

Georgia: Legal Uncertainties in the Further Accession Process

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Abstract:

After Georgia was granted candidate status in December 2023, the accession process, which had only just begun, came to a standstill just a few months later. A statement by the European Union (EU) in June 2024 to "put this process on hold" for the time being was countered by the Georgian government in November 2024 with the announcement that it would not hold any more accession talks until the end of 2028. The decisions of both sides appear unnecessarily hasty, as they were made in Brussels and Tbilisi in the heat of highly emotional debates. For Georgia, they have unfortunately introduced legal uncertainties into the accession process in many respects. The EU could use legal arguments to justify its "retreat." The consequences of prolonging the process are likely to be particularly painful. In this situation, it makes sense for Georgia to seek membership of the European Economic Area (EEA) as a transitional measure. As a "half EU membership," membership in the EEA—which is likely to be achieved more quickly—represents a preliminary stage or a transitional stage on the path to the ultimate goal of full integration into the EU. Such a step could also help to defuse the heated domestic political situation because it has the character of a compromise.

1. Introduction – The Starting Point

Georgia's application to conclude an accession agreement with the EU was submitted more than three years ago, in March 2022. In the same month, the Council of the European Union asked the European Commission (EU Commission) to give its opinion on the application for accession. Unlike Ukraine and the Republic of Moldova—two countries from the same accession round that are also seeking membership—the EU did not grant Georgia candidate status in June 2022. In an opinion, the EU Commission merely opened up a "European

perspective" for Georgia and made further steps towards EU membership contingent on the implementation of a catalog of twelve priorities¹. As is well known, the EU Commission then adopted its 2023 Enlargement Package in November 2023². In it, it recommended that the Council of the European Union grants Georgia candidate country status at its summit in December 2023. At the same time, it pointed out that Georgia had only completed three of the twelve priorities by that date: enhancing gender equality, taking into account European Court of Human Rights judgments, and nominating a new public defender. Following the Georgian government's public promise that the remaining nine priorities would be fulfilled in the foreseeable future, the Council of the European Union unanimously decided at its summit in December 2023, meaning with the approval of all 27 member states, to grant Georgia candidate country status. Accession negotiations were not initially taken up, as was also the case in Ukraine and the Republic of Moldova.³

Because it considered the Georgian legislature's regulation of foreign influence to be contrary to the rule of law, the EU "put the accession process on hold" in June 2024. In 2023, the Georgian parliament had submitted two bills in parallel, one on Transparency of Foreign Influence⁴ and another on the Registration of Foreign Agents⁵. After both bills were suspended following mass protests, the Georgian government reactivated the first bill⁶ in April 2024 and brought it into force. Following the parliamentary elections in October 2024, the Georgian government announced in November 2024 that it would postpone Georgia's accession talks with the EU for the time being. The Georgian Prime Minister stated that the Georgian government would "suspend" such talks until 2028⁷ and would not negotiate accession with the EU until the end of 2028⁸. The Georgian government saw the EU's ongoing criticism as interference in internal affairs and a threat to Georgia's sovereignty. At the same time, however, the Georgian Prime Minister assured that his country's accession to the EU remained a "top priority" for him and that he remained confident that Georgia would become a member of the EU by 2030 as planned⁹.

¹ See Communication from the Commission to the European Parliament, the European Council and the Council – Commission Opinion on Georgia's application for membership of the European Union, Brussels, June 17, 2024, COM(2022) 405 final.

² European Commission, Georgia 2023 Report, Brussels, November 8, 2023, SWD(2023) 697 final. Press release of the European Commission of November 8, 2023 <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_5633.html> (accessed on 1.9.2025).

³ These were only launched in June 2024, even though both countries had already been declared candidates for accession in June 2022.

⁴ Law on Transparency of Foreign Influence.

⁵ Law on Registration of Foreign Agents.

⁶ Specifically, Law of May 18, 2024 on Transparency of Foreign Influence, unofficial translation by the European Commission for Democracy through Law (Venice Commission).

⁷ Year of the next parliamentary elections.

⁸ "We have decided today to put the start of negotiations with the EU back on the agenda until the end of 2028."

⁹ Georgia halts EU accession talks until 2028, Caucasus Watch, November 28, 2024, <<https://www.caucasuswatch.de/de/news/georgia-halts-eu-accession-talks-until-2028.html>> (accessed on 5.9.2025).

Those interested in Georgia may welcome or lament this development, which is being voiced loudly depending on one's political views. On the one hand, the development is seen as the result of "blackmail" by the EU or an "attack on Georgia's dignity"; on the other hand, it is described as an "anti-European turn" or an "alarming backsliding to pro-Russian times." Regardless of this, it certainly represents the current dilemma facing Georgia in the accession process.

In terms of content, the following contribution is intended to initiate a more objective discussion of a heated political and legal debate. My remarks are those of a neutral observer from a legal and political science perspective, who has been much involved with such issues in his professional career. These remarks are intended to make a contribution to providing "unvarnished" information about the possibly expected legal and political developments. However, they can in no way be "instrumentalised" or exploited for certain purposes.

2. "Low-Key" Responses from the European Union – Setting up a Threat Scenario?

The EU's reactions to the Georgian government's suspension of accession talks have so far been "low-key" and do not contain any commitment on the part of the EU to the further accession process. However, they should be seen as a preliminary step towards a "tougher stance" by the EU and are creating a threatening backdrop¹⁰. In response to a request in July 2025, the EU Commission stated that it remained committed to deepening its partnership with Georgia in line with the aspirations of a large majority of the Georgian population; however, it did not currently see itself in a position to recommend that the Council of the European Union opens accession negotiations.

Measures taken at EU level to date include freezing bilateral budget support and assistance under the European Peace Facility. Individual EU member states have imposed entry bans on Georgian politicians and cut development cooperation funds. Germany alone has suspended support projects worth more than 200 million euros. Restrictions on visa-free travel for Georgian officials are also being discussed¹¹. In January 2025, the Council of the European Union decided to suspend parts of the Agreement between the EU and Georgia on the

¹⁰ This is already evident in the EU Commission's „Georgia 2024 Report“ dated October 30, 2024, SWD(2024) 697 final.

¹¹ See *Franziska Smolnik/Giorgi Tadumadze, Georgia at a Crossroads*, SWP-Aktuell 2025/A 26 of June 3, 2025 < <https://www.swp-berlin.org/publikation/georgia-at-a-crossroads.pdf> > (accessed on 1.9.2025).

Facilitation of the Issuance of Visas¹² ; this had entered into force in March 2011. In mid-July 2025, the EU Commission sent a letter to the Georgian Government with eight demands regarding respect for fundamental rights, the fight against corruption, the independence of judiciary and compliance with EU rules on border protection. If these demands are not met by the end of August 2025, Georgia risks losing visa-free travel to the EU for all Georgian citizens.

Various actors, including the Baltic states of Estonia, Latvia, and Lithuania, as well as the Czech Republic and EU Foreign Affairs Representative *Kaja Kallas*, have called for sanctions—so-called restrictive measures—against Georgian officials. Such measures do not have a punitive effect, but are intended to induce those against whom they are directed and who are held responsible for certain behavior to change their policies or actions. However, under Article 22 of the Treaty on European Union (TEU), EU sanctions under the Common Foreign and Security Policy must be decided unanimously by all EU member states. Because this is not the case, an "alliance of the willing" is now to impose individual sanctions.

At this point in time, the EU Commission is still uncertain as to what consequences it should draw at the level of Georgia's accession process. The European Parliament is also taking a wait-and-see approach, as can be seen from its Joint Motion for a Resolution on the further deterioration of the political situation in Georgia of February 12, 2025¹³ . In point 22 of the resolution, it merely calls for the EU's strategy towards Georgia to be "immediately and comprehensively reviewed" and for the EU-Georgia Association Agreement to be revised. Some also argue that further EU measures in the accession process should be made dependent on the outcome of the Georgian local elections in October 2025.

3. Risk: Abandonment of the Accession Process – Reset "to Zero"?

The fact that the accession process, with all the progress achieved so far – unanimous granting of candidate status, waiver by the EU of all twelve priorities – is being reset „to zero“ poses a risk for Georgia that should not be underestimated. The EU is currently taking a wait-and-see approach and has not yet taken any measures in this direction. However, some EU member states are already making such demands. The legal problem in this context is that the Georgian government felt compelled to counter the EU's decision not to continue the

¹² Council suspends visa-free travel for diplomats and officials, Press release of the Council of the European Union of January 27, 2025 < <https://www.consilium.europa.eu/de/press/press-release/2025/01/27.pdf>> (accessed on 5.9.2025).

¹³ See European Parliament, Joint Motion for a resolution, RC-B10-0106/2025 (adopted text P10_TA(2025)0019) <https://www.europarl.europa.eu/doceo/document/RC-10-2025-0106_EN.html> (accessed on 1.9.2025).

accession procedure with Georgia for the time being with its own announcement to "suspend" the procedure until 2028.

3.1. The Call for Consensus-Based Negotiations "on an Equal Footing"

As far as the – primarily verbal – dealings with Georgian officials on issues relating to EU accession are concerned, the accusations made by Georgia against European and national politicians from EU member states are certainly justified. However, a lack of mutual respect on the part of the EU towards countries wishing to join the EU has always been lamented; the absence of a positive atmosphere in such proceedings is therefore nothing new.

One example of this is an incident from the accession round in 2004: Poland was the largest and most populous of the ten candidate countries that joined the EU in 2004. The Polish government wanted Poland to become an EU member as quickly as possible. It requested that the accession date be brought forward, even though Poland had "fallen behind" in meeting the so-called Copenhagen criteria in 2002 and 2003. The EU Commission's Implementation Reports showed in particular that the Polish judicial system had not been brought into line with EU standards. Poland also wanted to „opt out“ of the free movement of capital, but at the same time refused to accept other EU member states' „opt-outs“, which were intended to prevent an influx of cheap labour force from Poland into those countries. The EU Commissioner for Enlargement, *Günther Verheugen*, increased the pressure on Poland with some harsh words. At a press conference in October 2002, he said: *"I would advise the Polish delegation to drink only one (!) glass of champagne or vodka and then get back to work immediately."*¹⁴ .

In the highly emotional and ideological debate, the EU is accused of "unfair treatment" of Georgia in the accession process and of acting as a "blackmailer." Georgia finds it unacceptable to view relations between the EU and Georgia as "one-sided." In this context, the Georgian side emphasises that integration into the EU is a "mutual act" and "not a generous gift from Brussels." Criticism is also directed at the EU's centralised decision-making process on accession issues and the fact that "consensus-based negotiations" with countries wishing to join are being replaced by a "majority-driven approach."¹⁵ .

¹⁴ See *Barbara Anna Woyno/Frank Hilbert*, EU-Beitritt von Polen < <https://www.polish-online.com/polen/wirtschaft/eu-beitritt.php> > (accessed on 5.9.2025).

¹⁵ For comprehensive details: Georgien setzt Verhandlungen mit Brüssel aus, Tagesschau news report from November 28, 2024 <<https://www.tagesschau.de/multimedia/audio/audio-204308.html>> (accessed on 1.9.2025); Georgia halts EU Accession Talks until 2028, Caucasus Watch of November 28, 2024< <https://www.caucasuswatch.de/de/news/georgia-halts-eu-accession-talks-until-2028.html>> (accessed on

Taken together, these statements reveal an inaccurate understanding of the legal meaning of the term "enlargement":

3.2. Misunderstanding of the Term "Enlargement"

When talking about enlargement of the EU through the accession of new member states, the following must be taken into account: The term "enlargement" of the EU used in this context is misleading. It suggests that this is a territorial expansion of the EU that originates from and is initiated by the EU, meaning that it is, in a sense, inherent in the logic of the EU itself. In fact, however, it is an opening of the EU desired by states wishing to join. The term "opening up" would therefore be more accurate. There is a widespread prejudice here: The EU does not recruit new member states with the aim of gaining more and more economic power and influence in the world. It is "opening up" itself to these states because they want it in that way. The countries that want to join the EU under Article 49 TEU expect that they will be able to develop more quickly and increase their prosperity with the help of the EU; they hope that their economies will benefit from the European single market. This is the basic principle, even if it has not been consistently upheld by the EU itself for some time. In this respect, the EU's enlargement doctrine has been conservative to date¹⁶. Consequently, there should be no "discounts" on the so-called Copenhagen criteria or "shortcuts" on the path to accession for countries wishing to join the EU.

3.3. The Accession Process as a Process of Subordination Law

The repeated calls for consensus-based negotiations "on an equal footing" give rise to the need to classify the process by which countries wishing to join the EU can be admitted under European law. It is always difficult to precisely classify procedures in the EU, which is also referred to as a "negotiated negotiation system," in terms of legal doctrine. However, some clarifying procedural maxims can be identified.

1.9.2025); Georgian Parliament Speaker participates in EU-Parliamentary Conference, engages in High-Level Bilateral Talks, Caucasus Watch, May 14, 2025 <<https://www.caucasuswatch.de/de/news/georgian-parliament-speaker-participates-in-eu-parliamentary-conference-engages-in-high-level-bilateral-talks.html>> (accessed on 5.9.2025).

¹⁶ See *Barbara Lippert*, EU Enlargement: Geopolitics meets Integration Policy, SWP-Aktuell 2023/A 63 of December 12, 2023 <<https://www.swp-berlin.org/publikation/eu-enlargement-geopolitics-meets-integration-policy.pdf>> (accessed on 5.9.2025). Changes to this enlargement doctrine have not been successful in the past: Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions – Enhancing the accession process – A credible EU perspective for the Western Balkans, Brussels, February 5, 2020, Com(2020) 57 final.

3.3.1. The Accession Procedure as an Application Procedure at the Discretion of the European Union

The accession procedure laid down in Article 49 TEU is a multi-stage process that begins with an application for membership and leads to EU membership if the "conditions for accession" are met¹⁷. Because the EU does not decide on an application for accession in the accession procedure exclusively in the interests of the state wishing to join, but must also, as a matter of principle and as a matter of priority, safeguard the interests of the EU, it decides through its Council of the European Union on the "if," "when," and "how" of the opening of accession negotiations at its discretion¹⁸. As a result, the EU has the final say in this matter. Although the state wishing to join is free to decide whether or not to submit an application for membership and is therefore free to do as it wishes in this respect, there is no legal right against the EU to initiate accession proceedings after a membership application has been submitted. Against this background, the application for admission is therefore a prerequisite for the admissibility of accession proceedings, without which the EU may not initiate such proceedings on its own initiative¹⁹. However, the state wishing to accede cannot force the opening of proceedings by means of its application.

3.3.2. Accession Agreement – Subordinate Treaty, Relationship of Superiority and Subordination

After successful accession negotiations and fulfillment of all "conditions for admission"²⁰, an accession agreement is concluded between the EU member states and the applicant country²¹. At first glance, it appears that at the time of conclusion of the accession agreement, the applicant country and the EU member states are „on an equal footing“, meaning that - as in private law - they are "on equal terms" and can freely determine their legal relationships. Nevertheless, even at this stage of the accession process, the legal relationship is characterised by a relationship of superiority and subordination. The accession agreement is a treaty governed by the law of subordination, not the law of coordination. Thus, the Council of the European Union unilaterally determines whether and when the "conditions for admission" have been fulfilled. Furthermore, the EU member states retain

¹⁷ See Article 49, sentence 5 TEU.

¹⁸ The so-called principle of opportunity applies. On discretion in the context of the accession decision, see Philipp B. Donath, Die Voraussetzungen für die Aufnahme neuer Mitgliedstaaten in die Europäische Union unter besonderer Berücksichtigung des Merkmals „Europäischer Staat“, in: Studentische Zeitschrift für Rechtswissenschaft (StudZR), 2008, 242 et seq.

¹⁹ In this respect, there is a blocking effect.

²⁰ This refers to the so-called Copenhagen criteria.

²¹ See Article 49, sentences 5 and 6 TEU.

freedom of conclusion with regard to the accession agreement until its conclusion; limits to the discretion to conclude may be set at most by a contractual self-commitment or the principle of proportionality.

3.4. Withdrawal of the Application for Accession under General Rules – The Example of the Republic of Iceland

The withdrawal of an application for membership in the application-based accession procedure is possible under general rules until the accession agreement is concluded. The withdrawal of the application is to be regarded as the *actus contrarius* to the submission of the application. The withdrawal of an application for admission may be made in writing or by conclusive conduct. Because an accession procedure may only be carried out at the request of the applicant country, this procedure ends with the withdrawal of the application for membership. Any (interim) decisions already taken by the EU become "irrelevant" and are therefore ineffective. The accession process is not divisible in the sense that parts of this process—such as the progress of the applicant country certified by the EU in the Enlargement Reports, the candidate status, or negotiation chapters already completed in the accession negotiations—can continue to exist.

The example of the Republic of Iceland shows that the withdrawal of an application for accession follows the general rules for the withdrawal of applications in procedures based on applications.²² The country had applied for EU membership in July 2009. Since June 2010, the Republic of Iceland had been an official candidate for accession, and the EU had already started accession negotiations with the country in July 2010. After the parliamentary elections in April 2013 resulted in political majorities rejecting Iceland's accession to the EU, the new Icelandic government declared to the EU in March 2015 that it no longer wished „to be considered a candidate country“²³. The Council of the European Union interpreted this statement by the Icelandic government as a withdrawal of the Republic of Iceland's application for membership and considered the accession process to be terminated. Prior to

²² See *Carsten Schymik*, Island auf EU-Kurs – Beitritt als Rettungsanker, SWP-Aktuell 2009/A 24 of May 5, 2009 <https://www.swp-berlin.org/fileadmin/contents/products/aktuell/2009A24_shy_ks.pdf> (accessed on 1.9.2025). Norway and Switzerland also withdrew their applications for accession after negative referendums on accession, in some cases even twice. In the case of Norway, conclusive behavior was interpreted as a withdrawal of the applications for membership; in detail: European Parliament, Die rechtlichen Fragen der Erweiterung der EU – Das Recht auf Beitritt <https://www.europarl.europa.eu/enlargement/briefings/23a2_de.html> (accessed on 5.9.2025).

²³ In detail: Island zieht Beitrittsantrag zurück, Süddeutsche Zeitung online, March 12, 2015 <<https://www.sueddeutsche.de/politik/europaeische-union-island-zieht-beitrittsantrag-zurueck-1.2391592.html>> (accessed on 1.9.2025); Mitte-Rechts-Regierung beendet Verhandlungen. Island zieht EU-Beitrittsantrag zurück, Tagesschau news report dated March 12, 2015 <<https://www.tagesschau.de/ausland/island-103.html>> (accessed on 5.9.2025).

its decision, the Icelandic government had neither consulted the Icelandic parliament nor held a promised national referendum on the continuation of accession negotiations with the EU²⁴ ; at the time of the withdrawal of the application for accession, one third of all negotiation chapters had already been completed. The Icelandic government's actions were accompanied by violent mass protests²⁵ .

3.5. The Decision to „Suspend“ Accession Talks as a Withdrawal of the Application for Membership?

The Georgian government's decision to counter the EU's decision not to continue the accession procedure with Georgia for the time being with its own announcement to "suspend" the procedure opens up scope for interpretation of this statement. There are growing calls in some EU member states for consultations on whether the accession process with Georgia should also be "formally" terminated in view of the Georgian Prime Minister's announcement. According to diplomats in Brussels, at least six EU member states are arguing that the accession process should not only be "suspended" in light of the Georgian Prime Minister's statement, but "formally terminated." These include not only the Baltic states, but also France and Germany. Former German Foreign Minister *Annalena Baerbock* has called for Georgia's suspension of accession talks to be followed by an official termination of the accession process²⁶ . In July 2025, EU Foreign Affairs Representative *Kaja Kallas* called on the Georgian government to comment on this by the end of August 2025²⁷ .

The EU's reaction to Iceland's withdrawal of its application for membership shows just how explosive the Georgian government's statement is. In March 2014, EU Commission diplomats advised the Icelandic government not to withdraw its application for membership with all the consequences that would entail, arguing that such a withdrawal would be irreversible

²⁴ See *Benedikt Johannesson*, Thousands Protest Government's EU Application Withdrawal, *Iceland Review*, March 15, 2015 < <https://www.icelandreview.com/news/2015/03/15/thousands-protest-governments-eu-application-withdrawal.html> > (accessed on 5.9.2025).

²⁵ Iceland government move to reject EU talks sparks protest, *Reuters*, March 15, 2015 < <https://reuters.com/article/iceland-eu-idUSL2NOVVH06T20150315.html> > (accessed on 1.9.2025). In December 2024, the current Icelandic government decided to hold a referendum on accession negotiations with the EU before 2027.

²⁶ *Annalena Baerbock* will Georgiens Beitrittsprozess aussetzen, *Die Zeit*, December 26, 2024 < <https://www.zeit.de/politik/ausland/2024-12/georgien-annalena-baerbock-will-georgiens-eu-beitrittsprozess-aussetzen.html> > (accessed on 1.9.2025).

²⁷ EU threatens accession candidate Georgia with sanctions, *European Newsroom*, July 16, 2025 < <https://www.europeannewsroom.com/de/eu-threatens-accession-candidate-georgia-with-sanctions.html> > (accessed on September 5, 2025).

and that the accession process would have to be restarted at a later date if necessary²⁸ :
"Iceland should better put its EU membership bid on hold instead of retracting or dropping the membership application."

However, even if the accession talks are merely "suspended," the EU may consider an application for membership to have been withdrawn by conclusive behavior, namely if the suspension is not limited in time. Referring to the precedent of Malta, which joined the EU in 2004 after putting its bid on hold while an EU-sceptic government was in office, the then EU Commissioner for Enlargement, *Olli Rehn*, stated²⁹ :

"So in a way putting the bid on hold is possible, but of course not for an unlimited period of time... There is no option to keep these things up in the air."

In view of the above, there is a risk for Georgia that the accession process, with all the progress achieved so far, will be reset „to zero“ by the EU.

4. Questioning Aspects Previously Considered Unproblematic

It is not possible to predict with certainty whether the EU – after resuming the current accession process, which has only been interrupted, or after starting a new accession process as a result of a reset of the current accession procedure „to zero“ – would examine obstacles that have not yet been addressed for the first time³⁰ . When the EU Commission set out a list of requirements in its "Opinion on Georgia's application for membership of the EU" in June 2022 and demanded twelve priorities to be fulfilled, it left questions that logically needed to be answered first unaddressed. These include aspects that relate to Article 49 TEU itself or – in the interpretation of Article 49 TEU – touch upon principles of EU enlargement policy. The EU Commission may have left such preliminary legal questions open because it assumed that there were no obstacles to Georgia's accession to the EU in this respect. The existence of obstacles to accession at this level, i.e., the validity of its previous unexamined assumptions, could now be called into question by the EU for the first time.

²⁸ For further details: Iceland can wait and see on EU membership, webarchive of March 6, 2014 < <https://www.webarchive.org/web/20140310000626/https://news.ninemsn.com.au/world/2014/03/06/08/06/iceland-can-wait-and-see-on-eu-membership.html>> (accessed on 5.9.2025).

²⁹ Iceland can wait and see on EU membership, webarchive of March 6, 2014 < <https://www.webarchive.org/web/20140310000626/https://news.ninemsn.com.au/world/2014/03/06/08/06/iceland-can-wait-and-see-on-eu-membership.html>> (accessed on 5.9.2025).

³⁰ No venire contra factum proprium.

4.1. Georgia: Not an "Outermost Region" or an "Overseas Country"

The objection raised by some Member States³¹ that Georgia is "remote" from the EU territory and geographically "isolated" because it does not share borders with other EU Member States has not yet been followed up by the EU Commission. In fact, the EU borders closest to Georgia are those of Bulgaria and Romania across the Black Sea. This argument put forward in favour of refusing Georgia's accession is based on the fact that, according to Article 49 TEU, only "European states" can join the EU³² and that the EU's ability to act also requires geographical "connection" to the EU territory. Admittedly, the term "European state" in Article 49 TEU is not an arbitrary term of inclusion or exclusion³³. Nevertheless, the EU has always taken great care in defining its territory. In Articles 349 and 355 of the Treaty on the Functioning of the European Union (TFEU), it has meticulously regulated whether land areas, territories, and states on the "outer periphery" of the EU should have access to it. In the absence of any connection under international law with any of the current EU member states, Georgia cannot be classified as an "outermost region" under Article 355, paragraph 1 TFEU or as an "overseas country" under Article 355, paragraph 2 TFEU, in which case individual EU regulations may apply. Due to its geographical "insularity," the member states mentioned above argue that a separate status under European law must be created for Georgia. Such concerns could become louder in the future.

4.2. No Accession Prospects for De Facto Divided States as a Dogma

The complete territorial sovereignty of a state over its national territory is one of the most important prerequisites for EU accession. In principle, a de facto divided state, i.e., a state that exists as a single entity under international law but includes territories controlled by another state, does not have access to the EU. The recognition of a divided state as a sovereign member of the EU is incompatible with the fundamental principles of the EU.

³¹ Denmark: Georgia's insularity stands in the way of its accession to the EU, Politiken of March 11, 2023 <https://www.politiken.dk/promo_name_id.digitaladgang/georgias-insularity-stands-in-the-way-of-its-accession-to-the-eu.html> (accessed on 1.9.2025); Poland: Wyspiarski charakter Gruzji stoi na przeszkodzie jej przystąpieniu do UE, Wirtualna Polska of January 24, 2023 <<https://www.wp.pl/presscorner.detail/gruzji.insularity.html>> (accessed on 1.9.2025); Portugal: A insularidade da Georgia impede sua adesão a UE, Diário de Notícias, September 7, 2022 <<https://www.portugal.eu/document/a-insularidade-da-georgia-impede-sua-adesao-a-ue.html>> (accessed on 1.9.2025).

³² For general information on this topic, see *Philipp B. Donath*, Die Voraussetzungen für die Aufnahme neuer Mitgliedstaaten in die Europäische Union unter besonderer Berücksichtigung des Merkmals „Europäischer Staat“, in: *Studentische Zeitschrift für Rechtswissenschaft (StudZR)*, 2008, 244 ff.

³³ See *Herfried Münkler*, Die politische Idee Europa, in: *Mariano Delgado/Matthias Lutz-Bachmann*, Herausforderung Europa, 1995, 10.

Internal border conflicts and external interference could jeopardize the stability of the EU itself. Following Cyprus' accession in 2004, the Council of the European Union took a clear position on this issue and made the rejection of such states a dogma of its enlargement policy³⁴.

To this day, Cyprus is effectively divided into a Greek Cypriot southern half, the Republic of Cyprus, and a Turkish Cypriot northern half, the Turkish Republic of Northern Cyprus. The latter is not recognized under international law. The EU accession applied for by the Republic of Cyprus on behalf of the entire island was intended to benefit the whole island. However, because the Cyprus conflict could not be resolved in time, the EU member states agreed to separate the accession negotiations from the reunification issue. The latter should not stand in the way of accession. In 2004, Cyprus joined the EU as a de facto divided island. The territory of the EU is its entire territory. The territory known as the Turkish Republic of Northern Cyprus, over which the Republic of Cyprus does not exercise effective control beyond the demarcation line known as the Green Line, is considered a "special EU territory" where EU law cannot currently be enforced. With Cyprus's planned accession to the Schengen area in the second half of 2025, the sovereignty issue will become particularly visible because the so-called Green Line will then become the external border of the EU³⁵.

Admittedly, for geopolitical reasons, the EU member states agreed in 2022 and 2023 to deviate from the aforementioned dogma under restrictive legal conditions. In any case, the Council of the European Union has not yet seen any obstacle to accession in the fact that the candidate countries in the last accession round do not have complete control over their national territory — Ukraine with Crimea and the Donbass, Moldova with Transnistria and Gagauzia, and Georgia with Abkhazia and South Ossetia. Because the sovereignty issues in Cyprus have not yet been resolved, there are growing calls to "reactivate" the EU's previous enlargement policy of strictly rejecting de facto divided candidate countries.

5. Assumption for an Uncompromising Monitoring of the So-Called Copenhagen Criteria from 2028 Onwards

In December 2023, the Council of the European Union granted Georgia the status of candidate country, even though the EU Commission had only considered three of the twelve

³⁴ Representatively *Stig Johansson*, De facto divided states and accession to the European Union – Cyprus as a case study, *europaesk rätt*, 2017, 62, 67.

³⁵ See *Andreas Demetriades*, Cyprus to join the Schengen Zone, Advocate & Legal Consultants < <https://www.demetriadeslaw.com/when-will-cyprus-join-the-schengen-zone.html> > (accessed on 1.9.2025).

priorities to be completed at that time³⁶. At the time, the EU Commission stated³⁷: *"In the case of Georgia...the Commission recommends that the Council grants Georgia the status of a candidate country on the understanding that a number of steps are taken."* The granting of candidate status by the EU thus represented a "bill of exchange on the future".

Against this backdrop, it is unlikely that the accession process will resume at the end of 2028 with the immediate opening of accession negotiations. Such a scenario would only be conceivable if the Georgian government were to use the time until 2028 to focus on and complete the remaining nine priorities.

5.1. Sovereignty-Preserving "Opt-Out" Clauses only with Unanimity in the European Union

Admission of a country wishing to join the EU does not necessarily mean membership "with all the consequences that entails." In theory, a candidate country also has the option of "fighting for" certain concessions that preserve its sovereignty during the accession process.

If a candidate country does not wish to participate in cooperation in a particular policy area of the EU, it can insist on being granted exemptions – "opt-out" clauses. Such reservations then allow it to "opt out" of certain EU projects, including obligations towards the EU. Such "opt-out" clauses can exist at the level of treaties, meaning primary law, but also at the level of secondary law. At the level of treaties—and thus also of an accession agreement—such reservations require the acceptance of all existing EU member states. To the extent of the reservation, the treaty obligations of the prospective member state requesting the exception are then limited³⁸.

It is impossible to predict whether and to what extent candidate countries will be granted sovereignty-preserving "opt-out" clauses in the accession negotiations. The success of such efforts will certainly depend on how trouble-free and without disruption the accession process has proceeded so far. However, the political desirability of the accession of the country concerned from the EU's point of view (at present) also plays a role that should not

³⁶ See footnote 3.

³⁷ European Commission, European Neighbourhood Policy and Enlargement Negotiations (DG NEAR), factsheet of November 8, 2023 <<https://www.neighbourhood-enlargement.ec.europa.eu/news/commission-adopts-2023-enlargement-package.html>> (accessed on 5.9.2025).

³⁸ In the past, the United Kingdom was proverbially the "land of opt-outs." However, Ireland, Denmark, and Poland have also always tried to preserve as much of their national sovereignty as possible through „opt-out“ clauses.

be underestimated³⁹. If "opt-out" clauses are demanded too emphatically, the EU member states can threaten to veto them under the current "unanimity rule," thereby causing the accession negotiations to "break down."

5.2. The Predestination of the Law on Transparency of Foreign Influence in the Accession Negotiations

In preparation for an accession agreement, the EU Commission conducts a screening of each of the 35 negotiation chapters to examine in detail the extent to which the national law of an applicant country deviates from the EU's „acquis communautaire“ and needs to be adapted accordingly. Since the introduction of a "new methodology" for conducting accession negotiations in February 2020, the so-called Interim Benchmark Assessment Report on the rule of law has been an important part of the accession process. Due to negative experiences with countries seeking accession in previous rounds of enlargement⁴⁰ and those in the Western Balkans⁴¹, compliance with the requirements of negotiation chapter 23, "Judiciary and Fundamental Rights," is being monitored particularly closely. Negotiation chapter 23 is the first to be "opened" in the accession negotiations and the last to be "closed." No other negotiation chapter may be "closed" until a positive Interim Benchmark Assessment Report has been issued for negotiation chapter 23. The EU Commission regularly draws on the recommendations of the European Commission for Democracy through Law (Venice Commission) for its assessment⁴².

With regard to the need for an Interim Benchmark Assessment Report on the rule of law, it can reasonably be assumed that the EU Commission will demand that the Law on Transparency of Foreign Influence⁴³ be repealed in its current form. In May 2024, the Venice Commission stated that the restrictions imposed by the Law on the rights to freedom of expression, freedom of association, and privacy are incompatible with the strict test set out in Article 8, paragraph 2, Article 10, paragraph 2, and Article 11, paragraph 2, of the European Convention on Human Rights...*“as they do not meet the requirements of legality,*

³⁹ On the refusal of „opt-out“ clauses for some candidate countries in the Western Balkans, see Communication from the Commission to the European Parliament, the European Council, and the Council on pre-enlargement reforms and policy reviews, Brussels, March 20, 2024, COM(2024) 146 final.

⁴⁰ Poland, Romania, and Hungary.

⁴¹ Albania, North Macedonia, and Serbia.

⁴² For more details, see *Mahir Muharemovic/Pavel Usvatov*, IBAR: Der Zwischenbericht zur Rechtsstaatlichkeit im Beitrittsprozess, KAS country report dated July 25, 2024 <

<https://www.kas.de/de/laenderberichte/detail/ibar-der-zwischenbericht-zur-rechtsstaatlichkeit-im-beitrittsprozess>> (accessed on 5.9.2025).

⁴³ Law of May 18, 2024.

*legitimacy, necessity...and proportionality...*⁴⁴ However, this opinion should be interpreted rather restrictively⁴⁵ : The European decision-making bodies also assume that a state's desire to increase the transparency of the financing of domestic associations when they receive money from abroad can certainly constitute a legitimate reason for regulation. On this basis, the legality of transparency laws is therefore merely a question of their design. ⁴⁶Obligations to obtain, communicate, register, and update information, administrative and criminal sanctions, and the entire enabling environment must be measured against the principle of proportionality. Judgments and opinions of European decision-making bodies now provide sufficient standards in this regard. These must be observed.

6. Duration and Dilatory Treatment in the Accession Process after 2028

In November 2024, the Georgian government reaffirmed its commitment to making Georgia *"the most prepared candidate for EU membership"* by 2030⁴⁷; this should be secured by 2030 (⁴⁸). However, against the backdrop of previous accession procedures, such a goal seems illusory. The "suspension" of accession talks until the end of 2028 merely delays the already lengthy accession process by another four years. It could also provoke the displeasure of other EU member states on this issue and, in the long run, cause the EU's remaining geopolitical interest in Georgia's accession to wane or at least to "slacken," for example due to a change in the global political situation. At this point, it should be remembered that an accession process requires unanimity within the EU at all stages.

Once a candidate country has achieved candidate status, it often takes several more years before accession negotiations can begin. Only then does the actual marathon of negotiations begin, which in turn often lasts for many years. Whereas the period between the application for accession and admission used to be less than ten years in some cases – the United Kingdom needed three years, Greece and Austria six years, and Spain nine years – the countries that joined in 2004 already took an average of ten years, and Bulgaria and Romania, which joined in 2007, took twelve years.

⁴⁴ See Urgent Opinion of the Venice Commission on the Law on Transparency of Foreign Influence, No. 1190/2024 of May 21, 2024, 23.

⁴⁵ See *Norbert Bernsdorff*, Foreign Agents Gesetze in der Analyse – Offenlegungsgebote und Verhältnismäßigkeitsprinzip, Festschrift für *Steffen Detterbeck* zum 70. Geburtstag (to be published in April 2026).

⁴⁶ See *Norbert Bernsdorff*, Foreign-Agents Gesetze in der Analyse – Offenlegungsgebote und Verhältnismäßigkeitsprinzip, Festschrift für *Steffen Detterbeck* zum 70. Geburtstag (to be published in April 2026).

⁴⁷ See above under footnote 10.

⁴⁸ Official announcement: *"This is our promise to the Georgian people, and we will fulfill it."*

Since the enlargements in 2004 and 2007, the accession processes have taken longer and longer. The EU Commission justifies this with bad experiences: Hungary, for example, has not met the EU's requirements for the rule of law since its accession in 2004. The economic and political standards of Bulgaria and Romania, which joined in 2007, are now below the EU standard again. According to the EU Commission, no significant progress has been made in the accession states of the Western Balkans despite the time that has elapsed. The accession date originally set for 2025 has now been completely abandoned; the date of accession to the EU is now a long way off. The accession process has taken the longest for Turkey⁴⁹ : After Turkey applied for membership in 1987, it was granted candidate status in December 1999; accession negotiations began in 2005. Due to setbacks in the areas of "democracy," "the rule of law," and "human rights," the EU "put" the accession process „on hold" in June 2018. Full membership of the EU currently seems highly unlikely⁵⁰.

That, despite the delay, the accession process for Georgia will accelerate after 2028 because the EU, contrary to its conservative enlargement doctrine to date, is refraining from a close-meshed review of the so-called Copenhagen criteria in the case of rapid so-called emergency enlargements, is not to be expected. Although, in the past, the EU Commission has developed ideas on how to make the accession process more efficient in such cases, with a view to the enlargement to include Western Balkan states. According to a communication from February 2020⁵¹ , it has changed the accession process so that some of the 35 negotiation chapters are now grouped into thematic clusters, meaning that accession negotiations are now conducted on the basis of the respective clusters as a whole rather than on the basis of individual chapters⁵². However, this step will not contribute to streamlining the accession process if the required reforms – such as the remaining nine priorities in the case of Georgia – are located in the same, i.e., one (single) cluster⁵³ .

7. Reform Processes in the European Union – The "Achilles' Heel" of Enlargements

Former EU Commission President *Jean-Claude Juncker* continues to warn against new accessions by Ukraine, Moldova, and Georgia without prior reforms of the EU "from top to bottom." When he took office in 2014, he announced his intention to "take a break" from

⁴⁹ See European Parliament, Türkiye's EU accession process must remain frozen, press release of May 7, 2025 < <https://www.europarl.europa.eu/news/en/press-room/20250502/PR28215/turkiye-s-eu-accession-process-must-remain-frozen.html>> (accessed on 5.9.2025).

⁵⁰ Regarding the following: Council of the European Union, Enlargement: Türkiye, Explainers of December 1, 2024 < <https://www.consilium.europa.eu/en/policies/turkey-enlargement.html>> (accessed on 5.9.2025).

⁵¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee of the Regions – Enhancing the accession process – A credible EU perspective for the Western Balkans, Brussels, February 5, 2020, COM(2020) 57 final.

⁵² See above under footnotes 16 and 51.

⁵³ Cluster 1 of negotiation chapters: "Fundamentals of EU accession process".

enlargement and prioritise organisational reforms of the EU⁵⁴. "Deepening" before "enlargement" instead of "enlargement" before "deepening"! This demand stems from an old debate in the EU that continues to this day. Is it imperative that enlargement and thus the expansion of the EU to include new member states⁵⁵ be preceded by institutional reforms of the EU? The background to these considerations is that, according to the so-called Copenhagen criteria, the EU must have the capacity to accept new member states. The accommodation capacity is currently exhausted. This is the consensus in Brussels; in connection with the accession processes of Ukraine, Moldova, and Georgia, this position was reaffirmed by the Council of the European Union in its Granada Declaration of October 2023⁵⁶.

For the "last round" of accession countries, the "linkage" between EU enlargement and reforms poses a serious risk. This is particularly true if a candidate country is not yet so far advanced in the accession process, for example if accession negotiations have not even begun due to delays for which the country itself is responsible. In this case, the EU might want to stick to suspending the accession process because it considers a candidate country's "entitlement" to EU membership to be still "weak" in such a situation. Accession countries would then have to wait for the end of the regular lengthy⁵⁷ reform process that has begun in the EU.

The length of time by which an accession process would be prolonged by reform efforts in the EU would, of course, depend primarily on their "temporal conditionality." The large continental European countries France, Germany, Italy, and Spain fear that the EU will be unable to act if it is not institutionally prepared for enlargement before the next round of accessions. They therefore advocate reforming the EU and the next round of accession negotiations one after the other, i.e., successively. Another group of EU member states, including the current EU Commissioner for Enlargement, *Marta Kos*, is willing to compromise and wants to do both at the same time as part of a so-called package solution. Irrespective of this, the duration of any interruption in the accession process would also depend on whether EU reforms were carried out at the level of treaty revisions requiring ratification⁵⁸ or below

⁵⁴ Political Guidelines 2014 <<https://www.euractiv.de/section/europa-wahlen/news/anhoerung-von-erweiterungskommissar-hahn-wir-werden-keine-daeumchen-drehen.html>> (accessed on 1.9.2025).

⁵⁵ This refers to the six countries of the Western Balkans as well as Ukraine, the Republic of Moldova, and Georgia.

⁵⁶ Granada Declaration of October 6, 2023 <<https://www.consilium.europa.eu/en/press/press-releases/2023/10/06/granada-declaration.html>> (accessed on 5.9.2025).

⁵⁷ For the potential duration, see the EU's efforts to reform the institutions through the „European Constitution“, which ultimately failed. The ambitious goal of former EU Council President *Charles Michel* to complete EU reforms by 2030 was not supported by the EU member states.

⁵⁸ Rollback or abolition of the so-called unanimity principle, reduction of the EU Commission, expansion of the powers of the European Parliament, etc.

this level, through adjustments to the subsequent accession agreements or by making use of the so-called passerelle or bridge clauses in the existing Treaty on European Union⁵⁹.

As a result, reform processes in the EU could constitute a further reason for the accession process for Georgia to be significantly prolonged. This is particularly important if the EU not only suspends the current accession process but also resets it „to zero“⁶⁰.

8. Conclusion and Outlook: Membership of the European Economic Area as an Intermediate Step, "Half membership" of the European Union

Georgia is at a crossroads. With the developments in 2024, Georgia's prospects for timely accession to the EU have deteriorated from many legal perspectives. An accession has become impossible to predict. Should such an accession still be pursued after 2028, the accession process is likely to be delayed indefinitely.

Georgia has long been the EU's closest partner in the South Caucasus. The country has been the location for regionally focused European initiatives and a regional advocate for "connectivity" with the EU. The relationship between Brussels and Tbilisi had an impact beyond the bilateral level on the role of the EU and its future engagement in the South Caucasus. Against this backdrop, it should be in the interests of both the EU and Georgia not to let the next few years pass unused, but to enable Georgia to at least achieve "gradual integration" into the EU via an interim solution.

For a long time, the so-called neighbourhood status of countries with no current prospects of accession was considered a genuine alternative to full membership of the EU⁶¹. It was a product of the EU enlargements in 2004, 2007, and 2013, is based on Article 8 TEU, Articles 212, 217, and 218 TFEU, and enables the deepening of cooperation with the EU in a privileged form within the framework of bilateral partnership agreements. Due to the "consolidation" that has already taken place in this regard, it therefore makes sense for Georgia to strive for "more" in partnership for a transitional period. Although countries associated with the EU under the European Neighbourhood Policy enjoy a privileged

⁵⁹ See *Thomas Gutschker*, Warum sich die EU mit einer Erweiterung schwer tut, Das Parlament, May 24, 2024 <<https://www.das-parlament.de/aussen/europa/warum-sich-die-eu-mit-einer-erweiterung-schwer-tut.html>> (accessed on 1.9.2025).

⁶⁰ See above under 3.5.

⁶¹ See the conference proceedings edited by *Ann Gäbler*, "Alternativen zum EU-Beitritt: Die Nachbarschaftspolitik der Europäischen Union am Beispiel von Georgien, Moldova und der Ukraine", from 2007, <<https://www.jstor.org/stable/24223550.html>> (accessed on 1.9.2025).

relationship with the EU, this only leads to a kind of partial integration that does not grant the advantages of full integration. However, if the focus is to be placed on such a "plus," this presupposes that Georgia will continue to adhere to its strategic goal of becoming a full member of the EU and, after the events of 2024, will not again seek merely an alternative to this, as it did in the past with its so-called neighbourhood status. In the former case, the goal would then be to achieve a legal preliminary stage or a legal transitional stage on the path to EU membership for an intermediate phase. Due to its compromise nature, such a temporarily accepted "half membership" in the EU could also help to defuse the domestic political situation in Georgia.

It is not expected that the EU will offer Georgia new legal cooperation models as an intermediate step during this transition period⁶². For decades, it has stuck to its concept of full membership⁶³, and above all does not tolerate cherry-picking or à la carte options when it comes to adopting the EU's common body of law. The status to be sought for a transitional period can therefore only be one from among the established cooperation models, such as a membership of the European Economic Area (EEA). The EEA, which consists of two pillars, the EU pillar and the European Free Trade Association (EFTA) pillar, has proven to be functional in the past⁶⁴ and has already served as a „springboard“ to EU membership for other countries.

A country does not become a member of the EEA by joining independently, but by becoming a member of EFTA and subsequently signing the EEA Agreement. Joining the EEA is therefore not done directly with the EEA organisation, but as an EFTA member via an EEA Agreement with the other EFTA countries and the EU. Membership of EFTA must be negotiated with its existing members Iceland, Liechtenstein, and Norway; this agreement⁶⁵ then forms the legal framework for economic cooperation and free trade between the EFTA states. After joining EFTA, membership of the EEA also requires the signing of the aforementioned EEA Agreement, which came into force in 1994.

Membership of the EEA offers the member state economic integration into the EU internal market⁶⁶. Nevertheless, the EEA Agreement goes beyond a mere free trade agreement in

⁶² For example, a status of "partial membership," "junior membership," or some kind of "light" EU membership. For more details: *Barbara Lippert*, Die EU und ihre Nachbarschaftsbeziehungen: etablierte Assoziierungsmodelle und neue Grundformen, in: *integration* 2/2019, 93 ff.

⁶³ Candidate countries must meet the so-called Copenhagen accession criteria in full.

⁶⁴ See *Barbara Lippert*, Die EU und ihre Nachbarschaftsbeziehungen: etablierte Assoziierungsmodelle und neue Grundformen, in: *integration* 2/2019, 83, 91.

⁶⁵ Accession to the so-called Stockholm Convention.

⁶⁶ No political and institutional integration into the EU, i.e. no representation in EU institutions and no participation in European legislation.

the traditional sense. The four fundamental freedoms of the EU internal market already apply in the EEA in accordance with Articles 28 et seq. TFEU: the free movement of goods, persons, services, and capital. Without already being a formal member of the EU with all the obligations that this entails, the EEA Agreement therefore grants, even before accession to the EU, the freedom of movement of persons, which is highly attractive to candidate countries, as well as the possibility of being integrated into other policy areas or policy spaces of the EU⁶⁷. Because of its close ties to the EU, membership in the EEA can build a "bridge" for countries that want to pave the way for later EU membership by integrating into the European internal market⁶⁸.

However, it should be noted that admission to the EEA is not always successful. This also applies to former EU member states such as the United Kingdom. For example, after Brexit, the EU would have liked to see the United Kingdom continue in its role as an EEA member. However, both its accession to EFTA and its continued membership of the EEA through the creation of a special status within the EEA – discussed as a "Norway plus" model – failed due to resistance from the current EFTA states Iceland, Liechtenstein, and Norway⁶⁹. Within the EEA, these states now constitute a more or less "exclusive club"⁷⁰.

The Republic of Austria serves as a model example for Georgia⁷¹. Its application for membership, submitted in the 1980s, was met with little enthusiasm in Brussels for several reasons. After lengthy negotiations, Austria agreed in 1994 to join the EEA for an intermediate phase as a legal preliminary stage or a legal transitional stage on the path to EU membership, which it achieved in 1995. The Republic of Austria thus used this legal interim solution as a „springboard“ for its ultimate goal of joining the EU⁷².

Further reading:

⁶⁷ See *Barbara Lippert*, Die EU und ihre Nachbarschaftsbeziehungen: etablierte Assoziierungsmodelle und neue Grundformen, in: *integration* 2/2019, 91.

⁶⁸ Example: Republic of Austria.

⁶⁹ Instructive here *Patrick Wintour*, Norwegian politicians reject UK's Norway-plus Brexit plan, in: *The Guardian* of December 7, 2018.

⁷⁰ *Barbara Lippert*, Die EU und ihre Nachbarschaftsbeziehungen: etablierte Assoziierungsmodelle und neue Grundformen, in: *integration* 2/2019, 83.

⁷¹ However, Georgia already has a separate free trade agreement with the EFTA organisation, which came into force in May 2018 and regulates trade between Georgia and the EFTA states.

⁷² See *Michael Gehler*, 1992: Österreichs EWR-Beitritt – Vorstufe zur EU-Mitgliedschaft, hdgö Digital Museum < https://www.hdgö.at/ewr_beitritt.html > (accessed on 5.9.2025). In order to explore the possibilities of Georgia's membership in the EEA, it might be useful to establish contact with Norway.

Jo Angerer, Streit um Pfad in die EU, Der Standard vom 1.12.2024 <
<https://www.derstandard.de/story/3000000247244/streit-um-pfad-in-die-eu.html>>
(accessed on 5.9.2025).

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Giorgi Gakharia, The EU should engage in Georgia despite its democratic backsliding, Caucasus Watch of April 20, 2025, <<https://www.caucasuswatch.de/en/interviews/giorgi-gakharia-the-eu-should-engage-in-georgia-despite-its-democratic-backsliding.html>> (accessed on 5.9.2025).

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Stefan Meister, Georgien am Kipppunkt, Internationale Politik vom 28.4.2025
<<https://www.internationalepolitik.de/de/georgien-am-kipppunkt.html>> (accessed on 5.9.2025).