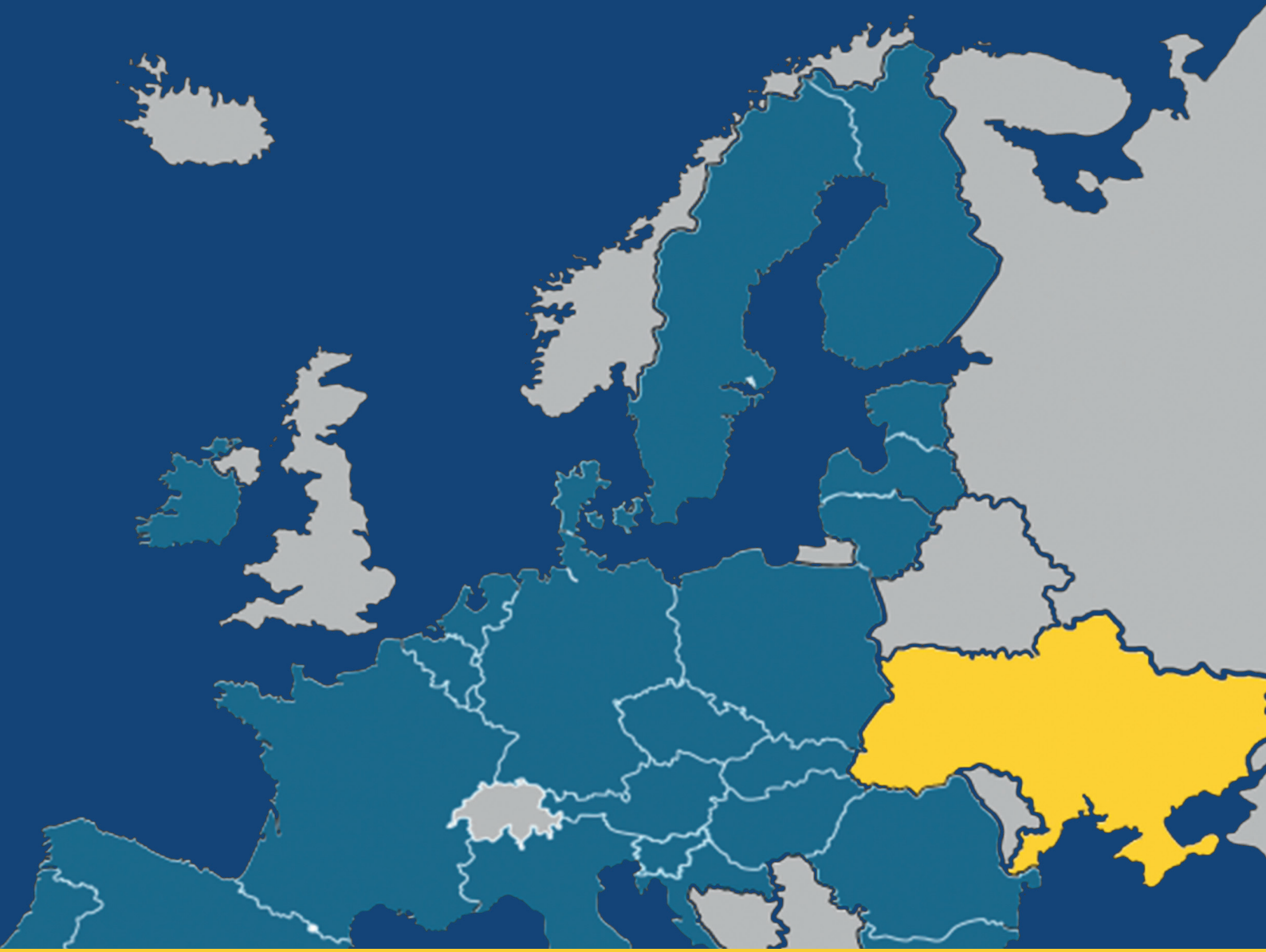


Ukraine

**as a Candidate for the Accession
to the European Union**



Political and Legal Aspects in Light of Russia's Aggression

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Introduction

By invading Ukraine, waging a brutal war, and committing international crimes, Russia intends to undermine the system of values founding the democratic community, and the very basis of global security. The democratic bloc has demonstrated exceptional unity and resolve in its response: Ukraine has been receiving political, military, and economic support. As part of this support, the European Council granted EU candidate status to Ukraine, thus paving the way towards Ukraine's integration with democratic Europe. The prospect of Ukraine as a member of NATO has also become more realistic. The finalisation of these processes will be tantamount to deep reshaping of the European security system. It will also put an end to imperial ambitions of Russia.

Understandably, these issues are of fundamental importance to Poland. It is the biggest EU Member State and NATO member to share a border with Ukraine, and it has played a key role in bringing support to Ukraine during the war. Last but not least, Ukraine's path towards EU membership does go through Poland. As for Poland, a truly independent Ukraine belonging to democratic institutions would be a realisation of its Promethean dreams, and a strategic security factor.

The aim of the present report is to shed light on the importance Ukraine's EU candidate status with particular focus on the afore-mentioned, central circumstances, and—to the fullest possible extent—to identify the detailed issues in relation to it.

The report does, of course, address Poland's arising opportunity to support Ukraine's European ambitions, following the internal political shift which occurred in Poland as a result of its parliamentary election of 15 October 2023.

The present report has been prepared based on documentation and opinions available before 15 October 2023.

1. The Evolution of Ukraine's Approach towards the European Union

Ukraine declared its independence in August 1991. As it did so, it had several strategic options to consider. Joining the EU was but one of the few moves at hand, as for years, staying independent of major blocks or joining the customs union with Russia, Belarus, and Kazakhstan have been equally considered as the new state's potential anchoring.

The cultural ties with Russia were centuries-old and deeply rooted. The use of the Russian language was omnipresent (except for the Western parts of Ukraine), virtually on par with the Ukrainian language in theatre, cinema, TV, including in the Ukrainian Parliament. Back when Ukraine's incumbent President Volodymyr Zelenskyy was a producer of a popular show, *Servant of the People*, in which he portrayed the main character, namely a fictional president of Ukraine, he did so in Russian. The show was vastly popular both in Ukraine and Russia. The Russian Orthodox Church possessed several times as many churches as the Ukrainian Orthodox Church and the Unitarian Church combined. Unlike Latvia or Estonia, Ukraine granted full citizenship to all inhabitants of the former Ukrainian Soviet Socialist Republic regardless of their fluency in the Ukrainian language. It was not until the Orange Revolution or later the Revolution of Dignity or until 24 February 2022 that many Ukrainians forsook the Russian language and switched to Ukrainian. Some two-thirds of Ukraine's stock of gas and oil and as much as 100% of its nuclear fuel reserve were sourced from Russia.

By the first half of 2022, 90% of Ukrainians were in favour of EU accession. It is a direct consequence of the heartless Russian aggression, which began on 24 February 2022. But what was it like before?

Ukraine's Simultaneous Development of Economic Cooperation with Russia and the EU.

While seeking further integration with the EU may seemingly stand in natural opposition to the integration with Russia, initially, it was not the case. Ukraine signed its first Partnership And Cooperation Agreement with the EU in 1994. The document entered into force in 1998. Later, the EU-Ukraine Cooperation Council was established. In June 1998, then President Kuchma approved the "Strategy for Ukraine's Integration into the EU". In 2000, the EU and Ukraine entered into an agreement on supporting reform in Ukraine with the aim of preparing the country for the association stage.

Simultaneously, the EU entered into similar agreements with the Russian Federation. In 1994, both parties signed the partnership agreement, and in 1997, the EU-Russia Cooperation Council was established. In 2001, both parties started talks on establishing a common European economic area. Unlike Ukraine, Russia did not wish to implement EU standards of democracy and human rights all the while demonstrating a vital interest in strengthening the economic cooperation with the Union. The EU *de facto* acquiesced in those terms. In 2004, Russia refused to participate in the European Neighbourhood Policy to which the EU eventually invited Ukraine, Belarus, Moldova, and three Caucasian countries. In 2010, in consideration of Russia's position and influence, President of the European Council Herman van Rompuy together with President of the European Commission José Manuel Barroso on the one part and Russian President Dmitry Medvedev on the other negotiated and signed a joint statement on the new initiative: the Partnership for Modernisation. It focused in particular on deepening economic cooperation while failing to mention democratic values in other than generic terms.

The EU supported both Ukraine and Russia in their efforts to join the World Trade Organization. Ukraine became a member in 2008 while Russia officially joined in 2012.

As a result, for many years, neither on the EU side nor from Ukraine's perspective, the country's efforts to develop its relationship with the EU were not regarded as threatening to Ukraine's long-standing economic ties with Russia. Pro-Russian groups in Ukraine did not oppose its further cooperation with the EU. Until they did.

The Ukrainian and Russian interests started to gradually diverge as a result of the Kremlin's growing neo-imperial tendencies. Putin sought to recreate the former Soviet Union in one way or another, the dissolution of which he publicly described as the biggest tragedy of the 20th century.

In the 2004 Ukrainian presidential election, Putin endorsed the pro-Russian candidate, Viktor Yanukovich. Following the run-off vote, Yanukovich declared his victory, and received a congratulatory phone call from the Kremlin. However, mass protests staged on Independence Square against numerous cases of electoral fraud led to the Supreme Court's decision to repeat the runoff vote which saw a pro-Western candidate, Viktor Yushchenko claim the victory. While the Orange Revolution, as it came to be called, gathered a lot of support in the West, it was regarded by Putin as a coup.

In 2005, backed by German Chancellor Gerhard Schröder, Putin decided to build a gas pipeline through the Baltic Sea, thus bypassing both Poland and Ukraine. This project did not have an economic *raison d'être*, merely a political one. Namely, it would give Russia a possibility to continue to supply gas to Western Europe, sidelining Poland and Ukraine and keeping leverage, by weaponizing gas supply against the pair.

In 2007, at the Munich Security Conference, Putin accused the United States of creating a unipolar world, which is "pernicious for all", "will not solve any problems", "plunging the world into an abyss of permanent conflicts". He subsequently characterised NATO's expansion onto Central European states and Baltic countries as a "provocation threatening the European security".

It was not until 2010 that Ukraine's further economic integration with the EU and deepening cooperation with Russia became irreconcilable. That year, the Customs Union between Russia, Belarus, and Kazakhstan was established. Ukraine as well as several members of the Commonwealth of Independent States were invited to join, too. It was Putin's ambition to make it an economic block capable of challenging the EU. With time, it was supposed to establish a common trade policy, free movement of workforce, and capital, as well as a common currency. Ukraine was simultaneously concluding its multiyear negotiations on the Association Agreement with the EU, the main part of which was focused on establishing a deep and comprehensive free trade zone.

No member of a customs union can sign its own free trade agreement with a third country. Only the Eurasian Customs Union as a whole could enter into such a deal with the EU, but it was not Putin's goal. Therefore, Ukraine was unable to both become a member of the Customs Union with Russia, Belarus, and Kazakhstan, and sign the free trade agreement with the EU. It was forced to pick one.

The Revolution of Dignity and Breakthrough in Ukraine's Relations with Russia, and the EU.

In March 2012, the negotiations on the EU-Ukraine Association Agreement were concluded. The agreement had been under negotiation since 2008, and Ukraine was represented by several consecutive governments formed by various political parties. The agreement in itself was not regarded as anti-Russian, as it did not contain such

claims. The negotiations were concluded under President Viktor Yanukovich from the pro-Russian Party of Regions, which was then in power and held the majority of seats in parliament.

The EU was willing to sign the agreement under the following three conditions: releasing former Prime Minister Yulia Tymoshenko from prison, conducting democratic legislative election and adopting several pro-European laws.

The 2012 parliamentary election campaign was characterized by multiple cases of using state resources in order to promote pro-government candidates with ties to the Party of Regions. However, the voting process and ballot counting met the European standards. This was attributable to the grassroots mobilisation by local activists throughout Ukraine who acted as watchdogs during the election. It included various groups ranging from local country housewives' clubs and pensioners associations to students. The self-appointed observers would receive copies of official election protocols from polling stations and text the results to their higher structure. There was a shadow vote counting process. It was apparent to what extent the Ukrainian society was devoted to meeting the European election standards. Some major irregularities were reported in solely 10 out of 225 constituencies. The Central Election Commission of Ukraine later mandated a repeat vote in five constituencies.

The signing of the Association Agreement with the EU was scheduled for the EU-Ukraine Summit held in Vilnius on 28 and 29 November 2013. In September that year, President Yanukovich convoked a meeting with the Party of Regions parliamentary club where he managed to convince reluctant MPs to vote in favour of the laws requested by the EU and to back the Association Agreement itself. The remaining political parties were, of course, already decidedly in favour of the Association Agreement.

Among the conditions set by the EU, the release of Yulia Tymoshenko was the most difficult to meet. Former President of Poland Aleksander Kwaśniewski and former President of the European Parliament Pat Cox undertook over 20 visits to Ukraine in order to convince President Yanukovich to free the former Prime Minister over humanitarian reasons. Yanukovich eventually decided to go with another solution (suggested by the author of this chapter). Namely, it was granting Tymoshenko a year-long parole from her sentence. Several different draft laws were subsequently filed to the parliament (as such year-long paroles had not existed in the Ukrainian law or practice).

At this point, it would seem that the signing of the Association Agreement was certain. But this was too much for Putin. On 5 November 2013, he summoned Yanukovich to Rostov-on-Don. After long hours of intense talks, no substantial statement was released. At the same time, the efforts to adopt the law on conditional paroles in the Ukrainian Parliament have stalled. On 21 November 2013, the sitting Prime Minister Mykola Azarov declared that the signing of the agreement must be postponed, as the Ukrainian industry would not withstand the free competition on European markets. The chairman of one of the largest business organisations and former Prime Minister Anatolii Kinach publicly denied these claims. Nevertheless, the summit in Vilnius ended in a fiasco.

As a result, protesters from all parts of Ukraine poured into Independence Square. A tent city was quickly erected. The primary calls included the immediate signing of the Association Agreement, Yanukovich's resignation, and tackling corruption. The biggest demonstration gathered some million protesters. Yanukovich decided to respond by using force, killing some 100 protesters. This has not, however, quelled the protests. On 21 February 2014, the sitting president fled the capital, seeking refuge first in Donbas, and then in Russia. The Supreme Council of Ukraine

ousted him and elected a new government with Arseniy Yatsenyuk as Prime Minister. In March, the new Prime Minister signed the political section of the Association Agreement, and President Petro Poroshenko, elected June of that year, signed the trade section of the Agreement. Eventually, even the Party of Regions condemned the actions of Yanukovych.

The Revolution of Dignity marked a significant shift in the Russia-Ukraine relations. The statues of Lenin were being taken down across the country. After the Russian military forces seized Crimea and part of the Donbas, the anti-Russian sentiment became rather commonplace. The parliament adopted laws promoting the Ukrainian language and limiting the use of Russian in public institutions, media, schools, and films. A lot of effort was made to limit the reliance on Russian energy supply. Naturally, the occupation was not recognized, and there were constant fights on the ceasefire lines. It was a small war. The military and special services were meticulously purged after mass trials with the use of lie detectors, as both formations failed during the Russian aggression. There was a concerted effort to improve the army's armament. Poroshenko managed to grant autocephaly to the Ukrainian Orthodox Church.

The Pro-European amendments to the Constitution. In the interest of perpetuating the pro-European orientation and preventing any potential backsliding, several amendments to the Constitution were adopted. This required a lot of effort, as amendments to the Constitution require meeting truly rigorous requirements.

- The following passage was added to the Preamble: “confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine”.
- The following passage was added in Paragraph 5 of the first part of Article 85, enlarging the competence of the Verkhovna Rada of Ukraine: “realization of the strategic course of

the state on acquiring full-fledged membership of Ukraine in the European Union and in the North Atlantic Treaty Organization”.

- According to part 3 added to Article 102: “The President of Ukraine is a guarantor of the implementation of the strategic course of the state for gaining full-fledged membership of Ukraine in the European Union and the North Atlantic Treaty Organization”.
- Article 116 now also stipulates that the Cabinet of Ministers of Ukraine: “provides the implementation of the strategic course of the state for gaining full-fledged membership of Ukraine in the European Union and the North Atlantic Treaty Organization”.

The afore-mentioned amendments were adopted by the Verkhovna Rada on 7 February 2019 with 334 MPs voting in favour and solely 16 MPs choosing to vote against it.

Support for Ukraine's integration with the EU in opinion polls. For many years, the Ukrainian public expressed nearly equal support for both the integration with the EU, and joining the customs union with Russia, Kazakhstan, and Belarus (with a slight leaning towards the EU). The sudden surges in support for EU accession in the next years were not attributable to EU incentives and European prospects, but rather the subsequent aggressive moves made by Russia against Ukraine.

Until 2014, many Ukrainians believed this two-way integration to be possible. In a poll conducted in 2012, some 48% of the surveyed were in favour of joining the EU with 29% against it. The customs union with Russia, Belarus, and Kazakhstan enjoyed a similar support: 40% were in favour, while 37% opposed it. When the respondents were asked to pick only one option, 42% favoured the EU, while 32% chose to pursue the customs union with Russia. The differences across various political parties electorates notable. Some 60-70% of the supporters of All-Ukrainian Union „Fatherland”, Udar or Svoboda supported the EU accession.

The Party of Regions voters, in contrast, favoured the customs union with Russia, with some 59% saying yes to this project. Among the Communist Party electorate, this number was as high as 71%. 11% of all surveyed wanted Ukraine to remain independent of both blocks. As many as 44% of the respondents were against joining NATO with solely 15% in favour. Prejudice against NATO purported to be an aggressive block, spread in Ukraine for years was directly reflected in the opinion poll.

Following the Revolution of Dignity, the support for integration with the EU and NATO substantially increased. In a poll conducted on 16 and 17 February 2022, just days before the Russian aggression against Ukraine, as many as 68% of the surveyed favoured the EU accession contrary to 28% opposing it. A month after the Russian full-scale attack, in a survey from 30 and 31 March 2022, the astounding 91% wanted Ukraine to become an EU member. According to another poll, the support for EU accession rose from 56% in 2021 to 79% in 2022. Furthermore, while in 2021 some 35% were against it, in 2022 it was solely 8%. In December 2022, 60% of respondents believed that the government should work on meeting all the criteria set by the EU for accession candidates, while solely 19% did not agree with this statement. 21% did not have an opinion on this matter.¹

EU's action or negligence fuelling Ukrainian disappointment. This ambivalent approach to having to choose between the EU and Russia or staying independent of the two blocks manifested by the Ukrainian public for many years also stems from a disappointment with the EU's attitude towards Ukrainian aspiration. There are numerous reasons for it:

- The EU did not hesitate to confirm the EU accession aspiration of the Western Balkan countries as early as 1999 with the aim of stabilising peace in the region. It did although the level of preparation for EU accession of many Balkan countries was much more dubious than that of Ukraine. Twenty-five years later, by 2023, solely Slovenia and Croatia managed to join the EU. As for Ukraine, it only received its candidate status in June 2022. It was a political gesture of support for a country that was brutally attacked and heroically fought for its independence.
- When Poland and other former members of the Soviet bloc joined the Schengen area, they were forced to introduce a visa regime for Ukrainians. As a result, the number of Ukrainians coming to Poland and several other countries dropped dramatically. In contrast, Ukrainian citizens could travel to Russia without having to apply for a visa or meet any requirements. Furthermore, in order to establish visa-free travel with the Schengen area, Ukraine was demanded to fulfil the same set of criteria as other third-party countries, which in reality extended the agreement process by several additional years. Visas are costly, and the majority of them were issued as a one-time permit, which was not understandable as a person who was once vetted should be able to re-enter the area and receive a multi-use visa. This was a rule established by the Schengen Agreement, but in practice, it was an incomprehensible exception.
- Humiliating EU border crossing conditions is an issue that remains unsolved. There are hours-long queues for passenger vehicles and long days of wait for lorries, especially on the Polish-Ukrainian border. Until 2014,

¹ Source: Ilko Kucheriv Democratic Initiatives Foundation.

Ukrainians did not experience any such problems when crossing the border with Russia.

- At the time of the Orange Revolution, Günter Verheugen, then-vice-president of the European Commission and the Commissioner for Enlargement was testing the possibility of granting Ukraine the candidate status, but his proposal was met with a firm opposition from several important Member States. While he has never publicly revealed who opposed to the idea, it is highly likely it was France, the Netherlands, perhaps even Germany. Interestingly, when asked in a poll, EU citizens ruled that Ukraine is the most deserving country to join the EU, with Balkan countries ranking lower. The European Parliament also advocated for the granting of candidate status to Ukraine. According to some pundits, if Ukraine had received it after the Orange Revolution, the Yushchenko-Tymoshenko government would have introduced more reforms. Instead, the country was paralysed by pointless internal conflicts.
- When negotiating the Association Agreement, the EU refused to inscribe even the unilateral prospect of membership into the preamble. This was the case in the Poland-Europe Association Agreement signed in 1991. There were fears that doing so could impede the ratification process for all Member States must ratify it as association agreements are subject to the rule of unanimity. As it later turned out, these fears were not unjustified, as a group of Dutch citizens demanded to call a referendum on the ratification of the agreement with Ukraine. The turn-out was strikingly low, with only 32% of the eligible casting a ballot. This accounts for less than 1% of EU citizens of age. The majority of participants voted against it. Fortunately, it was merely an advisory referendum, which meant that the Dutch parliament was able to ratify the agreement after the joint declaration was made by the Dutch

government and the European Council that the ratification did not constitute a promise of official candidacy.

The hesitance on the part of the EU, as demonstrated above, fuelled the anti-Union propaganda spread for years in Ukraine. It can be summarised as follows: “They don’t want us there, in the EU, they are only after our resources, they will exploit us, while we won’t benefit from it at all”. It clearly resonated with several Ukrainian demographics. Until it did not anymore. Today, the support for the EU and NATO is absolutely common in Ukraine.

2. The Legal Basis for the Accession and Ukraine's Path to the EU So Far

2.1. THE LEGAL AND POLITICAL FRAMEWORK FOR THE ACCESSION

A cohesive procedure for the accession of a new Member State was introduced by virtue of the Maastricht Treaty in 1993. It was later completed by practical arrangements worked out during several subsequent enlargements of the bloc. In 1995, the EU welcomed Austria, Sweden, and Finland. The 2004 enlargement is commonly referred to as the “big one” (as 10 countries have joined the ranks, including Poland). Then followed the 2007 enlargement with Bulgaria and Romania joining, completed by the Croatian accession in 2013. Today, the accession is governed by Article 49 of the Treaty on the European Union. From the Ukrainian and Moldovan perspective (and eventually, Georgian), there are several framework conditions to be satisfied by the applicant as set forth in Article 49.

First — The very process is a matter of international law and is concluded by drafting an accession treaty. In order for it to enter into force, it must be signed and then ratified by all Member States and the joining state. The direct implication of which is that all key decisions (opening the procedure, granting the candidate status, opening accession negotiations, finalizing the negotiations package) are made unanimously by all Member States (although Article 49 stipulates that pertinent decisions are made by the Council, in practice, it is the “Council” comprising the heads of state and government, that is, the European Council).

Second — The EU institutions play a crucial role in the accession process: the decisions made by the Council (effectively, Member States) must be preceded by a consultation of the European Commission and the consent of the European Parliament adopted by the majority of its component members.

Third — The two initial formal steps to be taken to launch the accession process are as follows: the applicant notifies the Council that it submitted its application, upon which the Council decides whether to open the procedure as governed by Article 49 of the TEU. The Council acts unanimously, having sought the preliminary opinion of the European Commission (*avis*).

Fourth — In practice, the procedure governed by Article 49 turns out to be more complex and goes beyond the framework set forth in the Article. The Copenhagen Declaration, as it is called, dated 22 June 1993² is of particular importance in this regard, as paved the way for the big wave of enlargement which saw Poland join the EU. In the declaration, the European Council formulated four criteria (hitherto referred to as the Copenhagen Criteria) which must be satisfied by the applicant country:

- The applicant country must guarantee that it is a democracy, respecting the rule of law, and human rights, including respect for and the protection of minorities (currently Article 2 TEU);

² European Council in Copenhagen 21–22.06.1993 r. Conclusions of the Presidency. SN 180/1/93 REV 1 (Paragraph 7, Section A) <https://www.consilium.europa.eu/media/21225/72921.pdf> (Retrieved 4.4.2022).

- a functioning market economy and the ability to cope with competitive pressure and market forces on the EU Single Market;
- administrative and institutional capacity to effectively implement the *acquis* and ability to take on the obligations of membership, including the criteria of the Economic and Monetary Union;
- Finally, the EU must have the capacity to absorb new members (the current wording of Article 49 TEU refers to it as “conditions of eligibility” agreed upon by the European Council).

All the afore-mentioned “criteria” must be satisfied by Ukraine (which is meticulously monitored as part of the accession negotiations). There is no possibility to use a “fast track” to the EU membership due to extraordinary circumstances. One of the key reasons for this is the inevitable revision of the treaty, Article 49 TEU to be precise, which it would entail. The process would be time-consuming (what is more, the Member States are currently not ready to open revision negotiations). First and foremost, it is certain that Member States would oppose the fast-track solution, as it could jeopardize the Union’s structural and economic cohesion.

2.2. THE GRANTING OF CANDIDATE STATUS FOR EU MEMBERSHIP TO UKRAINE

The Partnership and Cooperation Agreement was the first legal act to comprehensively regulate the

relations between the European Communities, as they were then called, their Member States, and Ukraine (after it declared its independence in 1991). The document was signed in Luxembourg on 14 June 1994, and entered into force on 1 March 1998.³ Subsequently, the relations were formally governed by first the 1999 Common Strategy on Ukraine,⁴ and then the European Neighbourhood Policy and Eastern Partnership. After Ukraine joined the WTO in 2008, the formal negotiations on the accession agreement could begin. At the 15th EU-Ukraine Summit held on 19 December 2011, the parties formally declared that they had reached a common understanding on the full text of the agreement. The signing of the Association Agreement was scheduled for the Eastern Partnership Summit held in Vilnius on the 28 and 29 November 2013. However, a few days prior to the summit, then-President Yanukovich formally declared his refusal to sign the agreement.⁵ This decision sparked mass social protests (*Euromajdan*) which led to ousting the government and forced Yanukovich to seek refuge in Russia. Seeing Ukraine’s internal crisis, Russia seized the opportunity and annexed Crimea and parts of Donbas in the first months of 2014.

Against this background, the eventual signing of the Association Agreement would take on an additional, political dimension. It would come to be seen as a declaration of support for Ukraine’s territorial integrity and independence, of Ukraine’s European direction, and a programme of pertinent political reforms.⁶ Owing to the political context, the agreement was finally signed in two stages: first, the political chapters were signed on 21 March 2014, followed by the signing of

³ OJ L 49, 19.2.1998, p. 3–46.

⁴ European Council Common Strategy of 11 December 1999 on Ukraine (1999/877 CFSP) OJ L 331, 23.12.1999, p. 1

⁵ Cf. EU-Ukraine relations. Factsheet. https://www.eeas.europa.eu/eeas/eu-ukraine-relations-factsheet_en

⁶ Cf. H. Van Rompuy, President of the European Council. Statement at the signing ceremony of the Association Agreements with Georgia, Republic of Moldova and Ukraine, https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143415.pdf (Retrieved 5.04.2022).

other chapters, including the trade section on 27 June 2014.⁷ On that day, similar agreements were signed with Georgia, and the Republic of Moldova.

While the Association Agreement does not refer to the question of Ukraine's future EU membership, its preamble contains the following passage: "NOTING the importance Ukraine attaches to its European identity". Furthermore, it confirms that "the European Union acknowledges the European aspirations of Ukraine and welcomes its European choice", and identifies the aim of gradual rapprochement "based on close and privileged links". Point (d) of the second paragraph of Article 1 of the Agreement (the Objectives) underscores the objective of establishing "conditions for enhanced economic and trade relations leading towards Ukraine's gradual integration in the EU Internal Market".

On the night of 24 February 2022, Russia, supported by Belarus, waged a full-scale aggression against Ukraine. This was firmly condemned by the international community, including by the EU. At the special meeting of the European Council convened on 24 February, the heads of state and government identified Russia's attack against Ukraine as an act of aggression, and called for the immediate ceasing of military

actions and respect for the independence and integrity of Ukraine (and that of Georgia and Moldova). The Council announced that Russia will be held accountable for its actions. The EU leaders called for the immediate preparation of a new package of sanctions against Russia and Belarus, expressed their solidarity with Ukraine, and declared further political, financial, humanitarian, and logistical support for Ukrainians. The Council also acknowledged the "European aspiration and the European choice of Ukraine, as stated in the Association Agreement" (cf. Point 8. of the EC Conclusions).⁸

On 28 February 2022, President of Ukraine Volodymyr Zelenskyy signed the formal application for EU membership. The application was officially acknowledged on 1 March.⁹ On that day, the European Parliament hosted a debate with Volodymyr Zelenskyy attending online.¹⁰ In its resolution adopted on that day,¹¹ the European Parliament called on the EU institutions to undertake efforts towards granting EU candidate status to Ukraine in line with Article 49 of the Treaty on European Union. The Member States expressed their position in the Versailles Declaration adopted on 11 March 2022, at the informal meeting of the European Council.¹² While the Declaration does not go beyond the wording and terms contained in the Association Agreement,¹³ the European

⁷ Final Act of 27 June 2014 between the European Union and Ukraine as regards the Association Agreement (OJ L 278, 20.9.2014, p. 4–5).

⁸ Special meeting of the European Council (24 February 2022) European Council conclusions on Russia's unprovoked and unjustified military aggression against Ukraine, EUCO 18/22.

⁹ https://euobserver.com/tickers/154455?utm_source=euobs&utm_medium=email.

¹⁰ Press release of 1 March 2022 Invasion of Ukraine: MEPs call for tougher response to Russia, <https://www.europarl.europa.eu/news/en/press-room/20220227IPR24205/invasion-of-ukraine-meps-call-for-tougher-response-to-russia> (Retrieved 4.04.2022 r.).

¹¹ European Parliament resolution of 1 March 2022 on the Russian aggression against Ukraine (2022/2564(RSP)). (OJ C 125, 18.3.2022, p. 2–9).

¹² Informal meeting of the Heads of State or Government. The Versailles Declaration of 10 and 11 March 2022 <https://www.consilium.europa.eu/media/54773/20220311-versailles-declaration-en.pdf> (Retrieved 4.04.2022 r.).

¹³ The assessment of the Versailles Declaration — see Statement of the Conference of Ambassadors of the Republic of Poland of 8.3.2022, *Ukraina należy do Europy! Wezwanie do stworzenia kompleksowego, konkretnego i efektywnego planu włączenia Ukrainy do Unii Europejskiej* [English: Ukraine Belongs with Europe! Call on Outlining a Comprehensive, Concrete and Effective Plan for the Integration of Ukraine to the European Union; translated by MS], <https://ambasadorowiedotorg.wordpress.com/2022/03/08/ukraina-nalezy-do-europy-wezwanie-do-stworzenia-kompleksowego-konkretnego-efektywnego-planu-wlaczenia-ukrainy-do-unii-europejskiej/> (Retrieved 5.04.2022 r.).

Council did invite the European Commission to submit its opinion on the Ukrainian application (as well as those of Moldova, and Georgia).

At the unprecedented meetings as part of the extraordinary NATO summit of 24 March 2022,¹⁴ the G7 summit,¹⁵ and the meeting of the European Council on 24 and 25 March 2022¹⁶ (with President of the United States Joseph R. Biden, Jr. attending on 24 March)¹⁷, the democratic community expressed its utter condemnation of Russia's aggression (with Belarus' support) against Ukraine. Furthermore, the European Council confirmed it had started to process the application submitted by Ukraine, Moldova, and Georgia (cf. Point 4 of the Conclusions)

The subsequent events were as follows:

- 8 April: Ukraine received the European Commission questionnaire on the political and economic criteria;
- 13 April: Ukraine received the European Commission questionnaire on *acquis* in relations to individual negotiating chapters;
- 17 April and 9 May: Ukraine provided its replies;
- 17 June: European Commission's opinion (avis) on Ukraine's application for membership of the EU¹⁸;
- 24 June: The European Council granted Ukraine the status of a candidate for accession to the European Union (along with Moldova).¹⁹

A joint statement by the Polish Robert Schuman Foundation and the Conference of Ambassadors of the Republic of Poland adopted on 4 July 2022²⁰ outlined the following strategic issues relating to granting EU candidate status to Ukraine:

First — while the statement reaffirmed that a “special, fast track” was out of the question in the case of the Ukrainian EU membership, it also pointed to the fact that the process set forth in Article 49 TEU was proceeding exceptionally smoothly, and granting Ukraine the candidate status is tantamount to a formal launch of this process. Therefore, an end has been put to many speculations aimed at postponing the actual prospect of Ukraine's membership;

Second — the decision by the European Council does meet the expectations of the international community, and is in line with the action taken by various international organisations, and institutions (such as NATO or G7). Furthermore,

¹⁴ Press conference by NATO Secretary General Jens Stoltenberg following the extraordinary Summit of NATO Heads of State and Government, www.nato.int/cps/en/natohq/opinions_193613.htm (Retrieved 5.04.2022 r.).

¹⁵ G7 Leaders' Statement — Brussels, 24 March 2022, www.consilium.europa.eu/pl/press/press-releases/2022/03/24/g7-leaders-statement-brussels-24-march-2022/ (Retrieved 5.04.2022 r.).

¹⁶ European Council conclusions on the Russian military aggression against Ukraine (24.3.2022). <https://www.consilium.europa.eu/pl/press/press-releases/2022/03/25/european-council-conclusions-on-the-russian-military-aggression-against-ukraine-24-march-2022/>

¹⁷ Joint readout by the European Council and the United States. The European Council, 24.3.2022 www.consilium.europa.eu/pl/press/press-releases/2022/03/24/joint-readout-by-the-european-council-and-the-united-states/ (Retrieved 5.04.2022 r.).

¹⁸ COM (2022) 407 final.

¹⁹ EUCO 24/22

²⁰ *Ukraina należy do Europy! Perspektywa członkostwa Ukrainy w UE w świetle konkluzji z posiedzenia Rady Europejskiej* [English: Ukraine Belongs with Europe! The Prospect of Ukrainian EU Membership in Light of the Conclusions Adopted at the Meeting of the European Council; translated by MS] (Statement issued on 23/24.6.2022). <https://monitorkonstytucyjny.eu/archiwa/22288>

it has a deep political dimension insofar as it sets direction for the political and economic development of Ukraine, provides support to the Ukrainian people in their struggle against the aggression imposed by Putin's regime, and uncompromisingly sets the limes for the future peace deal (the European direction of Ukraine being non-negotiable).

After the European Council decided to grant Ukraine candidate status, the subsequent actions are being taken in a satisfyingly rapid manner:

- September 2022: the 8th meeting of the EU-Ukraine Association Council was devoted to outlining the details of the next steps;
- 12 October: the communication published by the European Commission on EU enlargement policy (in which it assessed Ukraine and Moldova for the first time);
- 13 December: in its Conclusions, the Council of the EU²¹ accepted the assessment made by the European Commission in its communication of 12 October, and invited the Commission to prepare a roadmap outlining the next steps to ease Ukraine's access to the EU Single Market using the full potential of the Association Agreement;
- 1 February 2023: the European Commission submitted a detailed analytical report on Ukraine's application for EU membership;²²
- 2 February: in its resolution on the preparation of the EU-Ukraine Summit, the European Parliament called for working towards a swift opening of accession negotiations;²³
- 3 February: the joint statement released following the 24th EU-Ukraine Summit²⁴ held in Kyiv stressed the historical importance of granting the status of candidate country to Ukraine, and outlined the next steps to be taken in such areas as the National Programme for the Adoption of the *Acquis*, the implementation of the DCFTA, a deep and comprehensive free trade area as well as Ukraine's integration into EU programmes;
- 9 February: in its Conclusions, the European Council (gathered with President Zelenskyy attending) reiterated the importance of the rapid initiation of the accession negotiations;²⁵
- November 2023: the European Commission shall publish a detailed assessment of Ukraine's preparation to open accession negotiations.

In his address at the Bled Strategic Forum of 28 August 2023, President of the European Council Charles Michel outlined a sharply ambitious strategy for the enlargement finalisation "by 2030".²⁶ If this scenario was to be truly adopted, it would require a tremendous effort.

²¹ 15935/22.

²² 30 final Commission Staff Working Document. Analytical Report following the Communication from the Commission to the European Parliament, the European Council and the Council Commission. *Opinion on Ukraine's application for membership of the European Union*. Brussels, 1.2.2023 SWD(2023).

²³ European Parliament resolution of 2 February 2023 on the preparation of the EU-Ukraine Summit (2023/2509(RSP)).

²⁴ www.consilium.europa.eu/pl/press/press-releases/2023/02/03/joint-statement-following-the-24th-eu-ukraine-summit/ (Retrieved 6 February 2023).

²⁵ EUCO 1/23

²⁶ <https://www.consilium.europa.eu/pl/press/press-releases/2023/08/28/speech-by-president-charles-michel-at-the-bled-strategic-forum/> (Retrieved 1 September 2023).

3. The Position and Assessment of the European Commission

As Ukraine submitted its membership application on 28 February 2022, the European Council, following the formal procedure, asked the European Commission on 7 March 2022 to provide an opinion on Ukraine's application. The opinion was prepared in an unprecedentedly swift manner, which was possible thanks to the level of priority it was given by the Commission staff, and the personal supervision by the President of the Commission herself. As a result, the Commission adopted the full text of its opinion and communicated it to the Council on 17 June 2022.²⁷

The European Commission prepared its opinion based on the methodology adopted in 2020. It allows it to assess 35 areas structured around 6 thematic clusters. The assessment of Ukraine's level of approximation of the *acquis* was presented preliminarily, in general based on the European Commission monitoring of alignment efforts as part of the 2014 Association Agreement. The key question The Commission sought to answer was whether Ukraine satisfied the political conditions to the extent sufficient to grant it candidacy status. The Commission eventually concluded that Ukraine had made significant progress in the area of "stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities".

Following these conclusions, the European Commission recommended that Ukraine be granted candidate status. However, the decision was conditioned by a set of very precise criteria formulated in a novel manner. While they were not referred to as formal conditions, they soon came to be

seen as such by the Member States. The official recommendation of the Commission was issued "on the understanding that the following steps are taken [by Ukraine]". There is a total of seven steps to be taken:

- enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine,
- finalise the integrity vetting of the candidates for the High Council of Justice members and the selection of candidate to establish the High Qualification Commission of Judges of Ukraine,
- further strengthen the fight against corruption i.e. through implementing the activities formulated in the opinion,
- ensure that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF),
- implement the Anti-Oligarch law,
- adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive,
- finalise the reform of the legal framework for national minorities.

The "to-do list" as formulated above facilitated the political acceptance of the Commission's recommendation by the Member States, especially

²⁷ COM (2022) 407 final, 17 June 2022, Opinion on Ukraine's application for membership of the European Union.

since some of them were a direct response to doubts and reservations in regard to particular aspects of the Ukrainian institutional framework. It should be reiterated that the opinion was needed to merely formally open accession negotiations, as there was no comprehensive, in-depth analysis of Ukraine's level of compliance with each of the accession criteria. Instead, the Commission resorted to approximate estimates in its public communication. For instance, when presenting its official opinion, the President of the Commission said that Ukraine is 70% compliant with EU legislation, while several days later, Commission services estimated the country's compliance to be only at 50%. Regardless of the actual numbers, it was apparent that Ukraine has a substantial amount of homework to do, and its levelling-up to another stage on the path to membership will only be possible after the Commission runs the afore-mentioned full analysis, and Ukraine demonstrates ample measurable proof that it is enacting and implementing the institutional and legal components of *acquis communautaire*.

On 1 February 2023, two days prior to the EU-Ukraine Summit in Kyiv, the European Commission published its analytical report assessing the level of approximation of Ukraine's legislation to the EU *acquis* in each of the 33 chapters of approximation and future negotiations, taking stock of the situation in June 2022.²⁸ Each chapter came with a summary assessment. According to it, Ukraine has achieved a high score solely in 4 areas (Energy, Customs union, External relations, Foreign, security, and defence policy). Ukraine is considered to be moderately prepared (that is, around 50%) in five chapters, while in fifteen it

reached a score of less than 50% (characterised as "some level of preparation"). In the remaining areas, it was observed that the process was solely launched (that is, "early stage").

The moderate advancement of Association Agreement implementation does not formally influence the decision on opening the accession negotiations. This is conditioned by the Copenhagen Criteria, and the seven steps to be taken as formulated by the EC in June 2022. This notwithstanding, the implementation of the Association Agreement which mandates the enactment of the majority of *acquis* will testify to Ukraine's ability to adopt the EU norms, and in practice, it may influence the future decisions of the Council.

At the afore-mentioned summit, the EU reaffirmed that it shall decide on further steps once Ukraine fulfils the seven conditions outlined in the European Commission's opinion on its EU membership application in June 2022. Furthermore, the European Commission declared its readiness to provide technical support in regard to establishing the National Programme for the Adoption of the *Acquis* announced by Kyiv in line with the analytical report of the Commission.²⁹

In 2023, The European Commission proceeded with another assessment on 22 June at the informal meeting of the General Affairs Council of the European Union. In an oral presentation, the Commission assessed Ukraine's fulfilment of the seven priority actions. In the Commission's view, Ukraine had fully satisfied two of them (the reform of the two judicial bodies, and the media law), and made good progress in regard to the Constitutional Court. However, the Commission

²⁸ SWD (2023) 30 final 1.2.2023, Commission Staff Working Document, *Analytical Report following the Commission's Opinion on Ukraine's application for membership of the European Union*.

²⁹ On 28 February 2023, the Cabinet of Ministers of Ukraine adopted the Decision no. 189 mandating the ministries to prepare comprehensive analyses of the level of implementation of EU legislation by 30 June, and reports on the outcomes of the analyses paired with conclusions and implementations proposals by 30 August.

stated that there was still a lot to do in the four remaining areas. In this context, the Commission outlined in detail what it expected from Ukraine as priority actions. For instance, Ukraine is required to build a credible track record of prosecutions and convictions, restore the e-asset declaration system, and implement the adopted anti-corruption state programme. In conclusion, the oral assessment did not confirm previous optimistic declarations made by the Ukrainian side.³⁰ It does, however, acknowledge some degree of progress, and identify with precision the remaining areas to address. In doing so, it keeps open the perspective of a fully positive assessment of Ukraine's implementation effort on the occasion of the annual "enlargement package" announcement, during which the EU assesses all states with accession aspirations. The adoption of the package is scheduled for 8 November 2023.

³⁰ As an example, on 6 March 2023, when appointing Semen Kryvonos as the Director of the National Anti-Corruption Bureau, Prime Minister Denys Shmyhal stated that by doing so Ukraine "fulfilled all the seven recommendations outlined by the Commission".

4. The Position of Member States, the European Council, the Council of the European Union, and the European Parliament

The most precise target date for Ukraine's future membership in the EU was formulated by President of the European Council, Charles Michel. However, it was not expressed at a formal Council meeting, but at an international conference in Slovenia. At the Bled Strategic Forum held on 28 August 2023, Charles Michel outlined the perspective of 2030 as a possible and desirable date of the EU enlargement although requiring some tough decisions.³¹ While it was a first such declaration on such a high level, it did not receive much attention, neither by the members of the Council, representatives of the Member States, nor in the media.

The European Commission maintains a very open position regarding the EU enlargement process, but it is marked by caution. As such, the Commission avoids to formulate a target date. The Commissioner for Neighbourhood and Enlargement Olivér Várhelyi³² might have backed the suggestion that the year 2030 should be the target for the efforts towards the next enlargement, but he also added that this would only be possible if the efforts are doubled on the part of Ukraine, and that of Member States. Soon after this, the President of the European Commission Ursula von der Leyen in her annual

SOTEU address (State of the European Union) to the European Parliament failed to mention any target date for the enlargement, even though the address itself focussed on Ukraine to a large extent. However, Ursula von der Leyen did stress the need to accelerate the preparation efforts on both sides. The President did not uphold the call for treaty revision, but signalled the need to engage in a series of reviews in order to identify changes necessary for the next enlargement.

The European Parliament has always demonstrated a very positive position on Ukraine's membership in the EU. It adopted its resolution sooner than the European Council.³³ In preparation for the EU-Ukraine Summit held in February 2023, the European Parliament adopted a resolution outlining the expectations before the summit. Point 13 of the Resolution reads: "Welcomes the European Council's decision to grant EU candidate status to Ukraine; underlines that accession to the EU must take place in accordance with Article 49 of the Treaty on European Union, based on respect for the relevant procedures and conditional upon the fulfilment of the established criteria, in particular the so-called Copenhagen criteria for EU membership, and remains a merit-based process that requires

³¹ EU Eyes 2030 Target Date for Enlargement to Ukraine, Balkans, European Council president's target requires tough decisions in candidate countries and the support of all 27 EU members.

³² Politico, 6 September 2023, *EU enlargement chief backs 2030 deadline*.

³³ It was already on 1 March 2022, that is, less than a week after Russia's aggression against Ukraine that the European Parliament adopted the Resolution (2022/2564(RSP)). Point 37 reads: "Calls for the EU institutions to work towards granting EU candidate status to Ukraine, in line with Article 49 of the Treaty on European Union and on the basis of merit, and, in the meantime, to continue to work towards its integration into the EU single market along the lines of the Association Agreement".

adoption and implementation of relevant reforms, in particular in the areas of democracy, the rule of law, human rights, fundamental freedoms, a market economy and implementation of the EU *acquis*.³⁴

The approach towards Ukraine's EU membership has evolved in a similar manner in both the European institutions, and among the majority of Member States. Despite kind words, and commendation for the Association Agreement implementation advancement, in reality, the approach of many Member States after 2014 can be characterised as politically favourable but far from concrete. The Member States were rather evasive when it came to outlining the actual framework for the enlargement, and its timeline. Some even openly objected to formulating a clear and desirable target date for Ukraine's membership. Prior to the Russian invasion, members of the Union were overly cautious when talking about Ukraine's accession. However, in light of the full-scale invasion on Ukraine in February 2022, the political statements of nearly all EU heads of state and government shifted dramatically. Many Member States completely upended their position on Ukraine's accession. They went from hesitation and vague promise to expressing their strong support on the highest political level. Having said this, the determination level of various Member States remains nuanced.

For instance, Germany, whose approval is absolutely key in bringing about Ukraine's accession, and whose stance is closely observed, initially expressed reservations regarding Ukraine's readiness to fully integrate with the EU as well as fears over the economic implications of this process.

Immediately after Russia's aggression against Ukraine, German Chancellor Olaf Scholz gave a famous speech *Zeitenwende*³⁵ which marks a substantial shift in Germany's international policy. Soon after this, at the informal meeting of heads of state or government (10 & 11 March 2022) in Versailles,³⁶ the EU leaders unanimously declared that "Ukraine belongs to our European family". This position was confirmed at the formal meeting of the European Council in June 2023, where it decided to grant the status of candidate country to Ukraine.³⁷

France's stance evolved in a similar fashion (although it didn't signal a change of course as drastically as Germany did in the Scholz's *Zeitenwende* speech). Prior to the aggression and for some time following it, France was cautious when it came to Ukraine's accession, stressing the importance of EU internal reforms which needed to be carried out before to the enlargement. President Macron estimated that Ukraine is not ready to become a EU member. As Russia's aggression dragged on, however, France corrected its position, recognising the European perspective of Ukraine. At the same time, Macron came up with the proposal to establish the European Political Community as a platform for political coordination, and forum to promote dialogue and cooperation and enhance security, stability, and prosperity on the European continent. During the first two meetings of EPC, it was reiterated that it was not the Community's ambition to replace any existing organisation, structure, nor process.³⁸

The Netherlands, traditionally rather sceptical towards EU enlargement, initially had reservations regarding Ukraine's swift accession for reasons

³⁴ European Parliament resolution of 2 February 2023 on the preparation of the EU-Ukraine Summit (2023/2509(RSP)).

³⁵ Source: <https://www.bundesregierung.de/breg-en/news/policy-statement-by-olaf-scholz-chancellor-of-the-federal-republic-of-germany-and-member-of-the-german-bundestag-27-february-2022-in-berlin-2008378>.

³⁶ Source: <https://www.consilium.europa.eu/en/meetings/european-council/2022/03/10-11/>

³⁷ Source: <https://www.consilium.europa.eu/media/57442/2022-06-2324-euco-conclusions-en.pdf>

³⁸ Source: <https://www.epcsummit2023.md/>

relating to corruption and rule of law. Yet the Russian invasion on Ukraine caused it to change its position as well. Prime Minister Mark Rutte declared that Ukraine is a part of the “European family”, and supported its application to become a EU member.

Against this background, the position of Hungary and its evolution is less explicit and distinct, and in many aspects it diverges from the position of the remaining 26 member states. Hungary supported the European aspiration of Ukraine. After Ukraine submitted its membership application, Hungarian Minister for Foreign Affairs Péter Szijjártó supported the accelerated procedure for Ukraine’s membership. This notwithstanding, Hungary would at times resort to its veto right in the EU institutions to block particular initiatives for Ukraine. This objection was attributable to internal politics in Hungary, the country’s much more friendly and continued relationship with Russia (despite the aggression against Ukraine), as well as the controversies relating to ethnical Hungarian minority in Ukraine. Despite this, without any reservation Hungary did vote in favour of granting Ukraine candidate status at the European Council meeting in June 2022.

This radical change in political position of Member States is predominantly attributable to a shift in how Ukraine is perceived following Russia’s aggression against it in February 2022, as the result of which the EU-27 became more aware of the threat to European security that Russia poses. This elevated Ukraine to a role of a key partner in opposing Russian aggression, and influenced the change of position by Member States. At the same time, the information and footage coming

from the territories occupied by Russia considerably impacts the general public across the EU. For instance in Germany, despite the country’s traditional friendliness towards Russia, there was strong support for Ukraine following the aggression among the German society. The climate of opinion has played a key role in shaping governments’ positions and decisions.

It is rather telling, though, that the outlining of the target date for Ukrainian EU membership has not to date translated into a formal parameter organising the efforts towards enlargement. This is not a result of caution in formulating objectives in the form of concrete steps to be taken under deeply uncertain conditions, which the Member States and EU institutions have traditionally demonstrated. It is, rather, a manifestation of concerns that the new enlargement requires reform with the EU itself, the extent of which has not been defined to date. The very first proposal have just seen light, and most of its demands do not receive sufficient approval.³⁹ Furthermore, some voice their concern that the previous enlargement was poorly prepared which resulted in the EU’s growing problems in terms of its current functioning.⁴⁰

Therefore, we are seeing some disparity in the opinions formulated as a reaction to the challenge that integrating Ukraine into the EU poses. In the remarks we have heard so far, one can readily distinguish the difference in tone, nature and level of detail depending on the person’s position in the political hierarchy in both the Member States, and EU institutions.

³⁹ Cf. for instance Göran von Sydow & Valentin Kreilinger (eds); *Fit for 35? Reforming the Politics and Institutions of the EU for an Enlarged Union*, Swedish Institute for European Policy Studies, Stockholm, September 2023.

⁴⁰ Franklin Dehousse, *L’élargissement est la grande menace pour l’Union européenne*, *Le Soir* 25/08/2023, <https://www.lesoir.be/533168/article/2023-08-25/lelargissement-est-la-grande-menace-pour-lunion-europeenne>

The statements differ substantially on:

- **the highest political level**, that is, Member States heads of state or government. Virtually all have visited Kyiv and met with Ukrainian president. Public verbal expression of support is obvious and strongly underscored. It is concentrated, however, on stressing the importance of Ukraine's membership as an overarching goal and process which should lead to it.
- **on a technocratic level**, represented by lower-ranking politicians and officials, responsible for defining the framework of the accession process and criteria set for Ukraine as a future member. On this level belong: the assessment reports on Ukraine's level of preparedness published by the European Commission, and not very specific calls for EU necessary internal reform so that it is able to absorb new members as set forth in the 1992 Copenhagen Criteria. Even the report of the Franco-German working group outlining the scope of the EU reform⁴¹ focusses mainly on points which had already been advanced by both countries. Although the key proposals of the report do matter in regard to the EU enlargement, they do not fully address the challenge might bring;
- **on the lobbying level**, that is, sector-specific associations, business representation, formulating opinions on enlargement in the context of their own interests. The proposals made on this level, albeit sometimes highly detailed, may have a significant impact on the negotiation process. The governments of Member States cannot afford to readily ignore well-formulated and aptly substantiated proposals made by various interest groups. Even if the private sector proposals are not upheld in the negotiation proceedings, they do require a case-by-case consideration and reaction from the officials. As of now, there have been little to no publications or analyses prepared

by business associations which suggests that the sector believes the process of elaborating detailed solutions for business is at its very early stage.;

- **on the public debate and media discourse level**: to some extent the mirroring of the political positions can be observed. The topic of enlargement does not get in-depth coverage. The main axes for the debate are reconciling security questions and military situation development with the process of Ukraine's accession. The readiness of the Union to enlarge and necessary conditions for it to operate smoothly after it does so are another notable subtopics of this debate. As part of it, the media call for the necessary changes within the EU decision-making process and the shaping of the European Commission or the European Parliament. The questions of the enlargement-related costs, and the continuation of policies in their current shape are also mentioned, but in a less detailed manner. In this context, it is important to mention significant allegations that the previous enlargement was premature, ill-prepared, and led to current issues within the Union, such as the decision-making process, consensus-based problem-solving, and breaches of EU legislation or even EU's core values by some Member States which joined as part of the previous enlargement.

The importance of public opinion in the process leading to enlargement is absolutely key, and preconceived, stereotypical ideas might be of fundamental importance, too. Politicians cannot afford to ignore the ideas spread among their electorates only to be able to conclude the general declarations of support for EU enlargement with a positive decision on the ratification of the future accession treaty, as this requires action by national parliaments, and, in some cases, a national-level referendum as well.

⁴¹ Report of the Franco-German Working Group on EU Institutional Reform. *Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century*, Paris-Berlin- 18 September 2023.

5. The Strategic Issues

5.1. THE PATH TOWARDS EFFECTIVE OPENING OF ACCESSION NEGOTIATIONS

The European Commission is scheduled to adopt its annual “enlargement package” on 8 November 2023. For the first time, this package of assessment and analyses shall include Ukraine. The standard procedure sets the cut-off date for events and facts taken into consideration for the end June each year. Undoubtedly, in the case of Ukraine, the country’s positive steps taken between July and September this year will be taken into account as part of the general assessment of Ukraine’s progress.

The Commission should also note Ukraine’s this year’s effort to establish the national accession preparation programme. According to information communicated by the governmental agency coordinating the European integration, Ukraine completed the first stage of its auto-screening process with the aim of identifying the national legislation which is non-compliant with the EU *acquis*.⁴²

Will this full, up-to-date assessment give sufficient grounds for the Commission to recommend opening accession negotiations with Ukraine? This is undoubtedly the expectation in Ukraine. President Zelenskyy expressed that on numerous

occasions. As for the European Commission staff, they limit themselves to careful statements that “it is not impossible”. The recommendation, however, cannot be a result of political pressure. It has to be substantiated by measurable facts, and solid forecasts. There has to be a reasonable likelihood that in the mid-to-long term perspective Ukraine will be able to satisfy all criteria for membership.

Should the European Commission recommend opening accession negotiations, it is expected that Ukraine and a predominant part of media and civil society organisations will apply substantial pressure in order for the European Council to give its political approval to open the talks at its December meeting this year at the latest. Many heads of state and government will advocate for this decision. It cannot be ruled out, however, that some will want to introduce specific clauses and conditions already at this point (for instance, the requirement to reform the EU decision-making procedures prior to the inclusion of Ukraine or introducing additional changes to Ukrainian legislation on national minorities⁴³). By contrast, it is likely that deliberations on such specific requirements will be left for a later stage of this process, that is, until the talks on establishing the negotiating framework commence so that the official political approval can be granted in December without further delay or impediment.

⁴² Some 28,000 European legal acts were screened. According to preliminary analyses, some 20,000 do not require implementation, some 1,400 had already been implemented in full whereas some 3,000 still require transposition and implementation. (information published on 18.08.2023 on eu-ua.kmu.gov.ua).

⁴³ Vide the interview by Deputy Prime Minister of Ukraine Olha Stefanishyna for Interfax-Ukraine on 18.8.2023 in which she did not rule out potential further requirements on the part of Hungary in relation to the rights of national minorities. (interfax.com.ua, Україна виконає до жовтня всі узгоджені з Єврокомісією кроки, але реформи в цих сферах триватимуть і далі - Стефанішина). On a side note, the political pressure on the part of Hungary is rising. As Balázs Orbán, a close associate of Hungary’s Prime Minister told Politico on 4 September 2023: “The Ukrainian position on Hungarian minorities is just totally unacceptable. Until this problem is solved we will not be able to support the EU enlargement process towards Ukraine”.

In any case, at the time of this report, there are no precise predictions as to how the Member States will want to proceed following the potential positive recommendation by the European Commission.

The talks on the negotiating framework between the EU-27 and the applicant country can prove to be a substantial barrier on the path towards an effective opening of the accession negotiations. This was the case of Türkiye, Serbia, Albania, and first and foremost North Macedonia. As the negotiating framework must be adopted unanimously, just like any other collective decision as part of the EU accession process, various Member States use it to force their agenda on both other Member States, and the applicant, and the demands very often have little to nothing to do with the applicant's approximation of *acquis*.⁴⁴ So far, it has been standard practice for the European Council to invite the Commission to prepare a draft of the negotiating framework. In the case of Ukraine, it should be so as well. Having said this, there is no sufficient information to forecast whether the Council will have the Commission draft the framework immediately after it gives its positive recommendation—so that the draft is ready for the December European Council meeting—or whether the Council will hold it until it reaches the official political backing first. In respect to the standard contents of the framework, it is certainly expected to build on the revised enlargement methodology (including the key cluster no. 1, sitting on top of the negotiating process, and the reversibility of the entire process should the applicant country stray from democracy). In other words, the contents and scope of the negotiating framework for Ukraine should be virtually identical

to the framework adopted by the EU in 2022 for Albania, and North Macedonia.

Therefore, the first chapter of the formal negotiations with Ukraine cannot take place until the European Commission recommends opening the talks with Ukraine, followed by the political backing of the European Council to do so and reaching a consensus on the contents of the negotiating framework among Member States. This should be immediately followed by screening of the *acquis* with its explanatory and bilateral stages. The screening process is divided into the six thematical clusters and includes individual proceedings for each of the negotiation chapters of a given cluster. For this reason, if things proceed as smoothly as possible, the first negotiation meeting cannot take place before the first quarter of 2024, and the entire process is set to last at least 12 to 18 months, as it is currently the case for Albania and North Macedonia. On the political level, Ukraine will surely push to shorten the screening period, but it is unlikely to succeed.

⁴⁴ Therefore, it may be likely that conservative and national groups in Poland will call on the use of this tactic to leverage concessions by Ukraine in regard to some controversial aspect of the politics of history (such as, Stepan Bandera's place in Ukrainian history, exhumation in the Volhynia region).

5.2. ALTERNATIVES: ENHANCED ASSOCIATION, “FLEXIBLE” MEMBERSHIP, EUROPEAN POLITICAL COMMUNITY

It is worth stressing that following the granting of candidate status to Ukraine, any suggestion of further deepening the EU-Ukraine relations in ways other than its inevitable membership floundered. In regard to the Association Agreement, there are no further plans nor proposals of expanding its scope. However, the intention to fully and rapidly exploit the potential of the Association Agreement remains a priority, in particular the objective of easing Ukraine’s access to the EU Single Market. The Priority Action Plan “for enhanced implementation of the DCFTA for 2023-2024”⁴⁵ is supposed to be the driving force behind it.

What remains at the core the EU public debate, though, are ideas of a “partial” or “staged” accession. They are motivated by the conviction that the current enlargement policy has proved to be ineffective, as it did not offer enough incentives and benefits for the applicant countries, thus lowering their willingness to bear the risk of necessary reforms and costs of satisfying the EU membership criteria. As seen by the proponents of these concepts, the staged accession would offer a gradual access to benefits arising from EU membership, such as sectoral integration into

the EU institutions and decision-making mechanisms within the thematic scopes, within which a given candidate has matched all criteria. Such candidate would simultaneously gain access to a stream of EU funds which would complete the traditional pre-accession funds package from the EU IPA mechanism.⁴⁶

The afore-mentioned ideas have been developed in the academic and think-tank milieus, and to an extent resonated with politicians across the EU. Some have individually voiced their support for additional stimuli and incentives within the accession process while mentioning the ideas of a gradual, enhanced, staged, sector-specific or faster integration (although their calls were rather limited to uttering empty terms). In contrast, the novel accession ideas are not processed on the institutional level, although the topic is decidedly out there, and may even evolve into concrete proposals included in this year’s enlargement package adopted by the European Commission.⁴⁷ Should such proposals be formulated, they ought to go beyond the general “enhanced assistance package” proposed by the President of the European Commission at the GLOBSEC conference in May this year (it includes bringing the candidates closer to EU Single Market, deepening regional economic integration, accelerating fundamental reforms, and increasing pre-accession funds).

⁴⁵ Cf. point 7 Joint Statement following the 24th EU-Ukraine Summit, European Council press release 3 February 2023.

⁴⁶ An exhaustive example of such concepts has been developed by a group of scientists with European Policy Centre & Centre for European Policy Studies. It divides the accession into 4 stages before full membership is possible (A Template for Staged Accession to the EU, EPC/CEPS, October 2021). In June 2023, one of the authors behind the concept, Michael Emerson, vigorously called on the European Commission to consider it (vide *It Takes Two to Tango – Ukraine, Moldova and Georgia Advance Over the EU’s Conditions, While the EU Itself Prevaricates*, Michael Emerson, 27 June 2023, Stockholm Centre for Eastern European Studies).

⁴⁷ Cf. Speech by President Charles Michel at the Bled Strategic Forum on the EU enlargement, 28.8.2023. Michel said “The EU is strengthening (pre-accession) support for you. But we need to do more to close the development gap. First, through gradual and progressive integration into EU policies, so the benefits can be felt more quickly – even before membership. (...) The Commission’s enlargement package – expected in October – is an opportunity to outline the concrete details of this progressive integration. This could take place in different areas – the single market, for example”.

One can readily imagine candidate states having a sector-specific access to EU documents and meetings or sessions as part of the EU decision-making mechanism within the structures of the Council of the EU. It would be sufficient to adapt several EU models and procedures (such as informing candidate states in the period between the closure of the accession negotiations, and the signing of the accession treaty or granting a status of an active observer in the period between the signing of the treaty, and its entering into force). This stands in contrast with the increased funding. Finding sources and defining the scope of the additional streams of funds for candidate states in connection with their successful closing of selected chapters within clusters of accession negotiations will prove much more difficult to implement, both on a conceptual and negotiation level. Member States may instead prefer to concentrate their time and efforts on deliberating how and to what extent include the candidate state(s) in the EU multiannual financial framework for the period 2028-2034, should any of them join the EU before 2035.

With respect to another newly-emerged concept, the European Political Community, it has so far exceeded expectations while not posing a threat to the subsequent EU enlargement. When the President of France formulated the concept on 9 May 2022, it was largely understood as a way of deepening the relations between the EU and countries which are not EU members, yet share the EU values. Reactions on the part of Ukraine, but also Poland and the Baltic countries were rather critical and negative. They saw Macron's idea as an attempt to establish an alternative to the EU enlargement process. Since then, EPC held three official meetings, bringing together 47 leaders of European countries. They took place in Prague,

Chisinau, and, recently in Granada in early October 2023. The next meeting is scheduled to be hosted by the UK in London in 2024. The EPC meetings, next to the official short opening and concluding sessions, have provided ample opportunities for informal, unofficial bilateral and multilateral exchange, thus giving heads of state and government a platform to hold in-depth discussions free from the pressure of negotiating official press releases, statements or other official EPC documents. The exchanges have also proved to be useful in identifying common interests as a basis for dialogue and cooperation in such areas as defence, energy security and cybersecurity as well as ways of enhancing strategic resilience to external threats.⁴⁸

⁴⁸ A report by the Brussels Institute for Geopolitics provides a comprehensive overview of the organisation, its activity as well as an attempt to outline the perspective for this institution. See *Bringing the greater European family together. New perspectives on the European Political Community*, by Hans Kribbe, Sébastien Lumet, Luuk van Middelaar; Brussels Institute for Geopolitics, May 2023.

5.3. THE EU MEMBERSHIP OF UKRAINE, MOLDOVA (AND GEORGIA) IN LIGHT OF THE WESTERN BALKANS' ACCESSION

The pivotal change in the EU's geopolitical framework, and Ukraine's EU membership application broke off the year-long stagnation of the EU enlargement process, which even the revised enlargement strategy and methodology adopted in 2020 failed to end. The enlargement moved up on the Union's priority list, which benefitted a handful of Balkan candidate states. Albania and North Macedonia, ready for years to substantially open accession talks, could finally formally proceed with it in July 2022. In December that year, the EU granted the candidate status to Bosnia and Hercegovina, with Kosovo submitting its membership application that month, too.

The 2023 European Commission enlargement package, updating the assessment of progress made in satisfying EU membership criteria, will tell whether this new impulse for the EU enlargement policy has sped up the advancement of reforms in the Western Balkan countries. Until now, the dynamics of the process has left a lot of room for improvement, which inevitably resulted in a glacial pace of accession negotiations.⁴⁹ For instance, in areas which are key to the success of the entire process—functioning of democratic institutions and the judicial—the durability of the reforms and their advancement have generally been seen as dissatisfactory.⁵⁰ The ongoing disputes and continued conflicts in the region

(Serbia not reporting ready to normalize its relations with Kosovo, the obstruction by Srpska Republic towards the federal administration in Bosnia and Hercegovina, etc.) also have a negative impact on the process.

The years 2022 and 2023 saw a series of meetings on the level of heads of state and government between the EU and Western Balkan countries⁵¹ with the aim of developing substantial political proof of the priority treatment for the enlargement process and, first and foremost, stimulating a stronger dynamic of reform on the part of the candidate states. Having said this, the very negotiations continue to stall. For instance, the initial phase of negotiations between the EU and North Macedonia, the screening of the *acquis* in cluster 1, the Fundamentals, took place between September and December 2022. However, the official report of the Commission on this topic was only published on 20 July 2023. Furthermore, it was not followed by a formal proposal to open the negotiations on that cluster or a formulation of pre-requisite conditions to be met before the negotiations could be opened.

Against this background, whether the forthcoming few years will bring an acceleration of the accession process in the Western Balkans, including through the injection of additional stimuli and incentives targeting candidate states, remains wide open. Would it help the process if the EU set a target date by which it would be ready to include new members who by then managed to fulfil membership criteria and brought the

⁴⁹ Montenegro opened negotiations on 29 June 2012, that is, 11 years ago. Although 33 negotiation chapters were formally opened, the sides have agreed to close solely three of them. In parallel, since the opening of negotiations in 2014, Serbia has managed to open 22 out of 35 chapters and close 2 of them by the end of 2021.

⁵⁰ As the Communication on EU Enlargement Policy (COM (2022) 528 final of 12 October 2022) puts it on page 10: "Across the Western Balkans and Türkiye, judicial institutions remain exposed to many challenges. In particular, undue external pressures on the judiciary continued, undermining the independence of judges and prosecutors, compromising the overall institutional balance and ultimately affecting the separation between state powers".

⁵¹ The upcoming meeting as part of the Berlin Process set up in 2014 will be held in Tirana on 16 October 2023.

negotiations to conclusion? It seems that this aspect of the enlargement process begins to appear in the narrative set by the EU institutions.⁵²

Providing that the accession negotiations with Ukraine start in 2024, and the screening of the *acquis* shows good progress of the EU legislation approximation and implementation into the Ukrainian law, Ukraine shall be poised to sooner or later be elevated to the very top of the negotiating countries. In which case, Kyiv will have to undertake efforts to prevent a scenario in which the joining of Ukraine is conditioned by the accession of one or more Balkan states.

5.4. THE PARTICULARITY OF ACCESSION NEGOTIATIONS WITH UKRAINE, INCLUDING THE TRANSITIONAL PERIODS

Ukraine is still rather far from drafting its negotiation positions, and much less from outlining precise needs for time derogations from the application of *acquis*. For now, it focusses on launching the National Programme for the Adoption of the *Acquis* and its preparation to the screening stage expected to start in 2024.⁵³ However, when speaking off the record, Ukrainian officials, already

signal the need to negotiate transitional periods in areas where the adjustment cost is set to be particularly high (this may include in particular the Fit for 55 legislation package, and key elements of EU's environment protection legislation as well as EU standards for transport infrastructure).

Will the EU Member States need to rely on transitional periods? It is decidedly clear that far-reaching adjustments will be necessary. The European Commission has yet to prepare an in-depth analysis on the impact the enlargement will have on EU sectoral and horizontal policies, and the EU's general budget, and it does not intend to draft it prior to the accession negotiations. This notwithstanding, some Member States have developed their own preliminary, highly generalist estimates. While not much of Member State-level discussions penetrated to the public, even such fragmented information clearly confirms the magnitude of the challenge that Ukraine's accession will bring.⁵⁴ So far, the public opinion has been dominated by alarmist tones, underscoring the need for deep reform of the cohesion and agricultural policies, but offering little to no concrete solutions. As of now, there are no expert analyses with realistic calculations of the scale of the actual issues, which would offer variants of possible political

⁵² For instance, the European Parliament recommendation of 23 November 2022 concerning the new EU strategy for enlargement (P9_TA(2022)0406) in its Paragraph 1 s) calls on the Council and the Commission to “establish clear deadlines for concluding negotiations with the accession countries by the end of the current decade at the latest”. In parallel, on 28 August 2023, President of the European Council Charles Michel said the at the Bled Strategic Forum: “I believe we must be ready – on both sides – to enlarge by 2030”.

⁵³ The sequence of actions planned by Ukraine is as follows: drafting of the general repertory of Ukrainian legal acts in compliance with *acquis*, analysing disparities between the implementation of *acquis* as per the Association Agreement and current EU legislation, developing the National Programme for the Adoption of the *Acquis*, and a plan for *acquis* implementation, drafting bills of normative acts which shall be adopted under negotiations, adopting new legal acts, implementation of the adopted law, monitoring legal acts bills in terms of their compliance with Ukraine's European obligations, drafting guidelines for negotiation positions, cooperating with the European Commission in preparation ahead of the official screening due to start in 2024.

⁵⁴ For instance, the head of EU diplomacy Josep Borell told El País (the interview was later reprinted by the Polish daily Gazeta Wyborcza in the issue of 26 and 27 August 2023): “If Ukraine joined tomorrow, it would become a sole net beneficiary in the EU. All remaining states would become net contributors” [translated by MS]. In turn, at the informal COREPER discussion held in May 2023, it was allegedly estimated that if Ukraine joined the EU on today's general terms, and the main spending policies remained unrevised, it would receive one fourth of the cohesion policy funds, and one third of the funds earmarked for the Common Agriculture Policy.

solutions. These issues were discussed at the informal meeting of the European Council on 6 October 2023. Having said this, the Member States remain at the very early stage of drafting their positions and preferences ahead of the negotiations, and that unifying aspect of their positions translates into an excessively general framework for the ensuing steps.⁵⁵

In either scenario, following the European elections next year, the freshly appointed European Commission shall draft and submit the structure and size of the multiannual financial framework for 2028-2034 in the second half of 2024 at the latest. As part of this, not unlike in the case of the EU's work on the Agenda 2000 at the end of the last century, it should estimate the funds allocated to new Member States in the main areas of EU expenditure. Naturally, one cannot rule out that such estimations shall be postponed until the revision of the future multiannual financial framework. This will surely be the case if the advancement of the accession negotiations does not increase the likelihood of one or more candidate states finalizing the negotiations by 2030.

However, one element has already been identified as key in estimating the cost of Ukraine's accession to the Union. In June 2023, the European Commission proposed to set up the Ukraine Facility, a financial instrument dedicated to recovery and reform efforts of Ukraine to the tune of €50 billion for the period 2024-2027. One of the pillars of the instrument is aimed at supporting reforms necessary for EU accession, and ensuring the country's gradual integration into the EU Single Market.⁵⁶ Based on Member

States' reactions so far, it is highly likely that the instrument shall be officially established by the end of the year.

Building on the experiences and practices from the previous enlargements (2004, 2007, 2013), it can be said that the future accession treaty signed by Ukraine will highly likely contain a series of elaborate safeguard clauses, especially in the areas relating to the EU Single Market, protection of the rule of law, and EU financial interests. This will undoubtedly be paired with EU mechanisms for regular monitoring against any shortcoming in Ukraine's membership obligations, allowing for a quick and effective activation of relevant safeguard clauses if need be.⁵⁷

5.5. THE PARTICULARITIES OF ACCESSION NEGOTIATIONS WITH UKRAINE: SUBJECT MATTER CHALLENGES

The accession negotiations are usually a multi-way, multifaceted process. The advancement in a given area is conditioned by the result of talks among numerous entities involved in the process. Officially, the negotiations are held between the European Commission on the one part, and the applicant country on the other. Their overarching aim is to develop solutions to each and single discrepancy between the functioning of the applicant country on the one side, and the EU's *acquis communautaire*, and parameters and criteria relevant for the process on the other. The Copenhagen Criteria were formulated for the previous enlargement (which, inter alia, saw Poland join), and provided a basis for the 31 negotiation chapters.

⁵⁵ The European Council Granada declaration of 6 October 2023 reads: "Looking ahead to the prospect of a further enlarged Union, both the EU and future Member States need to be ready. (...) In parallel, the Union needs to lay the necessary internal groundwork and reforms".

⁵⁶ Proposal for a Regulation of the European Parliament and of the Council on establishing the Ukraine Facility, COM (2023) 338 final, Brussels, 20.6.2023.

⁵⁷ An interesting and comprehensive overview of these aspects of the future enlargement has been provided by Template 2.0 for Staged Accession to the EU, published by the European Policy Centre & Centre for European Policy Studies in August 2023.

In the course of the accession negotiations which are currently underway, these criteria were completed, and the number of chapters increased and divided into clusters. The very negotiation process saw an overhaul, with a new possibility to now go back to the starting point of the talks in case of substantial breach on the part of the candidate state.⁵⁸ After the EU adopts its decision to open accession negotiations with Ukraine, a similar document might be drafted. It will likely introduce rules similar to those adopted for the purpose of negotiating with the Western Balkan countries, rather than to those that concerned Poland at the time of its negotiations. Admittedly, questions such as the rule of law, the ability to effectively implement and govern EU instruments, border controls and the like will be of even greater importance than under the negotiations currently in place. The eventual path towards the full EU membership can also differ from how it is currently outlined. There are more and more voices in favour of the staged accession, which, in the long-term, would gradually elevate the status of the candidate country to a level similar to current Member States.⁵⁹ Until the position for the negotiations is well-defined along with their short- and long-term objectives, there is no ground to provide a more profound insight into the particularity of the Ukrainian case.

Regardless of the adopted methodology, that is, negotiating single areas or clusters, the negotiation positions are a result of postulates formulated by stakeholders, which are incorporated into the official positions agreed upon by the European Commission, and the Member States. The development of a negotiation position is always a result of various postulates formulated and discussed by the Member States, regions, professional organizations, lobbying groups, scientific organizations

or even particular businesses. This will be the case for the negotiations with Ukraine, too. The results of the negotiations communicated to the public are indebted to a longer process consisting in a confrontation of various interests tamed by the requirements set out in the EU legislation, which are under the European Commission's scrutiny.

Apart from the horizontal issues in the EU-Ukraine negotiations, which, not dissimilar to previous enlargements, are key parameters of the enlargement process (such as the integration in the decision-making process, integration into the most developed EU policies - common agriculture policy, competition law, treatment and rights of Ukrainian entities in the EU and vice-versa, etc.), it is expected that some seemingly minor issues might require intense negotiations, efforts, concessions, and developing solutions acceptable to both parties.

Among the expected negotiation roadblocks, much like in the case of Poland, there are first and foremost purely political issues, which usually touch on questions relevant to the internal politics of either the candidate state or Member States. For instance, in the case of Poland, allowing foreigners to purchase real estate on its territory proved to be a topic difficult to resolve within the internal public debate. This was linked to Poland's troubled history, and a degree of uncertainty as to how many former owners, citizens of other countries, would want to reclaim the property which belonged to them before the war, before Poland's borders shifted. Some political groupings took the issue drastically seriously, opposing even to the solutions based on in-depth analyses and minimizing conceivable negative consequences. Correspondingly, numerous Member States

⁵⁸ *Enhancing the accession process. A credible EU perspective for the Western Balkans*, Brussels, 5.2.2020 COM (2020) 57 final.

⁵⁹ See, for instance, M. Mihajlović, S. Blockmans, S. Subotić, M. Emerson, *Template 2.0 for Staged Accession to the EU*, EPC/CEPS, Brussels August 2023; or I. Demjanowski, D. Tilev, Z. Nechev, *A Blueprint for Accelerated Integration and Phasing In*, Institute for Democracy, KAS and WMCES, Skopje, September 2023.

fearing the negative impact of mass arrival of workforce from the candidate states, impeded the process of developing pragmatic solutions fitting the size of the problem. As a result, in the afore-mentioned cases, the final negotiated positions were exceedingly cautious, guaranteeing overprotection from the problems, which *ex post* turned out to be of lesser importance than expected.

Are such issues likely to hamper the negotiations with Ukraine? Despite Ukraine's fierce determination to join the Union, allowing EU citizens to freely purchase real estate might be conducive to heated political disputes, resulting in formulating non-realistic negotiation positions. Much like in the case of our Polish counterparts, Ukraine is also dealing with a troubled history which strongly influences its political positions. On top of this, Ukraine has a substantial Soviet legacy, which makes the question of private property additionally sensitive. In regard to matters of a purely political dimension, it is vital to avoid the escalation of the internal dispute among the political groupings, as it severely hampers the process of arriving at national consensus. If a proposed solution is accepted by all leading political parties, it offers greater opportunities for its later adoption under the negotiation in a similar shape.

The financial implications of the enlargement are the underlying cause of numerous negotiation issues. The size of the necessary funding depends on whether all instruments of the EU's most costly policies have been adjusted to its new Member States. In the case of Poland's accession, the implementation of some instruments

for the newly added Member States was either postponed or limited in order to decrease the costs of the enlargement. The negotiations concerning the agricultural sector and the Common Agricultural Policy reform provide a telling example. In other cases, the reduction in expenditure was attributable to reform and modification of the instruments across the EU so that the costs borne by both the newly appointed Member States and the old ones do not go beyond the agreed threshold. To this end, the EU established its Agenda 2000: For a stronger and wider Union⁶⁰, introducing a series of innovations within the existing EU policies, in particular, into its cohesion policy and CAP (which absorbed the most funds from the EU budget). The introduction of the transitional periods was also aimed at lowering the costs linked to the enlargement, as they allowed for a gradual integration of the new members into the costly instruments and favoured the preparation of subsequent EU policies reform taking into account the financial and economic implications of the wider EU.⁶¹

Ukraine's accession will bring about immense financial consequences, the source, size and full implications of which remain unknown to some extent. In her annual State of the Union Address, President of the European Commission announced policy reviews, which confirmed the beginning of preparation for a reform program with the aim of curbing the enlargement costs. Regardless of the launch date for EU-Ukraine negotiations, and the expected date of the country's actual EU accession, the prospect of Ukraine's membership will be taken into account when the EU starts the talks on its next multiannual financial framework starting in 2028. The

⁶⁰ Agenda 2000 introduced internal EU reforms which had already been considered. However, the arguments advanced in connection with the forthcoming enlargement finally enabled the Union to pay more attention to limiting the costs of the CAP following the enlargement. Com 97/2000, European Commission.

⁶¹ For example, the next substantial reform of the CAP took place in 2014, that is, when the last agriculture-related transitional periods negotiated by Poland were reaching their end.

Member States will attempt to lay out the conditions allowing for funding of the EU policies following the enlargement. The changes adopted in the EU budget notwithstanding, the negotiations are likely to include talks on transitional periods, limiting the access to full EU funding in the long-term following Ukraine's accession. When considering its preference: the somewhat limited EU funds or a swifter accession, Ukraine seems to be leaning towards the membership or even its credible prospect which it positions higher than the full stream of EU money.⁶²

The financial implications are also the reason why candidate states call for transitional periods themselves. Poland found the cost of EU legislation approximation in the area of environment protection to be particularly high. The obligation for each greater agglomeration to have a sewage treatment plant meant substantially high expenditure was necessary already at the pre-accession stage. For chiefly financial and technical reasons, this process needed to be stretched over a longer period of time, hence the need to negotiate a transitional period in this area. There were more negotiation postulates relating to Poland's financial limitations, and while the EU recognised the lack of sufficient funds to be an important reason, not all were eventually accepted on the part of the Union.

The financial limitations of Ukraine will likely be dire. What is more, Ukraine will simultaneously go through a post-war reconstruction period, which shall require immense capital. This will substantially impact the country's ability to meet the requirements, standards and regulations set by the EU for its Member States. It shall also influence

the number and duration of transitional periods requested in accession negotiations. Ukraine may seize this opportunity by tightly linking reconstruction efforts with a parallel adaptation to the EU membership obligations.⁶³ While it will not lower Ukraine's need for funds, it will allow for the use of the financial support provided for membership adjustments.

In the Polish accession talks, there was a high number of issues, chiefly practical or even technical relating to the country's existent infrastructure which did not meet the EU requirements and necessary investments which required time to be concluded. Among other problems cited by the Polish side, there were the costs of exchanging amenities or the impact adopting the EU regulation and standards had on investments still pending full amortization. The private sector was particularly active in pinpointing subsequent EU regulations which, in their view, were impossible to be satisfied, at least in the short term. Even though, in most cases, these demands were attributable to an understandable fear of change and a reluctance to bear the adjustment costs which resulted from it, it translated into the necessity to run in-depth analysis of accession implications for a given sector or a group of enterprises.

Similar problems are expected to arise amidst negotiations with Ukraine. Additionally, with a lower national income, the real adjustment costs may prove to be proportionally higher. What is more, some of the even most recent investments Ukraine has made do not meet the EU standards. Therefore, we might expect a significant resistance to bearing the high costs of adjustments.

⁶² EU accession prospects more important for Ukraine's reconstruction than money, EBRD chief economist says. See Jan Strupczewski reporting on the remarks by EBRD Chief Economist, Reuters 6 September 2023, "EU accession prospects more important for Ukraine reconstruction than money, EBRD chief economist says".

⁶³ Such funds can include resources donated by multiple countries, including non-EU members. Even today, the organisation which collects resources for Ukraine's reconstruction, the Multi-agency Donor Coordination Platform for Ukraine was launched by the G7 at its meeting on 12 December 2022, <https://coordinationplatformukraine.com/>

Another significant problem likely to influence many negotiation areas and chapters consists in the deeply rooted stereotypes according to which the Ukrainian economy is an oligarchic structure marked by rampant corruption. Regardless of the fact whether such claims are baseless or not, they may to a great extent enforce the introduction of various protections and control mechanisms.

The competition confrontation between the EU manufacturers and their Ukrainian counterparts is inevitable. Many have not yet realised what problems lie ahead in relation to the increased competition on the wider EU Single Market, which will mark a shift in the existing division between EU manufacturers on the one hand, and suppliers from the candidate state on the other. The multiple issues relating to not only exporting but transiting Ukrainian grain provides an extreme example here. It serves as a paragon for the size of issues potentially arising in this sector. Furthermore, in others, we might expect even more problems. Various organisations representing manufacturers across the continent (such as Business Europe or numerous others, sector-specific business associations or lobbying groups) have not to date published in-depth analyses of the impact Ukraine's accession will bring on their competitive position.⁶⁴ They have merely limited themselves to generalist, positive remarks or interviews so far.

5.6. THE RECONSTRUCTION OF UKRAINE

Size of needs: In March 2023, the World Bank group estimated the war damage in Ukraine amounted to \$411 billion, that is €383 billion. Should the recovery take 10 years, the annual expenditure would amount to €38.3 billion. At the conference in Lugano in July 2022, Ukraine's Prime Minister Denys Shmyhal presented Ukraine's 10-year recovery and development plan, which includes some 850 projects for a total amount of \$750 billion. A London-based think tank, Centre for Economic Policy Research (CEPR) estimated the total cost of the reconstruction plan at \$200-500 billion depending on the duration of the war. Notably, the four-year Marshall Plan providing aid to some dozen western European countries after WWII totalled some \$120-130 billion in today's dollars, that is, three, four times less than what Ukraine needs. The annual EU budget is a mere €130 billion. The comparisons drastically demonstrate the immensity of funds the Free World needs to provide to rebuild Ukraine. And this is merely a fraction of the necessary aid. Because of the war, the Ukrainian budget suffers additional expenditure allocated to defence, the internally displaced, and increased infrastructure maintenance. At the same time, due to the decreased economic activity, it receives lower contributions. In 2022, the GDP of Ukraine shrank by one third compared to 2021. Ukraine is in dire need of funding for basic operations: administration, pensions, schools, healthcare, etc. In 2023, the EU transferred some €18 billion (that is, €1.5 per month) to cover the ongoing needs of Ukraine. In total, it is estimated that in the years 2024-2027, Ukraine will need some €53 billion per year in foreign aid.

⁶⁴ Searching through the websites of such organisations brings little to no results when it comes to detailed assessments of the implications Ukraine's accession will cause in specific economic sectors, as though the necessary standard research on possible problems ahead of the negotiations had not been completed yet. See, for instance: <https://www.business-europe.eu/search?keyword=ukraine&type%5B%5D=56&type%5B%5D=58&type%5B%5D=59&type%5B%5D=61&type%5B%5D=62&undefined=Apply>

The international recovery mechanism ought to be prepared and even launched before the end of the war. Roads, energy networks, railroads, telecommunication networks, housing, schools, and healthcare facilities require immediate repairs and reconstruction. After the war, the recovery effort will take on a broader scope, including the territories currently occupied by the aggressor and battlefields. At this later stage, the aid mechanism can be subject to corrections. Having said this, the size of damage and needs in the territories fully under Kyiv's control is so immense that it requires immediate action. The principle of conditionality should be applied for funds allocated as part of the mechanism, in a similar manner to the principle introduced by the EU for funds allocated from its budget.

The consequences of Ukraine's accession for the EU budget, contrary to common opinions, it will not drastically shift the situation of today's net beneficiaries and contributors. According to Michael Emerson, should the current EU policies remain unrevised, moderate increases and cuts in contributions and benefits respectively from the EU budget will suffice to assign €18.8 net per year to Ukraine. Following Ukraine's accession, the net balance of Germany would shift from -€21.5 billion to -€26.2 billion, and that of France would deepen from -€9.6 billion to -€12.7 billion. Poland would go from a positive balance of €11.1 billion to a nearly equally positive €10.4 billion. Spain would be the only Member State to go from a positive balance position to a negative.⁶⁵

War reparations from Russia would be the most desirable source for financing the reconstruction of Ukraine. It remains highly dubious, however, whether making Russia pay would be possible. In negotiations concluding a war, one party may

mandate the other to pay reparations in exchange for levying the economic and personal sanctions. It is, rather, more likely that assets formerly belonging to Russia and its oligarchs, and frozen by the West, will be transferred to Ukraine. It is estimated that the sheer reserves of the Central Bank of Russia in Western banks amount to \$300 billion. In November 2022, the UN General Assembly adopted a resolution recommending the creation of a register to document damages caused by Russian aggression against Ukraine, and expressing its support for the establishment of an international mechanism for reparation for damages caused to Ukraine. Considerable doubt exists as to this issue, also in relation to the jeopardized credibility of the banking sector. In this context, it is worth reminding that following 9/11, the United States pushed the broad application of international regulations facilitating tracking of transfers and deposits which may be linked to terrorist financing as part of FATF. This deal as well as the UN Convention for the Suppression of the Financing of Terrorism allow for the seizure of funds intended for terrorist purposes. Russia is conducting terrorist activities in Ukraine on an immense scale. Therefore, logical conclusions must be drawn, and the frozen Russian assets should be repurposed for Ukraine's reconstruction. The declarations adopted by the European Council, G7, and the Council of Europe all stress the importance of establishing the right mechanism for holding Russia financially accountable.

It will be vital to sign an international agreement between the interested stakeholders, by virtue of which a reparation mechanism will be established to finance the recovery of Ukraine through the seized assets. The mechanism could then be used to pay individual damages to the victims (both natural and legal persons) as well as pay

⁶⁵ Michael Emerson, *The potential impact of Ukrainian accession on the EU's budget – and the importance of control valves*, International Centre for Defense and Security, Tallinn, September 2023.

reparations to the Ukrainian state. What is key, however, is making it compatible with the two remaining funds. Namely, the overall aid fund created by the states-donators, on the one hand, and the EU pre-accession funds on the other. The transfer of EU funds from its pre-accession mechanism is aimed at preparing the candidate for its future membership and is subject to the principle of conditionality. Correspondingly, the Ukraine reparation mechanism ought to be similarly conditioned, and the reparations should be “inscribed” into the Ukraine membership preparation programme. Only then will the funds transferred to Ukraine actually serve to build a democratic Ukraine.

Anti-corruption protection: Many concerns have been raised about the potential misappropriation of aid funds in corruption schemes. Despite the establishment of several bodies tasked with countering corruption, Ukraine’s progress in tackling corruption has been underwhelming. Therefore, the general rule should be applied: utilizing existing fund allocation mechanisms, but drastically improving their operability. Several issues should be reviewed here:

- Compensation schemes for natural persons for the damages resulting from the war could operate in a manner similar to insurance companies paying compensation for losses arising out of fire, catastrophes, or road accidents.
- Local authorities reporting war damage to their municipal ownership could receive subsidies allocated for concrete, well-documented projects. According to current legislation, public procurement and local authority investment must be preceded by a tender procedure. Perhaps the regulations call for an enhancement. It is decidedly vital to assure absolute transparency in regard to the contents of compensation applications outlining the degree of damage, the tender procedures for necessary works, and the disbursement of the allocated funds, which should happen in instalments conditionally available on the progress achieved.
- There has been a stream of support for SMEs in Ukraine: governmental programmes and EBRD loans for small entrepreneurs. Local businesses could further benefit from the reduction of businesses’ own contribution even to zero, and partial loan waivers for loans that were properly spent. The efficient operation of the Central Register of Debtors is also necessary.
- Giving preference to local, Ukrainian businesses in reconstruction efforts may prove to be contentious. For numerous Ukrainian politicians, it is the silver bullet for stimulating local business growth. Such conflicts have already emerged on the occasion of European Commission’s assessment of Ukraine’s legislation bills’ compliance with the requirements of the Association Agreement. Giving preference to local businesses violates the principle of unity of the Single Market, and that of equal opportunity for all EU entities regardless of their place of registration and the citizenship of their owners. It would lead to cases where some tenders are won by contractors who are not as well-prepared, providing lower quality services at a higher price, thus generating a loss of time and funds, and resulting in poorer overall quality of the reconstruction. Any business winning a tender will be more than interested in seeking local subcontractors in a country boasting cheap but well-qualified labour. Even if they fail to win a tender in the first years of the reconstruction, the well-managed Ukrainian firms are poised to receive abundant contracts, thus growing and securing opportunities for expansion.

5.7. THE IMPORTANCE OF GRANTING THE CANDIDATE STATUS FOR EU MEMBERSHIP TO UKRAINE IN LIGHT OF THE FUTURE PEACE DEAL WITH RUSSIA

As previously mentioned, the granting of candidate status to Ukraine decisively confirms the European direction for Ukraine, thus marking a shift in the European security system. Within its real practical scope, the candidate status mandates that the financial support transferred from EU aid funds and international programmes (including the potential reparation mechanism) shall be used to (re)build Ukraine as a democracy, meeting all political, legal, and economic standards of EU membership.

The strategic importance of Ukraine's official candidacy can be best exemplified in the context of a future peace deal with Russia. This is a clear sign for the Russian aggressor that the "European direction of Ukraine" is firmly non-negotiable: Ukraine is bound to become an EU member. The same can be said about Ukraine joining NATO⁶⁶ (which is further explored in Section 5.11). The accession of a democratic Ukraine to the European Union and its joining the NATO alliance will bring an end to Russia's imperialist ambitions.

Other issues related to Ukraine's membership in the EU are of fundamental importance in the context of the eventual peace deal between Ukraine and Russia. For instance, the territorial integrity of Ukraine, which mandates Russia to cede all the annexed territories. The position of Ukraine has been unequivocal: among the 10 fundamental proposals for Ukraine presented by President Volodymyr Zelenskyy, point no. 5 states that Russia violated Article 2, Paragraph 4 of the UN Charter (by annexing parts of the Ukrainian territories), and that the territorial integrity of Ukraine must be reaffirmed as per relevant international law. As President Volodymyr Zelenskyy underscores, it is not up to negotiations.⁶⁷

This position has been fully backed internationally. The UN General Assembly in its resolution of 1 March 2022 condemned the act of aggression perpetrated by Putin's Russia while reaffirming the "sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders" (cf. Point 1 of the Resolution)⁶⁸. NATO and the EU adopted identical positions. In the afore-mentioned Versailles Declaration of 10 March 2022, the European Council unequivocally demanded that Russia "fully respects Ukraine's territorial integrity, sovereignty and independence

⁶⁶ Point 11 of the NATO's Vilnius Summit Communiqué of 11 July 2023 reads: "We fully support Ukraine's right to choose its own security arrangements. Ukraine's future is in NATO", while Point 12 adds "The security of Ukraine is of great importance to Allies and the Alliance. To support Ukraine's further integration with NATO, today we have agreed a substantial package of expanded political and practical support". Vilnius Summit Communiqué. Issued by NATO Heads of State and Government participating in the meeting of the North Atlantic Council in Vilnius 11 July 2023.

www.nato.int/cps/en/natolive/official_texts_217320.htm?mc_cid=00fa7f40c5&mc_eid=5684c3fac8 (Retrieved 19.07.2023).

⁶⁷"The fifth – implementation of the UN Charter and restoration of Ukraine's territorial integrity and the world order. Article 2 of the UN Charter defines everything very clearly. Everything that Russia violated by this war. Therefore, we must restore the validity of international law- and without any compromises with the aggressor. Because the UN Charter cannot be applied partially, selectively or "at will". Russia must reaffirm the territorial integrity of Ukraine within the framework of the relevant resolutions of the UN General Assembly and the applicable international legally binding documents. It is not up to negotiations". Address at the G7 meeting on 15 November 2022

www.president.gov.ua/en/news/ukrayina-zavzhdi-bula-liderom-mirotvorchih-zusil-yaksho-rosi-79141 (Retrieved 2.09.2023)

⁶⁸ "1. Reaffirms its commitment to the sovereignty, independence, unity and territorial integrity of Ukraine within its internationally recognized borders, extending to its territorial waters". Aggression against Ukraine The General Assembly. Resolution of 1 March 2022 UN A/ES-11/L.1

within its internationally recognised borders”⁶⁹ (cf. Point 1 of the Declaration). Similarly, in its Communiqué following the Vilnius Summit held on 11 July 2023, NATO declared that it does “not and will never recognise Russia’s illegal and illegitimate annexations, including Crimea” (point 7 of the Communiqué).⁷⁰

For now, however, the war goes on with no end in sight. Therefore, it is unclear whether the peace deal will involve a demarcation line beyond which some territories of Ukraine will remain under Russian occupation. If so, how would it influence the advancement of the accession negotiations?

It is vital to remember that, as per the Treaties, acceding to the EU (under international law) encompasses the entire territory of the acceding country, that is land, water, and pertinent airspace (Article 52, Paragraph 1 TEU). However, the Treaties do allow (Article 52 Paragraph 2 TEU along with Article 355 TFEU) a partial or total suspension of the application of the Treaties on selected territories. Notably, Article 347 TFEU stipulates that in the event of “war, serious international tension constituting a threat of war, or in order to carry out obligations (...) for the purpose of maintaining peace and international security” a Member State may take the steps (limiting the application of the Treaties). This should be agreed upon with other Member States and the European Commission (Article 48 TFEU). Therefore, it can be argued that the Treaties allow for a degree of flexibility under extraordinary circumstances.

There exists a precedence that may play a vital role in the accession negotiations and Ukraine’s integration with the EU. It is the case of Cyprus, which joined the EU on 1 May 2004 (*inter alia* along with Poland). In 1974, a coup staged in Cyprus, sponsored by the Greek junta gave rise to the Turkish invasion of the island. In response, the Greek part of the island established the Republic of Cyprus, while the annexed part became the Turkish Republic of Northern Cyprus which remains internationally recognised only by Türkiye. In 2004, Cyprus joined the EU (formally it was the Republic of Cyprus), while the status of the annexed territory was regulated by Protocol no. 10,⁷¹ attached to the Act concerning the conditions of accession (part of the Accession Treaty). While the protocol fails to mention the existence of the Turkish Republic of Northern Cyprus, Article 1, Paragraph 1 states that “The application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control”. At the same time, the Council, acting unanimously on the basis of a proposal from the European Commission, may decide on the withdrawal of the suspension (cf. Article 1, Paragraph 2). As per Article 2, Paragraph 1, the Council defines the terms “under which the provisions of EU law shall apply to the line between those areas referred to in Article 1 and the areas in which the Government of the Republic of Cyprus exercises effective control”.

This solution serves as a good reference for the scenario in which at the moment of Ukraine’s EU accession, some of its territories will continue to be occupied by Russia. Additionally, the Member

⁶⁹ <https://www.consilium.europa.eu/pl/press/press-releases/2022/03/11/statement-of-the-heads-of-state-or-government-on-the-russian-aggression-against-ukraine-10-03-2022/> (Retrieved 11.03.2022 r.)

⁷⁰ Source: www.nato.int/cps/en/natolive/official_texts_217320.htm?mc_cid=00fa7f40c5&mc_eid=5684c3fac8 (Retrieved 19.07.2023 r.).

⁷¹ OJ L 236, 23.9.2003, p. 955.

States should prepare a declaration, or a separate statement in the Protocol, in which they condemn the Russian aggression against Ukraine and do not recognise the annexation of Ukrainian territory by Russia (in reference to the afore-mentioned documents). It is vital that Ukraine exercises “effective control” on its main territories and the demarcation line. This shall constitute a “territorial reference” for the purpose of the accession negotiation, and the conditions of accession, especially in relation to transitional periods.

5.8. EU INSTITUTIONAL PREPAREDNESS — INSTITUTIONAL BALANCE, THE DECISION-MAKING PROCESS

As previously mentioned, according to the Copenhagen Criteria, the EU itself also must be ready to absorb new Member States. It includes both the financial preparedness for the future enlargement, and the fitness of its institutions, such as the institutional balance and effectiveness of its decision-making process.⁷² At the time of the 2004 enlargement, these issues were regulated by the Treaty of Nice (which entered into force in 2003). It was, however, a “closed package” with the aim of adjusting the EU for its enlarged shape with 27 Member States (after the “big wave of enlargement”). The Treaty of Lisbon (entering into force in 2009) brought about more change: it introduced solutions which make the functioning of EU institutions and the decision-making process (the principle of qualified majority voting for the Council of the European Union) virtually independent of the number of Member States,

and to an extent allow passing relevant reforms on the basis of decision by the European Council or the Council of the European Union (instead of another revision treaty).⁷³

Therefore, institution-wise, the upcoming enlargement of the EU will prove to be an easier challenge. It will, however, remain difficult on political grounds. There are currently 8 countries (or 9 with Georgia) lining up to become EU members. The biggest among the nine, Ukraine, (with its nearly 43 million population) will become the EU’s 6th biggest state by population following Spain (some 47 million), and ahead of Poland (some 38 million inhabitants). The remainder will join the group of small to very small states: Serbia (ca. 6.8 million), Georgia (ca. 3.7 million), Moldova (ca. 3.5 million), Bosnia and Hercegovina (ca. 3.5 million), Albania (ca. 2.8 million), North Macedonia (ca. 2 million), Kosovo (ca. 2 million), and Montenegro (ca. 620 thousand). All are poised to become beneficiaries, that is, are set to receive more EU funds than they will contribute to the budget in the longer-term (hence the need to secure sufficient funds in the EU budget). Owing to its population size, Ukraine is set to play a vital role in the EU decision-making process. In contrast, the remainder will join the grouping of smaller Member States (with their total number becoming important in light of the number of Member States rule). What is more, all the current candidate states are still on their path to becoming free market democracies, while Ukraine is torn by a brutal war waged by Putin’s regime.

⁷² Interesting analyses have recently been published on the matter — see, for instance: Tanja A. Börzel, Sergio Fabbrini, Yves Mény, Sonja Puntcher Riekman, Frank Schimmelfennig Göran von Sydow & Valentin Kreiling (eds), *Fit for 35? Reforming the Politics and Institutions of the EU for an Enlarged Union*, Sieps 2023:20p.; *Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century*. Report of the Franco-German Working Group on EU Institutional Reform. Paris-Berlin- 18 September 2023

⁷³ See J. Barcz, *Od lizbońskiej do postlizbońskiej Unii Europejskiej. Główne kierunki reformy ustrojowej procesu integracji europejskiej* [English From the Lisbonian to Post-Lisbonian EU. The Main Directions for the EU Enlargement Process Structural Reform; translated by MS], Warsaw 2020..

President of the European Council Charles Michel pointed to the scope of political and financial challenge the planned enlargement will bring in his recent speech at the Bled Strategic Summit (held on 28 August 2023).⁷⁴ He also underscored the need for adapting the EU institutional framework and procedures for a smooth decision-making process. Contrary to recently advanced proposals, he demonstrated moderate support for the radical scrapping of the principle of unanimity, leaning towards solutions offering more flexibility (for instance, more uses of constructive abstention which does not impede the unanimity on a given matter). Furthermore, Michel mentioned the possibility of adapting (flexibility) the qualified majority voting in the decision-making process within the Council.

The testing of the qualified majority voting in the Council is independent of the potential increase in the number of EU Member States. A qualified majority is reached if 65% of the total EU population vote in favour, representing an appropriate number of Member States (in most cases, it is 55%+1; in some, this number increases to 72%). The so-called blocking minority is reached if 35% of the total EU population vote against, representing at least 4 Member States. Qualified majority voting is governed by the Treaties (Article 16, Paragraph 4 TEU, Article 238, Paragraph 2 TFEU, and Article 3, Protocol no. 36), which means that to amend it, the EU would need to revise the Treaties. This, in turn, is highly unlikely, although increasing the number of Member States required for a blocking minority could be justifiable (currently, bigger states are favoured).

The balance of voting power among Member States can be achieved by the allocation of European Parliament seats. It is worth remembering

that in matters where the Council of EU acts by the qualified majority (that is, in the ordinary legislative procedure), the European Parliament acts as a co-legislator. The Treaties (Article 16 Paragraph 2 TEU) govern the maximum number of MEPs (751), the maximum number of seats allocated to one Member State (96, which is only the case of Germany), and the minimum threshold of seats (6) allocated to the least populous state. Under this framework, the European Council unanimously decides on the exact composition of the European Parliament, “on the initiative of the European Parliament and with its consent” by applying the principle of degressive proportionality. Any change within that framework necessitates the revision of the TEU as well. As part of the last treaty amendments, despite voices warning of decreased effectiveness of the Parliament proceedings, the number of MEPs increased. The further increase should be prevented, as the current threshold (751) is already too high. However, there remains the question of the allocation of this maximum number of seats. To date, no precise criteria regulating the principle of degressive proportionality have been formulated. This is attributable to various political disputes and resentments which influence the division of seats. The negotiations on the matter will highly likely prove difficult, as Germany will probably need to cede several of its 96 seats (which formally does not pose difficulty, as the TEU stipulates that no Member State shall be allocated more than 96 seats, therefore, it can have fewer representatives). Notably, it is standard practice the new Member States receive the number of seats proportionate to “old” Member States of similar population.

It is interesting to return to the decision-making procedure. While introducing “greater flexibility”,

⁷⁴ Source: <https://www.consilium.europa.eu/pl/press/press-releases/2023/08/28/speech-by-president-charles-michel-at-the-bled-strategic-forum/> (Retrieved 1.09.2023).

as proposed by Charles Michel, for the principle of unanimity is possible, “constructive abstention” is only applicable in relation to Common Foreign and Security Policy. The emergency brake clause (that is, a Member State blocking an ordinary legislative procedure where qualified majority voting is applied if it considers that its fundamental interests are at stake. In such cases, voting by unanimity is applied) is applied exclusively in the areas explicitly mentioned in the Treaties. Expanding the areas for the brake clause usage would require a Treaty revision, although in the case of “constructive abstention”, the calls for reform will likely limit themselves to suggesting a more common use of the procedure.

Another question which, at least formally, would require the revision of Treaties is increasing the number of areas regulated by the Treaties in which the EU can apply the ordinary legislative procedure (allowing the Council of the EU to vote by a qualified majority) instead of the principle of unanimity. However, to a large extent, the enhanced “flexibility” of applying qualified majority voting can be achieved employing the so-called passerelle clauses (see chiefly Article 48, Paragraph 7 TEU). It does require, however, the unanimity of the European Council, the consent of the European Parliament, and the permission from national Parliaments. There are alternatives, too. The reverse qualified majority voting, as it is called, has been gaining ground. According to this procedure, the Council of the EU adopts a decision unless it is blocked by a qualified majority (it was introduced, for instance, in the case of the Stability and Growth Pact which maintains the stability of the public finances in the Eurozone). This has been instrumental in enhancing the efficiency of the decision-making process.

One must comment on the number of European Commission members as well. It was already the Treaty of Nice which, out of concern for the Commission’s effectiveness, introduced the solution mandating lowering the number of Commission

members to two-thirds of the number of Member States. The Treaty of Lisbon (Article 17, Paragraph 5 TEU) upheld this but gave the European Council the possibility to maintain the principle of one commissioner per Member State if it acts unanimously (which the European Council has been continuously doing). Undoubtedly, one of the implications of the planned enlargement will be the necessary reduction of the number of Commissioners to the threshold specified in the TEU. This may take the Member States back to difficult negotiations on the rules governing the rotation system (with the “big Member States” possibly seeking to secure preferential terms), all the more so as the reduction of the number of Commissioners to just two-thirds of the number of Member States will likely not be enough to assure the effectiveness of the Commission.

With respect to the remaining institutions (EU courts, the Court of Advisors, ECB) and consultative bodies, major problems are not expected. Although, in the case of the Court of Advisors, should the Treaties be subject to revision, it may be interesting to consider the reduction of the number of members in relation to the number of Member States (currently, the Court of Advisors consists of one national of each Member State — Article 285 TFEU).

All in all, it can be argued that the planned enlargement, in particular the accession of Ukraine, will bring difficult discussions on adapting the EU institutions. This is also attributable to the fact that the afore-mentioned areas are ruled by the principle of “communicating vessels”.

5.9. THE POSITION OF POLAND ON ACCESSION NEGOTIATIONS AND UKRAINE'S MEMBERSHIP

Not unlike in the case of numerous other Member States, in Poland, there exists a marked discrepancy between its highly positive, widely and regularly declared support for Ukraine's swift EU accession, and potential conflicts of interest which have recently become more palpable, and will require negotiations likely to lead to concessions on both sides. This also concerns fundamental issues, such as financial transfers or agricultural policy which, in turn, is connected with the free movement of agricultural products on the EU Single Market. The conflict of unexpected temperature, size, and repercussions around the export and transit of Ukrainian grain and other agricultural products may likely herald the size of the challenge that the negotiating parties will face on both sides. At the same time, just like in the case of all previous accession negotiations, there will be problems of much more marginal economic importance, which due to their substantial implications for one specific sector, demographics, or region may become "pollutants", calling for disproportionately strenuous negotiation efforts.

The European Commission runs the negotiations on behalf of the Member States. Their role remains important, however, and requires active participation in formulating the negotiating mandate which has to be agreed upon by all Member States as well as regular participation in the Working Party on Enlargement before which the European Commission presents progress in negotiations on all matters which are subject to talks. Generally speaking, from the point of view of a singular Member State, it is vital to establish to what extent the given question poses problems to other Member States and whether it is possible to come up with a joint approach facilitating the negotiation of satisfactory solutions.

When developing common positions for the purpose of accession negotiations, much stress is put on the possible negative implications of *acquis* approximation for selected demographics (entrepreneurs, farmers, consumers) or regions. This is why the negotiating postulates are formulated with the aim of countering or mitigating such consequences. Therefore, what is mainly at stake is the prevention of difficulties arising out of the accession of new Member States. Much more rarely, and to a lesser degree of detail, the sides formulate offensive objectives aimed at exploiting the full potential of cooperation with the candidate country and guaranteeing full rights for entities on one's own side that wish to operate on the territory of the newly joined state. Poland's offensive objectives should surely include laying out the conditions for setting up businesses in Ukraine, with the right to purchase real estate intended for commercial use. In particular, Poland should be concerned with securing the rights of SMEs, as when they enter a foreign market they do not hold as much negotiating power in talks with local authorities as big corporations.

From Poland's perspective, the negotiations on the integration of Ukraine into the policy schemes financed from the EU budget (that is, regional development policy, cohesion policy or agricultural policy, etc.) are the most important with potentially the most far-reaching consequences. Allocating funds to Ukraine under the current rules would lead to a substantial shift in the size of funds Poland receives. The internal reform within the EU may influence the situation of Poland to a similar if not higher degree. This is why the development of proposals that will lay the groundwork for Poland's future official position is needed now.

Already at this stage, it is clear to what extent working on solutions for agricultural trade may prove difficult. When Poland was under accession negotiations, the majority of negotiating issues circled around the application and

financing of CAP instruments in Poland, and only to a smaller extent it concerned the agricultural trade. Admittedly, some Member States did express their concern over the influx of agricultural products from Poland, but it was usually linked to their meeting the requirements and standards of the Common Agricultural Policy. For instance, Poland's milk quotas were one of the last issues to be resolved under the accession negotiations: an agreement was reached only in December 2002 in Copenhagen. At the current stage of Ukraine's path, the free movement of unlimited agricultural products from Ukraine across the entire EU poses a greater problem, though. Even without the EU subsidies for production levels or per hectare, the Ukrainian agricultural sector is highly competitive thanks to its fertile soils, natural conditions, and size of dominant farms. Having said this, the potential of Ukraine's farming must not only be seen as a threat to less efficient agricultural producers in the EU. Ukrainian agriculture will substantially enhance the EU's food self-sufficiency and contribute to lowering the relative cost of food products across the EU.

It is worth stressing that the array of Ukrainian products exported globally and across the EU differs substantially from the portfolios of the majority of Member States. For instance, Ukraine is one of the global leaders in sunflower oil production, but this product does not directly compete with the EU's olive oil. Therefore, the potentially heightened influx of produce from Ukraine will have a varied impact on Member States. The Member States whose agriculture is centred around products which are easily cultivated in Ukraine or can become so in the near future will suffer the most consequences of the outcomes of accession negotiations focussed on this chapter.

Traditionally, when the EU expands onto less developed states with lower income, the topic of limiting the free movement of workers is hotly discussed. In the case of Ukraine, this conflict of interest does not seem to be conducive to as much tension. First, nearly all local labour markets across the EU have the capacity to absorb workers, as they face shortages, in particular in professions in which migrants are quick to find employment. Second, especially following Russia's aggression against Ukraine, the Member States, with Poland in particular, received a substantial number of Ukrainian refugees who were granted work permits. While it can still be expected that granting full rights of free movement to Ukrainian workers may cause problems in some Member States and in some particular areas, it is unlikely to become a major topic of the accession negotiations. From Poland's perspective, it will suffice to determine whether granting full rights and protections required by the EU in the area of labour law and social security will not bring unforeseen ramifications.

The oligarchic nature of selected sectors of Ukraine's economy can play a major role in hampering access to the local market. It is not a coincidence that the European Commission identified the problem and made limiting the excessive influence of the oligarchic structure of ownership one of the key steps to be taken on the current pre-accession stage of Ukraine's path towards EU membership.⁷⁵ From the perspective of Polish entities, the structure of the Ukrainian economy presents little transparency, and it is potentially dominated by immense enterprises having direct access to politicians who are directly involved in economic policy-making and negotiations. Therefore, for the Polish side, it may constitute a source of serious reflection on negotiating the rules governing access to the Ukrainian market for Polish entities.

⁷⁵ Cf. *Association Implementation Report on Ukraine*, European Commission, Brussels, 22.7.2022 SWD (2022) 202 final

5.10. THE RULE OF LAW PROBLEMATICS IN LIGHT OF UKRAINE'S FUTURE MEMBERSHIP

Article 49 TEU unequivocally stipulates that solely the European states which respect the values referred to in Article 2 may seek to become EU members. Among the shared Union values, there is the rule of law. It is not new. Formulated in 1993 ahead of the expected big wave of enlargement, the Copenhagen Criteria set out the condition of the rule of law as a fundamental criterion for accession (next to economic requirements). EU Member States must be democracies that respect the rule of law. This is a rule enshrined in the EU legislation, which was later further clarified and enhanced (chiefly by rulings of ECJ) in light of the authoritarian course taken by Hungary (under Orban), and Poland (under Kaczyński).⁷⁶

As for Ukraine, which was granted the candidate status chiefly due to the extraordinary circumstances of Russia's attack, meeting the standards of a democracy respecting the rule of law proves to be a particular challenge. There are two contexts of fundamental importance at play.

First — after 2014, Ukraine has made substantial progress in its democracy-building efforts. The Association Agreement⁷⁷ signed on 21 March 2014 (which entered into force on 1 September 2017) stressed the importance of common values (which are specified in Article 2 TEU) in its preamble, counted them among Ukraine's objectives (Article 1) as well as in its general provisions (Article 2). This notwithstanding, even on the

eve of Russia's aggression Ukraine had still been falling short of its ambition in this area. Ukraine continues to be one of the most corrupt countries in the world⁷⁸, which encompasses areas such as its judiciary, administration (in particular, locally), healthcare, and even education.

In light of Russia's aggression and the ongoing brutal war, Ukraine is currently focussed on pushing the aggressor away from the occupied territories. In reality, however, it is a fight to defend Ukraine's statehood. Against this backdrop, the efforts undertaken by President Volodymyr Zelenskyy to tackle corruption and maintain the democratic nature of Ukrainian institutions ought to be particularly appreciated. The submission of Ukraine's application to become a Member State should be seen first and foremost as a declaration of Ukraine's ambition to be admitted among the group of free market democracies. This has fundamental importance morally, politically, and economically.

The EU, NATO, and G7 have demonstrated exceptional unity in the face of these challenges. They have used sanctions against the aggressor, provided economic support to Ukraine, and above all brought military support (which is fundamental in a time of war). The economic recovery of Ukraine is therefore happening simultaneously with the ongoing war. What is key is directing economic support and foreign aid towards the (re)construction of a democracy meeting EU standards already at this point.

In this context, the granting of candidate status to Ukraine and its integration into pre-accession

⁷⁶ See the four volumes published in the years 2020-2023 — Problem praworządności w Polsce w świetle orzecznictwa Trybunału Sprawiedliwości UE [English: The Non-respect of the Rule of Law in Poland in Light of the Rulings of the European Court of Justice; translated by MS]. Foreword, selection and edition by J. Barcz, A. Grzelak i R. Szyndlauer (available online in the EU library).

⁷⁷ OJ L 161, 29.5.2014, p. 3–2137.

⁷⁸ Source: <https://www.transparency.org/en/cpi/2022>

Union programmes was strategic. However, the remainder of foreign aid programmes should also prioritize the afore-mentioned objective, that is, (re)construction of Ukraine as a democracy. In order to achieve this objective, **the principle of conditionality** will be instrumental, as it has already proved effective in elevating countries (via support by the European Stability Mechanism) with the highest risk of succumbing to the financial crisis (in the years 2008-2012): the funds were strictly earmarked towards precise objectives, allocated according to transparent criteria, and conditional on progress made (while the entire process was rigorously monitored). The EU funds and foreign aid might have been otherwise “burnt” by the donors themselves or stolen by local oligarchs.⁷⁹ Against this background, the implementation of calls for substantiating the international support programmes for Ukraine (and the reparation mechanism) by an international agreement and oversight by a seasoned institution (such as the International Commission or the European Stability Mechanism) has strategic importance.

Second — Another aspect of the strategic importance that granting candidate status has for Ukraine is that the close monitoring of Ukraine’s (re)construction as a democracy thanks to EU funds is taking place within the framework laid out in the Association Agreement, as part of the pre-accession programmes, which will gradually be replaced by mechanisms introduced in the course of accession talks. In this context, it is worth noting the following fundamental circumstances:

- In the course of accession negotiations, the EU will decidedly heighten the monitoring of Ukraine’s effectiveness in democracy-building and respect of the rule of law. It is worth

underscoring that this is not exclusively a question of the developing sustainable institutions guaranteeing democratic standards, but it has also to do with the fact that the principle of the rule of law permeates the majority of negotiating chapters;

- Following the EU’s recent experience with Member States in breach of the rule of law (Hungary, Poland), and the extraordinary context of Ukraine, the EU will surely not finalize the accession negotiations until it is confident of Ukraine’s sustainable democratic character. It is not expected that Ukraine will receive special treatment due to Russia’s aggression;
- Having said this, the Accession Treaty concluded with future Member States, including Ukraine, will highly likely contain elaborate safeguard clauses allowing the EU institutions to “suspend” selected areas (or policies) of EU operation if there are shortcomings on the part of a Member State in implementing EU membership commitments as specified by the Treaties which are the constitutional basis of the EU;
- It can be assumed that in the coming years the EU will radically strengthen its reaction mechanisms against cases of breach of the rule of law, in particular if it is “serious” or “persistent”. This shall include both the “soft” measures (the political procedure preceding the triggering of Article 7 TEU, reviews of the rule of law in Member States, and enhancing the enforceability of the infringement procedure, in particular, the time ECJ takes to process cases), and the mechanisms governed by EU secondary legislation (enhancing and expanding the conditionality regulation).

⁷⁹ Cf. the case of wasting considerable amounts of foreign aid in Afghanistan: E. Suwara, *Public procurement as a tool of state-building in post-conflict situations: the case of Afghanistan*, Warsaw 2015.

The general conclusion to be formulated in light of the above is as follows: the pace of the accession talks and their eventual outcome, that is, the accession treaty shall be influenced by the two main factors: progress in Ukraine's economy recovery so that it is capable of satisfying the competition regulations governing the EU Single Market, and its credible, sustainable democracy-building efforts.

With respect to the "rule of law", there seems to be another important aspect to consider on Ukraine's path toward EU membership. Since 2015, Poland has been ruled by a nationalist government that was permanently in breach of the principle of the rule of law, laying the groundwork for an authoritarian regime. Naturally, it was not able to strike dialogue with Ukraine addressing important issues from the two countries' "troubled history" nor establish any notable programme for supporting Ukraine's EU membership ambition (all the more so as, due to its serious undermining of EU fundamental values, it was entrenched in a deep conflict with the EU institutions and leading Member States, that is, Germany and France and a feud with its regional partners in Central Europe due to its alliance with Orban's Hungary which has Pro-Putin leanings).

The war in Ukraine could have marked a turning point in Poland-Ukraine relations. Polish citizens provided immense, spontaneous support for Ukrainian refugees. Poland also quickly became a logistical hub for Ukraine's military and economic support sent by international allies. This notwithstanding, more than a year after Russia's full-scale aggression against Ukraine, Law and

Justice without hesitation exploited anti-Ukrainian sentiment amidst the election campaign to consolidate its base. The party lacked class in its attempt to cover the breach of the rule of law with arguments on "support provided to Ukraine" with more and more repugnant references to ignominious nationalist practices dating from the 1920s,⁸⁰ according to which independent Ukraine, as a likely ally of Germany, would pose a threat to Polish interests (which was further stoked by traditional anti-German sentiment in Poland). Leading Law and Justice politicians waged an anti-Ukrainian campaign, threatening to suspend military support for Ukraine and torpedo the accession negotiations. Such actions were in obvious conflict with Polish fundamental interests and did the EU some disservice. It nearly forfeited the historical opportunity to replace deeply-rooted, emotional divergence in viewing shared history with wise and constructive dialogue.

In Poland, the parliamentary elections of 15 October 2023 have been won by the pro-European bloc, which unequivocally condemned anti-Ukrainian rhetoric used by the ruling Law and Justice party (PiS).

It seems highly likely that the war in Ukraine will be long-lasting. Poland plays a strategic role in providing Ukraine with efficient military support. Poland's approach also has a fundamental importance for Ukraine's eventual EU membership. For the EU needs a strong representative in its Eastern flank which could facilitate the accession of Ukraine to the consolidating European community. This role may be exclusively performed by a democratic Poland which respects the rule of law, and as such, the fundamental values underpinning the European Union.⁸¹

⁸⁰ For context see T. Snyder, *Sketches from a Secret War: A Polish Artist's Mission to Liberate Soviet Ukraine*, Yale University Press, 2007

⁸¹ See argumentation by I. Krastev- *Wszystko zależy od Polski (w:) SPiS WIN. Osiem lat rządów Kaczyńskiego* [English: It All Depends on Poland (in:) Repertory of PiS' Sins, Eight Years of Kaczyński's Rule; translated by MS], *Newsweek Poland* 2023, Issue no 5, p. 10 i 11.

5.11. THE INTERRELATION BETWEEN UKRAINE'S EU MEMBERSHIP AND ITS NATO RAPPROCHEMENT

Ukraine is simultaneously seeking to become a NATO and an EU member. Both processes are highly difficult and may require tough decisions on the part of members of both organisations should they give the green light to Ukraine. And for various reasons.⁸²

In the case of Ukraine, the security context, in particular the fact that it is involved in regular fights in the course of the war against Russia, is of exceptionally fundamental importance for its EU accession. Never in its history has the EU absorbed a country actively leading military operations, fighting for its territory. It did, however, allow a country with an unterminated, frozen conflict, that is Cyprus. In its case, the Accession Treaty was concluded on behalf of the entire island, but its application is limited to that part of the island where Cypriot authorities can effectively apply *acquis*.⁸³ The case of Germany was not substantially dissimilar either. At the moment of the European Community's establishment, the existence of two German states was recognised. Formally, the Federal Republic of Germany was a sole member. The treaties and EU secondary law were not applied on the territory of the then-German Democratic Republic. The special relations between the countries translated into the so-called inner-German trade agreements. The legal framework of the reunification of Germany under which the territories of the German Democratic Republic were integrated into the Federal Republic of Germany allowed for the extension of the application of *acquis* onto the East without additional accession negotiations.

None of the afore-mentioned examples refers to the situation of an ongoing war as a direct result of a neighbouring country's aggression. In the case of Ukraine, in particular presently, it is not clear what the next steps of the aggressor might be, whether, following striking a peace deal and a temporary ceasefire, the conflict will not restart. It remains uncertain how the Member States could react in case the war resumed, perhaps with greater intensity, after Ukraine became an EU member, with parts of official EU territory turned into a battlefield. In this context, regulating the security question of Ukraine prior to its official joining the EU takes on extreme importance. This is not exclusively linked to the prospect of Ukraine becoming a member of NATO and its subsequent official accession to the alliance, but rather establishing such guarantees and security arrangements for Ukraine so that the future functioning of the country as an EU member is not subject to well-identified, foreseeable threats related to the area of security.

The accession talks with NATO are formally independent of the accession negotiations with the EU. As far as the negotiation proceedings go, procedure-wise and technically, these are two separate processes as these are two distinct international organisations of divergent composition, areas of interests, and cooperation mechanisms. Not all NATO members who take part in accession talks with applicants are also EU members. To a great extent, the accession negotiations are influenced by the policies and positions of the United States, although naturally each country has a say, and it cannot be expected that a favourable position of the United States will be decisive in the debate on Ukraine's membership. The position of EU Member States which are simultaneously NATO

⁸² *Ukraine's NATO Push Hit a Bump. Joining the EU Will Also Be Tough. Adding such a big country to the bloc will be hard for Europe, not just Kyiv.* By Laurence Norman July 17, 2023 5:30 am ET.

⁸³ "The application of the *acquis* shall be suspended in those areas of the Republic of Cyprus in which the Government of the Republic of Cyprus does not exercise effective control". Article 1 of Protocol No 10 on Cyprus, OJ L 236, 23.9.2003, p. 955–955, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A12003T%2FPRO%2F10>.

members will also play a key role in the case of Ukrainian NATO membership. This is especially true for the NATO members who owing to their geographical location, history, and interests view the questions of security and NATO enlargement through the prism of their policy towards Russia.

The decisions NATO took on Ukraine at its Vilnius Summit held on 11 & 12 July 2023 were not so much attributable to Ukraine's preparedness to fulfil the membership requirements, but rather the assessment of the geostrategic consequences at play in light of Ukraine's current situation. The NATO leaders were fully aware that at the 2008 summit held in Bucharest with Russia's president Vladimir Putin attending, where the prospect of Ukrainian membership was first discussed, the alliance made a mistake by not expressing its clear position on it. This has had a tremendous impact on Russia's aggressive approach and its military action taken not only against Ukraine, but also Georgia, and other countries in the region.⁸⁴

It is not Ukraine's advancement in preparing for NATO membership, nor the quality of its cooperation with NATO, especially in the area of military so far, which prevent the alliance from accepting Ukraine into its ranks. The Ukraine-NATO relations date back to the 1990s. Since 2013 the relations in numerous key areas have only intensified, in particular after Russia's unlawful annexation of Crimea. Following Russia's aggression against Ukraine on 24 February 2022, both NATO and its allies have provided Ukraine with an unprecedented level of support. Thanks to NATO's trust funds, Ukraine began its modernisation, transforming its Soviet-style military into a formation meeting NATO standards. Furthermore,

on a technical level, the Ukrainian armed forces have been provided with systems compatible with NATO standards.

Citing the examples of Finland and Sweden, the Ukrainian government has been pressing for a fast-tracked accession to the alliance. On 30 September 2022, Ukraine officially submitted its membership bid as part of this fast-tracked procedure. To conclude, the decisions NATO took in regard to Ukraine at its Vilnius Summit held on 11 & 12 July 2023 were not so much attributable to Ukraine's preparedness to fulfil the membership requirements, but rather the assessment of the geostrategic consequences at play in light of Ukraine's current situation. If NATO does not decide to invite Ukraine into its ranks until the war comes to an end, the EU may question whether the country can join the community without security guarantees. All the more so as the Common Defence Policy may obligate the EU and Ukraine to jointly engage in stabilizing the security of the entire region.⁸⁵

There remains the political dimension and the related question of whether on this level there is a clear association between or even interdependence of both processes.⁸⁶ While with respect to the previous enlargements, there were no signs of even the most subtle pressure exerted on candidate states to make efforts towards a NATO membership prior to the EU accession, in the case of Ukraine such assessment proves more difficult. Even though both processes are not formally tied, in reality, the question of providing security guarantees for Ukraine remains key for the country's prospect of EU membership.

⁸⁴ Anders Aslund, Andrus Kubilius, *Reconstruction, Reform, and EU Accession for Ukraine*, Frivard 2023, p. 26.

⁸⁵ Eric Ciaramella, *Envisioning a long-term security arrangement for Ukraine*, Carnegie Endowment for International Peace, June 2023.

⁸⁶ John Lough, *Ukraine's recovery depends on security guarantees*, Chatham House, 2 June 2023; <https://www.chatham-house.org/publications/the-world-today/2023-06/ukraines-recovery-depends-security-guarantees>

6. Conclusions

1) Russia's aggression against Ukraine, the brutality of Russian troops, and the sheer scale of international crimes perpetrated by the aggressor and the subsequent firm, united response by the West, including the EU and its Member States in providing military, economic and political support for Ukraine, and humanitarian aid to millions of Ukrainian refugees have forever changed the position of Ukrainians on EU and NATO membership. Neither political groupings, nor Ukrainian citizens see an alternative. There is no political force in favour of a different direction.

2) Ukraine records the highest support for EU membership among candidate countries. Ukraine is willing to accept all terms the EU will see necessary to fulfil. The bloc cannot afford to waste this enthusiasm. It is vital to provide Ukraine with all necessary support it may require in preparation to the accession negotiations. The EU should by all means avoid its recent mistakes (that is, moderate support for Ukrainian ambitions). What is at stake is the geostrategic objective of radical enhancement of security in democratic Europe and curbing Russia's imperialist ambitions.

3) The granting of candidate status to Ukraine sets the course for the political development of Ukraine, and, as such, for the shift in the European security framework. The strategic importance of Ukraine's official candidate status can be best exemplified in the context of a future peace deal with Russia. This is a clear sign for the Russian aggressor that the "European direction of Ukraine" is firmly non-negotiable: Ukraine is bound to become an EU member. The same can be said about Ukraine joining NATO. The accession of a democratic Ukraine to the European Union and its joining the NATO alliance will bring an end to Russia's imperialist ambitions.

4) Russia's aggression against Ukraine was an impulse to alter the EU's stance on the European ambition of Ukraine, which was hitherto moderate at best. The democratic West has shown exceptional unity and resolve in condemning the Russian aggression, and providing Ukraine with military, economic, and political support. The EU was remarkably quick to open the accession procedure specified in Article 49 TEU as early as June 2022 by granting the candidate status to Ukraine. By doing so, the EU sent a strong message that "Ukraine belongs to the European family" which is of paramount importance to Ukraine and its society fighting against the Russian aggression.

5) The international recovery mechanism ought to be prepared and launched immediately, regardless of the ongoing war. Roads, energy networks, railroads, telecommunication networks, housing, schools, and healthcare facilities require immediate repairs and reconstruction. After the war, the recovery effort will take on a broader scope, including the territories currently occupied by the aggressor and battlefields. At this later stage, the aid mechanism can be subject to pertinent corrections. Having said this, the size of damage and needs in the territories fully under Kyiv's control is so immense that it requires immediate action. The principle of conditionality should be applied for funds allocated as part of the mechanism, in a similar manner to the principle introduced by the EU for funds allocated from its budget so that the transferred aid is immediately used to rebuild Ukraine as a democracy fulfilling EU membership obligations. To this end, it is necessary to radically enhance the mechanisms and actions aimed at countering corruption.

6) Seizing frozen assets belonging to the Russian Federation and Russian oligarchs who support the war is of fundamental importance for funding Ukraine's recovery. It is in keeping with the sense of justice, and justified by the unprecedented character of the Russian invasion. More pressure should be applied on political elites to open up

the path for necessary steps to be taken in this direction. It will be vital to sign an international agreement between the interested stakeholders by the virtue of which a reparation mechanism will be established to finance the recovery of Ukraine through the seized assets. The fund could then be used to pay individual damages to the victims (both natural and legal persons) as well as reparations to the Ukrainian state. What is key, however, is making it compatible with the two remaining funds. Namely, the overall aid fund created by the states-donators, on the one hand, and the EU pre-accession funds on the other. The transfer of EU funds from its pre-accession mechanism is aimed at preparing the candidate for its future membership and is subject to the principle of conditionality. Correspondingly, the Ukraine reparation mechanism ought to be similarly conditioned and the reparations should be “inscribed” into the Ukraine membership preparation programme. Only then will the funds transferred to Ukraine actually serve to build a democratic Ukraine.

7) In parallel to providing support from aid funds and efficiently conducting the accession negotiations, much stress should be put on supporting the human capital of Ukraine, capable of applying EU standards (broad training opportunities for youth, twinning, etc.). It is necessary to expand the cooperation with civil society, and provide support in civil society building efforts.

8) By granting Ukraine the official candidate status, the EU has formally launched the procedure laid out in Article 49 TEU. All Copenhagen Criteria formulated in 1993 and further completed in the course of the subsequent enlargements must now be met. There is no possibility to use a “fast track” to the EU membership due to extraordinary circumstances, as what is at stake is the EU’s structural cohesion and the efficiency of its Single Market operations.

9) On the other hand, the duration of the war against Ukraine cannot be defined at this point. The same goes for the agreements under the future peace deal between Russia and Ukraine. If Ukraine were to conclude its accession negotiations while some of its territories remained under Russian occupation, it would not constitute an obstacle to the country’s accession to the EU. It will be crucial that Ukraine holds “effective control” on the demarcation line. This shall be a “territorial indicator” for the accession talks and the terms of accession. In this scenario, the accession treaty should unequivocally stipulate that the EU and its Member States do not recognise the annexation of the Ukrainian territories conducted by Russia after 2014.

10) The future EU membership of Ukraine has ceased to generate controversy and is currently in line with the interests of the EU institutions, the governments of Member States, opinion-makers, scientists, and media. On the political level, the opinions and remarks have been demonstratively favourable to the prospect of Ukraine joining the EU. Having said this, the practical implications of it are not fully known, and the position of key stakeholders, such as the EU institutions and governments of Member States, as to the detailed consequences of the enlargement has not been specified so far. As the accession of Ukraine will highly likely bring far-reaching consequences, this lack of opinion on the practical aspects of it testifies to the need for strong intensification of efforts so that the sides may proceed with the detailed negotiations, and eventually, their successful conclusion.

11) The European Commission has aptly reacted to the geopolitical dimension of the Ukrainian European ambition by prioritizing the steps towards it, providing durable political oversight by the President of the Commission, and, as a result, in an unprecedented pace outlining the comprehensive, objective basis for the Member States to decide on granting Ukraine the candidate status.

The European Commission will highly likely recommend opening the accession negotiations as part of its annual enlargement package, set to be adopted on 8 November. The European Council, in turn, shall likely give it its political approval by the end of 2023.

12) The actual pace of the accession negotiations remains unclear. The prospect of the EU enlargement on its Eastern flank has provided a positive stimulus in the Western Balkans-EU relations. Despite this, the accession process of these countries has been slow and complex. This is why the EU must provide new stimuli and incentives which will allow accelerating the process. In this context, quite reasonably, many advocate for applying the so-called regatta rule: serve the best first. This may, in turn, translate into a differentiation of status among the countries that managed to open accession talks (that is, six countries in the Western Balkans, Ukraine, Moldova, and Georgia) and their EU accession in groups. It is worth remembering, however, that the EU itself along with its Member States prefer a collective accession, not least for the otherwise cumbersome ratification procedure (which usually brings some degree of commotion to Member States' internal politics).

13) Contrary to commonly expressed opinions, the financial consequences of Ukraine's accession for the EU budget will not be necessarily as drastic for today's net beneficiaries and contributors as it is often said. According to Michael Emerson, should the current EU policies remain unrevised, moderate increases and cuts in contributions and benefits from the EU budget will suffice to assign €18.8 billion net per year to Ukraine. Following Ukraine's accession, the net balance of Germany would shift from -€21.5 billion to -€26.2 billion, and that of France would deepen from -€9.6 billion to -€12.7 billion. Poland would go from a positive balance of €11.1 billion to a nearly equally positive €10.4 billion. Spain would be the only Member State to go from a positive balance position to a negative one. The decisions on balancing the contributions

will decidedly prove highly difficult, not only in the course of negotiations with Ukraine but already during the discussions on the next multiannual financial framework for the EU.

14) Aside from the financial implications, the rules for business in Ukraine may constitute another major roadblock. The key questions include the right to purchase real estate, competition regulations in light of the oligarchic structure of the economy, and tackling corruption. While the Ukrainian legislation may already, to some degree, be in alignment with the EU standards, the administration's usual practices and general business climate for foreign entities point to the need to still pay much attention to the implementation of EU legislation. Furthermore, Ukraine is facing substantial challenges in the areas of environmental protection and climate, which may require strong organisational and financial efforts as well as time, likely translating, in turn, into the necessity to negotiate rather long transitional periods.

15) It would be advisable to "enhance" the accession negotiations (the model of "staged" membership) by a broader integration of Ukraine into the EU Single Market and its regulations (the Association Agreement may play a vital role here). The proposals to establish various bodies that could "accompany" the accession negotiations should be regarded with caution. The key criterion is whether said bodies are developed with the aim of enhancing the efficiency of the accession negotiations, or, on the contrary, hampering Ukraine's accession to the EU. Contrary to pre-existing concerns, the European Political Community does not pose a threat to the enlargement process of the EU.

16) The various proposals for "exceptional" Ukrainian membership should be regarded with caution. Ukraine along with the remaining candidate countries are seeking a full EU membership, not some ersatz. The accession negotiations will, therefore, be concluded by Ukraine's accession to the EU.

Having said this, the enhanced protections will necessarily need to be applied so that the joining of such a large country, amidst its post-war reconstruction, making efforts to perpetuate its free market democratic values does not shake up the cohesion of the EU structure and the functioning of the EU Single Market. It can be expected that the accession treaty will include numerous transitional periods of long-term duration as well as elaborate safeguard clauses, which the EU shall launch should Ukraine fall short of the EU Member State obligations as well as (after Ukraine becomes a member) the use of procedures specified by the Treaties, on which the EU is founded (enhanced cooperation, the procedure for Schengen membership, the procedure for Eurozone membership regulated by the Economic and Monetary Union). This notwithstanding, one question is clear at this stage: the EU and Member States shall avoid the use of durable opt-out clauses (which it did apply in the case of the UK, for instance).

17) The calls for a deep reform of the EU institutions ahead of the planned enlargement which would entail the revision of the Treaties must be treated with additional caution. The political climate is not favourable to the adoption of a treaty similar to The Treaty of Nice (which readied the Union ahead of the 2004 enlargement). Some changes may, of course, be introduced by the means of the Accession Treaty, but they should be limited to the revisions directly relating to the group of the acceding countries, Introducing far-reaching revisions could block the effective adoption of the Accession Treaty as it must be individually ratified by all Member States. The mechanisms introduced by the Treaty of Lisbon considerably facilitate the absorption of new Member States as it does not require a revision of the fundament of the EU, that is, the Treaties, to reform the fundamental areas (such as the allocation of seats in the European Parliament, the qualified majority voting in the Council, the composition of the European Commission). It will

decidedly be subject to difficult negotiations, but the decisions lie in the hands of the European Council (acting unanimously). Correspondingly, introducing greater flexibility to the Union decision-making process does not require Treaty revision. Instead, there are several options at hand to replace the unanimity voting by the qualified majority: passerelle clauses, constructive abstention or reverse qualified majority. Ukraine needs to be particularly alert so that its accession is not taken hostage by the ambition of some Member States to revise the Treaties.

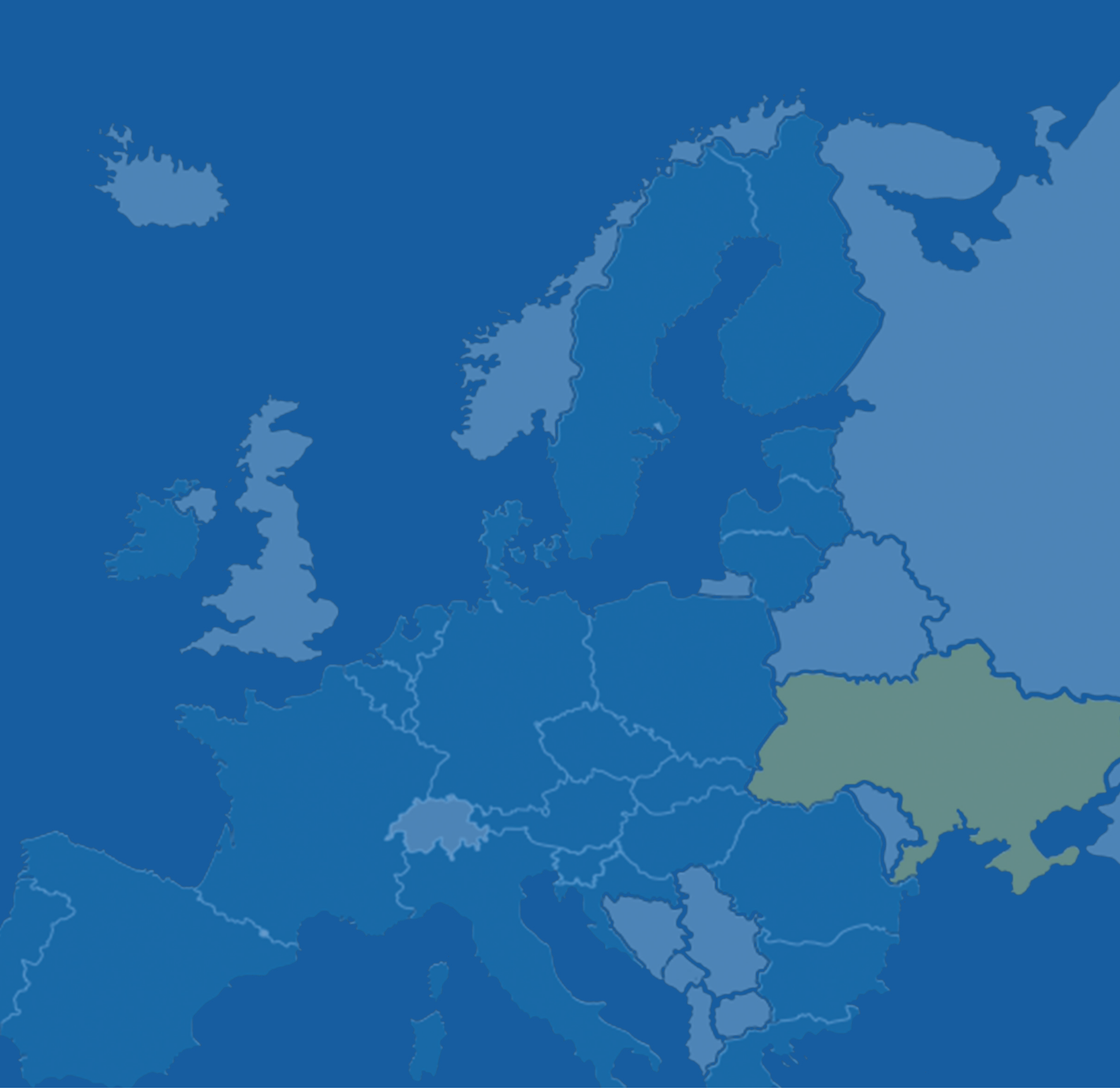
18) The pace of the accession talks and their eventual outcome, that is, the accession treaty shall be influenced by the two main factors: progress in Ukraine's economic recovery so that it is capable of satisfying the competition regulations governing the EU Single Market, and its credible, sustainable democracy-building efforts. The first Copenhagen criterion, that is building institutions guaranteeing democracy (respecting Union values specified in Article 2 TEU), and the effective satisfaction thereof will work as a test for Ukraine's EU accession. No special treatment is expected. The European Union is for democracies only. This conditions its effective functioning.

19) An additional factor at play is the breach of the rule of law and creeping authoritarianism in Poland and Hungary. As a result, the credibility of new Member States has been strained, as the EU cannot afford to tolerate new instances of this behaviour. Against this backdrop, the efforts undertaken by Ukrainian authorities to tackle corruption, and maintain and enhance the democratic nature of Ukrainian institutions ought to be particularly appreciated. The submission of Ukraine's application to become a Member State should be seen first and foremost as a declaration of Ukraine's ambition to be admitted among the group of free market democracies. This has fundamental importance morally, politically, and economically.

20) In regard to Poland's preparation ahead of the negotiations, it should already at this stage identify the key issues likely to have the most considerable impact on Poland's situation in the enlarged EU. On the top of that, it needs to elaborate the most exhaustive list of potential, albeit not necessarily critical, conflicts in various areas, from industry, economy to even social issues, which, owing to the confrontation with Polish entities or their potentially adverse impact on selected, identifiable demographics, are likely to result in generally unfavourable approach to the process of accession. The efforts should not only include a cross-sectoral review of both economies, the structure and portfolio of manufacturing, and the potential conflicts arising from confrontation, but also analysis of potential changes within in EU policies motivated by the enlargement and new issues it entails. A well-correlated revision of pertinent EU policies may solve numerous negotiating issues, although in some cases it may also lead to limited access to EU funds for Polish entities.

21) The fundamental problem, however, lies elsewhere. Polish people provided immense, spontaneous support for Ukrainian refugees. Poland also quickly became a logistical hub for the military and economic support sent by international allies. It plays a strategic role in providing Ukraine with efficient military support. Poland's approach also has a fundamental importance for Ukraine's eventual EU membership. For the EU needs a strong representative in its Eastern flank which could facilitate the accession of Ukraine to the consolidating European community. This role may be exclusively performed by a democratic Poland which respects the rule of law, and as such, the fundamental values underpinning the European Union. Poland moving away from democracy, on the path towards authoritarianism, that is, Poland under the rule of the Law and Justice's coalition dubbed the United Right in the years 2015-2023, not only posed a threat to the cohesion of the European integration, but also was a fundamental hurdle in Ukraine's accession to the EU. The

pro-European bloc won the majority of seats in the recent Polish parliamentary election of 15 October 2023. The winners do not condone the anti-Ukrainian and anti-EU rhetoric of the outgoing government.



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