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UKRAINE AND THE EU: HOW TO KEEP UP ACCESSION MOMENTUM

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LibMod Policy Paper

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¹ The two groups of authors are listed in alphabetical order.

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KEY POINTS

- When recommendations/demands on the side of the EU are concrete and linked to specific and attractive incentives, they have better chances to bring about reforms. This conclusion is not new and proved its validity during the implementation of the Visa Liberalisation Action Plan linked to building Ukraine's anti-corruption eco-system. The period after Ukraine became an EU accession country confirms this finding.
- The combination of concrete demands and tangible incentives, accompanied by regular and detailed feed-back, advice and expertise from the EU pays off in terms of producing better reform results and, importantly, offsetting reform veto-players in Ukraine. The EU should also more actively identify and engage with interested stakeholders who want reforms and build coalitions with them. So far this has helped to promote *acquis* approximation.
- The Support Group of Ukraine (SGUA), established in 2014 in recognition of the need of rapid and concrete reactions, is one example for the abovementioned approach, while the G7 Group of Ambassadors is another example. They talk to stakeholders (e.g., by inviting them to their meetings) and provide very concrete recommendations, criticism, etc. on various reform steps and the lack thereof. The EU's new Ukraine Service, the increased personnel capacity of which is very welcome, should build on this approach and coordinate with the G7 Group even more strongly to ensure joint pressure.
- While the change of approach on behalf of the EU towards a clear strategy of enlargement vis-à-vis Ukraine is a strong overall incentive for Ukraine's political actors to strengthen leadership, build capacities and improve intragovernmental coordination, the EU should take note of the difference in the way previous membership negotiations drove domestic reforms. A stronger focus on political and administrative governance mechanisms within Ukraine's government, especially with regard to the institutional setting for European integration, is key for "polity reforms," i.e., changes to political and economic structures and processes, such as separation of powers and rule of law, and policy reforms centred on the adoption of the *acquis* prior to accession. Moreover, governance and administrative capacity at all levels of government is key regarding Ukraine's public absorption capacity in light of reconstruction and recovery funds as well as future integration into EU programmes.
- The EU should open accession talks even if the seven steps are not implemented in full. Once accession talks start, the EU's leverage will grow stronger, since it can introduce benchmarks and rewards and control the process. Moreover, the EU's engagement will necessarily grow, as it will need to support Ukraine with expertise and resources. Importantly, the decision to open the talks should be presented not as a reward, but as an invitation to deliver concrete results. Ukraine did earn the prospect of EU membership with its defence of the fundamental values of human dignity, freedom, democracy and human rights enshrined in article 2 TEU. At the same time, it will need to uphold these in the accession process, and contribute to the EU as "a community of law." Ukraine did not earn an accession promise or short-cut.
- Whatever the modalities of integration, they should not slow down the accession talks. Moreover, the sequencing is very important – integration should first take place in those areas where 1) Ukraine can approximate with the *acquis communautaire*, given the limited resources; 2) progress aligns with reconstruction priorities, 3) tangible integration incentives can be identified, and 4) the EU can benefit from Ukraine's integration. It would be advisable to set up a working group of experts from Ukraine and the EU to identify such sectors.

- The financial burdens and consequences of EU enlargement will be considerable, especially regarding Ukraine's accession together with the Republic of Moldova and possibly Georgia, given that their combined population of over 40 million is more than twice that of the Western Balkan countries with 17 million. It is thus necessary to begin discussing the implications of the upcoming EU enlargement now – with a view to Ukraine in particular, as it will pose the greatest integration challenge – especially for the European Structural and Investment Funds (ESIF) and the Common Agricultural Policy (CAP). Experts also argue for a reformed Instrument for Pre-Accession Assistance (IPA IV). It will be crucial to include the results of this discussion in the EU's Multiannual Financial Framework for 2028-2034 in order to make sure the EU is financially prepared for new accessions.
- Poland should develop a "Warsaw Agenda" for its EU Presidency in the first half of 2025, i.e. a comprehensive road map to make the EU fit for the coming enlargement. Warsaw will not only need to get other EU member states on board, but also to recruit one or two of them as additional drivers of the process – preferably at least one current member state with strong experience concerning the Western Balkans. This would also be an opportunity for Warsaw to engage with the recent Franco-German expert group suggestions on EU reform and enlargement and to identify key points of both convergence and divergence with Polish positions.

1. UKRAINE'S EU CANDIDACY AS A GAME CHANGER

From full-scale invasion to candidate status

Ukraine submitted its application for EU membership just days after Russia's full-scale invasion began. For Ukraine it was an existential necessity to break away from its political no-man's land and make clear that it belonged to the European family.

With the request, the ball was in the EU's court. While the Eastern European and Scandinavian EU member states supported Ukraine's accession, Germany in particular was rather sceptical. Germany's initial hesitation on this issue (as well as on arms deliveries and oil and gas boycotts) has cost trust and undermined its leadership power. In the face of these developments Ukrainian Foreign Minister Dmytro Kuleba, via twitter, spoke of the "strategic ambiguity about Ukraine's European perspective practiced by some EU capitals in recent years." (Kuleba 2022)

On June 16, the leaders of France, Italy, Germany and Romania sent a positive signal during their joint trip to Kyiv. This was followed on June 17 by the European Commission's recommendation to grant Ukraine EU candidate status, and finally by the EU's unanimous decision to do so on June 23.

Game-changer for EU-Ukraine relations: higher expectations and stronger commitment

We argue that the historical decision to grant Ukraine the status of EU membership candidate country has become a game changer for the entire EU enlargement process (this will be discussed in the last chapter of the paper).

In terms of EU-Ukraine relations, this decision put Ukraine on a fundamentally different track. It not only sent the message that the EU wants Ukraine to become a member, but included Ukraine into its enlargement policy process, which 1) gives the

EU stronger leverage to stimulate transformation and reforms in Ukraine and 2) commits the EU to support Ukraine's European integration process with more human resources, more expertise and more frequent and detailed feedback, not to mention financial assistance. Moreover, the prospect of EU membership and the immediate perspective of opening accession negotiations raise the level of expectations on both sides. The EU expects higher commitment from Ukraine when it comes to domestic reforms and adoption and implementation of the *acquis*. Ukraine, for its part, expects the EU to allocate more resources to help it meet the requirements for accession.

Efforts by Ukraine

The number and intensity of reforms carried out by Ukraine since June 2022 despite the full-fledged war illustrate the country's commitment to reforms and European integration, as do struggles over reform, because they demonstrate that the targeted changes go to the heart of Ukraine's transformation into a liberal democracy with effective separation of powers. As is shown in chapter 3 and in Annex 1, the seven steps, outlined by the European Commission in June 2022 when recommending to grant candidate status to Ukraine, created pressure on political leaders in Kyiv. In some cases, Kyiv delivered, but in others the strong resistance of networks of vested interests to transformation has revealed itself.

More frequent feedback from the EU

The EU, for its part, offered more frequent feedback on where Ukraine stands in terms of alignment with the EU *acquis* and overall reform progress. The European Commission provided Kyiv with two previous reactions – in February and June 2023 – even though those were not required by any procedures. Ukraine is scheduled to receive a comprehensive report on its progress in October of 2023 as a part of

the standardised (more extensive) annual enlargement package. For Ukraine, the forthcoming report is of particular importance: only if it is positive can Kyiv hope to enter accession negotiations soon. The two previous feedback rounds provided Ukraine with an assessment of the state of alignment of its legislation with the EU acquis and implementation of the seven reform steps.

In the first case, the Analytical Report (European Commission 2023a)¹ on the eve of the annual EU-Ukraine summit provided a picture of Ukraine's implementation of the EU acquis. It was prepared according to the same methodology used to produce the accession reports and covers 32 negotiation chapters divided into six clusters. The sobering finding is that Ukraine is not very far advanced in most of the chapters, with the average score being 2,5 out of 5 according to the European Pravda scoring system (Sydorenko 2023) or less than 2 out of 4 according to the ESI scoring system – for the latter see Annex 2 (European Stability Initiative 2023).

The report should have dampened Ukraine's expectations. Shortly after the application for membership was submitted, high-ranking Ukrainian politicians often spoke about an accelerated accession process for Ukraine. As recently as late January 2023, Ukrainian Prime Minister Denys Shmyhal said Ukraine hoped to join the EU within two years (Lynch 2023). Recently, Deputy Prime Minister Olha Stefanishyna reiterated this claim (Kyiv Independent 2023). However, it is undisputed that these expectations are unrealistic. By producing unrealistic expectations, politicians are doing neither themselves nor their country any favours. Moreover, they expose themselves to accusations of populism when they hold out the prospect of unrealistic goals instead of explaining the realistic ones to their electorate and creating the political will

to achieve those. In this respect, objective

¹ The Report on Ukraine's alignment with the EU acquis considers laws and institutions as well as policy implementation, using a five-stage scale from "early" to "well advanced."

feedback from the side of the EU is useful and needed.

In the second case, in June 2023 the European Commission presented a so-called "oral report" on the implementation of the seven reform steps. The result was mixed: while Ukraine had made some progress, key measures were still missing (see Annex 1 for details).

Political signals of support

In addition to these feedback exercises and as a significant political signal, the EU reaffirmed its commitment to supporting Ukraine by holding the annual EU-Ukraine summit, originally scheduled to take place in Brussels, in Kyiv in February 2023 (European Council 2023a), in the midst of the war. Of no less importance was the joint meeting of the European Commission and the government of Ukraine on February 2, on the eve of the summit: in an unprecedented gesture of solidarity, European Commission President Ursula von der Leyen and 15 Commissioners met with the Ukrainian government (European Commission 2023b) in Kyiv. This was the first time Ukraine and the EU met in this format.

Moreover, on October 2, 2023, EU Foreign Ministers held their informal meeting in Kyiv – the first time that EU foreign ministers met in a third country, not to mention that this country is at war. This was another very strong gesture of support to Ukraine.

Conditionality works only with tangible conditions and precise deadlines

When identifying the seven steps, the European Commission followed the logic of conditionality. Even if their implementation was not formally linked to opening accession negotiations, a positive assessment seems to be needed to move on. The patchy implementation confirms that only concrete demands lead to meaningful results, as was also the case in the past (Rabinovych 2023). Enlargement can be an effective force for change, if Ukraine's international partners accept that there are sensitive issues which

transcend technocratic decisions – and are prepared to intervene politically. The new Ukraine Service will have to react quickly and prominently, like the SGUA or the G7 Ambassadors to Ukraine did previously. Without such close attention, progress will stall, as the distribution of forces between reformers and anti-reformers remains uneven. Ukrainian experts, activists, reform-minded politicians, civil servants, and ordinary citizens do their part, but the EU can and should do better to support them. This is what Ukraine’s reformers ask for, even more so with reconstruction and additional EU funding in the form of the new Ukraine Facility on the horizon.

The stimulus of enlargement can strengthen domestic governance and administrative capacity, but special attention is needed from both sides

Given the strategic nature of enlargement, the EU might consider a forward-looking approach.² There are good reasons to regard Ukraine a country that meets the fundamental requirements of a Western-oriented democratic order. Twice, in 2004 and 2013/14, the Ukrainian people insisted on their choice for a system in which the executive is responsive to the needs of the people. They have shown themselves “a citizenry able to recognise and respect other citizens as free and equal partners and the constitution as the legal framework structuring democratic practices of collective self-determination” (Kumm 2018). They defended their choice for a free and open society with respect for the rule of law, their wish to be fully integrated with Europe, and a society in which all have dignity and may realise their potential.

A commitment to enlargement and recognition that solving rule of law and anti-corruption problems is a joint challenge for Ukraine and the EU during accession negotiations (even if the tasks on both sides are different) would, moreover, better acknowledge the global dimension (Bullough 2018) of Ukraine’s high-level corruption problems. It would also contribute to fostering the domestic governance mechanisms for the politically sensitive and complex economic and sectoral aspects of EU integration. It was difficult to form such structures and provide them with sufficient strength with the lack of overarching political vision of where relations with the EU would lead (Wolczuk 2023). This is crucial because governance quality, together with administrative capacity, might be more important for Ukraine’s transformation than funding.

However, the stimulus of enlargement alone is not sufficient to make Ukraine fit for accession negotiations, incorporation of the EU *acquis* into national legislation and its implementation. The EU needs to pay more attention to strengthening Ukraine’s administrative capacity, which does not only mean implementation of the administrative reform, which experienced backsliding since the full-scale invasion, but also strengthening institutional infrastructure for European integration from the Office of the Deputy Prime Minister for European and Euro-Atlantic Integration and Government Office for Coordination of European and Euro-Atlantic Integration to Deputy Ministers for European integration in line ministries and other agencies. The capacity of the Verkhovna Rada to make sure that adopted legislation is in line with EU requirements is equally important.

² Even a “*Zeitenwende*” perspective on membership criteria is perceived. Angelika Nußberger observes: „With regard to Ukraine’s application to become an EU member, there is discussion of opening the door even if the Copenhagen criteria are not actually met. Togetherness is more important than formal criteria, feeling comes before law – at least this is the impression given by initial reactions.” (Nußberger, Aust, Heinemann-Grüder and Schmidt 2022, p. 213)

2. THE STATE OF UKRAINE'S APPROXIMATION TO THE ACQUIS COMMUNAUTAIRE

Ukraine has been implementing the Association Agreement (AA) with the EU since 2014. While the AA did not provide Ukraine with an incentive to implement tough fundamental reforms, it effectively stimulated sectoral reforms and intensified trade relations between Ukraine and the EU, turning the EU into Ukraine's key trading partner. In 2022, the EU's share of Ukraine's foreign trade increased to 53.6 per cent, up from 39.1 per cent in 2021 (Ministry of Economy of Ukraine 2023). However, the framework of the accession negotiations is much more stringent in terms of implementation of the EU acquis (especially when it comes to fundamental reforms) than the AA and thus requires an unwavering commitment from Ukraine to continue comprehensive reforms.

An overview of the implementation of the EU-Ukraine Association Agreement

According to the independent expert monitoring conducted by the Ukrainian Centre for European Policy (UCEP), as of 2022, the general progress of Ukraine's implementation of the AA amounted to 55 per cent.³ This figure includes fully implemented commitments as well as interim steps, such as drafting laws or adopting bylaws. The share of the fully completed tasks under the AA is only 30.4 per cent (Ukrainian Centre for European Policy 2023, p. 9). The greatest progress in

implementation is observed in the sectors of company law, public procurement, and technical barriers to trade (TBT), where Ukraine has fully completed more than half of its AA commitments. Some progress has been made in the sectors of foreign, security and defence policy as well as energy. Progress on the rule of law and respect for human rights and fundamental freedoms on the one hand and the dialogue and cooperation on internal reforms on the other hand is only 18.4 per cent and 20.8 per cent respectively. Such sectors as public health, agriculture and rural development, intellectual property, and education, training and youth are the least advanced, with fewer than 10 per cent of fulfilled commitments or no fully implemented tasks at all.

Such moderate results may be attributed to the fact that the Association Agreement hardly offers attractive incentives that would encourage the full implementation of reforms. Instead, Ukraine has voluntarily and selectively harmonised its legislation in certain sectors where various stakeholders saw the benefits of doing so (Vernygora 2019, p. 16). The fact that the TBT and public procurement sectors have been at the forefront of AA implementation was made possible mainly because stakeholders had motives to advocate for alignment with EU legislation. In the field of TBT, the prospects of signing the Agreement on Conformity Assessment and Acceptance of Industrial Products (ACAA Agreement, also called "industrial visa-free regime") served as a significant incentive for legal approximation. If the ACAA Agreement is signed, a confirmed number of industrial products from Ukraine will be admitted to trading on the EU market. In addition, in the years following the signing of the AA, the TBT sector received significant technical assistance from donor projects, which inter alia supported the development of legislation. The public procurement reform was extensively

³ The progress measurement unit of the UCEP Monitoring Report is a commitment which implies a specific set of tasks for progressive (planned) approximation of national legislation (transposition) and ensuring its enforcement (implementation). The AA implementation progress is assessed at the task level to which special status is assigned: transposition/implementation has not started, early stage of transposition/implementation, advanced transposition/implementation, perfect transposition/implementation, critical nonconformity. For the assessment purpose, the number of tasks with a certain status is divided by the total number of tasks within a particular commitment, subsector, sector or the entire Association Agreement; the result obtained is multiplied by 100. UCEP methodology allows for simultaneous assessment of the overall (includes early, advanced and perfect fulfilment) and perfect implementation progress of the AA (for more details see: Ukrainian Centre for European Policy 2023a, p. 6-8)

promoted by the Deputy Minister of Economic Development and Trade of Ukraine in 2015-2016. Even though some challenges still persist, this reform was considered to be one of the success stories.

Notable drivers of legal approximation under the AA may also be traced in the sectors of sanitary and phytosanitary measures (SPS) and energy. In order to facilitate exports to the EU market, large Ukrainian agricultural companies sought to bring their products into line with EU standards and were therefore active supporters of legal approximation in the SPS sector. The implementation of the EU acquis in the energy sector was among the attempts to gain relative independence from Russia-supplied gas and oil. As the UCEP study notes: “In the Ukrainian context, a legal approximation can be seen as an opportunity to “run away” from the unpredictability of energy supply from the Russian Federation.” (Vernygora 2019, p. 16)

In other sectors covered by the AA, the lack of clear incentives for reform has led to the so-called „Ukrainization“ of EU legislation. Since some stipulations of the EU acquis are difficult to implement, state authorities have been prone to arbitrary interpretation of EU norms and thus to selective approximation (Vernygora 2019, p. 16).

The provision of EU candidate status to Ukraine and the opening of accession negotiations in particular are expected to reboot the European integration reforms. For instance, the conferral of candidate status together with the seven steps spurred reforms that constituted AA commitments and have been pending for several years, i.e., the adoption of the Law “On Media” and relevant amendments to the Law “On Advertising” (belonging to the audio-visual policy sector) as well as the Law “On National Minorities (Communities) of Ukraine” (sector on justice, freedom, security and human rights). This demonstrates, as noted in chapter 1, that the presence of a clear political goal (opening accession negotiations with the EU), as well as specific

requirements from the EU (the seven steps) can serve as an effective motivator for otherwise unwilling Ukrainian authorities.

European integration in wartime

The Russian full-scale invasion has negatively impacted the AA implementation dynamic. In the period from the second half of 2021 to the end of 2022, overall progress on the implementation of the Agreement amounted to 6 per cent. Perfect fulfilment, i.e., complete fulfilment of the commitments, increased by only 4.8 per cent (compared to 13.2 per cent in the previous reporting period). This downward trend was caused by the obvious need to prioritise the military sphere and thus redistribute resources to counter the Russian aggression. In addition, the war inflicted destruction in such sectors as TBT and energy, which had been demonstrating a relatively good track record of AA implementation.

As a result of the hostilities in the north, east and south, individual enterprises in the field of technical regulation, production facilities and premises, as well as equipment have been damaged (Ukrainian Centre for European Policy 2023b, p. 27). Energy infrastructure has suffered significantly – according to the Cooperation for Restoring the Ukrainian Energy Infrastructure Project Task Force, “Russia occupied, damaged or destroyed about 50 per cent of the country’s installed power capacity. [...] The oil refining industry was destroyed. Electricity and natural gas consumption decreased by 30–35 per cent compared to 2021” (Cooperation for Restoring the Ukrainian Energy Infrastructure 2023, p.3).

The Kyiv School of Economics estimates that as of June 2023 the direct damage to energy infrastructure can be assessed at \$8.8 billion, including \$638 million in direct damage due to the destruction of the Kakhovka hydroelectric power station in June 2023. Direct losses to the agricultural sector are estimated at \$ 8.7 billion (Kyiv School of Economics 2023b). The damage may be much greater considering Russian attacks on Ukraine’s Danube ports since the

prolongation of the Black Sea Grain Initiative failed and Ukraine tried to divert shipments to the river ports (Ukrainska Pravda 2023, Kyiv School of Economics 2023a). Therefore, Ukrainian authorities as well as businesses have been focused on solving current challenges rather than on further reforms.

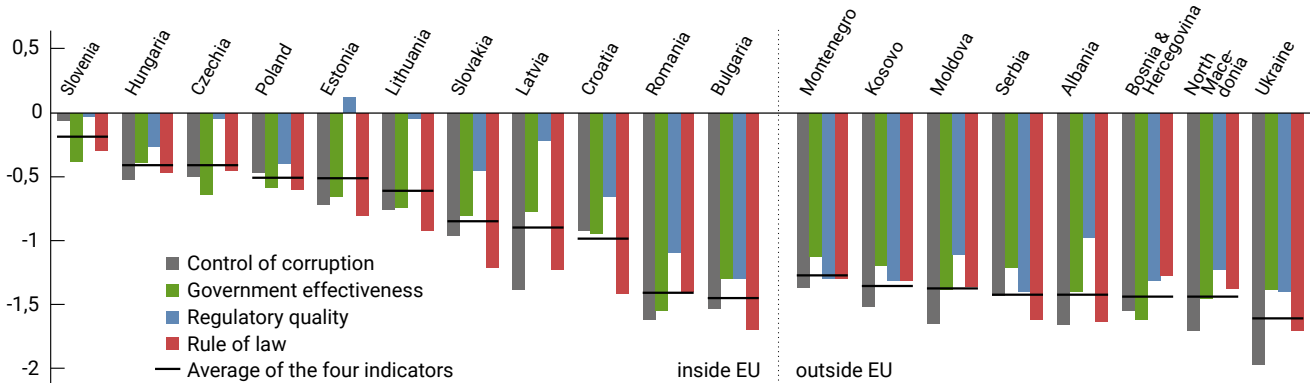
The martial law regime has resulted in some restrictions on civil rights for security reasons which, however, have led to negative trends in transparency in certain aspects of the state's functioning. This concerns the suspension of the application of almost all procurement procedures laid down by the Laws on Public Procurement and Defence Procurement (except for the open tender procedure), suspension of state market surveillance measures and of state aid supervision. This has led to backsliding in the respective sectors.

The war also exacerbated the issue of institutional capacity and the quality of personnel involved in the European integration reforms. Some civil servants were conscripted into the Armed Forces, and some (particularly females) sought refuge from the war in EU member states. In addition, due to the cutting of the salaries of civil servants (Vinokurov 2023), in the first half of 2023, the number of employees of all state bodies decreased by 2700 people (Ministry of Finance of Ukraine 2023). Given the fact that the implementation of the EU acquis (Cabinet of Ministers of Ukraine 2023a) into the national legislation requires solid institutions and highly qualified experts in the civil service, there is an urgent need for public administration reform which would include an increase in the salaries of civil servants (as is the case in some ministries with donor assistance, but not universally). Furthermore, additional training may be required for civil servants on EU legislation and English proficiency, since only 30 per cent of specialists involved in the development of legislation have knowledge of EU law and of English at the B1 level and above, according to the National Agency of Ukraine for Civil Service report (National Agency of Ukraine for Civil Service 2022 p. 39).

The European Commission's assessment of Ukraine's alignment with the EU acquis published in February 2023 showed that on average across 32 chapters (Chapter 23 "judiciary and fundamental rights" was not included in the report due to a lack of quantifiable data) Ukraine has some level of preparation to implement the EU acquis and is less than halfway to the EU's doorstep in terms of acquis implementation. In sum, the Association Agreement has given Ukraine an impetus to carry out sectoral reforms and adopt European standards. Accession negotiations, however, will require a thorough rather than superficial ("Ukrainization") implementation of EU legislation, especially in sectors where attractive incentives are less obvious. A clear prospect of membership could accelerate reforms, if linked to an equally clear prospect of certain interlocking rewards/milestones, as different modalities of integration, discussed in chapter 4, suggest.

3. CHALLENGES THAT NEED SPECIAL ATTENTION: RULE OF LAW REFORM AND WEAK ADMINISTRATIVE CAPACITY

Figure 1: Ukraine’s level of institutional quality is weaker than that of most EU-CEE countries at the time of their EU membership application, but it is not an outlier relative to current EU accession candidates.



Note: World Bank Worldwide Governance Indicators relative to the average of France, Germany and Italy at the time of each CESEE country’s application to join the EU. For those that applied in 2022, 2021 data are used (latest available). Source: World Bank Worldwide Governance Indicators, calculations by wiiw (Bertelsmann Stiftung/wiiw, forthcoming).

Ukraine is at a lower starting point in comparison to previous accession countries and current candidates. Data of 2021 on the dimensions of governance chosen by the World Bank to compare over 200 countries since 1996 show that Ukraine is currently behind the institutional performance standards of the EU-CEE (Central and Eastern European) countries at the time of their EU membership application.⁴ Yet data also underscores the role that the EU can play in strengthening a country’s institutional set-up. International rankings on corruption perception and economic freedom show how Romania, Bulgaria and Croatia, in the year of their application in a comparable position to Ukraine today, have improved considerably over accession negotiations (Reanimation Package of Reforms Coalition 2023).

Drawing on the above-mentioned Analytical Report by the Commission from February 2023, the think tank European Stability Initiative warns that the (standardised) “crucial focus on rule of law fundamentals [...] is failing to deliver results.”⁵ In the case of Ukraine, ESI moreover states that not changing this process would be “very detrimental to the investments needed to catch up (and reconstruct post-war Ukraine).”

4 Bertelsmann Stiftung/wiiw study forthcoming.

5 Regarding Ukraine, the ESI assessment, looks at “fundamentals” through “justice, freedom and security,” “public procurement,” “statistics” and “financial control,” because quantifiable data for “judiciary and fundamental rights” is lacking (European Stability Initiative 2023, p. 13).

Rule of law reform and anti-corruption – Finding a way out of the time loop

The problem of establishing a state based on the rule of law, with the judicial system and law enforcement reformed (and corruption curbed), has accompanied Ukraine's transition to a liberal democracy since its independence in 1991. Law and justice reform has been pursued since the 1990s with considerable foreign technical assistance and resources, including from the EU.⁶ Since systemic change was not achieved, the "anti-corruption eco-system" was built in parallel to the regular organs of law enforcement and justice, in order to at least curb high-level corruption. It did not and could not overhaul the judicial system and law enforcement. The rule of law has potent enemies – vested interests by influential individuals and financial/criminal groups and the structural interconnectedness of economic power and politics, protected by (in exchange for considerable payment) regular courts and law enforcement (as well as other state agencies). A clear distinction between old and new political players cannot be made either. So far, the only successful means to break up the old guard among judges and law enforcement have been the "pincers" of Ukraine's pro-reform actors working together with international partners, a mechanism first used systematically after the Revolution of Dignity in 2014.

Against this backdrop it is clear why reform of the judicial system and law enforcement bodies are the centrepiece of the seven steps – explicitly not called "conditions" by the European Commission,⁷ but deemed important enough to determine the opening of EU membership negotiations (European Council 2023b).⁸ Remarkably, protecting the rule of law is also a section of its own right and underlined as immutable

in the Franco-German Expert Group's Report on EU institutional reform, published in September 2023 (Franco-German Working Group on EU Institutional Reform 2023). On the one hand, one may perceive Ukraine's actions as reasonably successful, because relevant anti-corruption institutions currently have a functioning leadership again after crucial appointments had previously stalled. On the other hand, there is not (and it would have been unrealistic to expect) a clear answer to whether Ukraine did "strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions" (step 3, 1st half).

For example, the high-level corruption case exposed at the Supreme Court of Ukraine (SCU) in May 2023 (RBC Ukraine 2023), in the course of which the chairman of the Court was detained as part of an investigation into alleged bribery to the tune of \$2.7 million, is not an unquestionable success under "step 3," not only because the SCU had supposedly undergone a reform process already (Kreidenkova, Hlushko, Butko and Shevchuki 2023), but also because the repercussions of the case extend to the judicial bodies referred to in "step 2."⁹ Above all, the case led to conflict within Ukraine's anti-corruption eco-system itself (Vedernikova 2023), because of the way Ukraine's anti-corruption institutions handled it, and thereby risks undermining trust in one of Ukraine's major achievements, this very anti-corruption system, presumably upheld thanks to "step 3, 2nd half" at the same time.¹⁰ In sum: The precise steps had a significant effect,¹¹ while others, such as "a credible track record of prosecutions and

6 Between 2007-21 alone, international donors spent EUR 256,1 million on legal and judicial development in Ukraine, thereof EUR 117,9 million attributable to EU institutions and member states. Data: ODA/Creditor Reporting System, <https://stats.oecd.org/>.

7 EU Ambassador Matti Maasikas formulated "the EU trusts Ukraine." (Sydorenko 2022)

8 See Annex 1 for our detailed overview of Ukraine's efforts vis-à-vis the seven steps.

9 The accused SCU chairperson and judge was ex officio a member of the High Council of Justice.

10 Step 3 also urged the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office (SAPO). Oleksandr Klymenko was appointed on 28.07.22 (see Hromadske 2022). In the SCU-case, Klymenko transferred the trial prosecutor initially assigned to the SCU-case (Oleksandr Omelchenko) "as part of a normal reshuffle." Opinions are divided: For one side, Omelchenko is the face of an independent prosecution (Butusov 2023), for the other Klymenko (Vitali Shabunin, in: Vedernikova 2023).

11 After two years, the vacant position of a SAPO-head was finally filled.

convictions” may at best represent a rough rule of thumb. However, they could not have resolved every challenge in what has already been a lengthy reform process in the justice and law enforcement sectors from the outset.

Breaking the vicious, learning from the virtuous cycles

The EU and its member states have so far been too weak to drive all-embracing change. Ukrainians are only too familiar with the struggle of breaking up power structures that have existed for decades. Many examples – currently the restoration of asset declarations for public officials (AntAC 2023b), the voting ratio of foreign and domestic appointees in the vetting procedure of the Constitutional Court of Ukraine judges (Venice Commission 2023a, p. 6 no. 25, p. 9 no. 40) or the launch of disciplinary proceedings regarding judges (AntAC 2023a) show a familiar pattern (simplified here): Ukraine’s independent expert community (mostly funded from abroad), together with reform-minded members of parliament, supported by civil society, international donors, international financial institutions and special bodies like the Council of Europe’s Venice Commission, recommend or demand a reform; parliament/government/the president’s office overcome resistance and take action, until another loophole is created to circumvent change – and the cycle repeats.

Public administration reform: Build capacity, limit exceptions, ensure remedies

With a reform concept corresponding to the recognised principles of modern administration¹² and a political decentralisation reform that fundamentally restructured centre-periphery relations, the basis for efficient operation of the state and new relations with citizens is there. A landmark law “On Administrative Procedure” sets new rules (Reanimation Package of Reforms

12 The overall governance reform agenda encompasses public administration, decentralisation, e-service development, fiscal authority reform and transparent public finance (Cabinet of Ministers of Ukraine 2023b).

Coalition 2021). Public institutions have been supported through several programmes. Embedded expert teams focused not only on specific sectors but on reforming ministries and state agencies from within.¹³ This includes line ministries’ capacity building in policymaking. A new law “On Civil Service” introduced qualification-based appointments¹⁴ and transparent remuneration. State secretaries are selected on a competitive basis to sustainably professionalise the management of ministries with depoliticised high-ranking officers. Another innovation is the “reform expert concept,” now extended to all ministries, with positions essential for implementing reforms paid in line with the market. Of course, authorities and administrative courts must be geared up for the fundamental innovations and institutional transformations necessary to take hold over and systematically curb vested interests. Decentralisation reform, hailed for its reordering of power and the introduction of a two-tiered governance system, should be monitored for regress during the war, which must be rejected if not justified to strengthen Ukraine’s defense.

A closer look at public procurement reveals typical weaknesses in public administration and institutions. Despite having developed the open-source-based digital procurement tool „ProZorro,” internationally recognised¹⁵ and active though not obligatory under martial law, Ukraine’s alignment is rated low in the 2023 Commission Analytical Report. Acknowledging the need to

13 See above all EU4PAR, Support to Comprehensive Reform of Public Administration in Ukraine, financed by the EU and entering a 2nd phase in 2023, incl. Ukraine Reforms Architecture (URA), operated by the EBRD, incl. a Reform Support Team (RST) of Ukrainian professionals that have adapted their work in the course of the war from sectoral reforms to e.g. relocating businesses; but also Association4U, targeting capacity in the executive related to EU integration specifically, operated by various consultancies; U-LEAD, fostering decentralization reform, or Promoting Ukraine’s EU association through innovation, both operated by Germany’s GIZ.

14 Areas of the administration, especially law enforcement and customs authorities, have been excluded from the scope of the law to date due to significant resistance, see Law of Ukraine On Civil Service (2016), Art. 2 Item 2.

15 See e.g. Kelman, 2022, comparing ProZorro favourably to the U.S. procurement system.

streamline procurement processes during wartime, the authors of the report criticize a lack of progress in strengthening institutions, particularly regarding enforcement capacity and effective remedies (European Commission 2023a, p. 9-10). In other areas where civil society and the IT sector developed innovative solutions focused on digital governance and transparency, some best-in-class achievements may be absorbed in other compound ratings. The Report recognises the mobile app “Diia”¹⁶ for giving citizens and businesses extensive access to public services,¹⁷ but e-governance and digital services are assessed in conjunction with “digital transformation and media.” The ambitious project “DREAM” (Digital Restoration Ecosystem for Accountable Management)¹⁸ is yet to be put to the test. Through “DREAM” various registries and systems¹⁹ are integrated into one single platform for reconstruction, with analytical tools and infrastructure for the use of the international Open Contracting Data Standard (RISE Ukraine 2022) providing end-to-end transparency for donors, citizens and contractors. It remains to be clarified to which extent Ukraine’s ambitious and, in the case of “Diia,” already successful e-governance and digital services projects are lighthouses “only,” or will have greater impact within the governance sector, especially when approaches like “DREAM” might bundle the potential of various individual projects and thereby pool much-needed administrative capacity. Either way, transparency must be flanked by vigilance²⁰ and legal protection.

Now, as Ukraine and the EU approach the opening of accession negotiations, even more attention is needed to public administration reform. The latter experienced backsliding since the full-scale invasion in that transparency has been reduced (on a positive note, under the pressure of civil society, electronic declaration of assets was reopened in September 2023), competitive and independent appointment to civil service positions was put on hold, and budgetary cuts resulted in the outflow of personnel from public institutions, to mention just a few problems. The EU and Ukraine need to jointly address this problem with special financial and capacity-building instruments.

Moreover, the institutional architecture for European integration needs to be enhanced in view of the challenge which accession negotiations and related acquis approximation will pose to Ukraine’s state apparatus. According to the analysis of the Ukrainian Centre for European Policy, some of the challenges that need to be tackled include: erosion of policy-focused Directorates inside the line ministries, weakened expertise and coordination capacity of the Governmental Office for European Integration (GOEI) which weakened the horizontal work mechanism between the GOEI and line ministries, low capacity of the line ministries and other governmental agencies to align legislation with the EU acquis, as well as cumbersome cooperation procedures between the government and the parliament, when it comes to legal approximation (UCEP 2023).

16 Digital Country, Ukraine Now, <https://ukraine.ua/invest-trade/digitalization/>; Diia Portal, <https://diia.gov.ua/>.

17 “Ukraine is well advanced in providing digital services to its people and businesses and using information society tools to make public administration more transparent and efficient.” (European Commission 2023a, p. 33) As does the Ukrainian public, EU4PAR Quantitative Research Report: Respondents attribute the positive characteristics of the existing system of public administration to the provision of public services and digitalization.

18 DREAM was launched by Ukraine’s Ministry of Infrastructure in June 2023, together with the Restoration Agency of Ukraine, in collaboration with the Open Contracting Partnership (Nestulia, Hayman 2023)

19 Such as the register of damaged and destroyed property, the geographic information system, “Diia” and “ProZorro.”

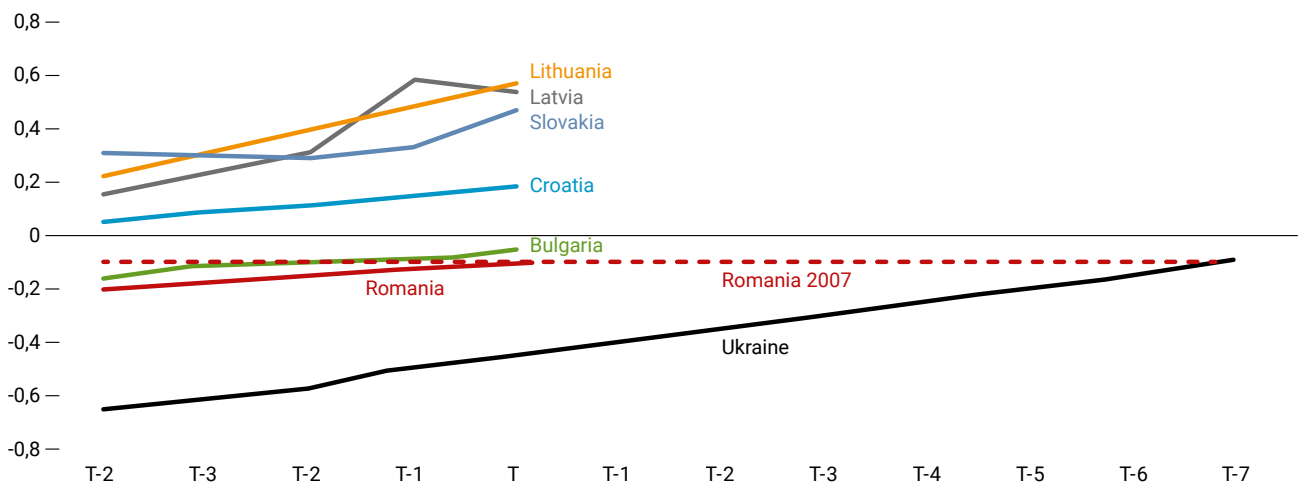
20 In a previous version, DREAM did not list local authorities as initiators. Only once criticised by the RISE coalition, this was changed. Interview by the authors, 14.09.23.

Ukraine and the EU should set an “ambitious but realistic” timetable

When comparing rule of law scores and reform speed of Ukraine’s EU-CEE peers, Ukraine will need to progress faster, considering its comparatively low starting point (Figure 2). The EU’s 2007 and 2013 accession countries and the three “weakest” 2004 accession countries (Latvia, Lithuania, Slovakia) improved their rule of law score by an average of 0.05 per year in the four years leading up to accession. At the beginning, their level was higher than Ukraine’s. Assuming a similar rate of progress, Ukraine will reach the theoretical minimum level (Romania 2007) in 2032.

For Romania, Bulgaria and Croatia, ten years passed between application and accession. Unless the EU and Ukraine succeed in accelerating reforms, accession will be a lengthy process. Ukraine’s strong sides are its active and vibrant civil society, which is able to set agenda and push for reforms, and innovative private sector. For instance, an innovative initiative like “ProZorro,” which started in the private sector, is a testimony not only to technical talent and innovation, but also to determination to drive transparency along with modernisation. However, the effects of the war on demographics (Tverdostup 2023) will need to be factored in. They only reinforce all arguments for reform and modernisation since Ukrainian families should decide to reunite in Ukraine voluntarily once the war ends.

Figure 2: If Ukraine reforms at the same speed as EU-CEE countries, it will need ten years to prepare for EU accession.



Note: World Bank Worldwide Governance Indicators, rule-of-law estimate. T = year of EU accession except for Ukraine, for which T-4 = 2021 (latest available data). T-4 data for Latvia, Lithuania and Slovakia is 1998 (actually T-5), because the World Bank only released WGI every two years until 2000. Source: World Bank Worldwide Governance Indicators, calculations by wiiw (Bertelsmann Stiftung/wiiw, forthcoming).

4. OPTIMAL MODUS OPERANDI FOR UKRAINE'S EUROPEAN INTEGRATION

If we assume that the accession process is likely to be lengthy, there is a need to accompany the accession talks with a real integration process, whereby Ukrainian society and various stakeholders perceive the benefits well before full accession takes place. A policy paper written by Laure Delcour and Kataryna Wolczuk (Delcour and Wolczuk 2023) gives a comprehensive account of the most important and elaborate proposals aimed at overcoming the enlargement stalemate, such as Staged Accession, produced by CEPS (Emerson, Lazarevic, Blockmans and Subotić 2021) and the Partnership for Enlargement, by Kai-Olaf Lang and Piotr Buras (Buras and Lang 2022).

The Staged Accession model, which was updated in August 2023 (Mihajlović, Blockmans, Subotić and Emerson 2023), brings together the internal reform of the EU (at least those aspects most relevant for enlargement policy) and the accession process as such. It offers four stages of integration, that is gradual integration into the EU before a candidate country becomes a full-fledged member.

The Partnership for Enlargement model offers several elements, one of them being full-fledged integration into the EU's single market, including extension of the four freedoms to the accession countries before they join the EU. It also points out (as do Delcour and Wolczuk) the importance of including a security-related dimension in the enlargement process.

Another idea which has been floating around is that of using the Association Agreement as the basis for further EU integration. The AA is based on the idea of integrating Ukraine into the single market of the EU, but only in a limited number of sectors. In a joint project of several Ukrainian think tanks entitled "Ukraine's integration in the EU common market: achievements in the frame of the Association

Agreement and the need for modernisation" and conducted in 2021 (Movchan 2021), experts identified 15 areas in which Ukraine has to implement a set of commitments (EU *acquis*), which would pave the way for EU decisions on deeper integration in those sectors. They include transport, energy, telecommunications and various others.

The Association Council established by the AA can in principle decide to include new areas in which integration is possible. The model of staged accession as currently proposed is fundamentally different from ideas of sectoral integration in two respects:

- a) In the staged accession model the incentives/rewards that allow to regard a certain stage as completed and move to the next level are institutional and financial. They are not related to joining the single market before the negotiation process is over.
- b) The staged accession model presupposes achievement of a certain level of approximation to the *acquis* (as required by the negotiation process) across all sectors/chapters in order to move from one stage to another (average across sectors). The authors of the model call it "horizontal progression."

While the authors of the staged accession model are sceptical of the benefits of sectoral integration (although conceding that it can be "a useful complement to accompany the formal enlargement process"), we view sectoral integration as an important element of accession in the case of Ukraine because it allows for the prioritisation of certain sectors over others.

This is important for two reasons:

- 1) the limited resources available to Ukraine because of the war to simultaneously pursue approximation to the *acquis* in all sectors, and 2) the need to prioritise some sectors over others given the challenges of reconstruction.

Thus, while not disagreeing with the basic tenets of the staged accession model, we nonetheless advocate incorporating some aspects of sectoral integration more explicitly in the Ukrainian case. This would build on the progress already achieved in the AA-DCFTA framework and help generate and maintain momentum in the accession process by focusing on those areas where rapid progress is feasible and particularly beneficial to stakeholders in both Ukraine and the EU at a given stage of the negotiations. In our terms, integration refers to joining the single market in specific sectors, including permission to join the relevant institutional setting (Council meetings, etc.) without voting rights or access to the corresponding EU funding. This would continue the trajectory which is already well advanced in the Ukrainian case towards an ACAA Agreement (see above Chapter 2) in particular sectors. Thus, very little previous work would be lost and the achievements to date could be harnessed to the advantage of the negotiation process.

To counter some of the concerns of the authors of the staged accession model, the proposed gradual sectoral integration could be rendered less ad hoc and more stringent by combining it with the cluster approach to negotiations as indicated in the revised enlargement methodology and embraced by staged accession. Thus, with reference to each cluster (except the “fundamentals”, which are the basis for progress in the other areas), those sectors could be identified in which integration into the single market is possible in a short-term perspective (within 2-3 years).

As alluded to above, the criteria for identifying those areas should be as follows: Acquis approximation and implementation

- are not too costly for Ukraine and feasible given the limited resources in the war-torn country;
- make sense in the context of reconstruction/recovery efforts;
- can lead to deeper integration with the EU, the effects of which can be felt by specific stakeholders and/or the society at large;
- allow the EU to benefit from Ukraine’s integration (e.g. the development of renewables in Ukraine and their export to the EU).

Every effort should then be made to achieve progress in those sectors of the respective cluster which fulfil these criteria. Their fulfilment (in the form of the chapters being sufficiently addressed) should be attached to tangible rewards in the institutional and funding spheres, as foreseen by staged accession, as well as to partial integration in the single market via ACAA agreements in the relevant sectors. Focusing on the most promising areas would also create an opportunity to reach the necessary level of average chapter performance within the given cluster as rapidly as possible and thereby advance both in terms of the number of clusters open for negotiation and with regard to the overall accession stage.

5. DEEPENING TO ENLARGE: HOW TO PREPARE THE EU

While political attention in the enlargement debate originally focused on the candidate countries delivering on their commitments as well as on whether this would be enough to open accession negotiations, the EU's own preparedness for enlargement has increasingly become a topic of discussion. Even if the prospect of admitting new member states seems to be relatively distant, the granting of candidate status to Ukraine and Moldova has reinvigorated the enlargement debate. In September 2023 a Franco-German expert group, created by officials responsible for EU issues from both countries, produced a report (Franco-German Working Group on EU Institutional Reform 2023) with concrete proposals on potential institutional adjustments. At the same time many other EU member states have questioned the need for reforms. In particular, there is a hesitancy to engage in treaty reform, which is one reason the Franco-German report made a special effort to provide some proposals below this threshold, while nonetheless arguing in favour of treaty reform in the medium term.

Whether the new enlargement will lead to the deepening of EU integration remains an open question. However, there is no doubt that should the EU indeed accept three East European and four (or six) Balkan countries as new members, it could not do so without a major overhaul of its institutions and, even more importantly, policies. The integration of smaller countries would pose problems for the current structures mainly due to the increase in the number of veto points in the decision-making process. This is why the modification of the voting system and the expansion of qualified majority voting (QMV) occupy an important place in the current considerations about the necessary reforms. While in particular smaller member states and those in the east of the EU are seriously opposed to expanding QMV, some compromise options have

been put on the table, such as more extensive use of the existing “passerelle clause” or requiring multiple vetoes in order to reject a proposal. It thus seems that on this issue, as well as those of reformatting the European Parliament and altering the rule of one Commissioner for every member state, solutions can eventually be found, even if this will not be easy (Pisklová 2023). It should be possible to generate the necessary political will over time, given that even without enlargement, steps towards rendering the EU a more efficient and effective entity both internally and in external affairs are sorely needed. Enlargement can therefore be seen as a catalyst for long-postponed EU reforms.

The focus on institutional adaptations, as important they might be, also seems to overshadow a much more burning issue: financial and policy reforms, without which the EU will not be able to accept new members. In fact, Ukraine stands out here as the key challenge because of its sheer size. Many fear it could change the power balance within the EU, strengthening the East European “bloc” at the expense of “old Europe.” This concern might be overblown, as the disputes between several of the Visegrad countries and Ukraine over grain imports to the EU have shown. What really matters are the financial and policy ramifications of the EU enlargement – a genuine Pandora’s box which needs to be opened sooner rather than later if the accessions are to occur in the foreseeable future.²¹

The plain truth is that an EU including Ukraine will need to have more financial resources – or reduce them in an unprecedented way for the existing members. According to some calculations, after Ukraine’s accession Poland’s share in the EU budget (if there are no changes) would drop from 30 to 12 per cent, Romania’s from

²¹ The debate has already started among experts. See, for instance, Emerson 2023

18 to 7 per cent, while Spain, Czechia or Slovenia would lose their net beneficiary status (Bastasin 2023). Clearly, long transition periods emerge as one possible solution to the massive political challenge posed by this perspective. However, they are not likely to provide a cost-free solution. An alternative to drastic cuts would be an increase in EU spending. This would amount to a major shift in the EU integration process towards its deepening, though, which has been so far prevented by arguments put forward by two powerful camps. On the one hand, the net payers and frugal countries do not want to spend more. On the other, countries opposing deeper integration – like Poland or Hungary – have been against the EU acquiring new central powers which would inevitably be the consequence of more redistribution (as in the case of the Next Generation Fund). A bigger EU budget would require additional own resources (perhaps EU-level taxes), which would be a powerful sign of how enlargement and deepening go hand in hand.

Agriculture is the second key policy area in which the status quo does not seem to be sustainable should Ukraine join the EU. Again, transition periods would be a partial solution. Poland received only 25 per cent of the direct payments in the first year after accession and waited ten years to reach the EU standard level. The current CAP does not seem to be adequate to absorb Ukraine, unless the EU countries are ready to accept drastic changes in trade and production patterns. Moreover, in the case of Ukraine, some peculiarities of the structure of its agricultural production should be beard in mind. More specifically, as the turbulences caused by the recent grain imports have shown, Ukrainian agricultural products are competitive on the EU market even without EU subsidies. In fact there is a remarkable difference between large-scale agribusinesses, which have sufficient resources of their own and, thus, could be excluded as fund recipients and small and medium farmers, who need support.²²

It would be false to assume that the EU has a lot of time to deal with these fundamental issues. If the EU is serious about “geopolitical” enlargement – as it should be! – it needs to be prepared to take in new members in the next decade. Anything else would push this perspective into the realm of vague promises – to the detriment of the EU’s geopolitical interests and the stability of the candidate countries. But being ready to accept new members (and Ukraine in particular) within the next decade means having a new Multiannual Financial Framework in place – for the period 2028-2034 – that envisages such an option. This budgetary debate will start very soon – just after the elections to the European Parliament in 2024 and the formation of the new European Commission.

Lessons learned from the previous Eastern enlargement in 2004 will be helpful. In 1999, five years before the actual accession happened, the EU adopted the Berlin Agenda 2000, a set of important and far-reaching reforms of its financial framework and agricultural policy, which were necessary to accept new members. It was preceded by an impact assessment and ideas put forward by the Commission two years earlier. Regardless of whether we think of a full accession or – for now – only the enlargement of the single market, a similar preparation of EU policies will certainly not be less important than institutional reforms (perhaps even more), although at the moment the latter attract more attention.

Under the Polish Presidency in the first half of 2025 the EU should thus adopt the Warsaw Agenda 2025 – a comprehensive plan of making EU policies fit for enlargement. By drawing on some of the recommendations of the recent Franco-German report, the Polish Presidency could increase

22 Considerations of the potential impact of Ukraine’s accession on the EU’s budget point out that the predominant EU CAP system of direct payments to farms could be subject to a capping regime. While it cannot be predicted how the EU and Ukraine would act, “precedents exist for negotiating caps that would avoid a politically implausible scale of grants for the mega-farms.” (Emerson 2023)

the chances of getting both France and Germany on board. The path towards the Warsaw Agenda should be defined within the next months and announced at the EU summit in December 2023. It should become a key priority of the new Commission to provide the impact assessments and policy recommendations needed to complete this process. Only this can ensure that the EU is ready for enlargement within the next decade. The rest will depend on the candidate countries themselves.

The development of such a road map appears all the more necessary due to the dynamic nature of the attitudes of member states towards the enlargement process. The best example of this is France, where Emmanuel Macron has recently engaged in a policy shift and has become much more favourable towards speedy and comprehensive enlargement than was previously the case. Even if this example works in favour of enlargement, other political and societal changes in the EU may not. National-level elections in member states often bring with them the potential of shifts regarding both enlargement and deepening. A document such as the proposed Warsaw Agenda 2025 could make it less likely that political developments inside the EU will derail the enlargement process. This inherent dynamism of positions is also yet another reason to aim for being ready to enlarge sooner rather than later.

A major undertaking such as the coming enlargement will require drivers, not only on the Brussels level but also among the member states. The idea of a Warsaw Agenda implies that Poland will be one of these, but others will be needed, in particular one or more countries with expertise on and experience with the Western Balkans. Beyond the drivers, it will be important to build some advantages for each member state into the process to overcome existing reticence. This does not mean tailoring enlargement to the needs of each current member state, but rather focusing on aspects of it that will benefit a variety of member states in different ways. This feeds into the idea of creating a positive narrative around the idea of enlargement, emphasising not only the EU's preparedness, but also the advantages it will bring. This in turn means discussing where the EU is heading – both internally and as an external actor – and why. It seems pertinent to return to the idea of ensuring peace and security, with reference both to the ongoing Russian invasion of Ukraine and to the wars in former Yugoslavia. Such an approach will go hand-in-hand with the need to inform and convince societies in member states, especially where referenda on enlargement may take place. It seems appropriate not simply to aim for the successful technical and institutional accession of new members, but also to lay the groundwork for a convinced EU populace that will embrace the newcomers while simultaneously accepting the major changes an enlarged EU will entail.

ANNEX 1: UKRAINE'S IMPLEMENTATION OF THE EUROPEAN COMMISSION'S (EC) "SEVEN STEPS"

1. Constitutional Court Reform

EC priority (06/2022):²⁵ Enact and implement legislation on a selection procedure for judges of the Constitutional Court of Ukraine (CCU), including a pre-selection process based on evaluation of their integrity and professional skills, in line with Venice Commission recommendations.

EC assessment (06/2023):²⁶

Ukraine has achieved good progress on this step.

A law on Constitutional Court reform has been adopted on August 17, 2023 (Khalilova 2023), changing the selection procedure and giving international experts a deciding vote on judging a justice candidate's integrity and competence, which was recognised by the Venice Commission (VC) (Venice Commission 2023c, no. 24). The VC regrets that its key suggestion to add a deadlock-breaking seventh member to the six-person Advisory Group of Experts (AGE) involved in the selection of candidates was not followed (Ibid. no. 19). Two CSOs have argued that an amendment to the voting procedure (additional ranking vote) enables the national members of the AGE to control its decisions, thereby affecting the fairness of the selection by the appointing bodies (Ibid. no. 25). However, the VC considers that the key recommendations [...] have been followed and will therefore proceed with the submission of proposed candidates for the position of one member and one substitute member of the AGE it previously withheld (Ibid. no. 42).

2. Judicial Reform

EC priority (06/2022):²⁵ Finalise the integrity vetting of the candidates for the High Council of Justice (HCJ) members by the Ethics Council and the selection of candidates to establish the High Qualification Commission of Judges (HQCJ).

EC assessment (06/2023):²⁶

Ukraine has completed this step.

Ukraine completed the merit-based selection process for members of key judicial governance bodies, the HCJ and the HQCJ (Hryhorii 2023).

3. Anti-Corruption Reform

EC priority (06/2022):²⁵ Further strengthen the fight against corruption, in particular at high level, through proactive and efficient investigations, and a credible track record of prosecutions and convictions; complete the appointment of a new head of the Specialised Anti-Corruption Prosecutor's Office (SAPO) through certifying the identified winner of the competition and launch and complete the selection process and appointment for a new Director of the National Anti-Corruption Bureau of Ukraine (NABU).

EC assessment (06/2023):²⁶

Ukraine has achieved some progress on this step.

The EC recommends further systemic measures, in particular the implementation of the State Anti-Corruption Programme for 2023-2025.

A new SAPO head and a new director of the NABU were appointed following a competition. However, the number of employees in these bodies, their resources (e.g., wire-tapping capabilities, forensic expertise), and

²⁵ European Commission 2022 (reference applies for all seven steps).

²⁶ European Commission 2023c (reference applies for all seven steps).

their authority is still insufficient to resolve the problems associated with post-war reconstruction. An independent and comprehensive audit of the performance of the Asset Recovery and Management Agency (ARMA), the NABU and the SAPO is yet to begin its work (Kalitenko 2023).

The Security Service of Ukraine (SBU) still has atypical powers not aligned with the best Euro-Atlantic practices, overlapping with the mandate of the anti-corruption “eco-system” and creating significant risks of corruption. The issue of SBU reform has been postponed until after the war (Ibid).

On July 27, 2023, the Verkhovna Rada supported in its first reading the draft law on the resumption of electronic declaration of the assets of officials and MPs in Ukraine (European Pravda 2023). The G7-Ambassadors have welcomed this progress but also noted – supported by CSO (AntAC 2023b) – the importance of avoiding loopholes in the disclosure of information (G7AmbReformUA 2023).

SAPO and NABU have made progress on high-profile cases. The number of investigations and verdicts handed down on high-level corruption has increased significantly. Most notably, they exposed a high-level corruption case recently at the Supreme Court of Ukraine (SCU). However, Ukraine’s anti-corruption institutions handled the case in a way that led to conflict within Ukraine’s anti-corruption “eco-system” itself (Vedernikova 2023), and thereby risks undermining trust in what is one of Ukraine’s major achievements.

4. Anti-Money-Laundering and Law Enforcement Sector Reform

EC priority (06/2022):²⁵ Ensure that anti-money laundering legislation is in compliance with the standards of the Financial Action Task Force (FATF); adopt an overarching strategic plan for the reform of the entire law enforcement sector as part of Ukraine’s security environment.

EC Assessment (06/2023):²⁶

Ukraine has achieved some progress on this step.

The EC points out that Ukraine should adopt the draft law for the restoration of the FATF, introducing a compliant definition of politically exposed persons and continue the legislative alignment with FATF standards.

According to the last follow-up FATF Mutual Evaluation Report 2020, Ukraine was compliant for 11 and largely compliant for 22 of the FATF 40 Recommendations (MONEYVAL 2020, no. 66).

Ukraine should adopt the draft law for the FATF restoration, introducing a compliant definition of politically exposed persons, and continue the legislative alignment with FATF standards, for instance in areas such as virtual assets, financial investigations, or targeted financial sanctions (European Commission 2023c).

A “Comprehensive Strategic Plan for reforming law enforcement” has been adopted on June 12, 2023 (Roshchina 2023). The document focuses on priorities and directions for reforming law enforcement agencies (Prosecutor’s Office, the National Police of Ukraine, the State Border Guard Service of Ukraine, the State Bureau of Investigations, the Bureau of Economic Security of Ukraine, the Security Service of Ukraine, and the State Customs Service of Ukraine). The Office of the Prosecutor General (GPO) has created an interdepartmental working group with international experts and in close cooperation with the EU Advisory Mission (EUAM).

5. Anti-Oligarch Law

EC priority (06/2022):²⁵ Implement the Anti-Oligarch law [of November 6, 2021] to limit the excessive influence of oligarchs in economic, political, and public life; this should be done in a legally sound manner, taking into account the opinion of the Venice Commission.

EC Assessment (06/2023):²⁶

Ukraine has achieved some progress on this step.

To date, the “Register of Individuals with Significant Economic and Political Weight in Public Life (Oligarchs)” (Presidential Decree No 459/2022, June 29, 2022, enacting a regulation of the National Security and Defence Council (NSDC)), a cornerstone of the Law, has not been set up (Minakov 2023). The VC’s opinion states (Venice Commission 2023a, nos. 60-66) the Law currently cannot be seen as a democratic response to the scourge of oligarchisation. VC experts criticised the laws’ punitive “personal approach” and called for a more systemic strategy, suggesting nine specific actions (including an in-depth and comprehensive analysis of the existing systemic measures), and underlining the importance of reform within the judiciary.

6. Harmonisation of Audio-Visual Legislation

EC priority (06/2022):²⁵ Tackle the influence of vested interests by adopting a media law that aligns Ukraine’s legislation with the EU audio-visual media services directive and empowers the independent media regulator.

EC Assessment (06/2023):²⁶

Ukraine has completed this step.

A Law “On Media” to the EU 2018/1808 Audio-visual Media Services Directive (AVMSD) and Council of Europe standards has been adopted on December 29, 2022. The DG Human Rights and Rule of Law states in its opinion on the law (Directorate General Human Rights and Rule of Law 2023, p. 5) that, to the extent that the Law covers the topics contained in AVMSD, it largely aligns with the Directive. The same applies

regarding its compliance with Council of Europe standards. Some points of non-alignment remain, for example in the areas of hate speech, conflicts of interest, judicial review and the appointment-procedures for members of enforcement bodies (Ibid. p. 11 ff.)

7. Legislation on National Minorities

EC priority (06/2022):²⁵ Finalise the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission, and adopt immediate and effective implementation mechanisms.

EC Assessment (06/2023):²⁶

Ukraine has achieved some progress on this step.

A law on national minorities (communities), providing the legal framework for protecting the rights of national minorities based on the recommendations of the VC and the United Nations Human Rights Monitoring Mission in Ukraine has been adopted on December 29, 2022. The VC opinion (Venice Commission 2023b, nos. 76-82) welcomes the adoption of the new law; however, it recommends reconsidering certain provisions of the law to ensure full conformity with [international standards] and makes recommendations on other laws it already assessed. The EC points out the use of minority languages in public life, administration, media and books as well as ensuring equal opportunities for people belonging to national minorities, avoiding a disproportionate interference in their rights (European Commission 2023c).

The Ukrainian government approved the concept of state target national cultural Programme „Unity in Diversity“ until 2034 (Service of the Deputy Prime Minister of Ukraine 2023). The concept envisages the “implementation of a set of measures under the Programme aimed at creating conditions for the proper protection of the rights of national minorities (communities) and indigenous peoples, and the integration of Ukrainian society.”

ANNEX 2: UKRAINE PREPAREDNESS FOR EU ACCESSION

EC Report on Ukraine, Moldova and Georgia, February 2023;

EC Report on Western Balkan, October 2022;

ESI Background Paper, March 2023 - ESI Scoreboard -

the true state of accession - 17 March 2023.pdf (esiweb.org)

Rating:

Early stage	0
Some level of preparation	1
Moderately prepared	2
Good level of preparation	3
Well advanced	4

COMPARING PREPAREDNESS

Updated table with all grades in all chapters for all ten countries.

Note: Green signifies "good preparation" in a chapter.

Chapters	Monte-negro	Serbia	North Macedonia	Turkey	Albania	Ukraine	Georgia	Kosovo	Moldavia	Bosnia & Herc.
1 Free movement of goods	2	2	2	3	1.5	2	1	1	1	0
2 Freedom of movement for workers	1	2	0	0	1	0	0	1	0	1
3 Establishment and service provision	2	2	2	0	2	1	2	2	1	0
4 Free movement of capital	2	2	2	2	2	1	2	1	1	2
5 Public procurement	2.5	2	2	2	2	1	1	1.5	0	1
6 Company law	3	3	3	4	2	1	1	1	0	1
7 Intellectual property law	3	3	2	3	1.5	0	1	1	1	2
8 Competition policy	2	2	2	1	1.5	1	0	1	1	1
9 Financial services	2	2	2	3	2	1	1	2	0	1.5
10 Information society and media	2	2	2	1	2	2	1	1	1	0
11 Agriculture and rural development	2	1	2	1	1	0	0	1	0	0
12 Food safety, veterinary, phytosanitary	2	2	3	1	1	2	1	1	1	1
13 Fisheries	1	2	2	2	1.5	0	1	0	0	0
14 Transport policy	2.5	3	2	2	1	1	1	0	1	1
15 Energy	3	2	2	2	2	3	1	1	1	0
16 Taxation	2	2	2	2	2	1	1	1	0	1
17 Economic and monetary policy	2	2	2	1	2	2	2	2	1	0
18 Statistics	2	2	2	2	2	1	1	1	1	0
19 Social Policy and employment	1	2	2	1	1	0	1	0	0	1
20 Enterprise and industrial policy	2.5	2	2	2	2	1	2	2	1	0
21 Trans-European networks	2.5	2	3	4	1	1	1	1	1	1
22 Regional policy, structural instruments	2	2	2	2	2	1	0	0	0	0
23 Judiciary and fundamental rights	2	1	1.5	0	1.5	n/a	n/a	0.5	n/a	1
24 Justice, freedom and security	2	1	2	2	1.5	1	1	0.5	1	1
25 Science and research	3	3	3	4	1	2	2	0	2	1
26 Education and culture	3	3	2	2	2	1	2	0	1	0
27 Environment and climate change	1	1	1	1	1	0	0	0	0	0.5
28 Consumer and health protection	2	2	2	3	0	1	1	0	1	0
29 Customs union	2	3	3	3	2	3	2	2	1	1
30 External relations	3	2	2	2	3	3	2	0	2	1
31 Foreign, security and defence policy	3	2	3	1	3	3	2	n/a	2	1
32 Financial control	2	2	2	3	2	0	1	1	0	1
33 Financial and budgetary provisions	1	1	0	1	1	0	0	n/a	0	0
Total*	70.0	67.0	66.5	63.0	54.0	37.0	35.0	26.5	23.0	22.0
Av. rating (0-4)	2.1	2.0	2.0	1.9	1.6	1.2	1.1	0.9	0.7	0.7

* Kosovo is rated for 31 chapters, Georgia, Moldova and Ukraine for 32 chapters.

UKRAINE

The assessment for Ukraine looks at “fundamentals” through chapters 23 (judiciary and fundamental rights), 24 (justice freedom and security), 5 (public procurement), 18 (statistics) and 32 (financial control). There is no separate assessment of rule of law fundamentals. No quantifiable data is available for chapter 23.

Chapters	2022/23	Rating:
1 Free movement of goods	2	Early stage 0
2 Freedom of movement for workers	0	Some level of preparation 1
3 Establishment and service provision	1	Moderately prepared 2
4 Free movement of capital	1	Good level of preparation 3
5 Public procurement	1	Well advanced 4
6 Company law	1	
7 Intellectual property law	0	
8 Competition policy	1	
9 Financial services	1	
10 Information society and media	2	
11 Agriculture and rural development	0	
12 Food safety, veterinary, phytosanitary	2	
13 Fisheries	0	
14 Transport policy	1	
15 Energy	3	
16 Taxation	1	
17 Economic and monetary policy	2	
18 Statistics	1	
19 Social Policy and employment	0	
20 Enterprise and industrial policy	1	
21 Trans-European networks	1	
22 Regional policy, structural instruments	1	
23 Judiciary and fundamental rights		
24 Justice, freedom and security	1	
25 Science and research	2	
26 Education and culture	1	
27 Environment and climate change	0	
28 Consumer and health protection	1	
29 Customs union	3	
30 External relations	3	
31 Foreign, security and defence policy	3	
32 Financial control	0	
33 Financial and budgetary provisions	0	
Total (out of 128)	37	
Average chapter rating (out of 4.0)	1.2	

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