

# Ukraine's Uncertain Path to the EU

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# Ukraine's Uncertain Path to the EU

Solidarity with Ukraine in surviving a war of aggression must be accompanied by realism about the country's ability to draw closer to EU membership. The sustainability of the accession process depends on straightforwardness about the hurdles posed by the Russian aggression and the domestic reform inertia.

By Henrik Larsen

The EU in June 2022 granted Ukraine status of candidate for membership in a strong gesture of solidarity after the country fell victim to Russian aggression. However, the accession process faces two fundamental challenges. The first relates to security and the obvious fact that Russia seeks to conquer Ukrainian territory and subdue the country. This puts the EU's economic-regulatory competence and identity at odds with the reality of a neighboring adversary using military force to change the established borders. The second relates to domestic politics and the fact that Ukraine to date has not demonstrated a reform record suggesting it would realistically be able to meet the criteria for EU membership. If that were to become the case, Ukraine would have to demonstrate fundamental domestic change. The EU and Ukraine cannot develop their relationship without considerations about how to go about these two challenges, which are inter-related in the sense that ongoing war hinders the effectuation of domestic reform.

## Status of Ukraine-EU relations

By granting the candidate status, the EU has given Ukraine the membership perspective the country longed for more than a decade. Ukraine's first major repercussion over its geopolitical orientation occurred with the so-called Orange Revolution in 2004 and 2005, after which the country



German Chancellor Olaf Scholz, Ukrainian Prime Minister Denys Shmyhal and EU Commission President Ursula von der Leyen in Berlin, October 25, 2022. *Michele Tantussi / Reuters*

elected a pro-European government rather than a government preferring to remain aligned with Russia within the post-Soviet structures. However, the pro-European leadership failed to deliver on their promises of reform, leading to the election of President Viktor Yanukovich in 2010.

It was, in turn, the question of Ukraine's geopolitical belonging that forced Yanu-

kovich to flee his country. Presumably under Russian pressure, Yanukovich refused to sign the Association Agreement with the EU in 2013, leading to the so-called Euromaidan Revolution and the coming to power of a new pro-European government under the leadership of President Petro Poroshenko in 2014. Russia annexed Crimea and instigated armed separatism in the Donbas in response. Ukraine finally con-

cluded an Association Agreement with the EU, by which it agreed to adopt and implement a big part of the EU legislation (*acquis*) primarily related to trade and economic affairs. Although Ukraine did not have a membership prospect, the gradual approximation of the EU *acquis* would pave the way for its integration into the EU's internal market.

The fact that Ukraine has officially become a candidate for membership calls on it to adopt and implement all the EU *acquis*, including the political provisions that go beyond the trade and economy-related areas. In recommending that Ukraine be granted the candidate status, the European Commission issued an opinion about Ukraine's capacity to fulfill the EU's membership criteria, known as the Copenhagen Criteria, which the Council endorsed end of June 2022. However, it remains to be noted that the EU members granted the candidate status out of solidarity with Ukraine after Russia's aggression, which otherwise probably would have remained an associate country.

The EU in 2022 also extended membership prospects to neighboring Moldova and Georgia. While the EU granted Moldova the candidate status like it did to Ukraine, it postponed the consideration of Georgia's application due to its outstanding problems with the state of democracy. By holding out the prospect of membership to the three countries with territory disputed or territo-

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ry annexed by Russia, the EU is assuming a security responsibility that is different from its previous trade-focused commitments, of which Ukraine is obviously at the forefront.

### Territorial Integrity and Defense

Ukraine's war with Russia may last years since both sides have set themselves maximalist goals. Russia has partially mobilized, annexed further territory and is causing worry with its nuclear bluster. The Western countries are discussing the extent to which they should increase their supply of weapons to Ukraine, including through common EU funding, to allow it to liberate its own territory. Russia failed in its attempt to capture Kyiv at the beginning of the war, but it is too soon to say how much of Ukraine will be destroyed and what form

the Ukrainian state will take after the cessation of the armed hostilities. EU enlargement hits the power-political reality of an aggressor state seeking to maintain and expand control over territory that is supposed to enter the union.

Russian President Vladimir Putin amidst the war declared that Russia could accept Ukraine's membership of the EU since it is not a military alliance comparable to NATO. Even if one were to trust this statement, Finland and Sweden show that it is hard or impossible to refuse NATO membership to countries that are already EU members (see [CSS Analysis no.310](#)). The prospective Ukrainian membership gives the EU trouble in the sense that it has a mutual defense clause, which obliges members to assist one another "by all means in their power" against external aggression. The EU and individual member states have provided Ukraine with financial and military aid to withstand Russia's aggression but accepting it as a member would seem to require them to further strengthen their role in the defense of Ukraine. Both NATO and EU countries have been averse to exactly this both before and during the war since that could lead them up an escalation ladder against a nuclear power that believes it has vital interests at stake in Ukraine.

Apart from the question of defense assistance to Ukraine comes the likelihood that Russia will keep parts of Ukrainian territory under occupation, where EU law ostensibly would be unenforceable. The EU has not publicly debated how it is supposed to go about this, although there are some relevant historical precedents. Cyprus was admitted to the EU in 2004 despite a disputed statehood with a separatist northern republic supported by Turkey. Should the EU open accession negotiations with Ukraine, it would need to consider the problem of territorial integrity as part of the country's realistic accession prospect.

Despite its human and economic costs, the war is a transformative experience that may affect Ukraine's domestic politics in a positive direction. Ukraine today is an almost entirely pro-European country, as opposed to the situation after 2014 when a significant minority remained supportive of or agnostic about Russia. On the other hand, helping Ukraine to survive a war of aggression is different from making the country adopt and implement the domestic reforms that could bring it closer to EU membership. Rather,

### Further reading

European Court of Auditors, "**Reducing Grand Corruption in Ukraine**", September 2021.

Michael Emerson et al., "**Deepening EU-Ukrainian Relations, 3rd edition**", *Center for European Policy Studies (CEPS)*, 2021.

Henrik Larsen, "**Dilemmas of Aiding Ukraine**", *Survival: Global Politics and Strategy*, Vol. 63 (1) (2021).

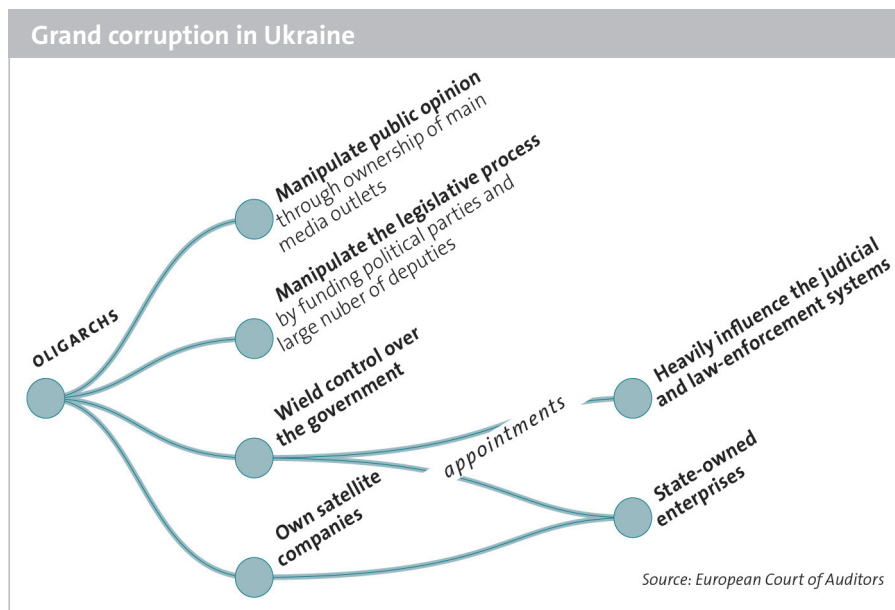
Andrew Radin, "**Institution Building in Weak States: The Primacy of Local Politics**", Georgetown University Press (2020).

the best point of departure for such an assessment is to consider Ukraine's history of pro-European reform since 2014, when the country experienced a similar external shock, albeit at a smaller scale than today.

### Membership Criteria

Ukraine's progress toward membership is best measured along the before-mentioned three Copenhagen criteria, which were laid down at the beginning of the 1990s as the EU prepared to enlarge eastward. The first (political) criterion describes whether Ukraine has the institutions to preserve democratic governance and human rights. The European Commission notes Ukraine's shortcomings on the rule of law, notably external interference with the courts at all levels as well as in the anticorruption institutions. It is also noteworthy that oligarchs exercise disproportionate influence in Ukraine's media landscape, while the country lags behind in some areas related to human rights.

The second (economic) criterion related to whether Ukraine has a functioning market economy and the ability to absorb the competition within the EU. The Commission notes several deficiencies in this regard: a big shadow economy, the absence of anti-monopoly policy and widespread corruption that deters investors and slows economic growth. Ukraine improved its banking sector, but continues to suffer from underperforming and predominant state-owned enterprises. The third (general) criterion describes Ukraine's ability to assume the obligations of the EU *acquis*, for which the country's approximation with the Association Agreement is the best indicator. The Commission commended Ukraine's legislative progress since 2014 but identified deficiencies within six main areas of reform, including transportation, employment, social policy as well as rural development.



Ukraine’s fulfillment toward the Copenhagen criteria provides an excellent snapshot, but falls short of identifying the political obstacles that have hindered the country to achieve a fundamental break with the past. Generally speaking, Ukraine progressed on the EU’s technical requirements but dragged its feet when it came to the rule of law, which is core to the functioning of a democratic state and because court and law-enforcement agencies easily become targets for external financial or political influence. Ukraine’s integration into the EU depends on its ability to overcome the resistance to reform of the fundamental levels of state power.

**Ukraine’s domestic politics**

The EU’s experience under President Poroshenko (from 2014 until 2019) and President Zelensky (from 2019) tells that Ukraine in the first half of their terms has momentum for reform, which then seems to stumble on the reassertion of vested interests against change. Ukraine does not have a European-style party system based on socio-economic interests and values, but predominantly leadership-based parties without clear political goals. Susceptible to external financial interests, the elected representatives often undermine reform they have officially committed to *vis-à-vis* the EU and their own electorates. The membership carrot alone is insufficient ground to believe that Ukraine can overcome the structural impediments to a system where the law and not the financially or politically stronger rule.

Ukraine’s integration into the EU depends on straightforwardness about the root problems that can explain why successive governments failed to establish the rule of law and a reasonably competitive economic environment. An authoritative report published in 2021 by the European Court of Auditors, the EU institution tasked with evaluating the spending of taxpayers’ money through the EU budgets, highlights the problem of “grand corruption” in Ukraine. Grand corruption essentially describes oligarch’s unhealthy and informal links to the media, the political parties, and the government, which, in turn, give them influence over the law-enforcement agencies, the courts, and the state-owned enterprises (see graphic). According to the report by the European Court of Auditors, the use of high-level power and state capture by the few hinders competition and economic growth, harms the democratic process, and helps to maintain a norm that justifies petty corruption in society.

The European Court of Auditors seem to be pointing to one, if not *the*, essential element of why Ukraine has been unable to promote the rule of law and economic competition. Ukraine under the pressure of the EU, the International Monetary Fund (IMF) and the US established specialized anti-corruption institutions and initiated various anti-corruption policies through the state agencies after 2014. However, their efforts were constantly at risk of being under-

mined by the courts, other agencies, or by legislative proposals in the parliament aimed at reducing their independence. Public trust in the judiciary and law-enforcement agencies remains at a very low level. Ukraine may continue to experience progress on the technical aspects of the EU *acquis*, but is likely to remain stuck in political and economic monopolies if the problem of grand corruption is left unaddressed.

The concrete steps that Ukraine needs to undertake may seem obvious, but deserve mention nonetheless. To dismantle the monopolies under oligarchic control, Ukraine needs to empower its relevant institutions and implement the privatization and corporate governance of the state-owned enterprises. To demonstrate a real risk to stealing from the state coffers, Ukraine needs to develop a track-record of high-level anticorruption cases with the existing institutions in place. To demonstrate that the law will be equally applied at the lower levels, Ukraine needs to increase the independence of its law-enforcement agencies and of decisions about disciplinary action against judges. To break the oligarch-influenced media landscape, Ukraine also needs to allocate funding to public broadcasters.

**External Conditionality**

The resistance to path-breaking reform is mostly found at the level of the political elite, whereas the Ukrainian electorate and its civil society broadly support them. When armed hostilities end, they can be expected to give a boost to the pro-reform-

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ist forces that see the move toward the EU as an existential question. However, this momentum will have to be capitalized upon by showing results to the electorate and the business community and ultimately reflect in increased public trust and economic growth. This is a domestic process that will mostly be up to the Ukrainians themselves. Part of the responsibility lies with Ukraine’s international sponsors that hold the structural incentive to make the elites abide to the reforms they have officially committed to. They must prepare to combat elite resistance and join forces with the segments of Ukrainian society wishing to reduce grand corruption or any other type of systemic resistance to change.

The EU and other Western donors with an interest in a successful renewed reform momentum may wish to draw lessons learned by revisiting what worked and what did not work in the past as they design conditionality going forward. In 2014-15, the Western sponsors were uncompromising on reform of the shaky banking sectors and gas sector reform (which they deemed crucial to macro-financial stability) but less adamant on the rule of law and privatization. Conditionality worked in the former, but less so in the latter case. The fact that elites comply when they believe macro-financial assistance is at risk is telling. The EU and other Western donors give well-meaning financial and technical support, but are unlikely to bring about change toward membership criteria fulfillment without binding it into the local political context.

Ukraine's international sponsors have a clear geopolitical interest in Ukraine keeping itself financially afloat, which limits the extent to which they can credibly withhold funding in case of non-compliance. However, there is a way around this problem, whereby the macro-financial assistance is divided into two. One category of Western funds can be devoted to reconstruction not necessarily with conditionality attached

other than making sure that the money is spent as intended. Not to perpetuate the oligarchic system, aid for reconstruction must also be subject to the appropriate bidding procedures. Another category of funds can be devoted to macro-financial assistance and capacity-building with condi-

## The resistance to path-breaking reform is mostly found at the level of the political elite.

tionality attached to reform progress. Political elites in a country at war are responsive not only to the threats of withholding financial support for the sake of balancing the state budget. They are also responsive to public criticism by the EU from deviating from the Copenhagen criteria because their voters are overwhelmingly pro-European as a matter of existential concern.

From a comparative perspective, it should be remembered that it took candidate countries such as Poland and the Baltic States around ten years to accede the EU. Although Ukraine perhaps cannot be expected to deliver so fast, the big challenge is to avoid ending up with another candidate country stuck in transition, such as North

Macedonia and Albania, or experiencing democratic setbacks, such as Serbia and Turkey, which may result in them never joining the EU. An accession process that takes a generation or more is not credible, since it contributes to broken illusions in Ukraine about becoming a full member of the EU family. In Brussels and among the EU member states, conversely, the rule of law setbacks in Hungary and Poland, as well as the persistent problems with corruption in Romania and Bulgaria, have consolidated the belief that candidate countries must demonstrate solid reform before they can be allowed to enter the union. The EU granted candidate status out of solidarity, but Ukraine cannot expect a fast-track accession process.

For more on perspectives on Euro-Atlantic security, see [CSS core theme page](#).

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