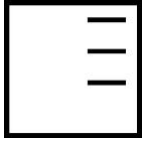


EU Monitor

The European Union's
Position Toward Ukraine's
EU Membership

Jakub Ferenčík



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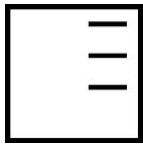
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Abstract

In order to discuss Ukraine’s potential membership in the European Union, we have to take a number of factors into consideration. It may be true that the majority of both EU and Ukrainian citizens are overwhelmingly in support of membership, but that does not mean that Ukraine's path toward membership will be straightforward or easy. In fact, we have good reason to think that Ukraine's inclusion in the EU is years away, despite their heroic efforts and our mutual desire for their membership. In this post, Jakub Ferencik discusses some of these factors, from committing to the EU values of “human dignity, freedom, equality,” to establishing an area of “prosperity and neighbourliness.” Ferencik also looks at the process of transitioning to an EU Member State and compares it with the similar process some other states, particularly Serbia, face. Finally, he touches on three key issues that will make EU membership challenging, particularly (1) Ukraine's economic conditions (2) Ukraine’s problem with corruption, and (3) the binding Defense Clause that requires Member States to do everything in their power to defend EU states.



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Monitor

Following the full-scale invasion of Ukraine on February 24 2022, both the European Union and Ukraine have shown strong support for the eventual Ukrainian membership in the EU. Despite our hopes for Ukraine, however, there are good reasons to believe that Ukrainian membership is years away. When taking into account the corruption in the judiciary, restrictions toward the media, and a host of other criteria, Ukraine falls short of the EU's institutional requirements and, arguably, values outside of the admirable wartime valor displayed in abundance by the Ukrainian people.

There are two reasons Ukrainian hope for membership has changed: the near unilateral support from EU Member States (26 out of 27 majority in support) and overwhelming Ukrainian support for EU membership (at least 86%).¹ Europe was not always as ardently supportive of Ukrainian membership. Even in light of the turbulent events in Maidan and the Russian illegal annexation of Crimea, only a slight majority of Europeans were in favor of Ukrainian accession into the EU. According to a German Marshall Fund poll, conducted in June 2014 and released on September 10 2014, only 52% of Europeans were in favor of Ukraine joining the EU. The most support was seen from Poland (69%), Spain (62%), and Italy (58%). At that point, both Germany (63% against) and France (52%) were opposed to the resolution.² The two nations continuously blocked any hopes of Ukraine's membership. A similar change in mind can be

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https://ratinggroup.ua/research/ukraine/obschenacionalnyy_opros_ukraina_v_usloviyah_voyny_1_marta_2022.html

² <https://euobserver.com/world/125559>

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seen from Ukraine. In 2014, only about 54% of Ukrainians were in support of EU membership.³ Today, that number is closer to 91% (as of May 2022).⁴

In the EU, the majority agree with EU accession, with the exception of Hungary (47%).⁵ Since the full-scale invasion of Ukraine, 66% agree with the claim that “Ukraine should join the EU when it is ready.”⁶ Correspondingly, a strong majority of EU citizens agree that Ukraine is a part of the European family (71%) and about nine in ten respondents (89%) feel sympathy toward Ukrainians.⁷ This data includes EU citizens aged 15 and above in all 27 Member States of the EU. In total, from 13 April and 20 April 2022, 26 066 interviews were conducted.⁸

To be in support of membership does not mean that this process will be easy or straightforward. The average time it takes from accession talks to full membership is approximately five years.⁹ Notably, the average does not indicate how long it might take for Ukraine to join the EU since Ukraine is subject to entirely different conditions. Austria, Sweden, and Finland managed to complete it in under two years.¹⁰ But countries that face more severe and systemic corruption

³ <https://euromaidanpress.com/2014/10/22/ukrainians-public-opinions-pro-europe-skeptical-of-moscow/>

⁴ <https://www.reuters.com/world/europe/record-number-ukrainians-support-joining-eu-backing-nato-membership-falls-poll-2022-04-05/>

⁵ <https://europa.eu/eurobarometer/surveys/detail/2772>

⁶ <https://europa.eu/eurobarometer/surveys/detail/2772>

⁷ <https://europa.eu/eurobarometer/surveys/detail/2772>

⁸ <https://europa.eu/eurobarometer/surveys/detail/2772>

⁹ <https://ukandeu.ac.uk/explainers/how-new-member-states-join-the-eu-all-you-need-to-know/>

¹⁰ <https://www.euronews.com/my-europe/2022/03/01/ukraine-is-pushing-for-eu-membership-but-what-are-the-real-chances>





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spend a much longer time negotiating membership. That process would be made easier with the EU fast-tracking its accession, but it is not clear as to what that would look like, nor if it would be in the EU's interest. It would also set an unwanted precedent to the Western Balkans. A speedy process would then further undermine the EU's much-needed stability, which has been cast into doubt from Brexit, but even from other separatist movements that arose because of the United Kingdom's withdrawal from the EU.¹¹ If the EU wants to prevent more divisions within the EU, it will have to take the potential of Ukrainian membership seriously and soberly assess the problems within Ukraine.

In order to become an EU member state, Ukraine must meet the strict terms of the Copenhagen criteria. There are a number of other factors that Ukraine must comply with, which they have thus far been open to. For one, affiliate Member States must respect the values the EU is founded on, as outlined in Article 2, which include "human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities."¹² Leading up to 2022, Ukraine has had its fair share of difficulty with upholding these values. Racism and gender inequality permeate Ukrainian society, as reported by the Human Rights Watch.¹³ According to a Kuras Institute of Political and Ethnic Studies 2010

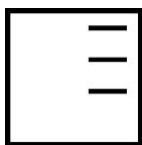
¹¹ These include Dexit (Deutschland Exit), Italexit (Italy Exit), Frexit (France Exit), Nexit (Netherland Exit), Posexit (Poland Exit), Swexit (Sweden Exit), and Fixit (Finland Exit).

¹² https://eur-lex.europa.eu/eli/treaty/teu_2012/art_2/oj

¹³

<https://web.archive.org/web/20160816022350/https://www.hrw.org/legacy/english/docs/2006/01/18/ukrain12219.htm>





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report, 70% of Ukrainians feel “tense” toward ethnic minorities in Ukraine.¹⁴ That polling can be coupled with the entrenched discrimination Ukraine’s Romani population face from the government and society alike. The economic dichotomy between the Romani people and the rest of Ukraine should be addressed, but that problem is not unique to Ukraine. Similar economic inequalities exist elsewhere in Europe. Ukraine in particular will have to amend what the European Commission against Racism and Intolerance (ECRI) calls the institutionalized ignoring of “marginalisation and discrimination” faced by the Roma from the government.¹⁵

They must also comply with the EU’s position on international affairs (Article 21)¹⁶ and develop a special relationship with neighboring countries, establishing “an area of prosperity and good neighbourliness” (Article 8).¹⁷ Clearly, establishing peaceful and “neighborly” relations with Russia in the coming years, maybe decades, may understandably and rightfully prove difficult if not impossible, especially when talks of reparations and holding Putin accountable begin. This point will be discussed at more length below. Nonetheless, extraneous circumstances might call for exemptions to some of the previously-arranged agreements of EU accession. But currently, there is little reason to assume this point.

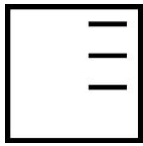
¹⁴ <https://www.kyivpost.com/article/content/ukraine-politics/racial-profiling-still-a-problem-in-ukraine-75582.html>

¹⁵ <https://web.archive.org/web/20180131024204/https://www.coe.int/t/dghl/monitoring/ecri/Country-by-country/Ukraine/UKR-CbC-IV-2012-006-ENG.pdf>

¹⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:12008M021&from=EN>

¹⁷ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12016M008>





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What Might This Transition Look Like?

Ukraine has already taken some steps to conform to EU laws in the form of changing its constitution and legislative framework. According to the Ukrainian Prime Minister Denis Shmygal, its Association Agreement is implemented by 63%.¹⁸ Work toward membership was already done prior to Russia's full-scale invasion of Ukraine, with 60% completed in 2021 and 54% in 2020. "A total of 15% increase over the past two years," Shmygal said.¹⁹ Last year alone, the Cabinet of Ministers approved 61 European integration documents and the Verkhovna Rada passed another 37 bills, in accordance with the Association Agreement.²⁰ The Prime Minister further claimed that their plan in 2022 is to submit 92 legal acts for European integration.²¹ This process may either be accelerated or halted by the progression of the war in Ukraine.

A "special track" for Ukrainian integration was not agreed upon at the EU summit of Heads of State of Government held on Thursday 10 March and Friday 11 March 2022, at the Palace of Versailles, Paris. Nonetheless, Ukraine hopes to be given candidate status by June, which can start the process for full accession talks and the associated reform tracks. If Ukraine will be in compliance with EU laws by June, negotiation talks will start.

¹⁸ <https://www.ukrinform.ua/rubric-polytics/3392395-ukraina-na-63-vikonala-ugodu-pro-asociaciu-z-es-smigal.html>

¹⁹ <https://www.ukrinform.ua/rubric-polytics/3392395-ukraina-na-63-vikonala-ugodu-pro-asociaciu-z-es-smigal.html>

²⁰ *ibid.*

²¹ *Ibid.*





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Despite these talks and illusions of fast-tracking, Ukrainian membership might take anywhere from two to ten years to complete, according to optimistic estimates, which will be discussed below. That is not to say that the European Commission will not do things out of the ordinary in order to speed up the process. The President of the European Commission, Ursula Von der Leyen, for example, promised that after the Questionnaire of the European Commission was delivered back to them, it would only take “I think a matter of weeks” before the Commission resolves if Ukraine’s membership will continue.²² As of writing, Ukraine has already submitted the second part of the Questionnaire, which typically include a few thousand questions on agriculture, education, public procurement, and other policy concerns. After the Questionnaire is completed and the Commission makes a decision on its quality concerning Ukrainian membership, Ukraine will be an official candidate for membership, allowing for the process of negotiations. Negotiations can take a number of years depending on the “speed of reform and alignment with EU laws.”²³ It is the European Commission’s responsibility to voice this difficult accession process to Ukrainians since the task of EU membership is challenging even if the best scenarios.

This process will depend on some of the concerns EU Member States have had with Ukraine in the past. We should remember that Ukrainian accession requires the unilateral consent of all 27 Member States, the European Commission, and the European Parliament. Previous repeated blocking from Bulgaria prevented North Macedonia and Albania accession, for example. Likewise, Turkey and Serbia have also been in a membership stalemate that has no end in sight.

²² https://www.reuters.com/world/europe/eu-chief-promises-speeded-up-process-ukraine-seek-membership-2022-04-08/?utm_source=pocket_mylist

²³ https://ec.europa.eu/neighbourhood-enlargement/enlargement-policy/steps-towards-joining_en





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The most recent member state of the EU, Croatia, had an arduous 10 year path to EU membership. So, from recent experience there are no good indications to expect that the process to membership will be swift.

Serbia in particular, a country that has also faced threats from Russia, has been stuck in accession talks since 2014. Looking at the annual progress reports of the European Commission for Serbia, we can intuit how slow the process toward EU membership can be. From when the European Council granted Serbia candidate status in 2012 to when accession negotiations began in January 2014, Serbia only provisionally closed two chapters of the 35 given. As of 2021, 18 remain open. The continued pace of these negotiations depend on reforms to the rule of law and on Serbia's relations to Kosovo.²⁴ In a similar vein, we might expect the pace of Ukrainian membership, if given candidate status in June, depend on reforms to the rule of law, particularly the executive and judiciary branches, and on relations with the very neighbours who have violated Ukraine's sovereignty and integrity. The requirement for good neighborly relations and regional cooperation have repeatedly undermined Serbia's progression, with the annual report citing tensions in Montenegro needing improvement in 2021.²⁵ Similar attempts at improvement were discussed with Albania and Bosnia and Herzegovina in previous reports.²⁶ Understandable increased russophobia in Ukraine will undoubtedly make it difficult to create

²⁴

https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia_report_2021.pdf

²⁵

https://www.mei.gov.rs/upload/documents/eu_dokumenta/godisnji_izvestaji_ek_o_napretku/serbia_report_2021.pdf

²⁶ https://ec.europa.eu/neighbourhood-enlargement/system/files/2020-10/serbia_report_2020.pdf

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fruitful conditions for neighborly relations. Whether the EU will downplay the importance of this aspect given the current war remains uncertain, but it merits consideration due to the severity and egregiousness of Russia's transgressions against Ukraine.

When it comes to issues that EU Member States may choose to veto, three key concerns come to mind: (1) Ukraine's economic conditions both prior to Russia's full-scale invasion and after, (2) Ukraine's problem with corruption in various key sectors, which make it presently unfit to attain membership status, and (3) the binding Defense Clause that requires Member States to do everything in their power to defend EU states. Each will be discussed below.

Three Key Issues Ukraine Must Resolve

Firstly, we have to take into account the economy of Ukraine prior to the full-scale invasion and the grievous impact Russian bombing and shelling has caused in recent months. Prior to February 24, Ukraine's GDP per capita rivaled that of Egypt and Indonesia, placing it 37th in Europe, about half of Kazakhstan's GDP per capita.²⁷ And with the war, estimates by the Kyiv School of Economics (KSE), which are supported by the Ukrainian government's estimates, suggest that the economic damages in Ukraine have surpassed \$92bn. According to a report by the International Monetary Fund (IMF), published on March 10 2022, Ukraine can see a recession of up to 25% or 35% of its annual GDP.²⁸ With more than 33.7 million sq. meters of residential buildings shelled or damaged, more than 23,000km of roads destroyed, and more than 90,000 automobile vehicles rendered inoperable, Ukraine, along with the international

²⁷ <https://www.worldeconomics.com/Wealth/Ukraine.aspx>

²⁸ <https://www.imf.org/en/Publications/CR/Issues/2022/03/10/Ukraine-Request-for-Purchase-under-the-Rapid-Financing-Instrument-and-Cancellation-of-Stand-514148>





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community, will have a lot to do to return its infrastructure to business-as-usual conditions. These conditions were already not in line with the EU standard and would require a lot of financing to bring up to speed. Nonetheless, the entire project of EU membership for Ukraine is predicated on achieving sovereignty and taking a firm stance toward the Crimean annexation. Ukrainian membership therefore is a decidedly post-war endeavor specifically because of the territorial impositions Putin has made on Ukrainian soil.

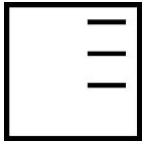
It should be said that despite being the poorest country in Europe per capita, the Ukrainian economy is already integrated with the EU. Ukraine's large population and skilled workforce would also mean more opportunity for the EU, which works in its favor.²⁹ Nonetheless, with a looming global food crisis, rising inflation, and the financial impacts of COVID-19, EU politicians might be slow to prioritize assistance in Ukraine over domestic concerns when many of their voters already experience heightened anxiety toward a worsening economy.

Secondly, Ukraine has historically had a systemic and widespread problem with corruption, which might be its largest hindrance toward EU membership. The suppression of the media, police torture and abuse, discrimination against women, and other human rights abuses are problems the Ukraine public deal with regularly. Ukraine has correctly been called a "kleptocracy" under former Ukrainian President Leonid Kuchma (in office from 1994 to 2005) and Viktor Yushchenko (2005 to 2010).³⁰ Perhaps some of the most severe corruption could be seen from President Viktor Yanukovich (2010-2014) who is estimated to have paid \$2 billion

²⁹ And the EU will have some moral responsibility to repair damaged areas in Ukraine despite its potential inclusion in the EU.

³⁰ <https://www.kyivpost.com/article/content/ukraine-politics/clearer-picture-112083.html>





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in bribes whilst President, approximating \$1.4 million a day.³¹ The Freedom House has therefore classified Ukraine only as “partly free.”³² The *Economist*’s Democracy Index, named it a “hybrid regime.”³³ In 2012, *Ernst & Young* placed Ukraine, alongside Brazil and Colombia, as among the three most corrupt nations of the 43 surveyed.³⁴ *Transparency International*’s 2021 Corruption Perception Index positioned Ukraine 122nd of 180 countries.³⁵ In Europe, Ukraine lags only behind Russia. Ukraine’s poorly-functioning justice system, ubiquitous presence of bribes both in politics and civil society, and influential corrupt elites have for decades dampened some of the economic and democratic progress Ukraine hopes for in order to make accession quick.

When it comes to Ukraine’s judicial system, observers rightly claim that it is severely undermined by the executive branch’s repeated acts of nepotism and favoritism.³⁶ This is not a secret from the Ukrainian public. Three out of every five Ukrainians assume that their judges are corrupt.³⁷ Judicial unreliability, influenced in large part by poor enforcement and

³¹ <https://www.telegraph.co.uk/news/2016/05/31/ukraines-fallen-leader-viktor-yanukovych-paid-bribes-of-2-billio/>

³² <https://freedomhouse.org/countries/freedom-world/scores>

³³ <https://www.eiu.com/n/campaigns/democracy-index-2020/>

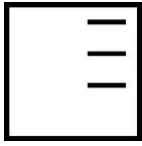
³⁴ <https://www.anti-corruption.com/2572866/ernst-and-young-s-2012-global-fraud-survey-highlights-significant-challenges-in-dealing-with-corruption-and-bribery-risks.shtml>

³⁵ <https://www.transparency.org/en/cpi/2021/index/ukr>

³⁶ <https://www.ganintegrity.com/portal/country-profiles/ukraine/>

³⁷ <https://www.transparency.org/en/gcb>





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accountability mechanisms, systemically undermine Ukraine's key institutions.³⁸ These will have to change fundamentally.

Some effort has already gone into reform, but whether they are adequate remains to be seen. In mid-2016, reforms to the judiciary included an entirely new provision of the Supreme Court, judicial independence from the government by the appointment of judges via an autonomous judicial council, and even by simplifying court procedures.³⁹ The autonomous High Council of Justice (Verkhovna Rada), established by Poroshenko in 2017, took over appointing judges. Other organizations including the National Anti-Corruption Bureau (NABU), National Agency for the Prevention of Corruption (NAPC), and the High Qualification Commission of Judges (HQCJ) were all formed after the Revolution of Dignity in Ukraine in 2014 and aim to tackle the severity of corruption.

The third key problem for Ukrainian accession is that the EU's Mutual Defense Clause obliges EU Member States to "aid and assist it by all the means in their power."⁴⁰ With a war still waging, creating contested borders and large numbers of foreign troops on Ukrainian soil, Ukraine would have to first regain its sovereignty and take a position to previously annexed territory and any future annexed territory. As briefly mentioned above, it would therefore also have to resolve the illegal annexation of Crimea in 2014. If Russia annexes further territory, which it could in the coming weeks or months, then more territory would have to first be regained or given up in order to appease baseline EU conditions for membership. Member

³⁸ https://pdf.usaid.gov/pdf_docs/PNADK247.pdf

³⁹ https://www.eeas.europa.eu/sites/default/files/ukraine_v2_0.pdf

⁴⁰ https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:mutual_defence





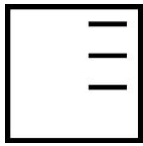
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States like Hungary, who have aligned with Russia in the past, may choose to block a speedy accession, especially because of these binding clauses on defense. The EU has been adamant on not militarily intervening in Ukraine in order to not escalate Russian aggression. And the EU's Defense Clause may be used by Russia to justify further expansion into Ukraine. In fact, in the words of Russia's deputy ambassador to the United Nations, Dmitry Polyanskiy, the Kremlin does not see any "big difference" between Ukraine's membership in NATO and the EU.⁴¹ This is likely because of the EU's defense policies.

There are other issues the EU would have to consider at length which may be disputed by Member States. One other problem that comes to mind is how the EU would solve the number of representatives Ukraine can claim and what representative force might Ukraine have with its 41 million inhabitants (43 million, if we include the population of Crimea). Their large population might sway some of the political influence of Eastern Europe, which small EU Member States might find problematic. In the end, Western and Eastern Europe have in recent years had conflicting interests.

⁴¹ <https://www.newsweek.com/russia-warns-ukraine-eu-nato-membership-1706302>





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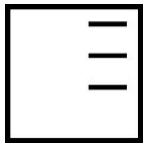
Summary

Clearly, there are a lot of factors to consider. The European Council is set to meet on June 23-24 and will release an opinion on the membership of Ukraine and likely grant it candidate status. Then it will be up to the negotiation process to resolve how swift accession will be. As discussed above, there are a few reasons the negotiation process might take longer than we want in light of Russia's unprecedented aggression toward Ukraine. Nonetheless, issues like corruption and defense will have to be discussed at length in order to not further destabilize what was an already weakened EU, prior to Russia's unifying effect on its Western neighbors. For the EU, it is also a time of reckoning with regard to what weight will be attributed to Ukraine's valiant defense against Russia, who by now have proved, beyond any shade of doubt, anathema to European values. In the end, the defense against that may prove a remedial factor to other legitimate institutional shortcomings.

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