყობს ხელს. ამ მიდგომას შეუძლია გააძლიეროს დამსახურებაზე დაფუძნებული გაფართოება ისე, რომ კანდიდატი ქვეყნების კონსტიტუციური მოწყობა უცვლელად არ იქნეს მიჩნეული და არ იგულისხმებოდეს, რომ წევრი სახელმწიფოების ვალდებულებები გაწევრიანებამდე იდენტურად მოქმედებს.

საკვანძო სიტყვები: ევროკავშირის გაფართოება; კანონის უზენაესობის პირობითობა; გაწევრიანების ნიშნულები; დემოკრატიული უკუსვლა; უკუსვლის დაუშვებლობა.

1. Introduction

1.1. The Renewed Enlargement Context

EU enlargement has regained a central position on the political, strategic, and constitutional agenda of the European Union. Russia's full-scale invasion of Ukraine substantially altered the geopolitical context of enlargement, bringing to an end a prolonged period characterised by enlargement fatigue and limited progress in the Western Balkans. The applications for EU membership submitted by Ukraine, Moldova, and Georgia in 2022, followed by the European Council's decision to grant candidate status to Ukraine and Moldova in June 2022 and the opening of accession negotiations with both countries in June 2024, marked the emergence of a new enlargement cycle (European Council, 2022; Council of the European Union, 2024a, 2024b). The European Commission (2024a) has emphasised the renewed geopolitical significance of enlargement and its contribution to European security, peace, stability, and prosperity.

This renewed enlargement agenda operates within an accession framework that has evolved considerably since the formulation of the Copenhagen criteria. The political criterion concerning democracy and the rule of law has progressively been supplemented by a more elaborate system for assessing judicial independence, fundamental rights, anti-corruption policies, democratic institutions, and administrative capacity. The introduction of Chapters 23 "Judiciary and Fundamental Rights," and 24 "Justice, Freedom and Security," the development of the "fundamentals first" principle, and the revised enlargement methodology have transformed the rule of law from one accession requirement among others into a structural condition affecting the overall trajectory of negotiations (Hoxhaj, 2024; Knežević Bojović & Ćorić, 2023; Ognjanoska, 2021; Phinnemore, 2026). Under the revised methodology, the fundamentals cluster is opened first and closed last, while progress or regression in fundamental reforms may affect the overall pace of negotiations. This institutional design reflects a growing recognition that accession readiness depends not merely on formal approximation to the acquis, but also on the quality and functioning of the candidate country's democratic and rule-of-law institutions.

At the same time, contemporary enlargement must be situated within the EU's parallel experience of democratic and rule-of-law backsliding among its existing Member States. Earlier scholarship on

conditionality had already identified the potential vulnerability created by the disappearance of the membership incentive once accession occurs (Grabbe, 2006; Kochenov, 2008; Schimmelfennig & Sedelmeier, 2004). Subsequent developments transformed this concern into a significant constitutional challenge. The erosion of judicial independence and institutional accountability in certain Member States demonstrated that legal and institutional reforms undertaken during the pre-accession period do not necessarily guarantee their subsequent consolidation or durability (Kelemen, 2017; Pech & Scheppele, 2017; Sedelmeier, 2014, 2017). Difficulties in addressing such developments, including through Article 7 TEU, contributed to the gradual expansion of the Union's internal rule-of-law toolbox through judicial, political, monitoring, and financial mechanisms (Pech & Scheppele, 2017; Sedelmeier, 2017).

1.2. The Enlargement Paradox: From Compliance to Non-Regression

The increasing complexity of rule-of-law conditionality reveals a fundamental paradox within the EU enlargement process. The Union's capacity to induce compliance is closely connected to the incentive of membership, which enables progress towards accession to be made conditional upon domestic legal and institutional reform (Grabbe, 2006; Schimmelfennig & Sedelmeier, 2004; Vachudova, 2005). This mechanism can generate significant legislative and institutional change. Rule-of-law reform, however, presents a more complex challenge. Judicial independence, institutional accountability, democratic checks and balances, and constraints upon the arbitrary exercise of public authority cannot be secured solely through legislative approximation or the formal establishment of institutions (Kochenov, 2008). The experience of the Western Balkans demonstrates that extensive formal reforms may coexist with persistent political interference, institutional fragility, or patterns of state capture (Bieber, 2020; Hogić, 2024; Kmezić, 2019; Richter & Wunsch, 2020). The European Court of Auditors (2022) similarly concluded that substantial EU engagement had produced only limited overall impact on fundamental rule-of-law reforms in the region.

The distinction between ***non-compliance*** and ***regression*** is therefore critical. Non-compliance denotes failure to attain a required standard, whereas regression involves deterioration from a level of legal or institutional protection previously achieved. Democratic and rule-of-law erosion frequently occurs incrementally, through the gradual weakening of accountability mechanisms and institutional constraints upon public power rather than through an immediate rejection of democratic legality (Kelemen, 2017; Pech & Scheppele, 2017). A candidate country that has not yet established an independent institution therefore presents a different conditionality problem from one that has established such an institution, satisfied the relevant benchmark, and subsequently weakened its independence. An effective framework of rule-of-law conditionality must accordingly be capable of distinguishing ***failure to progress*** from ***regression from prior achievements***.

The evolution of accession benchmarking has partially addressed this problem. Opening, interim, and closing benchmarks, together with increasingly prominent requirements for credible track records, have shifted accession assessment beyond formal legislative compliance towards scrutiny of implementation and institutional performance (Hogić, 2024; Hoxhaj, 2024; Knežević Bojović & Ćorić, 2023; Ognjanoska, 2021). Commission practice increasingly requires evidence of tangible and sustained results in areas such as judicial reform, anti-corruption, and organised crime, rather than merely the adoption of the relevant legal framework (European Commission, 2024b).

Track-record requirements introduce an important *temporal dimension* into conditionality because institutions must demonstrate effective and independent operation over time. Yet implementation and durability remain analytically distinct. A judicial council, prosecution service, or anti-corruption institution may demonstrate satisfactory performance during one phase of negotiations while remaining structurally vulnerable to subsequent political interference or institutional redesign. Similarly, formal safeguards may coexist with informal mechanisms of political control that conventional compliance assessment does not adequately capture (Bieber, 2020; Kmezić, 2019; Richter & Wunsch, 2020). Therefore, ***track record tests whether reforms function, while non-regression tests whether the constitutional gains produced by those reforms endure.***

The concern with durability has become increasingly visible in EU institutional discourse. The Commission's 2024 and 2025 enlargement policy documents increasingly emphasise the irreversibility and lasting character of reforms in the area of fundamental values (European Commission, 2024a, 2025a). This language suggests an evolution in the objectives of accession conditionality: the Union increasingly requires not only the

adoption and effective implementation of reforms, but also evidence of their institutional durability and resilience over time.

Nevertheless, ***irreversibility*** remains considerably less operationalised than compliance and track record. Moreover, irreversibility and non-regression should not be treated as conceptually identical. While EU institutional discourse increasingly invokes the irreversibility of reforms, this article employs ***non-regression*** as the more analytically precise concept. Irreversibility may imply that institutional change cannot subsequently be reversed, whereas non-regression establishes a substantive standard against which deterioration from a previously attained level of rule-of-law protection can be identified and assessed. Non-regression therefore does not assume that institutional reversal is impossible; rather, it provides a framework for determining when such reversal constitutes deterioration relevant to accession conditionality.

This constitutes what the article terms the ***enlargement paradox****:* the Union possesses its strongest instruments of rule-of-law conditionality at the stage when constitutional reforms are still being constructed, whereas the durability of those reforms can only be fully demonstrated over time, including after the principal incentive underpinning conditionality—membership itself—has been obtained. The paradox shifts the analytical focus from ***accession compliance*** towards ***constitutional resilience.*** The relevant inquiry is therefore no longer confined to whether a candidate satisfies a benchmark at a particular stage of negotiations, but extends to whether the legal and institutional arrangements underlying that assessment are capable of preserving the level of rule-of-law protection attained and resisting subsequent regression.

1.3. Research Question, Argument and Contribution

Existing scholarship has extensively examined the capacity of EU conditionality to induce legal and institutional reform, the Europeanisation effects of the accession process, and, increasingly, the importance of implementation and track records in assessing rule-of-law reform (Grabbe, 2006; Hogić, 2024; Hoxhaj, 2024; Kmezić, 2019; Knežević Bojović & Ćorić, 2023; Kochenov, 2008; Ognjanoska, 2021; Schimmelfennig & Sedelmeier, 2004). Considerably less attention, however, has been devoted to the conceptual and operational distinction between failure to attain a rule-of-law standard and subsequent regression from a standard already achieved. This distinction becomes particularly important as contemporary accession practice places increasing emphasis on the durability and sustainability of reforms.

Against this background, the article addresses the following principal research question: ***To what extent have accession benchmarks evolved into a mechanism of rule-of-law conditionality capable of identifying and responding not only to compliance deficits but also to regression from previously attained standards?***

A subsidiary question concerns the normative content of accession benchmarks: ***To what extent does the substantive content of accession benchmarks reflect the rule-of-law standards developed under Articles 2 and 19 TEU and the jurisprudence of the Court of Justice of the European Union?*** This question is important because the capacity of benchmark-based conditionality to identify progress or regression depends upon the substantive standards against which institutional developments are assessed. Kochenov's (2008) critique of the indeterminacy surrounding democracy and rule-of-law conditionality remains relevant; however, the subsequent constitutional development of EU law—particularly CJEU jurisprudence concerning judicial independence, effective judicial protection, legality, legal certainty, and constraints upon arbitrary public power—provides a substantially more developed body of rule-of-law standards than existed during earlier enlargement rounds.

The article advances the argument that contemporary EU enlargement conditionality reflects an increasing convergence between ***Article 49 TEU accession conditionality, the values enshrined in Article 2 TEU, the substantive rule-of-law standards developed by the CJEU under, inter alia, Article 19 TEU, and the benchmark criteria through which those standards are operationalised in accession practice.*** This convergence has progressively shifted accession conditionality beyond a predominantly compliance-oriented model towards one concerned with implementation, institutional performance, and the durability of rule-of-law reform. The increasing specificity of benchmarks and the growing importance attached to track records provide evidence of this transformation (Hogić, 2024; Hoxhaj, 2024; Knežević Bojović & Ćorić, 2023), while the Commission's emphasis on irreversible and lasting reforms indicates an emerging concern with institutional durability (European Commission, 2024a, 2025a).

The transformation nevertheless remains incomplete. The accession architecture is considerably more developed in measuring ***progress towards compliance*** and ***effective implementation*** than in systematically identifying regression and assessing whether previously achieved standards remain institutionally secure. The

article's principal conceptual contribution is therefore to distinguish three cumulative dimensions of contemporary rule-of-law conditionality: ***compliance, track record, and non-regression***. *Compliance* refers to the establishment of the legal and institutional framework required by the relevant accession conditions. *Track record* concerns the extent to which that framework operates effectively and independently in practice and demonstrates sustained implementation over time. *Non-regression*, by contrast, concerns the preservation of the level of rule-of-law protection already attained and the capacity of the institutions underpinning it to withstand subsequent political interference, erosion, or dismantling.

2. Materials and Methods

2.1. Research Design and Doctrinal Method

Methodologically, the article combines **doctrinal legal analysis with a structured comparative examination of EU accession practice.** The doctrinal component examines the relationship between Articles 2, 19, and 49 TEU and the rule-of-law standards articulated in the jurisprudence of the CJEU, with particular emphasis on judicial independence, effective judicial protection, legality, legal certainty, the separation of powers, and safeguards against the arbitrary exercise of public authority.

The doctrinal analysis draws upon the relevant Treaty provisions and CJEU jurisprudence, together with European Council and Council documents, Commission enlargement communications, country reports, the revised enlargement methodology, relevant accession and benchmark documentation, and the academic literature on enlargement conditionality and the rule of law. These materials are examined to identify, first, the substantive content of the rule-of-law standards emerging within the EU constitutional order and, second, the extent to which comparable standards are reflected and operationalised through accession conditionality.

This analysis does not imply that Article 19 TEU or the corresponding CJEU jurisprudence applies to candidate countries in the same manner as it does to Member States. Candidate countries are not subject to the full body of membership obligations prior to accession merely by virtue of their candidate status. Rather, the inquiry examines the extent to which CJEU jurisprudence provides an increasingly substantive ***constitutional vocabulary*** through which the Union articulates the rule-of-law standards that candidate countries, as prospective Member States, are ultimately expected to satisfy. The relationship examined in the article is therefore one of substantive and prospective convergence rather than direct legal applicability.

2.2. Comparative Case Selection

The doctrinal analysis is complemented by a structured comparison of **Moldova, Ukraine, Montenegro, Albania, and Serbia.** The five cases are not selected to provide comprehensive country studies or to rank candidate countries according to their rule-of-law performance. Rather, they capture different stages, trajectories, and generations of the EU's benchmark-based rule-of-law conditionality and therefore permit examination of how the objectives and instruments of conditionality have evolved over time.

Montenegro and Serbia represent the most mature applications of the Chapters 23 and 24 framework and permit examination of conditionality over an extended period, including prolonged negotiations, uneven implementation, stagnation, and potential regression. Their trajectories are particularly relevant for assessing whether increasingly elaborate benchmarking and sustained monitoring necessarily produce durable rule-of-law transformation, an issue identified both in the academic literature and in institutional assessments of the Western Balkans (European Court of Auditors, 2022; Hogić, 2024; Kmezić, 2019; Richter & Wunsch, 2020).

Albania represents a more recent phase in the development of fundamentals-based conditionality and provides a case in which increasingly detailed benchmarks and institutional requirements operate within the revised enlargement framework. Moldova and Ukraine, by contrast, represent the newest generation of accession conditionality. Their accession processes are developing after both the introduction of the revised enlargement methodology and the accumulation of substantial EU experience with internal rule-of-law challenges. They therefore provide particularly relevant cases for examining whether lessons concerning implementation, durability, and regression are being incorporated more systematically into contemporary accession practice.

The comparative logic is consequently both **temporal and institutional.** Rather than treating the five countries as directly equivalent cases, the analysis uses variation across different stages and generations of enlargement to identify continuities and changes in the formulation and application of rule-of-law conditionality. The comparison focuses on how benchmarks and institutional assessments address the establishment,

functioning, and subsequent preservation of rule-of-law safeguards, rather than on producing an overall evaluation of individual candidate countries.

2.3. Analytical Framework

The comparative analysis is structured around two related sets of distinctions. The first differentiates between ***non-compliance, stagnation, and regression***. *Non-compliance* refers to the failure to attain the required standard; *stagnation* denotes prolonged or insufficient progress towards its attainment; and *regression* involves deterioration from a previously achieved level of legal or institutional protection. Treating these phenomena separately is essential because each presents a different problem for accession conditionality. A framework designed principally to identify outstanding reforms may be capable of detecting non-compliance or insufficient progress without necessarily possessing sufficiently precise criteria for identifying deterioration from standards previously considered attained.

This distinction also provides the basis for assessing the principle of ***reversibility*** under contemporary enlargement methodology. Reversibility and non-regression perform different analytical functions. ***Non-regression constitutes the substantive standard against which deterioration from a previously attained level of protection can be identified, whereas reversibility constitutes a potential procedural response to such deterioration.*** The effectiveness of reversibility therefore depends on the establishment of sufficiently precise criteria for identifying regression, determining the relevant baseline against which deterioration is assessed, defining the threshold at which such deterioration warrants procedural consequences, and ensuring the consistent assessment of comparable instances of regression across candidate countries.

The second distinction concerns the three cumulative dimensions through which the article analyses contemporary rule-of-law conditionality: ***compliance, track record, and non-regression.*** Compliance concerns the establishment of the requisite legal and institutional framework. Track record assesses whether that framework operates effectively and independently in practice over time. Non-regression examines whether the level of rule-of-law protection thereby attained is subsequently preserved and whether the institutions underpinning it are capable of resisting political interference, erosion, or dismantling.

The three dimensions are analytically cumulative but not mechanically sequential. Formal compliance provides the institutional basis for implementation; a track record provides evidence that the relevant framework functions in practice; and non-regression addresses whether the resulting level of protection remains secure over time. The distinction is therefore fundamental to the article's analytical framework: ***track record tests whether reforms function; non-regression tests whether the constitutional gains produced by those reforms endure.***

Constitutional resilience is conceptualised as the broader institutional outcome towards which the interaction of these dimensions' points. It does not denote the permanence of any particular institutional arrangement or require constitutional systems to remain static. Rather, it concerns the capacity of legal and institutional safeguards to preserve the substantive level of rule-of-law protection attained while remaining capable of legitimate institutional adaptation. The analysis focuses particularly on judicial independence, prosecutorial autonomy, anti-corruption institutions, effective judicial protection, and safeguards against arbitrary political interference. These areas provide the principal institutional settings through which the article examines whether contemporary accession conditionality is evolving from a framework centred primarily on achieving compliance towards one increasingly concerned with the durability of constitutional and institutional transformation.

3. Results

3.1. Legal and Constitutional Foundations of Rule of Law Conditionality

Article 49 TEU constitutes the Treaty basis for accession to the European Union and is constitutionally significant in both substantive and procedural terms. Following the Lisbon Treaty, eligibility for membership is expressly linked to the requirement that an applicant European State **respect the values enshrined in Article 2 TEU and be committed to promoting them.** Article 49 further requires account to be taken of the eligibility conditions agreed by the European Council, while admission remains subject to unanimous approval by the Council, the consent of the European Parliament, and ratification of the accession agreement by all contracting States (Treaty on European Union [TEU], 2012, art. 49). Accession thus combines substantive constitutional requirements concerning adherence to the Union's foundational values with a decision-making process retaining a pronounced political and intergovernmental character.

The Copenhagen criteria exemplify this dual character. Established by the European Council in 1993, they require candidate countries to demonstrate the stability of institutions guaranteeing democracy, the rule of law, human rights, and respect for and protection of minorities; a functioning market economy; and the capacity to assume the obligations of membership. The Madrid European Council subsequently emphasised the administrative and institutional capacity necessary for effective implementation of the acquis (European Council, 1993, 1995). Although originally formulated as political conditions rather than Treaty-based legal obligations, the Copenhagen criteria have progressively become embedded in the accession framework. Their systematic application, together with the express requirement under Article 49 TEU that European Council eligibility conditions be taken into account, has increasingly integrated political conditionality into the Treaty-based framework governing membership (Hillion, 2010; Kochenov, 2008).

This framework has become progressively more differentiated and operationalised. Chapters 23 "Judiciary and Fundamental Rights," and 24 "Justice, Freedom and Security," created dedicated negotiating structures for assessing judicial reform, fundamental rights, corruption, organised crime, and related institutional requirements. The benchmark architecture further distinguishes between ***opening, interim, and closing benchmarks,*** thereby introducing greater sequencing and measurability into areas previously governed primarily by broadly formulated political criteria (European Commission, n.d.).

The 2020 revised enlargement methodology reinforced this development by grouping negotiating chapters into six clusters and placing Cluster 1 "Fundamentals," at the centre of the process. The cluster encompasses Chapters 23 and 24 together with the functioning of democratic institutions, public administration reform, economic criteria, public procurement, statistics, and financial control. The fundamentals are opened first and closed last, while progress in this area determines the overall pace of negotiations (European Commission, 2020). Importantly for the present analysis, the methodology also strengthened the principle of ***reversibility***, allowing accession progress to be adjusted or reversed in cases of serious or prolonged stagnation or backsliding.

3.1.1. Article 2 TEU and the Constitutional Meaning of the Rule of Law

Article 2 TEU identifies the rule of law as one of the values on which the Union is founded, alongside respect for human dignity, freedom, democracy, equality, and human rights (TEU, 2012, art. 2). The rule of law therefore forms part of an interconnected constitutional structure in which legality, democracy, fundamental rights, and constraints upon public power are mutually reinforcing. The substantive content of this value has been developed considerably through CJEU jurisprudence. A pivotal development occurred in *Associação Sindical dos Juízes Portugueses* (2018), where the Court connected Article 19(1) TEU with the rule-of-law value expressed in Article 2 TEU. Because national courts participate in the system of judicial protection established by EU law, judicial independence became an enforceable requirement linked to effective judicial protection rather than merely a general constitutional expectation.

Subsequent jurisprudence gave this requirement more concrete institutional content. In *Commission v. Poland (Independence of the Supreme Court)* (2019), the Court treated the irremovability of judges as an essential guarantee of independence and scrutinised changes to judicial retirement rules and executive discretion over extensions of judicial service. In *A.K. and Others* (2019), it emphasised that rules concerning the composition, appointment, tenure, and dismissal of judicial bodies must dispel reasonable doubts as to their susceptibility to external influence. *Commission v. Poland (Disciplinary Regime for Judges)* (2021) further required disciplinary arrangements to contain safeguards against their use as instruments of political control, while *W.Ż.* (2021) reinforced the importance of lawful appointment procedures and effective judicial review.

The *LM* judgment demonstrated the systemic implications of judicial independence. In the context of the European Arrest Warrant, the Court recognised that deficiencies in judicial independence could become relevant where an individual faced a real risk of breach of the fundamental right to an independent tribunal (*Minister for Justice and Equality (LM)*, 2018). Structural deficiencies in a national judicial system can therefore affect both individual rights and EU mechanisms based on mutual trust.

These judgments do not prescribe a uniform institutional model. Rather, the standard is functional: national arrangements must provide effective safeguards against forms of legislative or executive influence incompatible with independent adjudication (Damjanovski et al., 2020). This distinction is particularly

relevant to accession conditionality, where benchmarks should assess the effectiveness of institutional safeguards rather than prescribe an identical constitutional architecture across candidate countries.

The rule of law also extends beyond judicial organisation. In *Hungary v. Parliament and Council* (2022) and *Poland v. Parliament and Council* (2022), the Court upheld the Union's budgetary rule-of-law conditionality mechanism and confirmed a substantive conception encompassing legality, legal certainty, the prohibition of arbitrariness of executive power, effective judicial protection, separation of powers, non-discrimination, and equality before the law. The jurisprudence therefore provides increasingly specific substantive content to the Article 2 value of the rule of law.

The constitutional importance of these standards is reinforced by the principle of mutual trust. In Opinion 2/13, the Court characterised mutual trust between Member States as being of fundamental importance to EU law, particularly within the Area of Freedom, Security and Justice, where Member States are generally required to presume compliance by other Member States with EU law and fundamental rights (Opinion 2/13, 2014). Accession consequently entails entry into a legal order whose operation presupposes a minimum level of continuing confidence in national rule-of-law institutions.

3.1.2. Non-Regression and the Constitutional Continuity of Accession Commitments

The relationship between accession and non-regression is particularly visible in *Repubblika case*. The Court recalled that Article 49 TEU requires a European State seeking membership to respect and commit itself to promoting the values referred to in Article 2 TEU. It subsequently reasoned that a Member State may not amend its legislation in a manner that reduces the protection of the rule of law and must prevent regression in rules governing the organisation of justice where such regression would undermine judicial independence (*Repubblika v. Il-Prim Ministru*, 2021).

The judgment therefore connects **accession commitments with post-accession constitutional continuity.** Respect for Article 2 values is not exhausted at the moment of accession; the safeguards supporting those values cannot subsequently be dismantled in a manner incompatible with EU law. The judgment has accordingly been interpreted as articulating a principle of ***non-regression*** in EU rule-of-law protection (Leloup et al., 2021).

The direct legal obligations articulated in *Repubblika* concern Member States, not candidate countries. Its reasoning nevertheless has analytical relevance for Article 49 conditionality. If accession is constitutionally premised upon respect for Article 2 values, while membership subsequently entails an obligation not to reduce the protection of those values, substantial deterioration in safeguards previously introduced to demonstrate accession readiness cannot be conceptually irrelevant to the pre-accession assessment. Scholarly analysis has similarly identified the potential significance of non-regression for the EU's pre-accession toolkit (Leloup et al., 2021).

3.1.3. From Constitutional Standards to Accession Benchmarks

The doctrinal analysis reveals an increasingly identifiable relationship between the Union's constitutional standards and accession conditionality. Article 49 TEU establishes respect for and commitment to promoting Article 2 values as a condition of membership. Article 2 provides the normative foundation, while CJEU jurisprudence—principally through Article 19 TEU and related provisions—has progressively articulated more concrete requirements concerning judicial independence, effective judicial protection, separation of powers, legality, legal certainty, and constraints upon arbitrary public authority. Accession practice, in turn, translates these requirements into country-specific and increasingly measurable conditions.

This relationship should not be understood as implying that Article 19 TEU or CJEU judgments bind candidate countries in the same manner as Member States. Candidate countries remain outside that legal relationship until accession. The relevance of the jurisprudence is instead ***prospective and constitutional:*** it clarifies important characteristics of the legal order that a candidate seeks to join and the obligations with which it must ultimately be capable of complying upon membership. The doctrinal evidence therefore supports the article's proposition that CJEU jurisprudence increasingly provides a substantive constitutional vocabulary through which the rule-of-law content of Article 49 conditionality can be articulated.

3.2. Evolution of Accession Benchmarking

Recent accession practice demonstrates the increasingly central role of benchmarks. When Albania opened the Fundamentals cluster in October 2024, the Union established interim benchmarks both horizontally and specifically for Chapters 23 and 24 (Council of the European Union, 2024c). In May 2026,

the Union confirmed that Albania had fulfilled those interim benchmarks and established closing benchmarks for the cluster, including the two rule-of-law chapters (Council of the European Union, 2026a). Ukraine and Moldova's accession process follows the same architecture: when Cluster 1 was opened in June 2026, interim benchmarks were established horizontally and for Chapters 23 and 24, to be fulfilled before negotiations can enter their concluding phase (Council of the European Union, 2026b).

Benchmarks should therefore not be understood as merely political statements. They determine whether negotiations may advance and increasingly reflect legal principles derived from the acquis, Article 2 TEU, CJEU jurisprudence, and other European standards. At the same time, they do not constitute an autonomous body of secondary EU law. They occupy a **hybrid normative position** between Treaty-based membership conditions, political conditionality, and operational requirements (Hoxhaj, 2024; Knežević Bojović & Ćorić, 2023; Kochenov, 2008). In this sense, benchmarks constitute the **operational layer of Article 49 conditionality**, translating general membership requirements into sequenced, country-specific, and increasingly measurable expectations.

The development of benchmark conditionality has progressively shifted assessment beyond formal institutional compliance towards implementation and institutional performance. The concept of ***track record*** is central to this development because it asks whether institutions and safeguards established in response to accession conditions actually function in practice over time.

3.3. Comparative Evidence from Moldova, Ukraine, Albania, Montenegro and Serbia

3.3.1. Judicial Independence and Anti-Corruption

The five cases demonstrate a common movement from institutional establishment towards assessment of institutional performance, although they represent different stages of this process.

In *Montenegro*, EU assessment has moved beyond institutional establishment towards the functioning of judicial governance bodies and the quality of appointments. Following fulfilment of the interim benchmarks in 2024, the Commission continued in 2025 to require merit-based and transparent appointments and further alignment concerning the Judicial and Prosecutorial Councils, including their composition, decision-making, independence, and accountability (European Commission, 2025e). Benchmark fulfilment therefore did not constitute final validation of the institutional framework.

In *Albania*, justice reform relied extensively on transitional vetting. By 2026, however, EU scrutiny was increasingly directed towards the post-vetting phase. While recognising progress in completing vetting, the Commission continued to emphasise judicial independence, accountability, efficiency, and institutional quality after the extraordinary transitional mechanism had ended (European Commission, 2026). The relevant question consequently shifted from implementation of the transitional reform to whether the ordinary institutional system could sustain the standards it sought to establish.

Moldova presents a related institutional transition. The Commission's 2025 assessment recorded that the Superior Council of Magistracy and Superior Council of Prosecutors were operating in vetted compositions and performing core appointment and disciplinary functions, while also identifying unfinished vetting, vacancies, resignations, and capacity constraints (European Commission, 2025c). The case illustrates the distinction between institutional establishment and institutional consolidation: the existence of reformed bodies does not itself demonstrate their capacity for sustained independent operation.

Serbia illustrates the converse problem, in which formal institutional reforms coexist with continuing concerns regarding institutional behaviour. The Commission's 2025 assessment identified concerns relating to prosecutorial autonomy and the effects of political interventions on the perceived independence of prosecutors and courts (European Commission, 2025f). The case demonstrates why formal guarantees cannot substitute for evidence that institutions operate independently and that political actors refrain from undue interference.

Ukraine adds the dimension of institutional performance under severe external pressure. The Commission's 2025 assessment continued to require transparent and merit-based recruitment to key law-enforcement positions, stronger disciplinary arrangements, and enhanced anti-corruption safeguards, while also recognising institutional resilience under wartime conditions (European Commission, 2025g). The case demonstrates that resilience does not imply institutional continuity alone, but the capacity to preserve rule-based functioning under conditions of exceptional stress.

Anti-corruption conditionality reflects the same movement from institutional design towards measurable performance. Albania provides a particularly clear example: the Commission assessed the Special Anti-Corruption Structure (SPAK) not merely through its formal establishment, but through investigations, convictions, financial investigations, confiscations, workload, and institutional capacity, recognising positive results while identifying continuing weaknesses (European Commission, 2025b). This reflects the broader transition from compliance to track record within contemporary accession conditionality.

3.3.2. Track Record, Regression and Non-Regression

The comparative evidence also demonstrates that benchmark fulfilment does not terminate scrutiny.

Montenegro illustrates a logic of conditional progression without finality. Fulfilment of the Chapters 23 and 24 interim benchmarks in 2024 enabled negotiations to enter a subsequent phase, while continued implementation and the establishment of a track record remained necessary before closure (Council of the European Union, 2024d). Benchmark fulfilment therefore does not immunise the relevant reforms from subsequent reassessment.

Albania demonstrates the same principle in a more accelerated context. Fulfilment of the interim fundamentals benchmarks in May 2026 initiated a more demanding phase focused on implementation, solid track records, and lasting results (Council of the European Union, 2026a). The emphasis on lasting results indicates that conditionality is increasingly concerned not merely with reaching a benchmark but with sustaining the institutional transformation underlying it.

The architecture established for ***Moldova*** similarly provides for prolonged monitoring. Interim benchmarks introduced with the opening of Cluster 1 in June 2026 must be fulfilled before negotiations enter their concluding phase (Council of the European Union, 2026b), creating a period during which the functioning and consolidation of reformed institutions can be assessed.

Ukraine **illustrates a different dimension of resilience. Commission assessments combine recognition of institutional performance under wartime conditions with continued requirements concerning judicial independence, anti-corruption safeguards, and transparent appointments (European Commission, 2025g). Institutional resilience therefore cannot be equated with organisational survival; it requires continued adherence to rule-of-law standards under pressure.**

Serbia, by contrast, illustrates why an explicit non-regression dimension remains necessary. Where formal reforms coexist with prolonged concerns regarding judicial independence, prosecutorial autonomy, media freedom, and political influence, the analytical question is not solely whether progress is insufficient, but whether previously recognised improvements have subsequently been weakened or whether formal reforms failed to alter underlying structures of political power. Scholarship on the Western Balkans has similarly warned that formal alignment may coexist with state capture and weak substantive constraints on political power (Bieber, 2020; Kmezić, 2019; Richter & Wunsch, 2020).

The cases therefore reveal a distinction that conventional progress-oriented assessment may obscure: ***stagnation concerns insufficient movement towards a required standard, whereas regression concerns deterioration from a level previously attained.*** The latter requires a baseline against which deterioration can be identified and, where sufficiently serious, linked to the reversibility mechanisms available under the enlargement methodology.

3.3.3. Consistency, Differentiation and Credibility

Across the five cases, Commission assessments demonstrate substantial convergence in their **substantive vocabulary.** Judicial independence, prosecutorial autonomy, merit-based appointments, effective anti-corruption institutions, transparent recruitment, adequate institutional capacity, implementation, and track records recur across different enlargement contexts (European Commission, 2025c, 2025d, 2025f, 2025g, 2025h). This supports the proposition that an increasingly common set of substantive rule-of-law expectations informs contemporary accession conditionality.

The intensity and consequences of conditionality, however, remain politically mediated. Article 49 TEU preserves substantial Member State influence over the pace of negotiations, while enlargement decisions also operate within broader geopolitical circumstances. This creates a continuing tension between merit-based conditionality and strategic considerations (Hoxhaj, 2024; Rabinovych, 2024). Moldova and Ukraine have progressed through the initial stages of accession more rapidly than Western Balkan candidates did historically, reflecting the transformed geopolitical environment after 2022. Procedural acceleration does not

in itself demonstrate weaker conditionality; the relevant question is whether accelerated progression remains accompanied by substantively demanding benchmarks.

The more significant consistency problem arises where comparable stagnation or regression produces different consequences. If deterioration of a similar nature generates divergent accession responses depending upon political or geopolitical context, the credibility of non-regression conditionality may be weakened. Consistency is therefore important not only for equal treatment among candidates but also for the transformative capacity of conditionality itself (Kochenov, 2008; Kmezić, 2019; Richter & Wunsch, 2020).

Three findings emerge from the comparative analysis. ***First,*** contemporary rule-of-law conditionality has moved beyond formal compliance towards sustained scrutiny of implementation, institutional behaviour, and track records. ***Second,*** durability has become increasingly visible through continued monitoring after benchmark fulfilment, requirements for lasting results, and attention to stagnation and backsliding, but **non-regression remains more implicit than operationalised.** ***Third,*** consistency is strongest at the level of substantive standards and vocabulary, but weaker at the level of consequences, where political discretion and geopolitical considerations remain significant.

The results therefore support the article's analytical framework: **compliance establishes the required legal and institutional framework; track record demonstrates its effective operation; and non-regression assesses whether the level of protection thereby attained is subsequently preserved. Constitutional resilience represents the broader institutional outcome towards which these three dimensions collectively point.**

4. Discussion

4.1. Regression and the Limits of Progress-Oriented Conditionality

The results confirm that contemporary accession conditionality is considerably more sophisticated in measuring progress towards rule-of-law standards than in assessing deterioration from standards previously attained. This asymmetry follows from the historical logic of enlargement: benchmarks identify reforms to be completed, while track records assess whether those reforms function in practice. Regression poses a different problem because it requires comparison not only with an external standard, but also with a previously achieved and, potentially, formally recognised level of protection.

This distinction is consistent with the broader literature on democratic and rule-of-law backsliding. Contemporary erosion typically develops incrementally through the weakening of accountability institutions, judicial independence, institutional checks, media pluralism, or other constraints upon political power rather than through an abrupt abandonment of constitutional government (Bermeo, 2016; Kelemen, 2017; Pech & Scheppele, 2017). Within the framework of accession conditionality, a clear distinction must be made between the structural deficit of a candidate yet to develop an autonomous institution, and the compliance regression of a state that successfully met the initial criteria only to later compromise its institutional independence.

The critical issue is therefore the ***baseline of assessment.*** Non-compliance can be identified by comparing existing arrangements with the standard required by the benchmark. Regression additionally requires an assessment of whether the current level of protection has materially deteriorated from a previous position. Commission country reports, benchmark assessments, screening documents, EU common positions, and formal recognition of benchmark fulfilment can therefore serve not only as records of progress but also as potential reference points for identifying subsequent deterioration.

4.2. Reversibility as a Structured Response to Regression

The revised enlargement methodology provides the clearest institutional mechanism for addressing such deterioration. By allowing serious or prolonged stagnation or backsliding to affect negotiating progress, access to benefits, financial support, or previously recognised achievements, reversibility introduces a genuinely bidirectional element into accession conditionality (European Commission, 2020).

Its significance lies in challenging the assumption that progress through accession negotiations is necessarily cumulative. However, **reversibility and non-regression perform different functions.** Non-regression concerns the substantive assessment of whether a previously attained level of rule-of-law protection has materially deteriorated. Reversibility concerns the procedural consequences that may follow once such deterioration has been established.

The effectiveness of reversibility therefore depends on the establishment of sufficiently precise criteria for identifying regression, determining the relevant baseline against which deterioration is assessed, defining the threshold at which such deterioration warrants procedural consequences, and ensuring the consistent assessment of comparable instances of regression across candidate countries.

This distinction also helps differentiate administrative incapacity from deliberate institutional weakening. Priebus (2022) distinguishes management-oriented responses, centred on dialogue and assistance, from enforcement approaches involving material consequences. The same logic is relevant to enlargement. Where limited progress results primarily from insufficient capacity, technical assistance and intensified monitoring may remain appropriate. Where authorities deliberately weaken judicial independence or other constitutional safeguards, a credible conditionality framework requires consequences capable of responding to the change in direction.

Reversibility can therefore be understood as an emerging **enforcement dimension of Article 49 conditionality**, but not as a fully legalised enforcement regime. Its operation remains substantially political and discretionary. The objective should consequently not be to eliminate discretion, which is inherent in accession negotiations, but to structure it more transparently around identifiable baselines, substantive standards, proportionality, and consistency.

4.3. Non-Regression and Constitutional Resilience

The doctrinal and comparative findings support the article's central distinction between ***compliance, track record, and non-regression.*** Compliance establishes whether the requisite legal and institutional framework exists. Track record determines whether that framework operates effectively and independently in practice over time. Non-regression asks whether the level of rule-of-law protection thereby attained is subsequently preserved.

The third dimension cannot be reduced to implementation. A candidate may satisfy a benchmark and establish a positive track record while remaining vulnerable to subsequent institutional capture or political redesign. For this reason, ***track record tests whether reforms function; non-regression tests whether the constitutional gains produced by those reforms endure.***

Non-regression should nevertheless not be equated with institutional immutability. Candidate countries must remain free to amend their constitutional and institutional arrangements. The relevant inquiry is functional rather than formal: whether subsequent changes preserve the substantive guarantees upon which an earlier positive assessment was based, including judicial independence, effective judicial protection, prosecutorial autonomy, legality, and safeguards against arbitrary political interference.

This approach is closely connected to the reasoning in *Repubblika*. As demonstrated in Section 3, the Court linked Article 49 TEU accession commitments to the continuing requirement that Member States not reduce the protection of the rule of law in a manner incompatible with Article 19 TEU (*Repubblika v. Il-Prim Ministru*, 2021). That principle does not apply directly to candidate countries as if they were already Member States. It nevertheless provides a constitutional rationale for treating substantial deterioration in safeguards previously introduced to demonstrate accession readiness as relevant to the Article 49 process.

A non-regression assessment therefore requires three elements. ***First,*** an identifiable baseline, derived where possible from previously documented and recognised accession progress. ***Second,*** a substantive assessment of whether subsequent institutional change materially weakens the guarantees underlying that assessment. ***Third,*** a proportionate connection between the seriousness of deterioration and the consequences available through reversibility.

Such an approach would not create a new accession criterion. Rather, it would systematise a dimension already implicit in the Union's references to backsliding, lasting results, sustainable track records, and irreversible reforms. The added value of non-regression lies in transforming these concerns from general institutional language into a more coherent analytical framework.

Constitutional resilience represents the broader outcome towards which the three dimensions collectively point. It does not imply that institutions become immune to political change. Rather, it denotes a degree of institutional embedding sufficient to preserve the substantive guarantees associated with the rule of law notwithstanding changes in government, political majorities, or institutional design.

4.4. Limits, Consistency and the Geopolitical Dimension

A resilience-oriented approach must remain subject to important limits. First, it should not become a mechanism of constitutional homogenisation. EU law does not prescribe a single model of judicial governance, prosecutorial organisation, or constitutional adjudication. As the CJEU jurisprudence examined above demonstrates, the relevant requirements are predominantly functional: institutions must preserve independence, legality, accountability, and effective judicial protection rather than conform to an identical structural model.

Second, consistency is critical. The comparative analysis in Section 3.3 indicates substantial convergence in the substantive vocabulary applied across candidate countries, particularly regarding judicial independence, prosecutorial autonomy, anti-corruption effectiveness, merit-based appointments, institutional capacity, and track records. Yet the consequences attached to stagnation or regression remain more strongly mediated by political and geopolitical considerations. A credible non-regression framework therefore requires differentiation in institutional pathways without allowing comparable deterioration to be assessed according to fundamentally different substantive thresholds (Hoxhaj, 2024; Knežević Bojović & Ćorić, 2023; Kochenov, 2008).

Third, no pre-accession framework can eliminate the possibility of post-accession backsliding. The experience of existing Member States demonstrates the limits of such an expectation (Kelemen, 2017; Pech & Scheppele, 2017; Sedelmeier, 2014). The objective of non-regression is more limited: to make fuller use of the Union's strongest period of leverage to assess whether reforms have moved beyond formal adoption and short-term implementation towards a degree of institutional durability.

This is particularly important in the current geopolitical context. The renewed enlargement agenda has created pressure for greater procedural speed, especially in relation to Moldova and Ukraine. Yet **procedural acceleration and substantive preparedness should be analytically distinguished.** Faster negotiations, earlier integration benefits, or more intensive political engagement need not imply weaker rule-of-law conditionality. The relevant question is whether accelerated progression remains accompanied by sufficiently demanding assessment of implementation, track record, and preservation of achieved standards.

The article's principal normative proposition is accordingly that ***non-regression should become an explicit dimension of rule-of-law benchmark assessment rather than remaining only an implicit rationale for political reversibility.*** This would not require amendment of Article 49 TEU or the creation of a separate accession criterion. It would require a more systematic use of existing benchmarks, documented baselines, and substantive rule-of-law standards to assess not only whether reforms have been achieved, but whether the level of protection they establish is subsequently preserved.

5. Conclusion

This article examined the extent to which accession benchmarks have evolved into a mechanism of rule-of-law conditionality capable of identifying and responding not only to compliance deficits but also to regression from previously attained standards. It also considered whether the substantive content of those benchmarks increasingly reflects the rule-of-law standards developed under Articles 2 and 19 TEU and CJEU jurisprudence. Four principal findings emerge.

***First,* Article 49 TEU conditionality has evolved beyond the original Copenhagen framework through its increasingly close relationship with Article 2 TEU values.** The Copenhagen criteria remain an essential foundation of accession policy, but contemporary rule-of-law conditionality can no longer be understood solely as the application of broadly formulated political conditions. Article 49 expressly links eligibility for membership with respect for and commitment to promoting Article 2 values, thereby situating rule-of-law conditionality within the constitutional framework governing accession.

***Second,* CJEU jurisprudence has given increasingly concrete substantive content to the rule of law.** Through the development of standards concerning judicial independence, effective judicial protection, legality, legal certainty, separation of powers, and protection against arbitrary public authority, the Court has progressively clarified the constitutional characteristics of the legal order that candidate countries seek to join. These standards do not bind candidates in the same manner as Member States before accession, but they increasingly provide the substantive constitutional vocabulary through which accession requirements can be articulated.

***Third,* accession benchmarks have evolved beyond formal compliance towards implementation and track-record assessment.** The comparative evidence from Moldova, Ukraine, Albania, Montenegro, and Serbia demonstrates an increasing emphasis on institutional behaviour, measurable results, merit-based appointments, prosecutorial autonomy, anti-corruption effectiveness, and sustained performance. Yet track-record assessment does not fully resolve the problem of durability. **Track record tests whether reforms function; non-regression tests whether the constitutional gains produced by those reforms endure.**

***Fourth,* regression remains the least systematically operationalised dimension of contemporary accession conditionality.** The revised methodology recognises backsliding and provides for reversibility, but a coherent framework for identifying deterioration from previously attained standards remains less developed. This requires a clearer distinction among non-compliance, stagnation, and regression, together with identifiable baselines and sufficiently consistent standards for determining when deterioration warrants accession consequences.

The article therefore proposes a three-dimensional model of rule-of-law conditionality based on ***compliance, track record, and non-regression.*** Compliance concerns the establishment of the requisite legal and institutional framework; track record concerns its effective and independent operation over time; and non-regression concerns the preservation of the level of protection thereby achieved. **Constitutional resilience is not a fourth criterion but the broader institutional outcome towards which these three dimensions collectively point.**

This model does not assume that the accession process can eliminate future democratic or rule-of-law backsliding. Nor does it require institutional arrangements to remain unchanged. Its purpose is more limited: to ensure that accession assessment examines not merely whether reforms have been adopted and implemented, but also whether subsequent developments materially weaken the substantive safeguards upon which earlier progress was recognised.

The distinction between non-regression and reversibility is central to this approach. **Non-regression constitutes the substantive standard; reversibility provides the potential procedural consequence.** A more structured relationship between the two would strengthen both the predictability and credibility of accession conditionality by requiring the Union to identify which previously recognised safeguard has deteriorated, against which baseline, according to which substantive standard, and why a particular consequence is proportionate.

The renewed geopolitical importance of enlargement does not diminish the relevance of this approach. On the contrary, accelerated accession processes make the distinction between ***procedural speed*** **and** ***substantive preparedness*** increasingly important. The Union may choose to accelerate negotiations or gradual integration, but the constitutional threshold associated with Article 2 values should remain stable.

The credibility of contemporary enlargement therefore depends not only on whether candidate countries can **reach** the rule-of-law standards required for membership, but also on whether the accession process is capable of assessing whether the constitutional and institutional gains achieved along the way are sufficiently embedded to **endure.**

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