UKRAINE AND THE EU AT THE TIME OF WAR: A NEW PARADIGM

by Laure Delcour and Kataryna Wolczuk

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Introduction

Russia's invasion of Ukraine, and even more so the atrocities committed by Russian troops, shake the very foundations of the European integration project. This is not only because Russia's war may destabilise the EU both economically and politically. Importantly, Russia is also defying the EU as an international actor, seeking to nullify its influence in Ukraine as well as the latter's sovereignty and right to freely conduct its foreign policy. In essence, the Russian authorities have waged war against the values upon which the EU has developed over the past seven decades.

In light of the geopolitical stakes, this paper will argue that Russia's aggression may significantly accelerate Ukraine's integration with the EU and help to consolidate the EU's integration process – in other words, the precise opposite of what Russia sought to achieve. This is because an opportunity has presented itself to both reinvigorate the enlargement process and give a decisive impetus to the EU's as a (geo) political actor.

Therefore, given the exceptional circumstances it is clearly far from sufficient to tinker with the technicalities of Ukraine's 'candidate status' or the enlargement methodology. It is now evident that there is a need to revive the EU's capacity to act and achieve objectives on enlargement and, more broadly, foreign policy and defence of values. This entails no less than rethinking the EU's integration process. Business as usual – with all of the concomitant fragmentation and hesitation - no longer cuts it (not that it ever did).[1] The world has changed - and so must the EU.

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1 Moscow's strategy vis-à-vis Ukraine is premised on the belief that western support for Ukraine is fickle and will evaporate in the near future.

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1. Pathways to integrating Ukraine

The post-modern, post-geopolitical period of European security, in which economic and soft power transcended hard power as a means of political leverage to ensure security is over.[2] As the EU comes to terms with the regional and global ramifications of Russia's invasion of Ukraine, one thing is already abundantly clear: with Ukraine gaining candidate status, the future boundaries of the Union will change. This change will have consequences for the EU itself: widening involves strategic trade-offs and complex interlinkages between different political objectives, priorities and policy areas.[3] However, in the current context, one challenge stands out: how to balance the geopolitical imperative of Ukraine's membership against its readiness for membership and the EU's merit-driven demands of applicant states against the (lingering) reluctance of many member states to Ukraine's accession.

It is clear that a fast track approach for Ukraine is not feasible for legal, political and economic reasons: Ukraine will be ensconced in the waiting room for some time to come.[4] Notwithstanding the earlier successful enlargements, the process has been depicted as 'stalled', 'excruciatingly difficult', 'dysfunctional', 'atrophied', 'deprioritising', 'neglect', 'farce', or, as one observer put it: 'a showcase of duplicity and double talk, of dreams and dejection, and of the disconnect between genuine intentions and harsh reality'.[5] The reality is that 'unfortunately, a Balkans-style purgatory is the fate that awaits Ukraine as well – unless the enlargement process gets unstuck'.[6]

Given the general dissonance that characterises policy making within the EU, the unity underpinning the offer of candidate status to Ukraine is particularly noteworthy.[7] The EU member states have shown exceptional unity on delivering symbolic support to Ukraine by immediately granting candidate status in the landmark decision of June 2022.[8] Working out EU policy towards the eastern neighbours and the western Balkan countries is a strategic matter which needs more leadership from the large EU member states that so far has been forthcoming.[9] The very fact of granting Ukraine candidate status shows that with political leadership a renewed sense of purpose and unity within the EU can emerge in a very short time.

However, the offer of candidate status should not distract from the multitude of challenges, above all, the fact that EU member states are divided over Ukraine's potential accession (with some using the timeline of such accession as a delaying tactic). In other words, there is a disconnect between the symbolism captured in the rhetoric and the reality behind the true meaning of the EU's geopolitical 'awakening'. This is despite the fact that it is recognised that Russia's war on Ukraine jeopardises the entire European order, its peace and stability. In fact, a return to the status quo ante is now inconceivable. As has been stated the new candidate states' , 'successful integration will be crucial to the entire future European order and the new self-identification of the EU as a geopolitical actor. This is rapidly becoming a priority for the EU's foreign policy'.[10]

2 A. Moshes, 'The War in Ukraine and the Europe's External Policy', FIIA Comment, August 2022.

3 R. Youngs, 'Ukraine's EU Membership and the Geostrategy of Democratic Self-Preservation', Carnegie Europe, April 2022.

4 'The Balkan Turtle Race: Warning to Ukraine', ESI Report, 13 July 2022.

5 https://www.politico.eu/article/eu-leaders-enlargement-balkans/

6 M. Bergmann, 'The EU's next big deal: Enlargement for treaty reform', Politico, 2 August 2022

7 Much of the analysis in this paper also applies to Moldova and Georgia.

8 Since the 1990s, the usual practice has been to formulate the conditions before candidate status is granted by the Council.

9 S. Meister and M. Nic, DGAP Online Commentary, 20 June 2022.

10 K.-O. Lang and P. Buras, 'Partnership for enlargement: a new way to integrate Ukraine and the EU's eastern neighbourhood'. Policy Brief, ECFR and Batory Foundation, 2022

In sum, the first hurdle, the positive response to the membership applications has been passed. This is of political and symbolic importance. But this will only be of any consequence if accompanied by a major overhaul of strategy. The offer needs to draw lessons from the mistakes of the past and factor in the shifting political context.

The experience of EU's institutional relations with Ukraine – embodied in the Association Agreement with the Deep and Comprehensive Free Trade Area (AA-DCFTA) – needs to be reflected on. The use of AA-DCFTAs in the EU's eastern policy has been a means of promoting convergence with the EU's values and rules while bypassing the vexed question of membership. Yet, while being the one of the ambitious bilateral agreements the EU has offered, it has been ridden with ambiguities and contradictions. The absence of a *finalité*, namely a clear sense of what the end goal of EU-Ukraine relations actually was, has constrained their effectiveness.

However, despite lacking a political vision, it has to be said that the very offer of these agreements to the Eastern Partnership countries (EaP) certainly helped tease out precisely which EaP countries were actually interested in, and able to, commit to European integration.

The AA-DCFTA lists the regulatory requirements in a comprehensive way – this has played a significant role in familiarising Ukraine with the actual technical acquis-related requirements of membership. But the lack of political vision of the AA-DCFTA has, if anything, hindered progress: the agreement remains underpowered in political terms and overloaded in regulatory terms. For sure, it remains a useful legal framework for the time being, thereby, sparing the need to negotiate a new agreement. But its effectiveness is premised on providing a credible political vision and leverage (see below). A membership perspective offers an excellent opportunity to address this deficit.

2. Diagnosing the enlargement stalemate

As it is, owing to a number of structural problems within the EU, candidate status for Ukraine has almost no practical significance in the absence of much needed change to the enlargement process itself. There are two main problems.

2.1 'Reverting to technocracy'

Since 2004 the European Commission has tweaked and refined its enlargement strategy to help the Balkan countries to improve their democratic and economic systems. The aim was to make it both comprehensive and stringent – in terms of addressing not only transposing the acquis but also addressing the fundamentals – the way that the political and economic systems function (democracy, rule of law, public administration, anti-corruption and so forth). Stringency was introduced to ensure thorough

preparation and leverage.[11] Paradoxically, notwithstanding the boosting of political conditionality, the EU has in the Western Balkans failed to engage with the political elite in pursuit of more profound change. Instead it has focussed on technical issues to give the illusion of progress.[12]

The rule of law (judiciary reforms and anti-corruption) were treated as technical rather than political issues. rather than 'the EU offering accession as a distant prospect and then pushing for extensive technical harmonization in the hope that this will

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11 The most recent revamp is outlined by the European Commission, 'Enhancing the accession process – A credible EU perspective for the Western Balkans', COM(2020) 57 final, February 5, 2020.
12 M. Kmezić and F. Bieber, 'The Crisis of Democracy in the Western Balkans. An Anatomy of "Stabilitocracy" and the Limits of EU Democracy Promotion', The Balkans in Europe Policy Advisory Group, March 2017, 95

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suffice to resolve intensely political problems'.[13] It has to be recognised and acknowledged that, ultimately, the political resistance to reforms may be too strong to overcome in the aspiring states, but at least the EU could use its leverage, resources and expertise more effectively to fulfil its end of the bargain.

2.2 The role of member states

The increased role of member states in the enlargement process has led to arbitrary decision making. Any member state can derail the process in pursuit of their own ends, unrelated to the membership criteria. Thereby, the enlargement process has become hostage to national interests and bilateral disputes, as was shown by the tensions between Slovenia and Croatia before the latter joined the EU, or more painfully recently by the successive vetoes by Greece, France and Bulgaria to the opening of accession negotiations with North Macedonia. This is easily achieved as member states need to agree unanimously on an enlargement strategy and any progress decision for individual countries.

Despite the focus on these fundamental reforms in the enlargement methodology even more since 2020, results have been underwhelming.[14] Needless to say, the shallow enactment of political reforms in some Western Balkan countries erodes the support for enlargement amongst EU some member states, something which, in turn, weakens the credibility of the EU in the Western Balkans. This has become a self-reinforcing vicious circle of enlargement atrophy.[15]

These problems overshadow the ongoing process, despite some progress. Recent upgrades include the opening the negotiations with Albania and North Macedonia (as well as the decision to grant Bosnia and Herzegovina the candidate status). Despite these positive steps, it has hardly raised hopes for two reasons. First, as a consequence the member states' reluctance and vetoes both countries had to remain in a 'vacuum' for years (8 in the case of Albania, 17 in the case of North Macedonia) after being granted candidate status before negotiation talks could start. Second, membership negotiations amount to 'little more than rituals of opening and closure of chapters, that drag on for ever and 'which only the specialist are able to decipher'.[16] As a result, the political influence of the EU has already much waned in the process because:

Progress has not been related to merit for a long time. The fundamentals first' approach has not worked. And the motivation of candidate countries to carry out reforms has decline, the longer the process has been ongoing.[17]

In conclusion, a root and branch reform to the enlargement process is necessary – tinkering is no longer enough.[18] This is particularly true in light of what is at stake when it comes to Ukraine.

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13 Youngs, 2022.
14 C. Stratulat, 'EU Enlargement to the Western Balkans – three observations', EPC Commentary, Nov 2021.
15 The failure of the enlargement process to promote democracy in the candidate status is analysed in Zweers et al. 'The EU as a promoter of democracy or "Stabilitocracy" in the Western Balkans', Clingendael Report, February 2022.
16 P. Mirel, 'European Union-Western Balkans: for a revised membership negotiation framework', Policy Paper, Robert Schuman Foundation, No. 59, Sept 2019.
17 'The Balkan Turtle Race', 4.
18 Tinkering would involve, for example, clustering chapters in different groups and/or different approach to opening/ closing clusters and chapters.

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3. Preparing the EU for further (successful) enlargement

3.1 The widening-deepening nexus

The perspective of integrating new members (most importantly, Ukraine) has also re-ignited the long-standing debate about whether the EU can function effectively with over 35 member states and how integration should develop further.

Discussions about whether the EU should prioritise deepening integration or enlarge to new countries started in the early 1990s, when the collapse of communism unexpectedly opened new horizons for the then European Economic Community at a time when it was engaged in critical dynamics of deepening its own integration (not least through setting up a single currency). While in the 1990s the EU decided to simultaneously enlarge and deepen, the debate about this nexus seemingly came to an end in the mid-2000s, when the European Council decided that 'the pace of enlargement must take into account the capacity of the Union to absorb new members'.[19]

In the short to medium-term, this implied limiting new accessions to the Western Balkans, so that the EU could maintain its own development. This pause in the enlargement process was tightly interwoven with political developments in some of the member states. In particular, the rejection of the so-called 'Constitutional Treaty' in two founding EU member states, France and the Netherlands, in 2005, was broadly associated with 'enlargement fatigue', that is fear about the impact of massive new accessions in 2004-2007 and scepticism about the effective functioning of a 27-member Union. In other words, whereas EU institutions repeatedly praised enlargement as the bloc's 'most successful *foreign policy* instrument',[20] its impact on the EU's *internal* integration process was hotly debated.

This is because for some Western Europeans (be they members of the political elite or ordinary citizens), the most recent enlargement rounds came at the expense of deeper integration. This view has prevailed over the past fifteen years, thereby prompting a pause in the enlargement process.

The decision to grant Ukraine (as well as Moldova) candidate status has abruptly put an end to this *status quo*. This decision is both highly symbolic and irreversible. However, it does not imply that the balance between enlarging and deepening EU integration will sway in favour of the former, and at the expense of the latter. In fact, the war in Ukraine offers an opportunity to reconcile widening and deepening.

In essence, the geopolitical context around the EU may result in a sea change in how the European integration process is envisaged. As has been repeatedly said over the past eleven months, Russia's aggression against Ukraine is a 'tectonic shift in European history',[21] and thus a game-changer for the EU's integration process. The war in Ukraine is an unprecedented occasion for the EU to reflect on the critical connections between its geographical, institutional and functional expansion. Therefore, it does not just re-open the door to Ukraine's integration, as was discussed above, but also profoundly transforms the terms of the debate on what is at stake in the European integration project.

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19 Council of the European Council, Conclusions of the Brussels European Council (14-15 December 2006), 12 February 2007.

20 See for instance European Commission, Wider Europe Neighbourhood. A New Framework for our Relations with our Eastern and Southern Neighbours, COM (2003) 104 final, 11 March 2003, p. 5

21 Council of the EU, Informal meeting of the Heads of State or Government, Versailles Declaration 10 and 11 March 2022.

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This is because Russia's invasion has blatantly exposed the weaknesses of a series of EU policies beyond the Eastern Partnership and enlargement. More deeply, it has also uncovered the flaws of the EU's decision-making process. The Kremlin's actions in and around Ukraine have shed a new light on persisting gaps in EU energy policy and foreign and defence policies, to name just a few. As is the case in enlargement policy, these shortcomings stem primarily from the different (if not divergent) situations and interests of the member states. This is especially obvious in the energy area, in which the EU struggles to develop a common policy against the backdrop of different energy mixes, degrees of dependence on Russian gas and positioning vis-à-vis Russia.

Russia's war has therefore been a rude awakening for the EU. The debate on energy sanctions towards Russia has tested EU unity, as was illustrated by Hungary's resistance to an oil ban, as well as objections raised by Slovakia and the Czech Republic. These did not prevent the adoption of sanctions, even if with temporary exceptions. However, if anything the sheer divergences in member states' responses to the surge in energy prices have blatantly exposed the EU's limitations in addressing Russia's 'weaponisation' of energy.[22] Importantly, in many other areas the EU, widely known as a slow machine, has been able to respond swiftly and firmly to Russia's actions. It has promptly made decisions which seemed unthinkable prior to the invasion of Ukraine, given that they touch at the core of the member states' sovereignty. These include, for instance, the delivery of lethal weapons to Ukraine (the first time ever to a third country) and the decision to trigger the 2001 Temporary Protection Directive with a view to granting temporary residency to Ukrainian refugees.[23]

However, whether these huge steps will effectively lead to the effective 'geo-political awakening'[24] of Europe remains to be seen. As was shown by the examples of enlargement and energy, unity remains fragile and requires constant negotiations. Importantly, EU unity has been reached in a context of urgency, but needs to become ordinary practice. Given the sheer diversity of member states' situations and interests, which will only increase after the next waves of enlargement to the Western Balkans, Ukraine, Moldova and (potentially) Georgia, this requires changing the decision-making process. Under the current EU rules, a single member state can block the adoption of key decisions related to enlargement, foreign policy or other major policy areas such as taxation. Dropping unanimity voting in those policies in which decisions have to be approved by all member states is anything but a new idea,[25] however it has gained traction in the context of the war.

In the field of foreign policy, the shift to qualified majority voting does not require changing the Treaty as it is explicitly envisaged by the passerelle clause included in article 48(7) of the Treaty on the European Union. The latter provides that the European Council may adopt a decision authorising the Council to decide by qualified majority voting, among others on matters falling under Title V on external action and common foreign and security policy.[26]

22   Jean Pisani-Ferry, Europe's Looming Energy Distaster, Project Syndicate, 1 November 2022.

23   International Crisis Group, The War in Ukraine Raises New Questions for EU Foreign Policy, 5 April 2022.

24   EEAS, Europe in the Interregnum: our Geopolitical Awakening After Ukraine', 24 March 2022.

25   For instance, in early 2019 the European Commission presented a communication on how to move gradually from unanimity voting to the ordinary legislative procedure.

26   European Parliament, Passerelle clause in the EU Treaties. Opportunities for more flexible supra-national decision-making, European Parliament Research Service, 2020.

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However, even though key EU member states such as Germany,[27] France[28] and Italy,[29] as well as the president of the European Commission,[30] support the shift to qualified majority in EU foreign policy, the move is opposed by other EU countries, given their reluctance to abandon a critical lever in a highly sensitive policy. Central and Eastern European countries (primarily Poland and Hungary) indeed regard unanimity as intrinsically linked to their sovereignty. The long-standing concern over the preservation of their national interests has only been exacerbated by what these countries view as Germany's, France's and Italy's leniency vis-à-vis Russia. Therefore, against the background of the war in Ukraine Central and Eastern European countries are keen to retain unanimity in order to maintain their impact on EU foreign policy. [31]

Yet reforming the decision-making process is not the only – and perhaps not even the main- avenue for reconciling deepening of EU integration and enlargement to new countries. Crucially, for the EU's geopolitical awakening to become effective, it needs to be embedded in a broader strategic vision that would encompass key policies, address their interactions and promote the EU's values and interests.

The next sub-section examines whether and how the project of European Political Community could – if adequately and inclusively designed – address these challenges.[32]

3.2 The European Political Community

On May 9th, which marked both Europe Day and the end of the Conference on the Future of Europe, the French President Emmanuel Macron tabled before the European Parliament a proposal for a European Political Community (EPC). While still being quite fuzzy, the idea raised scepticism and criticisms in some EU member states and associated countries, not least in Ukraine. This is because it emanated from the country that has been perhaps the most reluctant to enlarge the EU further. Against this background, the EPC was perceived by many in Eastern Europe as yet another French attempt to dodge new EU accessions by offering an alternative only a few weeks before the decision on Ukraine's candidate status was to be made. And yet, such a concern has (at least thus far) proven ill-grounded. A few days after his speech in Strasbourg, the French President clarified that the EPC would complement enlargement and not substitute it.[32] In addition, France (as well as some other Member States traditionally opposing enlargement, such as the Netherlands) voted in favour of granting Ukraine (and Moldova) the status of candidate country. The European Council's unanimous vote clearly confirmed Ukraine's anchoring in the enlargement framework. Whereas some of the member states (including Germany and France) have insisted on the need to consider the country's accession in a mid to long-term perspective, none of them, even the most reluctant to enlarge, has questioned the fact that the country would eventually join the EU.

The fact that the EPC will not serve as an alternative to enlargement is an important clarification, yet it is not sufficient to get a clear picture of how these policies will interact. This is because many other crucial issues related to the EPC need to be elucidated, including its added value. Two critical features have emerged from the initial talks on the EPC: the open nature of the initiative, which would gather both the EU and non-EU countries (the latter being a highly

27 Politico, Scholz pitches major EU enlargement – with reform, 29 August 2022.
28 EUWatch, Qualified Majority Voting in EU foreign policy? 17 August 2022.
29 EUobserver, EU should drop unanimity in foreign policy, Italian PM says, 3 May 2022.
30 Politico, Commission president calls to end unanimity in EU foreign policy decisions, 2 September 2022.
31 E. Kaca, The Introduction of Qualified Majority Voting in EU Foreign Policy: Member State Perspectives, Bulletin no.162, December 2018.
32 Euractiv.fr, Macron says EPC no substitute to enlargement, 20 May 2022.

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heterogenous group, with a sheer variety in their relationship with the EU); and its focus on political issues, including democratic values and security-related questions. Both elements are inherited from the (failed) project of European Confederation proposed by François Mitterrand, upon which the EPC has drawn inspiration. However, the context was drastically different. The then French President put forward the idea of a European Confederation in 1989, at a time when no EU membership perspective was on the table for Central and Eastern European countries, when the relations between Europe and Gorbachev's Soviet Union developed positively and when post-Cold war Europe's security architecture could legitimately be called into question.

These elements raise issues about the EPC's added value. In contrast to the dynamics that prevailed in the late 1980s, Russia is increasingly perceived as a threat to both Europe's security and its values. Whether the continent needs yet another institution (in addition to the existing plethora of initiatives and organisations) to address threats and promote its values is debatable. After all, current challenges could be addressed by building on structures that worked successfully. And yet, should it materialise as initially envisaged the European Political Community would carry a highly symbolic value as it would enact the EU's shift from an often technocratic, still trade- and economy-centred organisation towards a broader security and (geo-)political pole. The EU has clearly failed to bring about this transformation, despite the high expectations expressed in the late 1980s. The European Political Community may offer another opportunity to do so in the face of an aggression which is a defining moment not only for Ukraine, but for Europe as well. Subject to clear-cut criteria (not least political) on membership, the EPC would 'affirm a European bloc united by the same values and a common destiny'.[33] In light of this potential significance, it is no coincidence that the initiative was deemed 'deliberately

confrontational' by Russia's Minister of Foreign Affairs Sergey Lavrov.[34]

For Ukraine and other candidate countries, the EPC would entail much greater exposure to the EU's institutions and decision-making from the outset of the accession process, i.e. even before negotiations start, and yet outside the accession toolbox, i.e. on a more equal footing compared to the very asymmetrical framework of negotiations. In terms of substance, the EPC would also strengthen the emphasis on political values (the first Copenhagen criterion). Importantly, cooperation could develop on other topics as well, subject to EPC members' preferences. In other words: "Unlike the neighbourhood policy model ('Everything but the institutions'), the model proposed here would fit in with the principle of 'Institutions first' in order to quickly establish the feeling of being part of the European project for aspiring countries and to embody it in a substantial and perceptible way for citizens".[35]

However, for the EPC to become effective and yield such results, it needs to be fleshed out. The first EPC summit, which took place in Prague in early October, confirmed the initiative's political and security foothold and its soft institutional design as a platform for coordination.[36]

Crucially, the EPC 'needs to be a meeting of leaders who are on equal footing' in order to be endorsed and owned by all EU member states and, especially, partners and candidate countries.[37] This requires cautious navigation as the EPC should not develop as an EU-centred initiative.

33 Thierry Chopin, Lukáš Macek, Sébastien Maillard, The European Political Community. A New Anchoring to the European Union, Notre Europe, May 2022.

34 TASS Agency, Lavrov calls European Political Community deliberately confrontational initiative, 18.07.2022

35 Ibid.

36 Council of the EU, Meeting of the European Political Community, 6 October 2022.

37 Senior EU official quoted in Le Monde, Macron's European political Community wants to be a new platform for cooperation, 6 October 2022.

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4. New proposals on enlargement

To overcome the enlargement stalemate and to provide an impetus to the transformation of the EU into a full-fledged (geo) political actor, there is clearly a need for change and various proposals have been put forward, including the following two:

Staged Accession

Over the past few years, the idea of gradual accession to the EU, even if premised on different stages, has gained ground as a model to revive the accession process by both sustaining the incentives offered to candidate countries and easing the concerns of those member states reluctant to enlarge further. While originally designed for the Western Balkans in 2018–19,[38] the staged accession model is relevant for Ukraine as well. As detailed in 2021, it consists of four stages through which a candidate country needs to go before it can fully join the EU.[39]

In this model, the enlargement process would still be based on the 35 chapters organised into clusters. The performance of the applicant states would be monitored in order to allow both qualitative and quantitative assessment. This would create conditions for a transparent and merit-based progression through the four proposed stages. Each stage would have its own specific criteria and rewards the achievement of which would allow progress onto the next stage which would release further funding and increased participation in EU institutions before conventional membership is reached in the final stage.

I – Initial accession stage

During the initial accession stage, candidate countries (explicitly recognised as such by the EU) would gain a (selective) observer status in the EU's institutions and receive half of a conventional member's funding. This would be granted once satisfactory ratings were achieved in accession clusters. In contrast to the existing methodology, all chapters would be opened and the lists of the acquis for each chapter would be specified (with a built-in mechanism for an acquis update).

In terms of institutional participation, this would already begin in a selected and graduated fashion, starting mainly with policy dialogue.

II - Intermedia accession stage

In order to reach this stage, the accession country would need a mix of moderate-to-good ratings and would receive 75% of funding (EU funding per capita under the existing policies) as well as some institutional participation in policies and institutions, reflecting the different degree to which it may be possible for different EU institutions.

III - New member state

This stage would be reached upon overall good ratings across all chapters. This level of readiness would be rewarded with 100% funding level, participation in EU policies and full EU citizenship. At the same time, participation in the institutions would be expanded but with some limits still applying especially with regard to the Council and Commission and with generalised QMV voting rights for new member states in the Council. In stage III, new member states would have QMV rights while unanimity requirements are progressively reduced for the existing member states.

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38 Milena Lazarevic, Away with the enlargement bogeyman, EPC, 3.07.2018; Pierre Mirel, European Union – Western Balkans: for a revised negotiation framework. Robert Schuman Foundation, European Issue n° 529, 30.09.2019.

39 Michael Emerson, Milena Lazarević, Steven Blockmans and Strahinja Subotić, A Template for Staged Accession to the EU, CEPS October 2021.

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IV - Conventional membership

All requirements are met, the EU moves to QMV and there is a formula for the participation in the Council and Commission.

This model would put an end to the current enlargement impasse by offering gradual incentives, while reversibility could apply for backsliding candidate countries.[40] In order to prevent backsliding, reversibility needs to be factored in and this would require a wider range of more graduated forms of downgrading and exclusion from institutional participation and funding.

This proposal is the most extensive and comprehensive as it blends preparation for membership with EU reforms, including treaty changes, for example with regard to the QMV for new member states in Stage III (see above). However, it is also the most ambitious and demanding in terms of the upfront overhaul of the enlargement strategy.

The Partnership for Enlargement

The Partnership for Enlargement is another proposal which seeks to address the current stalemate and rests on four pillars:

• accelerated integration into the single market – providing 'the greatest possible integration with the EU in economic terms below the accession agreements'.[41]

• EU financial support. Integration needs to underpinned by significant funds, coupled with assistance offered by other international financial institutions (IFIs), such as the World Bank and the IMF.[42]

• strengthened assistance for the climate and energy transition – this would focus on transforming (decarbonising) Ukraine's energy system and economy. This would both facilitate Ukraine integration into the EU's energy and climate policies and reduce its energy and economic vulnerabilities.

• cooperation in security and foreign policy – the EU needs to gain a much stronger geopolitical identity to help shore up security of the countries seeking to integrate with the EU.

The partnership for enlargement would offer enhanced cooperation and incentives while bypassing the vexed question of treaty changes, which some kind of partial EU membership would entail. However, some of the proposed changes, such as full participation in the single market and participating in the four freedoms (people, goods, services and capital) would go beyond the framework of the AAs, therefore requiring a new bilateral legal agreement.

At the same time, the key challenge remains - to ensure that this gradual integration is actually viable and will not stall for the same reasons that the current enlargement process has.

Overall, the above two proposals – and other proposals which had been already floated with regard to the Western Balkans[43] – aim to restore the credibility of the commitment, incentives and functionality of the accession process beyond the current binary in-or-out approach.

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40 Ibid.
41 Lang and Buras, 2022, 6.
42 However, the idea of committing part of structural/cohesion funds to pre-accession countries, something that would lend credibility to the EU and serve as a powerful incentive for reform - has thus far not been supported. Pierre Mirel, op.cit. and In support of a new approach with the Western Balkans: Staged accession with a consolidation phase, Robert Schuman Foundation, European Issue n° 633, 24.05.2022.
43 P. Mirel, 'European Union-Western Balkans: for a revised membership negotiation framework', Policy Paper, Robert Schuman Foundation, No. 59, Sept 2019.

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There is no doubt that member states' divergent positions on Ukraine's membership remain the biggest challenge. If codified in a new treaty, the staged accession would limit the ability of member states to block progress. This is essential because without political will of the member states, the technical process – however well led by the European Commission – will remain largely inconsequential. Thus, to safeguard the process, some treaty changes are needed.

Yet political leadership is vital. Germany made a pivotal difference during the 2004 enlargement but seems to have abdicated from this role for a series of reasons.[44] Enlargement cannot be revived without Germany renewing its leadership role.

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44   https://www.politico.eu/article/germany-leadership-gap-olaf-scholz-chancellor-race/, https://carnegieeurope.eu/strategiceurope/85463

5. 'Seize the moment': Ukraine's handling of candidate status

For Ukraine, in light of Russia's intention to annihilate the Ukrainian state and nation, candidate status is a 'matter of survival for Ukraine as a sovereign state'.[45] EU membership is of uttermost priority. The influence of the EU can only be effective if there is a domestic demand and drive for reforms.[46, 47] This more than anything else will ensure that the EU has a more powerful role in Ukraine.

Simply put, Ukraine must implement stringent and hugely sensitive political, legal and sectoral reforms.[48] The enactment of the seven political conditions necessary to open accession negotiations is underway. They are of a varied nature but all of them relate to the political conditionality, where the EU can easily enact political pressure. It is already clear that candidate status provides a powerful impetus to enacting political conditionality (so-called fundamentals). At the same time, however, it is worth remembering that political conditionality is more vulnerable to discretionary assessment within the EU member states, which are opposed to Ukraine's membership.[49]

Ukraine wants to move quickly and the past experience shows that the candidate states followed vastly different timelines, some of them completing accession in less than 3 years.[50] On the one hand, legal approximation is relatively straightforward and fairly advanced in many areas. However, implementation especially involving business and state agencies will be more difficult, especially in the context of the war. At the same time, the fact that Ukraine is already familiar with the acquis and achieved a vast array of (even if partial) approximation and implementation, thanks to the AA-DCFTA, should not be underestimated in terms of the willingness and ability to move across a number of areas.[51]

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45   Meister and Nic, DGAP Online Commentary, 20 June 2022.
46   The most spectacular example of what happens when external support is not matched by the domestic drive for reform is the case of international assistance to Afghanistan.
47   An EU official with a direct experience of supporting reforms in Ukraine called this situation 'when the stars align'.
48   Deputy prime Minister Olga Stefanishyna's interview, Ukrainska Pravda, August 2022.

49   No doubt, granting candidate status was a powerful symbolic act of support for Ukraine and its independence. However, against the backdrop of the 'enlargement stalemate' it does not mean that the member states will go beyond the symbolic step; indeed they may rely on the stalemate to allow the accession process to grind to a halt.
50   Latvia, Lithuanian and Slovakia completed accession negotiations in less than 3 years, whereas Montenegro's negotiations, which have lasted for 10 years, have resulted in only 3 out of 35 being chapters closed (as of June 2022).
51   J. Langbein and K. Wolczuk, 'Convergence without Membership? The Impact of the European Union in the Neighbourhood: Evidence from Ukraine', Journal of European Public Policy, 19(6), 2012.

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Most importantly, however, the Ukrainian domestic alignment in favour of rapid reforms is premised on viable membership prospects. Needless to say, this applies most to (fundamental) political reforms. With its aim of 'political cooperation', the Association Agreement did not – and could have not – stimulate such a reform. This impetus can only come from the accession process.

Yet, the incentive also matters for economic and sectoral integration. The Association Agreement is comprehensive in terms of Ukraine's commitments, some of which exceed what the aspiring Western Balkan countries committed to in the Stabilisation and Association Agreements.[52] This means that now Ukraine is expect to align with the acquis in anticipation of membership, even though prospects for accession remain uncertain.

To qualify for membership, Ukraine needs to embark on wide-ranging, systemic reforms. Yet, the reform momentum will depend on the credibility of the prospect. But, notwithstanding the optimism in Kyiv, this is low at the moment and not safeguarded in any formal way. Already a certain time frame for Kyiv to expect a conclusion of the assessment is being indicated.[53] What matters is that the EU and Ukraine already have a vast experience of close cooperation on a range of domestic reforms, including even the most sensitive areas, such as anti-corruption reforms.[54] Indeed, the EU's involvement has been unprecedented in comparison to any third countries, prompting the Commission to pioneer a new way of supporting a whole range of domestic reforms.[55] Hence the EU is very well positioned to provide an in-depth, valid assessment, in a more authoritative way that it has been in the Western Balkan countries in many ways.

However, this does not imply that the Association Agreement is sufficient and that political reforms, economic and sectoral integration can be delivered on the 'back of' the agreement alone.[56] Membership conditionality is what matters.

Yet, there are no safeguards about any future stages of enlargement as the experience of the last decade and half evidences. That candidate status does not imply that when Ukraine fulfils the seven conditions, negotiations can be opened soon after, nor that, regardless of Ukraine's performance, they can be concluded in a reasonable time frame.[57] For this the whole approach to accession needs to be revamped and safeguard the process by offering robust conditionality, intermediate stages, funding and rewards.

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52 S. Blockmans, 'The Obsolescence of the European Neighbourhood Policy', CEPS, 2017.

53 Sweden, which is holding the EU presidency in the first part of 2023, has already indicated that it will not focus on opening accession talks with Ukraine (nor Moldova) as its priority. The second half of 2023 has been indicated as a feasible time when an assessment of Ukraine's progress towards meeting the conditions can be expected, according to the EU Ambassador to Ukraine.

54 Interview with the EU Ambassador to Ukraine, Ukrainska Pravda, August 2022. On the anticorruption reforms see also J. Lough and V. Dubrovskiy, 'Are Ukraine's Anti-corruption Reforms Working?', Research Paper, Chatham House, 2019.

55 K. Mathernova and K. Wolczuk, 'The Eastern Partnership: Between fundamentals and integration', New Eastern Europe, Sept 2020; K. Wolczuk, 'State building and European integration in Ukraine', Eurasian Geography and Economics, 60(6), 2019.

56 The AA's strength is its comprehensive focus on more technocratic aspects of integration, especially those involving transposing the acquis related to the single market and sectoral policies but without offering any systematic guidance, monitoring nor funding.

57 For a sobering comparison of the processes for Central and Eastern Europe and the Western Balkans see 'The Turtle Race: Warning to Ukraine'.

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6. Integration and reconstruction

Reconstruction is a formidable challenge, especially in the context of Russia's continuing war against Ukraine.

This is especially so as reconstruction needs to be combined with systematic modernisation and integration. The EU has direct experience in coordinating international assistance and cooperating closely with Ukrainian government. This experience must be fully harnessed and the EU must be in a driving seat to ensure full synchronisation between reconstruction and Ukraine's integration with the EU. For example, rebuilding energy-generating plants – which may be undertaken by various international donors - needs to be done in line with EU standards.

There is an overarching question as to how reconstruction should be managed institutionally. There is no doubt that transparency, clarity and accountability are important principles to guide any reconstruction plans and funding. These principles can only be enacted within an overarching coordinating structure, which brings all the donors together, and ensures prioritisation in order to avoid duplication, desynchronised and inefficient assistance.[58]

The EU and Ukraine will need to find a way to coordinate donor activity closely and manage the flow of assistance to Ukraine. This is a formidable task, given the complexity and divergence of donors' priorities, timelines and funding conditionality and monitoring. This will need to be done while Ukraine prioritises urgent needs over strategic, longer-term modernisation. So far there is a very divergent political understanding on all sides of what this could look like.

Ukraine's ongoing economic and trade integration with the EU is premised on creating the necessary infrastructure. This ranges from transportation hubs, energy-related such as new high-voltage lines to the cyber-security of Ukraine's energy infrastructure.

In terms of economic recovery, the decision so suspend import duties on all Ukrainian exports to the EU represents an unprecedented gesture of support by the EU.[59] Given that thanks to the AA-DCFTA, most of Ukraine's tariffs have been eliminated, except for some transitional periods, tariff-rate quotas and anti-dumping duties, the suspension would need to be extended for a longer period to make a tangible difference to Ukraine, especially given the contraction of its production and exports due to Russia's occupation of Ukraine's territory.

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58   K. Wolczuk and D. Zeruolis, 'Rebuilding Ukraine: An assessment of EU assistance', Research Paper, Chatham House, 2018.
59   'A transformational moment?', Special Report, CEPS, Brussels, April 2022.

7. Security dimension

Both enlargement and neighbourhood policies have been devoid of any security considerations. This is despite the fact that the ENP was supposed to bring about security, as well as stability and well-being to the areas concerned.[60] Security has been identified as a glaring gap between the EU's promise to promote security and stability and the actual actions.[61]

While promoting 'resilience' via civilian means, the EU has failed to create a mechanism under the Common Foreign and Security Policy (CFSP) or any other platform within the Eastern Partnership to shore up eastern neighbours' security. Leaving the countries willing and ready to join in a grey zone creates a security vacuum which, in turn, generates security risks. In other words, by offering closer integration without acting as a security provider the EU has left Eastern Partnership countries exposed to Russia's threats, retaliatory measures and use of force.

A large lacuna emerged between the needs and policy tools. The repurposing of the European Peace Facility has allowed funding significant military support to Ukraine since the start of the full-scale invasion. The EU proposal for a military training mission is a much needed and long overdue step, given the launch of invasion in 2014. But, at the time of speaking, it appears to be slowed down by the way the CSDP functions, owing to its intergovernmental modality.

Ultimately, there is no integration without security: 'any plans for integration or cooperation with the EU will only feasible if the country manages not only defend itself against current Russian aggression but also to build a deterrent capacity that minimises the likelihood of a similar war in the future'.[62] The ideas of strengthening the security dimension has been put forward as 'an Eastern Partnership Security Compact'.[63] And various proposals include permanent structured cooperation (PESCO) projects in order to promote the infrastructural coherence. While there are various valuable ideas, there is no strategic forum to promote security-related integration, which could drive integration of Ukraine into the EU's institutional framework.

The European Political Community could act as this forum, as it would entail a 'fast-track accession to the EU's political and institutional dimensions',[64] thereby also filling a gap in the current accession process. However, this would also require internal EU changes (whether related to the decision-making or toolbox) with a view to strengthening the CFSP.

60 European Commission, Wider Europe Neighbourhood. A New Framework for our Relations with our Eastern and Southern Neighbours , op.cit

61 L. Delcour and K. Wolczuk, 'Well-Meaning but Ineffective? Perceptions of the EU as Role as a Security Actor in the South Caucasus'. European Foreign Affairs Review, 2018, 23(1).

62 Lang and Buras, p. 13

63 G. Gressel, 'Promoting European Strategic Sovereignty in the Eastern Neighbourhood', Policy Brief, ECFR, Nov 2020.

64 Chopin et al., op.cit.

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Conclusions

From an inauspicious beginning in the 1990s, over time, and in particular since 2014, EU-Ukraine relations have taken on global reverberations. Ukraine had already profoundly impacted on EU's eastern policy over the last two decades, as evidenced by the AA-DCFTA and various policy instruments. For the last decade or so, EU-Ukraine relations pivoted around the implementation of the new agreement with the EU officials, statements and policies focusing on Ukraine's commitments and responsibilities. So Ukraine is already very familiar with what integration with the EU requires. Despite - or rather because of - the war, Ukraine is open to integration with the EU and all that entails in terms of a structured process, conditionality and monitoring. This is especially so not only in the acquis heavy areas but most importantly, the rule of law and anti-corruption reforms. Given the challenges and opportunities, the EU has an unprecedented leverage vis-a-vis Ukraine and the stake in using this leverage has never been higher.

Russia's full-scale invasion of Ukraine has highlighted the need for the EU to both restore the credibility of the accession process and review in-depth its own integration process. To face the challenges that arise from Russia's aggression, the EU must reconcile a renewed, gradual and transparent enlargement policy with changes needed to turn the EU into an autonomous foreign policy actor.

The challenges that await the EU are likely to be as daunting as was the case back in the late 1980s-early 1990s, when communism collapsed in Central and Eastern Europe. It is now time for the EU and its member states to address the errors that were then made. These included an excessively technical enlargement process that was poorly explained to EU citizens and the policy gaps that were then left open (particularly foreign policy). Above all, the EU member states ought to focus on the *finalité*, rather than just the methodology or toolbox. Only by 'getting things done' the EU can deliver on its 'geopolitical awakening'.

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About this policy paper

This policy paper was prepared for the project which LibMod implemented in cooperation with the Policy Planning Unit of the German Federal Foreign Office in 2021-22. The project brought together high-profile experts from think-tanks in the EU, Ukraine, and North America to discuss the EU's long-term policy towards Ukraine in key areas and develop policy recommendations. All policy papers initially served as input papers for the discussions and were finalised before being published.
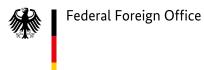
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