How Ukraine Should Join the European Union

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The European Union is ill prepared for the new world of geopolitical competition. It faces grave external threats, some from unexpected quarters, and struggles to be united in its response. Eurosceptic and nationalist forces continue to obstruct the EU's internal reform. But there are external challenges, principally Ukraine, that will not disappear by the charm of inaction. If a sovereign Ukraine is to be salvaged, it must be admitted to EU membership, and quickly. Ukraine's accession will not be accomplished in the normal way, in accordance with the EU's conventional plodding accession process.

The logjam around enlargement must be broken for the sake of peace. The Ukrainian crisis will trigger a reappraisal of the EU's overall enlargement strategy as well as a reform of its decision-making processes.

The Copenhagen criteria

Any European state that wishes to apply to join the Union may do so. Motivation behind the different rounds of enlargement of the Union (now numbering seven successful) has varied over time and place. But the basic assumption has been that the Union does well to share its security and prosperity with its neighbours.

Achieving enlargement in practice, however, is complicated. Any incoming state, especially a large one, alters the balance of power among the existing membership; it installs new frontiers and alters the Union's international profile; it stimulates internal competition and swells the EU budget; it may revive historic and ethnic tensions; it poses challenges to the internal workings of the Brussels institutions and raises some awkward questions about constitutional reform. Enlargement, clearly, is not to be undertaken lightly. The Union's decisions about its future size and shape are inevitably affected by its own "absorption capacity".

By the time the Berlin Wall fell, the Union had doubled its membership from the original six. But the prospect of a new round of applications from central and eastern Europe caused EU leaders to tighten requirements. Ostensibly, the Copenhagen criteria were intended to ease the path of candidates. Yet they have been a double-edged sword, able to be used by current member states to repel unwelcome boarders or to delay the admittance of candidates deemed unready.

The criteria insist on the stability of national institutions guaranteeing democracy, the rule of law, and human rights, including the respect for and protection of minorities. They demand of the candidate a functioning market economy and the ability to cope with competitive pressures and market forces within the EU. They require of the incoming state an ability to take on all the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the "acquis communautaire"). They expect loyal adherence to the aims of the European political, economic and monetary union.

Meeting such criteria is surely challenging for candidates. They also embarrass any current member state that has slipped backwards from commitments made when it first joined up. Whereas candidate countries are screened systematically by the Commission for progress towards membership, existing members manage to evade such ongoing scrutiny. There has been much dissembling under the cover of the Copenhagen criteria.

The authors of the treaties have been wise enough not to inscribe the Copenhagen criteria into the primary law of the Union. Combining high political ambition with low political cunning, the criteria are referred to only obliquely in Article 49 of the Treaty on

European Union, the current iteration of how to join the Union:

> *"Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union. … The conditions of eligibility agreed upon by the European Council shall be taken into account".*

Under this regime, the Union succeeded in growing its membership to twenty-eight states with the addition of Croatia in 2013. Notwithstanding the safeguards already built into the enlargement process, when the prospect of the EU's expansion to the Western Balkans loomed, further tough measures were taken.

The 2020 reform had two rather contradictory goals: not only to "reinvigorate the accession process" but also to subject it "to stronger political steering". The Council now has direct involvement in setting benchmarks for the candidates, and in monitoring progress, especially in the "fundamentals" and on alignment of foreign and security policy. There is plenty of scope for any one member state to obstruct all progress or procrastinate for any number of reasons, some of which may be bilateral trivia or totally unrelated to the EU's overall enlargement strategy.

Fast-tracking Ukraine

Ukraine first applied for EU membership immediately after the full-scale Russian invasion in February 2022. All things being equal, Kyiv can be said to have made good advances towards meeting the accession criteria, not least thanks to the Association Agreement that it had struck with the EU in 2014. However, Ukraine cannot complete the conventional accession process in its current wartime state. In any case, accession on a slow trajectory will not meet Ukraine's acute need to be immediately grounded in the EU security nexus (Article 42(7) TEU).

And all things are not equal, of course, because Hungary, under instruction from the Kremlin, is blocking the progress of the Ukrainian dossier. Although Ukraine's technical preparations for the EU acquis continue, Viktor Orbán's government rejects the Commission's assessment of the situation and refuses to let the formal political phase of the accession negotiations begin. Moldova's accession progress, caught in the slipstream, is also impaired.

It is obvious that Ukraine's EU membership must form an integral and robust part of any cease-fire arrangement or inherently unstable "peace deal" imposed by Russia and the US. Indeed, without EU membership Ukraine's integrity as a sovereign state cannot be assured. Speed is of the essence. Like it or not, the European Union is having to cope with an emergency landing for Ukraine, all the while avoiding a disastrous crash landing. This suggests three steps.

First, the Union must upgrade and modernise the Copenhagen criteria which were written in a more benign age over thirty years ago. Enlargement today has become an instrument of security and defence. This needs to be codified in a solemn decision of the European Council that declares the immediate membership of Ukraine to be a strategic imperative in the protection of the Union's own values, fundamental interests, security, independence and integrity (Article 21(2) TEU). A new condition of eligibility should be attached to ensure that candidate states are capable of and willing to strengthen the security, defence and independence of the Union.

Second, the European Council and Commission, backed by the European Parliament, should table a revision to the 2020 enlargement procedures so that each chapter can be opened and closed on the initiative of the Commission alone unless the Council acts by Reverse Qualified Majority Vote to block the action. Such a reform would conform not only to Article 49, which prescribes unanimity only at the beginning and end of the accession negotiation, but also to Article 17(1) TEU that gives to the Commission and not to the Council the power to ensure the application of the treaties.

Third, as enlargement Commissioner Marta Kos has hinted, the Ukrainian accession treaty should be drafted so as to establish the incomer as a member state on probation. Reform programmes in various sectors that would normally be prescribed before

formal accession should in Ukraine's case be repackaged as part of agreed post-accession transition arrangements. This would increase the leverage of the EU over Ukraine's administration, including its military. The accession treaty should be rendered operational on a provisional basis until such time as final ratification is complete — a process that could in any case be expected to last two or three years.

While still a probationary member state, Kyiv's ministers would have a vote in the Council (but not a veto) in all those areas as and when the relevant chapters are satisfactorily closed in accordance with the conventional procedures. These sectors should include, as a priority, the provisions for permanent structured cooperation in defence (Article 42(6) TEU). Ukraine could lay claim to a place inside any group of integrationist member states acting under the enhanced cooperation provisions of the treaty (Article 20 TEU). Only after the completion of ratification would Ukraine have full powers with a member of the Commission, a judge at the European Court of Justice, and directly elected MEPs. A target of July 2029 to coincide with the next elections to the European Parliament and the start of the next institutional cycle would make perfect sense.

Calling the shots

Naturally there will be many objections to this emergency procedure, not least from Orbán whose bluff must be called decisively while he faces the Hungarian general election in April. Doubtless he and others will launch some ultra vires litigation at the Court of Justice. The Council legal service, whose habitual raison d'être is to defend the status quo, must be called into line by the politicians to serve the EU's new geopolitical strategy, as articulated in the revised Copenhagen criteria.

Diplomats representing other candidate states will protest that they are being unfairly excluded from Ukraine's privileged treatment. In fact, however, the more flexible procedures invented for Ukraine's emergency landing could well be adapted to speed membership for Moldova and the leading Balkan candidates. Here, recent statements by Albania's Prime Minister Edi Rama that he would be prepared to accept second-class status on a provisional basis are encouragingly realistic. Where Ukraine leads, others will follow.

Changing the methodology of enlargement will not answer all the EU's current constitutional problems. But it may open minds, hitherto closed since the Treaty of Lisbon, to wider reforms in a federal direction. The addition to the club of one or more new member states wholly committed to deeper European integration need not in itself be a bad thing. President Zelensky told the Davos audience of his frustration that the EU remained "a *beautiful but fragmented kaleidoscope of* middle powers", incapable of action. Imagine his impact as a full member of the European Council. Ukraine as a member state would be a pioneer in driving the next phase of Europe's integration in security and defence.

Once the logjam on enlargement is broken, Iceland and Norway may well revive their previously thwarted membership bids. Greenland, which left in 1985, might even be wise to come back. The UK, which itself seceded from the EU in 2020, is a vocal supporter of Ukraine's EU membership. Irony has no bounds.

Fast-tracking Ukrainian membership against the odds would be proof positive that the European Union can live on into the 21st century with purpose and confidence.

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