Istituto Affari Internazionali

Applying for EU Membership in Time of War: "Accession through War" of Ukraine

by Roman Petrov

The European Union in
International Diplomatic Relations

EUDIPLO

Geneva | Groningen | Leuven | Pisa
Jean Monnet Network

With the support of the
Erasmus+ Programme
of the European Union

ABSTRACT

The paper studies Ukraine's road to EU membership. Russia's invasion of Ukraine on 24 February 2022 considerably changed the perception of the EU's enlargement policy, which can be used as a means to support a third country that openly shares EU common values and is ready to defend these values on a battlefield. This process can be labelled "accession through war". The paper also scrutinises the role and impact of the European Political Community to address the war in Ukraine and other potential security threats on the European continent and beyond.

keywords

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The Network focuses on this central question: **What are the internal and external constraints and opportunities for the European Union to further its ambitions as an international diplomatic actor?** In dealing with this question, the Network aims to generate a stronger awareness on, and contribute to deeper insights with regard to, the European Union's diplomatic activities throughout the world, in third States as well as at multilateral fora.

Both the European External Action Service and the Union delegations – and hence the European Union's diplomatic institutional machinery – remain largely unknown to the public. Yet, the European Union not only has a worldwide network of more than 140 'embassies', but at the same time it has assumed 'state-like' functions on the basis of the adoption of diplomatic rules that were originally created for states only. Many **challenges** do remain, but the deep and wide legal and policy powers – and the sheer size and universal network – of the European Union also offer **opportunities** that remain as of yet untapped.

Academic and policy analyses have pointed to a great number of **legal and political questions** related to the developing role of the EU in international diplomacy. EUDIPLO brings experts in this area together to focus on these questions in order to make public authorities at all levels (EU institutions, governmental institutions in Member States and in third countries, international organisations, international and national civil servants and diplomats), young professionals and students, as well as the public at large, aware of the challenges and opportunities in this area.

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by Roman Petrov*

Introduction

Ukraine's formal application for EU membership, on 28 February 2022, took place in tragic circumstances. It also came as a surprise to many. How could President Volodymyr Zelensky and his government even think about EU membership while the Russian army was invading the country on a frontline, scale and ambition that had not been seen in Europe since Nazi Germany launched Operation Barbarossa against the Soviet Union in 1941? And yet, the formal application to the EU was signed just a few days after Russia's unprovoked aggression, while Russian troops were only about 15 kilometres from the president's office in Kyiv. The long-cherished dream of the Ukrainian nation to embark formally on an EU membership course suddenly became a reality, in one of the most critical and mortal moments of the country's history.

On the one hand, the formal bid for EU membership was an act of despair by a country already at war since 2014, and now fighting for its survival. Indeed, the bold move ultimately served its purpose and considerably boosted the combatting morale of the Ukrainian nation. It also raised hopes for more military, financial and technical assistance from the EU to support Ukraine's war effort. By any standards, the EU accession process triggered by the application unfolded with unprecedented speed. While Ukraine's application was immediately accompanied by similar moves by Moldova and Georgia, the European Commission committed itself to issuing its opinions on the respective applications, as required by Article 49 TEU, as soon as possible.[1]

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[1] "So we will accelerate this process as much as we can, while ensuring that all conditions are respected." See European Commission, *Statement by President von der Leyen with Ukrainian President Zelenskyy at the Occassion of the President's Visit to Kyiv*, 8 April 2022, https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2381.

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Indeed, by 7 June 2022, the Commission had already assessed Ukraine's ability to join the EU, in consideration of the accession conditions based on the so-called "Copenhagen criteria".[2] It concluded that

> Ukraine is a European State which has given ample proof of its adherence to the values on which the European Union is founded [and] therefore recommend[ed] to the Council that Ukraine should be given the perspective to become a member of the European Union.[3]

Consequently, the Commission recommended to European Council to grant Ukraine the much sought-after "candidate status" – a label that is not formally envisaged by the procedure of Article 49 TEU, but which has become a key component of the EU enlargement taxonomy and a milestone in the accession process. This recommendation was supplemented by the request to conduct urgent reforms within seven sectors (judiciary, rule of law, fight against corruption, national minorities, anti-money laundering legislation, anti-oligarch legislation, media legislation in line with the EU acquis). The European Commission committed itself to monitor Ukraine's progress in these policy fields and issue a final assessment by the end of 2023. Further, the European Commission confirmed that Ukraine's accession process would be based on "established criteria and conditions".[4] Thus, it confirmed that the Copenhagen criteria remained crucial for the progress of Ukraine's accession. The Commission also recalled that the EU-Ukraine Association Agreement "has been and continues to be of essential importance in facilitating and promoting Ukraine's further integration with the EU".[5]

Although less favourable, the Commission's opinions on the applications of Moldova and Georgia came to the same conclusion: the two countries were given a perspective to become member states of the Union.[6] The European Council endorsed the Commission's recommendations only a few days later and recognised the European perspective for Ukraine, Moldova and Georgia, acknowledging that "[t]he future of these countries and their citizens lies within the European Union".[7] The candidate country status was granted only to Ukraine and Moldova, however,

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[2] These are political, economic and administrative criteria. See in detail in the website of the European Commission DG NEAR: *Glossary: Accession Criteria*, https://neighbourhood-enlargement. ec.europa.eu/enlargement-policy/glossary/accession-criteria_en.

[3] European Commission, *Commission Opinion on Ukraine's Application for Membership of the European Union* (COM/2022/407), 17 June 2022, p. 20, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52022DC0407.

[4] Ibid.

[5] EU and Ukraine, *Joint Statement following the 24th EU-Ukraine Summit*, 3 February 2023, https://europa.eu/!PJjpk9.

[6] European Commission, *Commission Opinion on Moldova's Application for Membership of the European Union* (COM/2022/406), 17 June 2022, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52022DC0406; *Commission Opinion on Georgia's Application for Membership of the European Union* (COM/2022/405), 17 June 2022, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52022DC0405.

[7] European Council, *Conclusions*, 23-24 June 2022 (EUCO 24/22), point 10, https://europa.eu/!TCKrrj.

Georgia was required to address domestic reform priorities indicated in the Commission's opinion before it can obtain the status of "candidate country".

1. Challenges on the road to Ukraine's EU membership

Ukraine's road towards EU membership will not be a trivial re-enactment of the accession experience of the EU's old and new member states. This is because, as put by law expert Allan Tatham, "Ukraine became the first country to apply for EU membership in the middle of a war that had been started by invasion of it by another state with which the EU still has a functioning bilateral partnership and cooperation agreement".[8] There are other challenges to be considered on Ukraine's road towards EU membership. The first is whether the comprehensive EU-Ukraine Association Agreement can remain the relevant foundation of Ukraine's accession procedure. This agreement was negotiated in 2012 and does not reflect the contemporary geopolitical situation in the region. Yet, experts contend that the EU-Ukraine Association Agreement still has considerable potential to assist Ukraine's accession efforts and therefore can be regarded as a perfect "stepping-stone towards EU membership".[9] A second challenge is that the Ukrainian case requires the reconsideration of the accession procedure due to the imminent and escalating cost of war. Ukrainian officials call for either a "fast-track" procedure for Ukraine or for a "'special procedure' for Ukraine's application 'without the strains of mistrust and the failure of conditionality'".[10] However, the EU has not shown any sign of accepting the "fast-track" procedure for Ukraine yet. On the contrary, it highlighted the importance of all conditions specified by the European Commission to be met by Ukraine before going towards the opening the EU membership negotiations.[11] In other words, it would be an unbearable challenge for Ukraine to participate in the complicated and meticulous accession race while being engaged into resource-consuming and bloody war with Russia. A third challenge is that the substantive and procedural rules of the future accession of Ukraine to the EU must reflect the scope and objectives of a future peace deal between Ukraine and Russia Ukraine's ability to conduct the accession negotiations with the EU will inevitably depend on the outcome of the war, and the terms upon which hostilities eventually end. A potential war settlement will indeed define and/or confirm the geographical borders of Ukraine and could influence its sovereignty on issues related to its security and ability to join international organisations like NATO or the EU itself.

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[8] Allan Tatham, "Conflict between Rhetoric and Reality of Enlargement: The Implications of Opening EU Accession Negotiations with Ukraine", in *EU Law Live*, 5 April 2022.

[9] Peter Van Elsuwege and Guillaume Van der Loo, "The EU-Ukraine Association Agreement as a Stepping-stone towards EU Membership?", in *EU Law Live*, 28 March 2022.

[10] Dimitry Kochenov and Ronald Janse, "Admitting Ukraine to the EU: Article 49 TEU is the 'Special Procedure'", in *EU Law Live*, 30 March 2022. Also see Dimitry Kochenov and Elena Basheska, "The European Neighbourhood Policy's Value Conditionality: From Enlargements to Post-Crimes", in Sara Poli (ed.), *The European Neighbourhood Policy – Values and Principles*, London/New York, Routledge, 2016, p. 145-166.

[11] EU and Ukraine, *Joint Statement following the 24th EU-Ukraine Summit*, cit.

2. A "classic" EU accession process?

The European Council's decision to grant candidate status to Ukraine would probably not have happened in pre-war circumstances. While the country's aspirations to join the EU have been clear for some time, formally applying for membership was not seriously contemplated in Kyiv before the Russian invasion. Russia's aggression thus paradoxically turned Ukraine's ambition to embark on an EU membership course into reality.

The EU-Ukraine Association Agreement of 2014 has been a backbone of Ukraine's EU membership ambitions. Since 2014 the Ukrainian authorities have been concentrating their efforts on the demanding implementation of the Association Agreement, considered as "the most advanced agreement of its kind ever negotiated by the European Union",[12] and characterised by its unprecedented *comprehensiveness*, *complexity* and *conditionality*. The Agreement indeed governs the entire spectrum of Ukraine's relationship with the EU, with the ambitious aim of integrating the country into the EU internal market, based on its ability to implement the relevant EU acquis and observe its values.[13]

To be sure, the Commission's annual reports on the implementation of the Association Agreement had never been overly positive.[14] Even Ukraine's internal evaluation of the domestic implementation efforts was rather humbling.[15] In other words, had the Commission (and the European Council) been asked before 24 February 2022 to assess Ukraine's (as well as Moldova's and Georgia's) ability to join the Union by reference to established accession standards, its opinion would likely have been far less supportive.

Arguably, therefore, the EU member states and institutions have granted the candidate status to Ukraine essentially as an act of moral support, to boost the

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[12] European Council, *Press Remarks by Herman Van Rompuy, President of the European Council, following the EU-Ukraine Summit* (EUCO 48/13), 25 February 2013, https://data.consilium.europa.eu/doc/document/ST-48-2013-INIT/en/pdf.

[13] Guillaume Van der Loo, Peter Van Elsuwege and Roman Petrov, "The EU-Ukraine Association Agreement: Assessment of an Innovative Legal Instrument", in *EUI Working Papers Law*, No. 2014/09, https://hdl.handle.net/1814/32031.

[14] European Commission, *Ukraine: EU Report Notes Continued Implementation of the Reform Agenda Though Challenges Remain*, 1 December 2020, https://ec.europa.eu/commission/presscorner/detail/en/ip_20_2259. See European Commission, *Association Implementation Report on Ukraine* (SWD/2022/202), 22 July 2022, https://data.consilium.europa.eu/doc/document/ST-11581-2022-INIT/en/pdf. The report listed quite extensive issues where Ukraine is expected to improve its performance in implementing the EU-Ukraine Association Agreement, mainly in the fields of justice, rule of law and the fight against corruption. See European Commission, *Ukraine: EU Report Notes Important Steps Taken in the Implementation of the Reform Agenda*, 26 July 2022, https://ec.europa.eu/commission/presscorner/detail/en/ip_22_4706.

[15] Ukrainian Centre for European Policy, *Ukraine and the Association Agreement: Implementation Monitoring 2014-the first half of 2021*, 2021, https://www.kas.de/en/web/ukraine/single-title/-/content/ukraine-and-the-association-agreement-implementation-monitoring-2014-the-first-half-of-2021.

country's resistance to the aggression and, perhaps more than ever in the history of EU enlargement, as a (geo)political decision rather than a scrupulous legal application of the conditions related to Article 49 TEU. Russia in effect boosted the eligibility of Ukraine, and incidentally that of Moldova and Georgia – whose respective territorial integrity has also been undermined by Russia-backed forces in Transnistria as well as in Abkhazia and South Ossetia, respectively. If so, the question can then be raised whether the three new applicants' accession process will continue to be framed by this extraordinary "*accession through war*" approach, or whether it will ultimately fall back onto the "classic accession" track, as applicable to candidate states before the war.

"Accession through war" entails that the war justifies the EU taking a different approach in its assessment of the applicant's ability to join the Union. It implies a more favourable EU treatment of the membership application if and because the applicant is fighting, literally, to defend common European values as defined in Articles 2 and 21 TEU.[16] If such a country is committed to respecting those values, notably by taking an active part in the EU external policies (such as the Eastern Partnership, an EU 2009 initiative to intensify cooperation with former Soviet republics in Eastern Europe and the South Caucasus),[17] and/or as a party to a framework association agreement with the EU, and becomes a victim of a military or hybrid invasion,[18] it may expect extensive political, economic, security and humanitarian support from the EU and its member states. Such support may indeed include the recognition of a membership perspective if the country wishes to accede, and ensuing EU engagement to make it happen. Of course, the aggression would have to be of such a nature that it undermines the territorial sovereignty of the state concerned and consequently its European integration objectives.

The notion of a more favourable approach towards Ukraine's accession was indeed evoked by several member states early in the process.[19] But it has also triggered

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[16] *Consolidated version of the Treaty on European Union*, http://data.europa.eu/eli/treaty/teu_2012/oj.

[17] Further on Eastern Partnership, see e.g. European Commission, *Eastern Partnership Policy beyond 2020. Reinforcing Resilience – an Eastern Partnership that Delivers for All* (JOIN/2020/7), 18 March 2020, https://eur-lex.europa.eu/legal-content/en/TXT/?uri=celex:52020JC0007; Council of the EU, *Eastern Partnership Policy beyond 2020: Council Approves Conclusions*, 11 May 2020, https://europa.eu/!uH49cw.

[18] A hybrid invasion can be conducted by military as well as by non-military means, but still threatens the sovereignty and territorial independence of a State (cyber-attacks leading to a termination of government control and/or establishing of non-recognised entities, and others).

[19] See the letter of the Polish and (then) Slovenian Prime Ministers sent the day before the start of Russia's invasion of Ukraine to European Council President Charles Michel: *Joint Letter of Slovene and Polish Prime Minister on the Ukrainian European Perspective*, 23 February 2022, https://www.gov.si/en/news/2022-02-23-joint-letter-of-slovene-and-polish-prime-minister-on-the-ukrainian-european-perspective; and the subsequent declaration of 28 February 2022 of the respective Presidents of Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Slovakia and Slovenia, *Support of Ukraine's Swift Candidacy to the EU*, 28 February 2022, https://www.president.pl/news/open-letter-by-presidents-in-support-of-ukraines-swift-candidacy-to-the-european-union,49584. See also: Alexandra Brzozowski and Bartosz Sieniawski, "Poland, Slovenia, Lithuania Say Ukraine

negative reactions, both in the EU and among other candidates for membership. Some member states have promptly rejected any "fast-track accession" on grounds that formally there is no such special procedure in EU law, and that the watering down of entry conditions it could entail – which some EU governments might agree to for other reasons – would be dangerous for the Union,[20] as well as problematic for its relations with other applicants. Indeed, candidate states from the Western Balkans have warned against the proposition that Ukraine should get accession priority, as that would (further) undermine their own accession perspective. As is well known, some of the applicant countries from the Balkans experienced bloody civil wars and military intrusion by third countries, and have since, at least in some cases, made considerable efforts to be able to join, though without always getting much support from the EU in return.

The other option for Ukraine (and Moldova and Georgia) is the "classic accession" process. Like any other candidate country, Kyiv will be expected to fulfil the Copenhagen criteria and, consequently, to apply the whole EU acquis covered by the 35 or more chapters of accession negotiation. Judging from official statements, this is indeed the approach that the EU institutions and member states appear to favour. Having recalled the provisions of Article 49 TEU, and the accession conditions based on the Copenhagen criteria, the Commission's opinion underlined that the latter "ha[d] been prepared following a methodology similar to that used in previous Commission Opinions".[21] In the same vein, the European Council Conclusions underlined that "[t]he progress of each country towards the European Union will depend on its own merit in meeting the Copenhagen criteria".[22] It is also noticeable that, while recalling that progress in the accession depends on the candidate's fulfilment of the Copenhagen criteria, the European Council underscored that "the EU's capacity to absorb new members", a consideration whose significance has steadily increased in the EU enlargement rhetoric since 2004, would have to be "tak[en] into consideration".[23]

As the accession practice shows the EU institutions and its member states remain adamant to apply the established accession methodology to the new applicants, and do everything possible to avoid "fast-track" accession with very few exemptions.[24] The ongoing war has morphed into an attrition campaign, with protracted

Deserves EU Candidate Status", in *Euractiv*, 24 February 2022, https://www.euractiv.com/?p=1717223.

[20] See e.g. "There Is No Fast Track Procedure for EU Membership, Dutch PM Says", in *Reuters*, 10 March 2022, https://www.reuters.com/world/europe/there-is-no-fast-track-procedure-eu-membership-dutch-pm-says-2022-03-10; Daniel Boffey, "Western Europe Leaders Rebuff Ukraine Fast-Track EU Membership Appeal", in *The Guardian*, 10 March 2022, https://www.theguardian.com/p/yxq23; David M. Herszenhorn, "Netherlands' Tight Fist Now Chokes Ukraine's EU Bid", in *Politico*, 10 March 2022, https://www.politico.eu/article/netherlands-ukraine-eu-membership-zelenskyy-putin.

[21] European Commission, *Commission Opinion on Ukraine's Application for Membership of the European Union*, cit., p. 2.

[22] European Council, *Conclusions*, 23-24 June 2022, cit., point 14.

[23] Ibid.

[24] For instance, the Iceland's application for the EU membership on 16 July 2009 and the formal negotiations have started already on 27 July 2010.

impact both on Ukraine and the entire EU. Ukraine's ability to meet the accession conditions is being further depleted every day by the devastating aggression and will thus hinge on the country's overall reconstruction. Ukraine's accession will in other words depend on, *inter alia*, the long-haul support that it gets from the EU in this major undertaking. The more assistance the EU provides, the more it will be normatively and effectively in a position to demand the scrupulous observance of the accession conditions. While the magnitude and the specific nature of the efforts needed to reconstruct Ukraine require an *ad hoc* adjustment of the accession methodology (also to meet the specific needs of Moldova and Georgia, as collateral victims of the war), the process should also trigger a wider recalibration of the EU "pre-accession strategy", which has shown its limits and weaknesses over the years. Ukraine's application (as well as that of Moldova and Georgia) is indeed a major incentive for the EU to design a "pre-accession strategy 2.0", *inter alia* so as better to prepare candidate states both to meet the accession criteria and to operate as well-functioning member states in the future. The new strategy should also allow a country like Ukraine to get back on its feet as a post-conflict society, something the EU and its member states have proved not to be particularly strong at in various candidate countries of the Western Balkans; the EU needs to improve this strategy, to be able to fulfil its promises, and secure peace in Europe. Among the flagship changes of the "pre-accession strategy 2.0" could be: revision of the conditionality policy so as to include the ability of a candidate country to defend and promote European common values; re-elaboration of the "Copenhagen" criteria including respect of international law and unconditional support of the EU common security and defence policy in them; inclusion of the "fast-track" accession as an *ad hoc* option of the EU accession.

3. A peace deal as a key to Ukraine's accession to the EU and constitutional reform

The terms of any peace deal between Ukraine and Russia will inevitably influence the pace and priorities of Ukraine's accession to the EU as well as domestic constitutional and legal systems. Several scenarios could be envisaged at this stage.

In a first scenario, Russia would face complete military defeat, followed by a regime change. In this situation, a peace deal could lead to the liberation of all Russia-occupied areas of Ukraine, including Crimea and the territories of so-called peoples' republics in the East as well as Kherson and Zaporizhzhia regions. From the perspective of the accession process, that would be the best outcome for Ukraine and the EU. Such a peace deal would restore Ukraine to its internationally recognised borders and lay the grounds for the fastest possible reconstruction of Ukraine, as well as the finalisation of its accession to the EU. The Union, other world powers and international organisations would unleash a package of significant financial and technical assistance to support Ukraine's rebuilding, with the Copenhagen criteria and the EU acquis as a compass. In this case the constitutional system of Ukraine would remain intact and Ukraine remains a unitary state as provided in

the existing constitution.[25] The liberated territories would go back under Ukrainian control, which would allow the resumption of the Ukrainian courts' jurisdiction, social support, education and police control. Importantly, the Ukrainian legislature would face the necessity to deal with the legal status of Ukrainian nationals who joined military and police units of the so-called people's republics in the East in Ukraine and Russian army and police in Crimea.

The second scenario would see Ukraine win convincing military successes while Russia would be thwarted by the unbearable costs of war and sanctions. In this situation, the Russian government would agree to a compromise peace deal that envisages the de-occupation of Ukrainian territories invaded since 24 February 2022, but not Crimea or the territories of the so-called peoples' republics od Luhansk and Donetsk (LDPR) in the East of Ukraine. This option does not imply any formal recognition of the territorial status of Crimea and the LDPR. Simply, this issue would be postponed for a later stage of the peace settlement when the territorial status of these entities could be defined. This option would come close to option one in terms of its positive effects on the Ukraine's recovery and accession prospects. However, it would inevitably raise sensitive questions such as how to treat Ukrainian nationals and companies located in these territories in the event of Ukraine's membership in the EU. Regarding companies, their registration and seat of operation would be essential to determine the legal regime applicable to them. The status of Ukrainian nationals residing in these areas would be especially problematic. Most of them have acquired Russian citizenship and could rely on their Ukrainian passport to use (or abuse) their rights as EU citizens. The experience of Cyprus would be of a great value for Ukraine in this regard. While the EU recognises Northern Cyprus, which has existed as a non-recognised entity since the early 1970s, as being *de jure* part of the Republic of Cyprus (and therefore the EU itself), it also acknowledges that *de facto* Cyprus' jurisdiction does not fully apply there. This has led to the ostensibly temporary suspension of the application of EU law on the territory of Northern Cyprus – including those concerning the freedom of circulation of goods, services, capitals and people – to Cypriot citizens living in Northern Cyprus. The Cyprus case could therefore provide a reference framework for the treatment of rule of origin of goods and services originating from the occupied territories of Ukraine and rights of Ukrainian nationals residing therein to acquire EU citizenship rights. In this scenario the constitutional system of Ukraine is unlikely to be changed. The country would remain a unitary state as provided in the existing constitution.[26]

In a third scenario, Ukraine and Russia would face a military draw and subsequently reach a "status quo peace deal", leaving already occupied Ukrainian territories under Russian control. The Ukrainian government would be pushed to accept the ceasefire under the unbearable cost of warfare and possible termination

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[25] Article 2 of the Constitution of Ukraine of 1996. The official English translation is available at: http://www.ccu.gov.ua/sites/default/files/constitution_2019_eng.doc.

[26] Ibid.

of Western economic and military assistance due to "fatigue". Most likely that would imply the indefinite "freezing" of the conflict. As a result, Ukraine would face a permanent security threat on its borders and lose access to the Azov Sea, while its Black Sea ports would remain blocked by the Russian Navy. Thereby, Ukraine's export of agricultural products and other goods would meet a plethora of unavoidable obstacles in reaching the EU and international markets. This option would significantly complicate Ukraine's accession process. The cases of Cyprus and the North Ireland Protocol are unlikely to be a source of inspiration since the situation in Ukraine would be different from anything the EU has faced so far. However, the Belgrade-Pristina Dialogue could offer some inspiration for possible Ukraine-Russia Peace Deal. The Ukraine's accession deal would probably require specific derogations on the application of EU acquis and membership rights within the internationally recognised territory of Ukraine. This option could imply a constitutional reform in Ukraine. Since the status of the old and newly occupied territories of Ukraine would be "frozen", the Ukrainian legislature would take steps to prepare a legal ground for their eventual return. The constitutional reform would focus on several aspects of the domestic political and legal systems. First, Article 2 of the Constitution of Ukraine could be changed to transform Ukraine from a unitary state into a federal state, thereby giving Ukrainian regions considerable impact on the decision-making. Second, provisions of the Constitution of Ukraine on "irreversibility of European and Euro-Atlantic" foreign policy of Ukraine may be either deleted or revised to meet the possible compromise in the Russo-Ukraine peace deal about the neutrality of Ukraine.[27] Third, Ukrainian as official language of the country could be supplemented by Russian and other languages in the areas of compact residence of national minorities in Ukraine (Hungarian, Bulgarian, Polish, Romanian and other).[28] Furthermore, as a pre-condition of the peace deal the Russian Federation may demand adding to the Constitution of Ukraine a provision on a special status of the Russian-speaking minority in Ukraine and even on common history of Ukraine and Russia.

The fourth scenario would be a complete military defeat of Ukraine, potentially leading either to the loss of all or most of its territory to Russia, or its partition into several zones/peoples' republics, as occurred to the Baltic countries and Finland in the early 1940s. In the worst-case scenario, the Ukrainian government may go into exile or move from Kyiv to another city like Lviv, while the patriotic population would continue the resistance within occupied territories. This scenario would severely complicate Ukraine's accession to the EU in both legal, economic and political terms. In practice, it would imply so-called "demilitarisation" or even the "denazification" of Ukraine by the Russian Federation.[29] In the former case it means not only reducing the defence capacity of Ukraine but also formal acceptance of the policy of neutrality and revocation of any objective to join defence unions like

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[27] Ibid., Preamble. See also Articles 85(5), 102, 116(1).

[28] Ibid., Article 10.

[29] Russian Presidency, *Address by the President of the Russian Federation*, 24 February 2022, http://en.kremlin.ru/events/president/news/67843.

NATO. In the latter case the Russian Federation would pursue the policy of so-called "filtration" as already tested in the East of Ukraine and the establishment of so-called "Nuremberg type tribunal" over allegedly "war criminals" in Ukraine.

All these scenarios are of speculative nature and are obviously not definite, since the terms of any settlement must still be decided on the battlefield. For now, top Ukrainian officials have ruled out any prospect of a peace deal with the Russian Federation other than on the basis of the complete military defeat of Russia. Of course, the latter is the most desirable option for Ukrainians and for the international community even though it would cost more human lives and destruction in Ukraine. Unfortunately, chilling references by Russian officials to the possibility of using nuclear weapons against Ukraine imply that all options are still possible. The Russian Federation has embarked upon a strategy of an attrition war in the hope to wear down Ukraine's resistance and Western assistance and support due to the enormous loss of human lives and military resources. In any outcome, the options discussed above show that the objectives of the Ukraine-Russia settlement will have a considerable impact on the pace and nature of Ukraine's accession to the EU and will require commensurate engagement from the EU and its member state to make it possible.

4. The European Political Community and the accession of Ukraine to the EU

In parallel with the granting to Ukraine the status of candidate country, the EU has been searching for new forms of political cooperation to strengthen Ukraine's resilience and ensure mutual solidarity in time of intimidating security threats in Europe. Eventually such efforts resulted in the European Political Community (EPC) initiative proposed by French President Emmanuel Macron in May 2022 during France's presidency of the EU Council.[30] The French president outlined his vision of the EPC as a new political platform that would be "open to European States that share a common set of democratic values, whether or not they are members of the Union and regardless of the nature of their current relationship with the European Union" with the overall purpose to "strengthen the political, economic, cultural and security links between its members".[31] It may cover cooperation on "foreign and security policy issues, climate change and the supply of energy and other raw materials, food security, infrastructure development and interconnection, mobility, migration, the fight against organized crime, relations with other geopolitical actors". Overall, the EPC would "provide a forum for coordination, decision-making and cooperative projects to respond in a concrete way to the challenges facing all countries on the European Continent".

[30] French Presidency, *President Macron's Closing Speech at the Conference on the Future of Europe*, Strasbourg, 9 May 2022, https://franceintheus.org/spip.php?article10823.

[31] French Presidency, *Non-paper on European Political Community*, 17 June 2022, https://www.rijksoverheid.nl/documenten/publicaties/2022/06/17/non-paper-european-political-community.

The European Council supported the French initiative at its June 2022 summit.[32] The EPC initiative was perceived with a degree of suspicion by some third countries. Some candidate countries feared that the EPC could either undermine or even implicitly serve as an alternative to their ultimate EU membership bid like the European Neighbourhood Policy and Eastern Partnership did before. However, the French government importantly underlined that

> The European Political Community would not be an alternative to EU membership and would not be a substitute to the enlargement process. For European States wishing to join the European Union, it would, on the contrary, allow for the strengthening of links with EU Member States prior to accession.[33]

Against the background of these controversial anticipations, the kick-off EPC meeting took place on 6 October 2022 in Prague during the Czech presidency of the EU Council. This meeting can be hailed as successful for several straight-forward reasons. First, it exceeded expectations, even though there were not many expectations in the first place. Second, the meeting was attended by all countries for which the initiative had been conceived, namely EU member states, the UK, Turkey and countries of the Eastern Partnership.[34] The EU High Representative for Foreign Affairs and Security Policy, Josep Borrell, concluded in the aftermath of the kick-off meeting that the EPC may be seen as: 1) a community of shared principles through an alignment on principles that guarantee peace and stability on the continent; 2) a community of resilience to reduce the exposure and vulnerability of European countries to risks and threats of an increasingly hybrid nature; 3) a community of cooperation aimed at strengthening economic cooperation, interconnectedness and cross-border sectorial cooperation; 4) a community that adds value to existing institutions and formats since the EPC is complementary to the EU policies and other regional frameworks.[35]

What is the practical value of these optimistic conclusions? What the results of the first kick-off meeting of the EPC could mean for the accession of Ukraine to the EU?

1. The EPC kick-off meeting was attended by almost all countries of the European continent with heterogeneous European integration aspirations and with sometimes conflicting geopolitical interests and objectives. On the one hand, the heterogeneity of EPC membership may turn future meetings into a chaotic

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[32] European Council, *Conclusions*, 23-24 June 2022, cit.

[33] French Presidency, *Non-paper on European Political Community*, cit.

[34] Fortyfour countries of the European continent participated but not attended by Andorra, Monaco, San Marino and Vatican City and not invited Belarus, Russia and Kazakhstan.

[35] European External Action Service, *European Political Community: Speech on behalf of High Representative/Vice-President Josep Borrell at the EP Debate on the Outcome of the First Meeting*, 19 October 2022, https://www.eeas.europa.eu/node/421674.

political "bazaar". On the other hand, it may serve as a unique and valuable testing laboratory to elaborate and discuss current and future European crises and challenges like finishing the war in Ukraine and reducing dependence on Russia' gas and oil of the European countries. The Black Sea Grain Initiative, the arrangements between the UN and Russia and between the UN and Ukraine mediated by Turkey in summer 2022 to ensure safe passage of food shipments, is a good example of a deal that could have been developed and exercised under the EPC framework. Participation of Ukraine in further EPC initiatives could be a valuable tool to stimulate the "parallel" integration of Ukraine into selected pan-European projects while being engaged into the meticulous EU accession process.

2. The EPC could contribute to the eventual return of some European pariah states back to the "European concert". For instance, representatives of Russia and Belarus may be invited to participate in the forthcoming EPC meetings and activities. Surely, officials of the current Russian and Belarussian regimes cannot be welcomed to any of the EPC's meetings. However, representatives of the Russian and Belorussian internationally recognised opposition may be invited to attend the EPC's meetings to discuss possible formats of the EU policies with post-war Russia and Belarus. Whereas there is an internationally recognised opposition leader in Belarus, Svetlana Tsikhanovskaya, there is no such internationally recognised opposition leader(s) in the Russian Federation yet. The ongoing war in Ukraine should not hinder the important task of unifying and consolidating opposition movements in Russia and Belarus. Furthermore, people of these countries must be given a chance to know about possible alternatives to today's stalemate *status quo* in EU-Russia and EU-Belarus relations. Engagement of Russian and Belarussian opposition leaders in the activities of the EPC could considerably contribute to this course.

3. While the EPC can become a platform for peace talks between Ukraine and Russia in the future, for the time being it is impossible to envisage the participation of representatives of the current regimes in Russia and Belarus in Ukraine-Russia peace talks under the aegis of the EPC. It simply contradicts the idea of the EPC as a community of shared democratic values and principles. Nevertheless, the EPC participants jointly with the Russian (in case of emergence of internationally recognised opposition) and Belarussian opposition leaders may contribute to the elaboration of guiding principles of a potential Ukraine-Russia Peace deal, of course in close engagement with Ukraine. It is important to make public how the future peace deal may affect post-war Russia and Belarus. Transparent and consistent position of the EPC on this issue could counterbalance intrusive Russian propaganda and might send a clear signal of support of the change of the current regimes in these countries. It is important to send a strong message that post-war comeback of Russia and Belarus to Europe is possible.

The EPC contains several important advantages to be considered by Ukraine against the background of its accession process to the EU. A first advantage is the fact that the EPC platform hosts almost all countries of the European continent with

different policies and geopolitical preferences and, therefore, could bring a real chance to develop truly "pan-European" solutions to European crises like the war in Ukraine and energy security. The second advantage is that the EPC could serve as a transition platform for change agents (internationally recognised opposition) from ousted European states to ensure their gradual come back to the concert of European nations. Third advantage, the EPC's meetings and statements could offer pragmatic alternatives to the refined and somehow predicted EU foreign policy solutions and statements and, consequently, the EPC's statements may offer unorthodox solutions to European crises like the war in Ukraine.

Conclusions

The invasion of Ukraine by the Russian Federation on 24 February 2022 represents an unprecedented historical juncture for the EU. The Union faces the most serious security crisis since its foundation. The Russian Federation was the first military and political power that openly challenged the European security order and undermined the foundations of international law by disregarding the territorial sovereignty of Ukraine, repeatedly broke the UN Charter and openly opposed Western and European democratic values with self-developed notions of "sovereign democracy" and "traditional values". Ignorance of these blatant violation of international norms would run against the spirit of Article 21(1) TEU[36] and would irrevocably undermine the role of the EU as a global actor. In these critical circumstances Ukraine appeared to be ready and resolute not only to fight for its survival but also protect the ideological and political credibility of the EU on the battlefield. This unparalleled challenge pushed the EU to employ political, economic and security tools to stop Russia and to do everything politically plausible to restore the territorial integrity of Ukraine and, in the end, peace to the European continent.

The end of the War in Ukraine will inevitably be entrusted to a Russo-Ukrainian peace deal. There are several possible scenarios of the peace deal depending on the success on the battlefield in Ukraine. Some of the scenarios of the peace deal (draw on the battlefield and defeat of Ukraine) would imply a constitutional reform in Ukraine. The scope of constitutional reforms may vary from the transformation of Ukraine into a federal state and single official language policy to the acceptance of neutrality in foreign policy and complete demilitarisation. The degree of the constitutional reform and potential limitation of the national sovereignty directly depends on the performance of the Ukrainian Army on the battlefield and the sustainability of Western support.

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[36] It says that "The Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law".

Today's geopolitical turbulences require fundamental change in several traditional EU domestic and external policies, including primarily the EU enlargement process which Ukraine's struggle brought back to the top of the EU agenda. In the 1990s and early 2000s, EU enlargement was a potent framework to trigger wide-scale Europeanisation of ex-communist countries from Central and Eastern Europe, including the former Soviet republics in the Baltic. In 2022, EU accession is being applied to boost the war effort of a pro-European post-Soviet country and enhance the potency of European common values when they are defended on the battlefield. It remains to be seen how the apparent tectonic shift in the EU approach, from a mostly "technocratic" accession exercise to a value-based "accession through war", will play out in the longer term.

Updated 2 May 2023

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