

Negotiations on EU-Accession of Ukraine - Procedure and Implications

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Introduction

Ukraine's rapprochement with the European Union

1995 Admission to the Council of Europe

Ukraine citizens may apply to the European Court of Human Rights

1996 Partnership and Cooperation Agreement

The aim of legal approximation was fixed for the first time.

2014 Deep and Comprehensive Free Trade Area Agreement

Ukraine was given preferential access to EU market



Introduction

Ukraine's rapprochement with the European Union

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|------|---|---|
| 2019 | The goal of membership is given constitutional status | |
| 2022 | February | Russia starts war,
Ukraine's application for EU membership |
| | March to May | Questionnaires sent to Ukraine Government |
| | June | Opinion of the Commission, decision of the Council
7 Conditions for maintaining candidate status |
| 2023 | November | Commission's Ukraine 2023 report and
Communication on EU Enlargement Policy |
| | December | Decision of the European Council is scheduled |



Historical Background

1948 **Council of Europe**, Charter of Human Rights, European Court of Human Rights in Strasbourg Venice Commission

1958 **Treaties of Rome** Germany, France, Italy, Benelux
Creation of the **European Economic Community (EEC)**

Common market based on the four fundamental freedoms

Free movement of goods,

Free movement of entrepreneurial activity,

Free movement of workers

Free movement of capital



Historical Background

1973 to 1986 Enlargement of the EU

1973 Northern enlargement: Denmark, Great Britain, Ireland

1981 Greece (1967 to 1974 military dictatorship)

1986 Portugal (1974 Revolution), Spain (1975 death of dictator Franco)

1979 First election to the European Parliament

1991 March Dissolution of Warsaw Pact

December Dissolution of the Soviet Union



Historical Background

- 1992 **Treaty of Maastricht**
Foundation of the **European Union**
Creation of the European Economic and Monetary Union
Transfer of further competencies to the EU with the aim of creating an '**ever closer union of the peoples of Europe**', democratisation process
- 1995 Accession of Finland, Austria, Sweden,
- 2005 EU constitution rejected in France and the Netherlands
- 2007/2009 **Treaty of Lisbon**
Creation of the legal bases now in force
Treaty of the European Union – TEU (institutional foundations)
Treaty on the Functioning of the European Union – TFEU
Expansion of democracy, creation of the European Council
- 2016 Brexit Withdrawal of Great Britain



Historical Background

Some legal particularities

1. The European Union is a supranational organization with legal capacity and its own competencies.
2. Competencies are conferred to it by the member states (Art. 4 TEU). As a consequence the European Union is a confederation of states, not a federal state.
3. EU law ranks higher than national law, however national constitutional courts do retain residual competence to control, whether concrete competencies have been conferred to the EU by National Parliaments



Historical Background

4. EU law in principle does not replace national law, the EU respects national legal orders and identities (Art. 4 II TEU).
5. For that reason the basic purpose of EU legislation is to implement the aims of the EU. As a consequence full harmonization of legislation of a certain area of law (by regulation, see art. 288 TFEU) is an exception. In most cases only additional rules are adopted (in the form a Directive), which have to be integrated into already existing national laws
6. In practice the European Court of Justice in Luxembourg plays a crucial role in interpreting and further developing EU law.



III. Eastern Enlargement of the EU

Legal Fundament:

Art. 49 TEU

*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 European Parliament and the national parliaments shall be informed of this application. The applicant State shall address its application to the Council, which shall act unanimously after consulting the Commission and after obtaining the consent of the European Parliament, which shall act by a majority of its component members. The criteria agreed by the European Council shall be taken into account. The conditions of admission and the adjustments to the Treaties on which the Union is founded which become necessary as a result of admission shall be the subject of an agreement between the Member States and the applicant State. The agreement shall be subject to ratification by all contracting states in accordance with their constitutional provisions.*



III. Eastern Enlargement of the EU

Art. 2 TEU

The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society characterised by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men.



III. Eastern Enlargement of the EU

1993 Copenhagen criteria

As a prerequisite for membership, the candidate country must have achieved institutional stability as a guarantee of democracy, the rule of law, respect for human rights and respect for and protection of minorities; it also requires a functioning market economy and the ability to cope with competitive pressure and market forces within the Union. Membership also requires that the individual candidate countries accept the obligations of membership and are able to embrace the objectives of political union and economic and monetary union.



III. Eastern Enlargement of the EU

Political criterion

- Respect for human rights, institutional stability
- Democratic and constitutional order
- Respect for and protection of minorities

Economic criterion

- The ability to withstand competitive pressure within the EU internal market
- Functioning and competitive market economy
- Openness of markets to foreign countries

Acquis criterion

Adoption of the "acquis communautaire", i.e. all legal standards as well as other legal provisions and the case law of the European Court of Justice.

Absorption capacity of the EU

For its part, the EU must be in a position to bear the additional burdens resulting from the admission of new members.



III. Eastern Enlargement of the EU

Accession of the Eastern European states

1990 to 1996 Applications from Eastern European states for membership of the European Union

1998 and 1999 Start of accession negotiations

2004 Accession of Poland, Hungary, Czech Republic, Slovakia, Slovenia, Lithuania, Latvia, Estonia, Cyprus.

2007 Accession of Romania, Bulgaria

2013 Accession of Croatia

Start of negotiations with Western Balkan states (Albania, Bosnia-Hercogovina, Moldova, Montenegro, North Macedonia, Serbia) and Turkey

2023 Candidate countries Ukraine, Georgia, Kosovo, Moldova



III. Eastern Enlargement of the EU

Economic Indicators

	Inhabitants	Gross national product	Gross national product per capita
European Union	446.141.649	12.511,874	29.100
Germany	83.237.124	3.869,90	46.180
Poland	37.654.247	656,905	17.370
Spain	47.432.893	1.327,108	27.870
Ukraine	41.830.619	152,42	04.011



III. Eastern Enlargement of the EU

Problems of eastward enlargement

- Violation of the principles of democracy and the rule of law
- Restriction of freedom of the press
- Restriction of the judiciary
- Influencing electoral legislation
- Corruption

Reaction of the European Union

Reports on the rule of law in the member states, see COM 2020 (580)

Since 2020 Mechanism for reducing budget funds in the event of breaches of the rule of law (Regulation 2022/2092)



IV. Scenario for EU -Accession

1. Conditions for maintaining candidate status

Seven conditions were put up in June 2022, the fulfillment of which is prerequisite for maintaining the candidate status. These conditionalities are referring to particular aspects of the reform of the judiciary, the fight against corruption, money laundering, curbing o the power of oligarchs, freedom of the media and protection of minorities.

According to the Commission report of November 8th, four conditions have been met. In its Communication form the same day the Commission recommends to start negotiations when

- anti-corruption forces (NABU) are strengthened
- corruption prevention institution (NACP) is given more powers
- a law on lobbying is enacted
- Venice Commission as regards protection of minorities are incorporated

2. Decision of the European Council on starting negotiations is expected in mid December



IV. Scenario for EU -Accession

1. Step: Definition of the negotiation framework

Negotiation partners, subjects, time frame, interim milestones, benchmarks

2. Step: Negotiations as regards 32 areas of legal regulation ('Chapters of the EU Acquis') combined into six thematic clusters

- Fundamentals
- Internal Market
- Competitiveness and inclusive growth
- Green agenda and sustainable connectivity
- Resources agriculture and cohesion
- external relations



IV. Scenario for EU -Accession

‘Negotiations’

1. The EU explains the principles and the contents of the *acquis Communautaire*
2. Ukrainian will present to which extent its legislation is compatible to EU law and which steps will be taken to implement remaining EU law
3. Cluster Screening reports evaluating the degree of preparedness and will fix priorities for key reforms (benchmarks) will be drafted
4. After the screening the Council will decide whether to open the corresponding cluster for negotiation



IV. Scenario for EU -Accession

- ' 5. Negotiations with regard to each cluster will take place, defining concrete steps for implementation
6. Implementation will be monitored by EU
7. Once benchmarks are met, the corresponding chapter will be closed
8. Once all chapters are closed, Commission will give its opinion on the readiness of Ukraine to become a member

During the process EU will provide for technical and financial assistance.



IV. Scenario for EU -Accession

3. Step

Negotiation treaty between Ukraine and EU-Members states will be negotiated. It may provide for transitory provisions and gradual accession in certain areas.

4. Step

Decision in all member countries on the accession of Ukraine according to their national constitutional laws. The decision has to be taken unanimously

Reform of EU

In the meanwhile EU has to reform itself with a view to improve its absorption capacities. In particular the majority principle has to be given a wider field of application instead of the consensus principle.



V. Cluster ‚Fundamentals‘

The most important cluster, which will be opened first and closed last comprises the following topics

1. Functioning of democratic Institutions
2. Public administration reform
3. Judiciary and fundamental rights
4. Justice freedom and Security
5. Public procurement
6. Implementation of EU-standards of Statistics
7. Introducing of appropriate procedures for financial control



References

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Commission Report on Ukraine 2023

https://neighbourhood-enlargement.ec.europa.eu/ukraine-report-2023_en

EU Enlargement policy

https://commission.europa.eu/strategy-and-policy/policies/eu-enlargement_en

Venice Commission

<https://www.venice.coe.int/>

History of the EU

https://european-union.europa.eu/principles-countries-history/history-eu_en